

<p><u>LEASE COVERING PREMISES LOCATED AT:</u> 95± Acres Vacant Land, southeast corner of Bickmore Avenue and Mountain Avenue, Chino, California</p>	<p><u>DEVELOPMENT GROUND LEASE</u>  <u>LEASE NO.:</u> _____</p>
<p><u>District:</u> ORANGE COUNTY FLOOD CONTROL DISTRICT, a body corporate and politic</p>	<p><u>Lessee:</u> MAJESTIC [SPECIAL PURPOSE ENTITY TBD], LLC, a Delaware limited liability company</p>

THIS LEASE AGREEMENT (hereinafter referred to as “**Lease**”), entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the “**Effective Date**”), is made by and between the ORANGE COUNTY FLOOD CONTROL DISTRICT, a body corporate and politic (hereinafter referred to as “**District**”), and MAJESTIC [SPECIAL PURPOSE ENTITY TBD], LLC, a Delaware limited liability company (hereinafter referred to as “**Lessee**”). District and Lessee may individually be referred to herein as a “**Party**,” and collectively as the “**Parties**.”

**RECITALS:**

WHEREAS, District is the fee owner of approximately 95 acre property located at the southeast corner of Bickmore Avenue and Mountain Avenue, in the City of Chino, County of San Bernardino, California 91708, defined below as the Premises; and

WHEREAS, District issued a public Request for Qualifications dated December 3 2015 for the ground lease and development of such Premises and selected Majestic Realty Co., an Affiliate of Lessee, to option, entitle, ground lease and develop the Premises; and

WHEREAS, District is reliant upon the expertise of Lessee for the development and operation of the Premises, and chose Lessee based upon its experience and track record; and

WHEREAS, District and Lessee or an affiliate of Lessee entered into an Option Agreement, dated October 25, 2016 (“**Option Agreement**”), which has been subsequently amended, granting Lessee the right to secure Entitlements for the Premises, including complying with CEQA; and

WHEREAS, the Parties acknowledge that the conditions precedent required by the Option Agreement have been fulfilled and therefore Lessee and District desire that Lessee shall ground lease the Premises from District on the terms set forth herein

NOW, THEREFORE, in consideration of the mutual promises and agreements set forth herein, and for good and valuable consideration, District and Lessee hereby agree as follows:

**WITNESSETH:**

1. **DEFINITIONS.**

In addition to the terms defined elsewhere in this Lease, the following terms as used throughout this Lease shall have the following meanings:

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

B. “**Annual Operating Budget**” shall have the meaning set forth in Section 10.B below.

C. “**Approved Construction Budget**” means any written budget prepared by Lessee for any Construction Phase and approved by District pursuant to the procedure set forth in the Work Letter (defined below).

D. “**Asset Management Fee**” means an annual fee Lessee shall pay District to compensate District for costs incurred in connection with District’s ongoing administration and management of this Lease (and any subsequent Related Lease) and the entirety of the Premises, including but not limited to staff time, legal expenses, third party and consultant costs. The Asset Management Fee is separate from and in addition to the DAC Payment (as defined in the Work Letter). The amount of the Asset Management Fee is set forth in Section 9.B below. This payment shall be made to District with the notation “Lease No. \_\_\_\_\_” and sent to:

County of Orange  
c/o CEO/Corporate Real Estate  
ATTN: Chief Real Estate Officer  
400 W. Civic Center Dr., 5<sup>th</sup> Floor  
Santa Ana, CA 92701

E. “**Auditor-Controller**” means the Auditor-Controller, County of Orange, or designee, or upon written notice to Lessee from District, such other person or entity as shall be designated by the Board of Supervisors.

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

G. “**Capital Replacement Reserve**” means a reserve to be maintained by Lessee as part of the Project Costs to be used for the repair, modification or replacement of the Facilities, as set forth in the Annual Operating Budgets approved by District, as more particularly addressed in Section 10.C and Section 11.C below.

H. “**CC&Rs**” whenever used herein, means any covenants, conditions, easements and restrictions developed by Lessee for the Premises with District’s and City’s approval, which may include, but not be limited to, specific guidelines for use of the Premises.

I. **“Chief Real Estate Officer”** means the Chief Real Estate Officer, County Executive Office, County of Orange, or designee or upon written notice to Lessee from District, such other person or entity as shall be designated by the County Executive Officer or Board of Supervisors.

J. **“City”** means the City of Chino, California.

K. **“Commence Construction”** (or similar phrase) means commencing construction of the work that is the subject of a Construction Phase by Lessee causing its construction contractor to obtain occupancy and control of the area and to begin actual site development and construction thereon. Notwithstanding any other term of this Lease, no provision, covenant or condition of this Lease shall prohibit Lessee from contracting with or otherwise engaging either its affiliated general contractor, Commerce Construction Co. L.P. (**“Commerce Construction”**), or third parties, independent contractors, and/or subcontractors to assist Lessee in constructing the Facilities as required or permitted under the terms of this Lease and to assist Lessee in furnishing services on the Premises. If Lessee engages Commerce Construction to construct the Facilities, the contractor’s fee payable to Commerce Construction shall not exceed five percent (5%) of the hard or direct costs of such work, which fee shall be inclusive of contractor’s overhead, without District’s prior written approval.

L. **“Commencement Date”** means the date that the Term of this Lease commences under the terms of Section 2 below.

M. **“Construction Phase(s)”** means the planning, development and construction of the Facilities for a portion of the Premises, as Lessee may determine from time to time with District’s prior approval, as represented by Permit Plans approved by District and City. Substantial Completion of a Construction Phase is to be determined as provided in Section 9.A (1) below. As of the date of this Lease, there are more than one Construction Phases contemplated for the Premises, as generally depicted on the attached Exhibit C. Lessee, subject to District’s approval and obtaining any other required governmental approvals, may alter the size, number or configuration of the Construction Phases depicted on the attached Exhibit C. Notwithstanding the above, a “Construction Phase” may also include the construction of the Off-Site Improvements and an initial additional Construction Phase might not include the construction of any buildings, but might only include improvements such as the mass grading work, the Premises Storm Water Drainage System, Off-Site Improvements or other infrastructure work.

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

O. **“Debt Service”** means Lessee’s payment of principal, interest and any other sum due and owing (monthly or otherwise) pursuant to the terms and conditions of any Leasehold Mortgage for construction, interim and/or permanent financing of the Facilities and Off-Site Improvements, but excluding any penalties, late charges, default interest and other amounts (except principal and interest) payable solely as a result of a breach or default under such

Leasehold Mortgage, except to the extent such breach or default is caused in part by the acts or omissions of District.

P. **“District”** means the Orange County Flood Control District, a body corporate and politic, and where this Lease refers to “approval by District,” or “approved by District,” such phrases mean either (1) the required approving action by the Board of Supervisors (limited to approval of this Lease and any subsequent amendment to this Lease), or (2) all other approving action contemplated under this Lease, which is to be taken by District's Chief Real Estate Officer.

Q. **“Entitlements”** means all discretionary land use entitlements or approvals that Lessee deems necessary or desirable for the development of the Premises, including, without limitation, an amendment of the City’s General Plan Land Use designation for the Premises, a change of the City’s zoning classification for the Premises, the approval of a parcel map, and environmental review processing pursuant to the California Environmental Quality Act, Public Resources Code Section 21000, *et seq.* (“**CEQA**”), all of which have been obtained prior to the full execution and delivery of this Lease.

R. **“Environmental Laws”** means any one or all of the laws and/or regulations of the U.S. Environmental Protection Agency or any other federal, state or local agencies regulating Hazardous Material, including, but not limited to the following as the same are amended from time to time:

COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT (42 U.S.C. Section 9601 *et seq.*)

RESOURCE CONSERVATION AND RECOVERY ACT (42 U.S.C. Section 6901 *et seq.*)

TOXIC SUBSTANCES CONTROL ACT, as amended (15 U.S.C. Section 2601 *et seq.*)

SAFE DRINKING WATER ACT (42 U.S.C. Section 300h *et seq.*)

CLEAN WATER ACT (33 U.S.C. Section 1251 *et seq.*)

CLEAN AIR ACT (42 U.S.C. Section 7401 *et seq.*)

and the regulations promulgated thereunder and any other laws, regulations and ordinances (whether enacted by the Federal, State or local government) now in effect or hereinafter enacted that deal with the regulation or protection of the environment (including, but not limited to, the ambient air procedures and records detailing chlorofluorocarbons [CFC]), ambient air, ground water, surface water and land use, including sub-strata land.

S. **“Equity Contribution”** means any funds provided by Lessee (or any other party deemed to be a Lessee pursuant to Section 32 below) in accordance with the provisions of Section 9.C below.

T. “**Excess Fill Dirt Site**” means that certain real property located along both the southeast and the southwest corners of Euclid Avenue and Pine Avenue in the City. A depiction showing the approximate boundaries of the Excess Fill Dirt Site is attached hereto and made a part hereof as Exhibit "I".

U. “**Excess Fill Dirt Interest**” means Lessee’s temporary license to enter upon and access the Excess Fill Dirt Site, (and in the Other District Property [as defined in the Option Agreement], as applicable) as provided in Section 62 below, in order to excavate and permanently remove soil, subsoil, material and dirt from the Excess Fill Dirt Site. Such rights and interest shall be exclusive to Lessee and include all beneficial rights held by District to excavate and remove soil, subsoil, material and dirt from such property.

V. “**Facilities**” means all buildings and site improvements (including all paved and landscaped areas) physically constructed by Lessee (or any Tenant) on the Premises in accordance with the terms and conditions of this Lease. Facilities shall include, without limitation that portion of the storm water drainage system to be located on the Premises to address the storm water originating on the Premises, which shall be designed so that all storm water shall exit the Premises at the point designated on the approved storm water management plan (the “**Premises Storm Water Drainage System**”).

W. “**Fixed Ground Rent**” means the annual rental described in Section 9.A below.

X. “**Hazardous Material**” means the definitions of hazardous substance, hazardous material, toxic substance, regulated substance or solid waste as defined within the following:

COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT (42 U.S.C. Section 9601 et seq.)

RESOURCE CONSERVATION AND RECOVERY ACT (42 U.S.C. Section 6901 et seq.)

HAZARDOUS MATERIALS TRANSPORTATION ACT (49 U.S.C. Section 1801 et seq.) and all present or future regulations promulgated thereto.

DEPARTMENT OF TRANSPORTATION TABLE (49 C.F.R. Section 172.101) and amendments thereto

ENVIRONMENTAL PROTECTION AGENCY (40 C.F.R. Part 302 and amendments thereto)

All substances, materials and wastes that are, or that become, regulated under, or that are classified as hazardous or toxic under any Environmental Laws, whether such laws are Federal, State or local.

Y. “**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).

Z. **"Leasehold Mortgagee"** means any lender of Lessee holding the beneficial interest in any Leasehold Mortgage.

AA. **"Leasehold Mortgage"** means any mortgage or deed of trust which is in favor of a Leasehold Mortgagee and encumbers Lessee's interest in this Lease, the leasehold estate in the Premises created hereunder and/or the Facilities from time to time located on the Premises. No Leasehold Mortgage shall encumber District's fee interest in the Premises or any interest in any real property other than Lessee's leasehold interest in the Premises under this Lease and the Facilities.

BB. **"Maintenance and Operations Expense"** means any expense paid by Lessee for the management, maintenance, operation, administration and repair or replacement of the Premises and the Facilities not otherwise reimbursed by Sublessees or Tenants, including, but not limited to, repair, maintenance or replacement of the plumbing, heating, ventilating and air conditioning systems, electrical systems, lighting facilities, security and fire protection systems, utility installations, fixtures, walls, foundations, roof, ceilings, floors, structural systems, doors, glass, skylights, landscaping and irrigating systems, driveways, parking lots, fences, retaining walls, perimeter wall, Premises Storm Water Drainage System, Off-Site Improvements (including the Off-Site Drainage Facilities [defined below], but only to the extent the maintenance of such Off-Site Drainage Facilities is routine, as reasonably determined by Lessee), signs, sidewalks, and the cost of all janitorial service, trash disposal, water, gas, electricity, and other utilities, together with any taxes thereon.

CC. **"Management Fee"** means the payment, as a Maintenance and Operations Expense, to Lessee or any property manager it selects for the administration, bookkeeping, accounting and management of the Premises and the Facilities (inclusive of salaries and benefits payable to any on-site personnel). Such Management Fee shall be two percent (2%) of rents, charges, fees and income derived directly by Lessee from Tenants and Sublessees each month during the Term of this Lease. The Management Fee shall be paid to Lessee or its property manager on a monthly or other basis selected by Lessee.

DD. **"Net Revenue"** means for each calendar year, or portion thereof, during the Term of this Lease, the amount of cash available after deducting from Total Revenue for such year (or portion thereof), in the following order of priority: (a) Debt Service for the calendar year (or portion thereof); (b) Asset Management Fee, (c) Fixed Ground Rent (if applicable), (d) Management Fee for the calendar year (or portion thereof); (e) all other Project Costs (other than the Asset Management Fee and Management Fee paid pursuant to clauses (b) or (d)) incurred during such calendar year (or portion thereof), including funds applied to the following reasonable reserves as set forth in an approved Annual Operating Budget in the following order of priority: (i) any reserve funds required by any Leasehold Mortgagee, for such calendar year (or portion thereof) and not otherwise provided for in this sentence, (ii) Maintenance and Operations Expense reserve (iii) replenishment of the Capital Replacement Reserve in an amount

set forth on an Annual Operating Budget, and (iv) commencing 84 months prior to the then scheduled expiration of the Term of this Lease, reserve funds to raze the Facilities at the end of the Term, (f) payment of interest on Equity Contributions in accordance with Section 32 and (g) repayment of Equity Contributions in accordance with Section 32. All such calculations shall be pursuant to cash basis accounting principles consistently applied (except that any prepaid rent received from a Sublessee shall be allocated to the period for which it is due), and shall be presented in a format similar to the sample monthly Net Revenue calculation statement attached as Exhibit D to this Lease.

EE. “**Off-Site Improvements**” means all improvements constructed by Lessee outside the Premises that are otherwise required for the development of the Premises by the City, County of San Bernardino, or other governing body with jurisdiction. This Lease gives no governmental approvals for such Off-Site Improvements, and Lessee shall be responsible to obtain any and all required approvals and permits necessary for the Off-Site Improvements. Notwithstanding any language to the contrary in this Lease, the Off-Site Improvements may also include any storm water drainage pipes, ditches, berms, or other improvements that are designed to divert storm water that originates on the Premises (the “**Off-Site Drainage Facilities**”). Once constructed, Lessee shall have the obligation to maintain, repair or improve the Off-Site Improvements, including any obligations imposed by the CC&Rs, or the City as a condition to obtaining the Entitlements. Any costs incurred by Lessee to maintain, repair or improve the Off-Site Improvements shall be a Project Cost.

FF. “**Premises**” initially means that area of land situated in the southeast quadrant of Bickmore Avenue and Mountain Avenue containing approximately 95 acres of undeveloped land, in the City of Chino, County of San Bernardino, California, comprising those parcels depicted and described on Exhibit A. As provided in Section 61 below, the description of the Premises is subject to amendment upon the execution and delivery of one or more Related Leases. With respect to this Lease or any Related Lease, legal descriptions of the Premises will be attached to the Memorandum of Lease described in Section 59 below.

GG. “**Project**” means the commercial real estate development proposed for the Premises, which will include the Facilities and all other related improvements to be constructed on the Premises pursuant to this Lease.

HH. “**Project Cost**” means, during any period, all necessary costs incurred by Lessee (excluding Rent and Fixed Ground Rent) prior to or after the date hereof in connection with the entitling, subdividing, designing, constructing, leasing, financing or managing the Premises or the Facilities and Off-Site Improvements constructed by Lessee, including, without limitation, all costs associated with Lessee's or Lessee Affiliate's performance of its duties under the Option Agreement, and all costs associated the excavation and removal of soil and other material from the Excess Fill Dirt Site (and from the Other District Property, if applicable). Except as otherwise provided in this Lease, Project Cost shall include (without duplication), but not be limited to, the following: (a) all architectural and engineering expense, (b) all plan check fees, permit fees, school fees, drainage fees and all other governmental, and utility fees, licenses and permit cost, (c) all costs to entitle the Premises and Facilities, including environmental impact reports, traffic studies, biological studies and all other reports and studies required by governmental agencies, railroads or utility companies, and also all mitigations and impact fees,

(d) all costs to subdivide and re-subdivide the Premises or to prepare and implement any CC&Rs, (e) all costs incurred by Lessee in constructing the Facilities or other permitted improvements on the Premises, (f) establishment or replenishment of Capital Replacement Reserves and all other capital improvement expenses as necessary, (g) all Maintenance and Operations Expense, (h) all Management Fees, (i) except as provided in Section 27 below, all costs incurred for uninsured losses, earthquake, flood or other casualty, or repairs or replacements to the Premises and the Facilities or other improvements and the unreimbursed portion of any insured losses, (j) except as otherwise expressly provided in Section 35 below, all costs of complying with Environmental Laws, (k) all insurance premiums for insurance required hereunder and property taxes and assessments, and all income taxes payable on account of interest payable to Lessee on any interest-bearing bank account that holds security deposits, reserves or other funds associated with this Lease, (l) all leasing commissions and all other marketing and advertising expense related to the Premises and no other property, (m) Asset Management Fee and DAC Payment (defined in the Work Letter), (n) all loan fees, points, appraisal fees and other costs associated with any Leasehold Mortgages, (o) all interest on Leasehold Mortgages, (p) the cost of title commitments and policies, and (q) all other expenses related to the use, maintenance, leasing, financing and operation of the Premises and the Facilities. Project Costs shall only include costs, expenses and other amounts to the extent the same are reasonable and competitive in amount and actually expended. Without limiting the preceding sentence, any costs, expenses or other amounts specified in an Approved Construction Budget, under an Annual Operating Budget, or otherwise approved in writing by District, shall be deemed a reasonable and competitive amount. Further, Project Cost shall not include any cost, expense or other amount included within any other cost, expense or amount which is permitted by this Lease to be deducted from Total Revenue in calculating Net Revenue (including any withdrawals from any reserves established with Total Revenues), the intention of the Parties being that no cost, expense or other amount which is so permitted to be deducted from Total Revenue will be deducted therefrom more than once. Additionally, Project Costs shall not include the amounts incurred by Lessee to the extent caused by any violation of any Applicable Law to the extent caused by Lessee, including any fines, penalties, additional costs to correct any of Lessee's violations of or other noncompliance with any Applicable Law (to the extent of the same), additional or duplicative permit or other governmental fees, the cost of consultants, engineers, attorneys or others defending, settling, or for designing solutions for the cure of any such violation or non-compliance by Lessee; provided, however, that the exclusion from Project Costs described above in this sentence shall not include the costs of defending or settling any lawsuit (including satisfying any judgment) filed by a third party challenging the Entitlements or the validity of this Lease, but only to the extent such costs or expenses do not result from the negligence or willful misconduct of Lessee.

II. “**Project Schedule**” means the master schedule for development and construction of the Facilities and Off-Site Improvements as agreed to by District and Lessee from time-to-time, which is attached as part of Exhibit C to this Lease.

JJ. “**Related Lease**” shall have the meaning set forth in Section 61.B of this Lease.

KK. “**Release**” means any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing or dumping of any Hazardous Material in violation of Environmental Laws.



LL. “**Rent**” means District’s share of Net Revenue, as described in Section 9.D below.

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

NN. “**Sublease**” means the documents signed by a Sublessee or Tenant of Lessee for the leasing of a portion of the Premises or space in the Facilities from Lessee.

OO. “**Sublessee**” or “**Tenant**” means any individual, corporation, limited liability company, trust, business, firm or other entity that leases or otherwise occupies or uses all or any portion of the Premises or the Facilities under a lease, rental agreement or other arrangement with Lessee.

PP. “**Total Revenue**” means, for any period, the total amount of all rents, charges, fees, credits, and/or other income derived or received, directly or indirectly, by Lessee from the use, operation and/or leasing of all or part of the Premises or the Facilities, including, without limitation, all rents, charges, fees, reimbursements and/or other income and amounts received from Sublessees or Tenants of all or any part of the Premises or the Facilities during each full or partial calendar year during the Term of this Lease and the net proceeds received by Lessee as a result of a Total Taking, Partial Taking or Temporary Taking (all as defined in Section 34 below). Total Revenue also includes all excess loan proceeds (including the product of any refinancing) not needed for Project Costs.

QQ. “**Work Letter**” means the Work Letter attached as Exhibit B to this Lease.

2. TERM.

The term (“**Term**”) of this Lease will commence on the first January 1 following the full execution of this Lease by District and Lessee, and will expire at the end of the sixty-fifth (65<sup>th</sup>) calendar year following such commencement date. Notwithstanding the above, (a) during the period between full execution and commencement of the Term, the terms and provisions of this Lease shall be effective, and (b) the Term of this Lease shall be tolled while a lawsuit, referendum, moratorium, or initiative is pending that challenges or involves the Entitlements for the Premises or otherwise challenging the validity of this Lease.

3. HOLDING OVER.

Any holding over after the expiration of the Term or any extension thereof, with or without the written consent of District expressed or implied, shall be deemed a tenancy only from month-to-month, and all other terms and conditions of this Lease shall continue in full force and effect; provided, however, that the rent payable by Lessee to District during such holdover tenancy shall be ninety percent (90%) of the Net Revenue, payable monthly in arrears. Holdover rent is immediately due and payable on the first day of the month following the expiration of the Term, payable each month in arrears. Holdover rent shall be due and payable to District whether or not an actual invoice is sent by District or received by Lessee.

4. LEASE OF PREMISES.

A. District does hereby lease to Lessee, and Lessee hereby hires and leases from District, the Premises.

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

C. This Lease and the rights and privileges granted Lessee in and to the Premises are subject to all covenants, conditions, restrictions, and exceptions of record or apparent from a physical inspection of the Premises. Nothing contained in this Lease or in any document related hereto shall be construed to imply the conveyance to Lessee of rights in the Premises which exceed those owned by District, or any representation or warranty, either express or implied, relating to the nature or condition of the Premises or District's interest therein.

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

5. USE OF PREMISES.

A. Upon performance of the agreements, provisions and conditions contained in this Lease, Lessee will have the use of the Premises for the development of the Premises and construction and operation of Facilities in substantial conformance with the Permit Plans (as defined in the Work Letter) as approved by City, studied pursuant to CEQA and approved by District prior to execution hereof and for any other business activities related thereto, and for warehouse, industrial, office and any other use permitted by the City and for no other purposes, unless approved in writing by District.

B. Lessee acknowledges that the Rent payable to District under this Lease is directly dependent upon the generation by Lessee of Net Revenue, and that the failure by Lessee to use commercially reasonable efforts to maximize Net Revenue will have a direct and adverse effect upon District's and Lessee's economic return under this Lease. Therefore, as a material inducement to District to enter into this Lease, Lessee agrees that, pursuant to the terms of this Lease, it will at all times construct, manage, lease and operate all Facilities in a manner and through the use of commercially reasonable efforts so as to maximize Net Revenue throughout the Term of this Lease.

C. Lessee will use commercially reasonable efforts to develop the Premises and construct the Facilities in substantial conformance with the Final Plans, subject to the approval by City, pursuant to CEQA and approval by District (as provided in the Work Letter), and the implementing plans and specifications prepared by Lessee in accordance with applicable governmental statutes, ordinances, rules and regulations, including those of District, the City and the State of California, as applicable.

D. Lessee shall employ a competent property manager (the "**Manager**") that 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 Lessee with respect to the supervision over the operation and maintenance of the Premises, including the authority to enforce compliance by Lessee's agents, employees, concessionaires, licensees and Sublessees with the terms and conditions of this Lease and any and all rules and regulations adopted hereunder. The initial Manager to be employed by Lessee is Majestic Management Co., an Affiliate of Lessee. Lessee shall notify District in writing of the name of any replacement Manager, with such notice to be given as provided in Section 38 of this Lease.

E. In its development of the Premises, Lessee shall rely solely on the water supplied by City or other governmental or quasi-governmental authority and acknowledges that its leasing of the Premises from District does not include any water rights or any warranty by District with respect to the availability of water.

F. District shall not be responsible for the security of the Premises, Lessee or any Sublessees, or any of their respective employees, agents, vendors, clients, visitors, volunteers, staff or construction workers while such persons are in, on or about the Premises.

G. During the Term, Lessee shall use commercially reasonable efforts to continuously conduct Lessee's business at the Premises (which is the development and leasing of space in the Facilities to Sublessees) in the manner provided under this Lease and shall not discontinue use of the Premises for any period of time, except in case of (1) damage or destruction of the Facilities, (2) a Force Majeure event, (3) lawsuit, referendum, moratorium, or initiative that challenges or involves the Entitlements or use of the Premises, or challenges the validity of this Lease, or (4) unless such temporary cessation of business is otherwise permitted in writing by the Chief Real Estate Officer. Any such discontinuance shall only be to the extent the events of (1) through (4) substantially interfere with Lessee's ability to continuously conduct business in the Premises.

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

## 6. COMPLIANCE WITH LAWS.

Lessee shall, at its sole cost and expense (but as a Project Cost), comply with all of the requirements of all municipal, state, and federal authorities now in force, or which may be in force pertaining to the Premises and the use thereof according to Section 5 above.

7. RIGHT TO ENTER.

Subject to Section 37 below, during the Term of this Lease, there shall be and is hereby expressly reserved to District and to any of its agencies, contractors, agents, employees, representatives or licensees, the right during regular business hours, or at any time in the case of an emergency, to temporarily enter upon the Premises for survey, inspection, or any other lawful District purposes. District shall use its best efforts to provide at least one (1) business day's prior notice, unless in an emergency situation, of such entry and to allow accompaniment of Lessee's authorized representative. In case of any entry onto or inspection of leased premises occupied by a Sublessee or Tenant, District agrees to comply with such Sublessee's or Tenant's reasonable security protocols. No such entry upon the Premises by or on behalf of District will cause or constitute a termination of this Lease nor be deemed to constitute an interference with the possession thereof nor constitute a revocation of or interference with any of Lessee's rights in respect thereof for exclusive use of the Premises. The rights of entry for inspection and other purposes as contemplated by the Parties to this Lease, pursuant to this Section 7, are for the sole benefit of the Parties. No benefit to any third party is contemplated or intended.

8. MINERAL RIGHTS.

Lessee agrees not to interfere, in any way, with the interests of any person or persons that may presently, or in the future, hold oil, gas, or other mineral interests upon or under the Premises; nor shall Lessee, in any way, interfere with the rights of ingress and egress of said interest holders. Notwithstanding the foregoing, said mineral interest holders (including District or any grantee of District) (i) shall not have any surface access rights on the Premises, (ii) shall not undermine any portion of the Premises that could make the Facilities built thereon unstable or subject to collapse, (iii) shall not interfere in any way with the quiet enjoyment of the Premises and Facilities by Lessee and its Sublessees, Tenants, or their respective employees, agents, contractors and invitees, and (iv) shall not have the right to enter upon or disturb the first 500 feet below the surface of the Premises in the exercise of rights to its mineral interests or to extract the same.

9. RENT, COSTS AND EQUITY CONTRIBUTIONS.

Rents due under this Lease and Equity Contributions for the development, construction and operation of the Facilities will be as follows:

A. Fixed Ground Rent.

(i) Should the work for any Construction Phase not be commenced or Substantially Completed within nine (9) months after the applicable deadline for such commencement or such completion set forth in the Project Schedule, the rent for that Construction Phase may, at the election of District, be a fixed ground rent ("**Fixed Ground Rent**") equal to ten percent (10%) of land value as determined by appraisal, with payment of Fixed Ground Rent commencing upon receipt by Lessee of written notice of District's election, which shall be no earlier than the first (1<sup>st</sup>) day of the tenth (10<sup>th</sup>) month after the applicable deadline set forth in the Project Schedule (each a "**FGR Date**"). For example, if the Project Schedule's deadline for commencement of work for a

Construction Phase is twenty-four (24) months following the Commencement Date and such work has not commenced by the end of the thirty-third (33<sup>rd</sup>) month following the Commencement Date, then District may elect to have Lessee begin to pay Fixed Ground Rent beginning on the first day of the thirty-fourth (34<sup>th</sup>) month following the Commencement Date. Notwithstanding any language to contrary in this Section 9.A, the time for Lessee's performance of its obligations under this Section 9.A shall be extended, day-for-day, by any delay caused by any Force Majeure event or by reason of District's acts or omissions that make such delay unavoidable by Lessee. Once Fixed Ground Rent has commenced for any reason, the Fixed Ground Rent for that portion of the Premises that is the subject of the applicable Construction Phase shall continue to be paid until commencement of the work or until Substantial Completion of the Facilities planned for that Construction Phase (depending on whether the obligation to pay Fixed Ground Rent was based on a failure to timely commence construction or based on a failure to timely Substantially Complete the work), at which time Lessee's obligation to pay Fixed Ground Rent for such Construction Phase will cease and the Rent will be determined and payable as provided in Section 9.D. below. Notwithstanding any language to the contrary in this Lease, so long as Lessee is paying the Fixed Ground Rent, Lessee shall not be in material breach of this Lease for failure to Substantially Complete the subject Facilities. As used in this Lease, "**Substantial Completion**" or "**Substantially Complete**" (or similar phrase) means the required Off-Site Improvements (if applicable) or the building shell for any building (and the on-site improvements related to such building) included with the Facilities for such Construction Phase has been completed pursuant to the Permit Plans (as defined in the Work Letter), with the exception of any "punch list" items (those items that can be completed by Lessee within sixty (60) days thereafter, but will not delay the subsequent construction of specific improvements for a Sublessee), as determined by District and/or City or upon issuance of a temporary or permanent certificate of occupancy (or its equivalent) by City, whichever first occurs.

(ii) Once Lessee's obligation to pay Fixed Ground Rent for a Construction Phase has commenced and is continuing, the amount of Fixed Ground Rent payable shall increase annually on each January 15 by five percent (5%) compounded annually. For example, the first annual increase shall result in total Fixed Ground Rent payable equal to ten and one half percent (10.5%) of the appraised land value.

(iii) If the Facilities for the applicable Construction Phase are not Substantially Completed within four (4) years following the applicable FGR Date, then District or Lessee may terminate this Lease as to all portions of the Premises where development is not Substantially Completed, and this Lease will otherwise continue in full force and effect and there shall be no reduction in any payments of Rent (other than Fixed Ground Rent) payable by Lessee to District under this Lease, excepting any reduction that may result from a decrease in Net Revenue. Notwithstanding any language in this Lease to the contrary, District shall give ninety (90) days prior written notice to Lessee and all affected Leasehold Mortgagees of its intent to terminate as provided above, which shall provide them an opportunity to Substantially Complete the work of the Construction Phase prior to the end of such 90-day period; moreover, District agrees to not exercise its right to terminate as to any such portion of the Premises until any affected Leasehold Mortgagee has been given its right to cure or foreclose as set forth in Section 32 below.

Upon such termination, neither Party shall have any further obligations to the other under this Lease with respect to that portion of the Premises that is no longer subject to this Lease, other than those obligations that have accrued prior to the date of such termination or those that expressly survive such termination.

(iv) Lessee at its sole cost (which will be treated as a Project Cost) shall engage an independent MAI appraiser who shall determine the "as is" per square foot fair market value of the applicable undeveloped land within the Premises based on the then-current Entitlements as of the FGR Date. This fair market value, once determined, shall be used for the purpose of determining the amount of Fixed Ground Rent. Lessee shall promptly notify District of the independent MAI appraiser retained. The appraisal report provided by Lessee's appraiser shall be delivered to District no later than sixty (60) days following the applicable FGR Date. If District disagrees with Lessee's appraisal, District may order an appraisal by a different independent MAI appraisal, which appraisal report shall be delivered to Lessee not later than ninety (90) days after receipt of Lessee's appraisal report. Lessee shall pay the cost of District's appraisal as a deposit to District, the cost of which will be treated as a Project Cost. The failure of District to deliver District's appraisal report within ninety (90) days shall result in the presumption that District accepts Lessee's appraisal. If Lessee's appraisal and District's appraisal differ by ten percent (10%) or less, then the average of Lessee's appraisal and District's appraisal shall constitute the average per square foot land value of the applicable undeveloped portion of the Premises. If District's appraisal differs from Lessee's appraisal by more than ten percent (10%), the appraisers preparing Lessee's appraisal and District's appraisal, shall, within fourteen (14) days after delivery of District's appraisal, select a third independent MAI appraiser to make a third appraisal to be submitted to District and Lessee not later than sixty (60) days after the selection of the third appraiser. If the third appraisal (i) matches either Lessee's appraisal or District's appraisal or (ii) falls anywhere in between District's appraisal and Lessee's appraisal, then the per square foot land value specified in the third appraisal shall be the final determination of land value per square foot. If the third appraisal does not match District's appraisal or Lessee's appraisal or fall between them, then the land value per square foot shall constitute the average of (i) the third appraisal and (ii) whichever of District's appraisal or Lessee's appraisal as shall have been closer in amount to the third appraisal. The fees and costs of the third appraiser shall be paid by Lessee as a Project Cost.

(v) Notwithstanding any language in this Lease to the contrary, provided that Lessee reasonably determines that the Project is no longer economically feasible, Lessee may elect to terminate this Lease at any time prior to acquiring a Leasehold Mortgage for construction, by providing District with written notice of such determination of the Project's infeasibility with the Lessee's rationale to support that determination and of Lessee's election to terminate this Lease which shall terminate ten (10) days after the District's receipt of such notice. Upon such termination, neither Party shall have any further obligations to the other under this Lease other than those obligations that have accrued prior to the date of Lessee's notice of termination or those that expressly survive the expiration or earlier termination of this Lease, and Lessee shall have no right to any Equity Contributions or other Project Costs made prior to the termination of the Lease.

B. Asset Management Fee. Lessee shall pay an annual Asset Management Fee to District in the initial amount of \$30,000.00 for District's internal costs of administering this Lease and any subsequent Related Lease. In the event that a Related Lease is executed, the Asset Management Fee shall be distributed on a pro rata basis between this Lease and the Related Lease (which shall be memorialized through an amendment to this Lease executed by the Lessee and the Chief Real Estate Officer). In no event shall Lessee be liable for payment of more than one annual Asset Management Fee regardless of the number of Related Leases. The Asset Management Fee will be payable to District and sent to the following address and shall display the notation "Asset Management Fee":

Orange County Flood Control District  
c/o County of Orange/CEO/ Real Estate  
ATTN: Chief Real Estate Officer  
400 W. Civic Center Dr., 5<sup>th</sup> Floor  
Santa Ana, CA 92701

The Asset Management Fee shall be paid annually in advance, commencing the first January 15 after the City issues the first building permit for the first Construction Phase for the Premises, and on January 15 of each year thereafter. After said first January 15 payment, the Asset Management Fee shall increase annually on each January 15 thereafter by two percent (2%) of the Asset Management Fee payable immediately prior to such increase. Lessee shall also make the DAC Payment provided in the Work Letter.

C. Equity Contributions.

(i) The Parties anticipate that prior to, during and after expiration or termination of the Term, there will be times where Total Revenue either does not exist (during pre-development or periods of vacancy) or is insufficient to cover expenses and capital expenditures, including without limitation the cost of Entitlement, Project Costs, leasing commissions, tenant improvements and other out of pocket expenses. When, in these shortfall instances, Lessee covers such expenditures out of its funds, all such funds expended by Lessee shall be deemed an Equity Contribution subject to repayment pursuant to the terms and conditions of this Lease. The Parties also anticipate that from time to time during the Term of this Lease, Lessee will obtain debt financing for the development of the Premises and the Facilities and other Project Costs in accordance with the terms and conditions of Section 32 below. Any funds required for the completion of each Construction Phase in excess of any financing secured by any Leasehold Mortgage obtained by Lessee, shall be provided by Lessee as an Equity Contribution. Within thirty (30) days after making such payment, Lessee shall notify District of any such excess payments paid by Lessee if they exceed the amount of Equity Contributions identified in the Approved Construction Budget for such Construction Phase, and such notice shall explain in detail why the actual amount of the Equity Contributions exceeded the budgeted amounts. Pursuant to Section 53, below, the District shall have the right to approve any Equity Contributions proposed to be made by Lessee, which approval may be provided through the Approved Construction Budget or the Annual Operating Budget, as the case may be.

(ii) Any additional capital required for the operation or maintenance of the Premises and the Facilities or other Project Costs following the completion of each Construction Phase and any capital required to repay any Leasehold Mortgages thereon, not otherwise available from Total Revenue, shall be contributed one hundred percent (100%) by Lessee upon approval by District as set forth herein. Within thirty (30) days of Lessee contributing funds under this Section, Lessee must provide District a statement with information and evidence, in reasonable detail, substantiating the amount and reasons for such additional capital.

a) Within ninety (90) days following City's issuance of a certificate of occupancy for each Construction Phase, Lessee shall provide District with a final accounting of the actual Project Costs for the Construction Phase, which shall include a final accounting of the Equity Contribution for the Construction Phase (the "**Project Costs Statement**"). Upon District's approval of the Project Costs Statement, including the approved Equity Contribution under Section 9.C(i) above, the amount of the Equity Contributions shall be fixed for that Construction Phase, subject to additional Equity Contributions that may be required from time to time, as provided in Section 9.C(i) above. District must approve or disapprove the Project Costs Statement in writing within fifteen (15) days following submittal by Lessee, and if disapproved, District must specify the reasons for such disapproval in its notice.

(iii) The Total Revenue remaining after payment by Lessee of Debt Service, Fixed Ground Rent, Asset Management Fee, and all Project Costs during each calendar year of the Term of this Lease will be paid to Lessee to pay down Lessee's Equity Contributions until such time as all Equity Contributions are repaid in full together with interest thereon. All Equity Contributions made in accordance with the provisions of this Section 9.C shall bear simple interest at an annual rate equal to the lesser of five percent (5%) above the discount rate quoted by the Federal Reserve Bank of San Francisco as of the date of contribution or eight and one-half percent (8.5%).

(iv) The Parties hereto will acknowledge the date(s) any Equity Contributions are paid in full by written notice from Lessee and acknowledgment by District.

(v) Any Equity Contributions, otherwise approved by District and that benefit the entire Project (and not solely a particular Related Lease) pertaining to the costs of (a) the Entitlements, (b) Off-Site Improvements and on-site infrastructure costs benefitting the Premises, such as the costs of grading, utilities, drainage, and roads, and (c) Lessee's Post-Termination Duties, remaining unpaid upon expiration or earlier termination of this Lease shall be repaid from the Total Revenue of any other Related Lease still in effect.

(vi) If, at any time following the obtaining of any Leasehold Mortgage for interim or permanent financing to replace a construction loan for a Construction Phase or in the absence of any Leasehold Mortgage, the amount of Lessee's Equity Contribution exceeds twenty percent (20%) of the total amount of the Project Costs Statement, District may require Lessee to seek a commercial loan in an effort to increase the debt financing for the Project and to reduce such Equity Contribution to as small a percentage as practicable of the total amount of the Project Costs Statement. Lessee's obligation to



obtain any such commercial loan is subject to Lessee being able to obtain such new secured debt financing on commercially reasonable terms acceptable to Lessee and District.

D. Rent. Fifty percent (50%) of all Net Revenue, if any, during each calendar year, and first and last partial calendar year if any, during the Term of this Lease shall be paid to District as Rent for the Premises. Rent shall be paid to District in monthly installments on or before the twenty-fifth (25th) day following the end of each calendar month. Such payments shall be accompanied by a written statement setting forth in detail the sources and amount of Total Revenue received for the preceding month and allowable deductions for the Net Revenue calculation. A check for District's fifty percent (50%) share of Net Revenue will be submitted with such statement. Except as otherwise provided in this Lease, all Rent shall be paid without deduction, offset or abatement. Should there be insufficient monthly cash flow to support a Rent payment, Lessee shall submit to District a monthly written statement setting forth in detail the sources and amount of Total Revenue received for the preceding month and allowable deductions for the Net Revenue calculation.

E. Rent Payments. Unless District discontinues the use of electronic payments, Lessee will make all payments electronically (except the Asset Management Fee) to District, and statements required by this Lease shall be filed with the Orange County Treasurer-Tax Collector, Revenue Recovery/Accounts Receivable Unit, P.O. Box 4515, Santa Ana, California 92702-4515 (or may be delivered to 601 N. Ross St., 2<sup>nd</sup> Floor Santa Ana 92701). The designated place of payment and filing may be changed at any time by the Chief Real Estate Officer upon ten (10) business days' written notice to Lessee.

F. Default Interest; Late Charge. In addition to, and without limiting, any other right or remedy which District may have under this Lease or at law or in equity, in the event any required payment is not made by Lessee to District as required and remains unpaid for a period of thirty (30) days or more past the due date, District will be entitled to receive, and Lessee will pay to District, simple interest on all such amounts at an annual rate twelve percent (12%), until paid in full not to exceed the highest rate permitted by law (the "**Default Interest**"). In addition, Lessee acknowledges that the late payment by Lessee to District of rent will cause District to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult and impracticable to ascertain. Those costs may include, but are not limited to, administrative, processing and accounting charges, and late charges which may be imposed on District by the terms of any ground lease, mortgage or trust deed covering the District's fee interest in the Premises. Accordingly, if any rent due from Lessee shall not be received by District or District's designee within ten (10) days after the date due, then Lessee shall pay to District, in addition to the interest provided above, a late charge for each delinquent payment equal to five percent (5%) of that delinquent payment (the "**Late Charge**"). Acceptance of a late charge by District shall not constitute a waiver of Lessee's default with respect to the overdue amount, nor shall it prevent District from exercising any of its other rights and remedies.

G. Annual Accounting and Rent Statement.

## Attachment D

(1) For purposes of this Lease, the accounting year shall be the calendar year with twelve full calendar months. Provided, however, that if the Commencement Date is not January 1 of a calendar year or if the end date is not December 31, then the accounting period for such period shall be the number of months in that period. The accounting year shall be continued throughout the Term of this 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 Lessee or District, and not because of mere convenience or inconvenience.

(2) On or before April 30 annually during the Term of this Lease and within one hundred twenty (120) days after the expiration of the Term of this Lease, Lessee will provide District with a statement showing in detail the sources and amount of Total Revenue received for the entire preceding calendar year (or the first and last partial calendar year, if applicable), the appropriate uses of or deductions from such Total Revenue during the subject period, such as Debt Service, repayments of Equity Contributions, Project Costs incurred, etc. (consistent with Section 1.BB above), and all distributions of Net Revenue (if any) during such period, substantially in the form of that attached as Exhibit F to this Lease (the “**Annual Accounting and Rent Statement**”). One component of the Annual Accounting and Rent Statement shall be an accounting of the Equity Contributions made during the subject period (and all payments made on account of the Equity Contributions), including beginning balance, repayments and contributions, interest and interest rate, and ending balances. The Annual Accounting and Rent Statement shall be prepared or audited by a Certified Public Accountant (“CPA”), reflecting business transacted on or from the Premises during the accounting year. Lessee shall provide District with copies of any CPA’s management letters prepared in conjunction with their audits (if any) of Lessee’s operations from the Premises. Copies of management letters (if any) shall be provided directly to District by the CPA at the same time Lessee’s copy is provided to Lessee. The Annual Accounting and Rent Statement shall also be accompanied by a certification executed by the Chief Financial Officer (“CFO”) of Lessee, or the CFO of Lessee’s manager or agent thereof (or if such CFO is not a CPA, then by a CPA), certifying that the information contained in the Annual Accounting and Rent Statement is true and correct to the best knowledge of the signing officer and that such information is the same as that used as of the date of signing for all internal and reporting purposes of Lessee.

(3) Should the Annual Accounting and Rent Statement show that the amount of Rent paid District during the subject calendar year was less than that which was due, the Annual Accounting and Rent Statement shall be accompanied by Lessee’s payment of the additional amount to District. Should the Annual Accounting and Rent Statement show that the amount of Rent paid District during the subject calendar year was more than that which was due, after review and verification by District, a credit will be issued to be applied against future monthly installments of Rent. Any and all supporting documentation for any of the items disclosed in the Annual Accounting and Rent Statement shall be provided to the District at the same time as the Annual Accounting and Rent Statement.

(4) Pursuant to Section 18 below and applicable law, Lessee acknowledges its understanding that any and all of the Annual Accounting and Rent Statements submitted to District pursuant to this Lease may be subject to public inspection pursuant to §§ 6250 *et. seq.* of the California Government Code.

(5) Upon the request of Auditor-Controller, Lessee shall promptly provide, at Lessee's expense, necessary data to enable District 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 Lessee's use of the Premises. Such data shall include, if required, the information contained the Annual Accounting and Rent Statement.

H. Value Appreciation Rent.

(1) In the event of a Lessee Sale (defined below in this Subsection H), Lessee shall pay to District, Value Appreciation Rent as described herein. Value Appreciation Rent shall be payable as follows: If and only if a Lessee Sale occurs before the expiration of the term of the initial Sublease (and before the commencement date of an extension to that Sublease or before the commencement date of any replacement Sublease) (the "**VAR Period**"), then Lessee shall pay to District an amount equal to ten percent (10%) of the Net Transfer Proceeds (defined below) from such Lessee Sale. Before the closing on any Lessee Sale and not later than sixty (60) days prior to the anticipated effective date of any Lessee Sale for which Value Appreciation Rent may be due, Lessee shall provide District with its detailed calculation of the Value Appreciation Rent, if applicable. Such Lessee Sale shall be permitted to occur without agreement as to the proper calculation of Value Appreciation Rent as long Lessee makes reasonably acceptable arrangements for the preservation of any additional Value Appreciation Rent plus interest at the Default Rate that District claims is due it over and above that reflected in Lessee's calculation should any such dispute be resolved in favor of District. Value Appreciation Rent shall be due and payable by Lessee to District within ten (10) business days after the effective date of the Lessee Sale giving rise to the obligation to pay Value Appreciation Rent (or, with respect to any disputed amount, within ten (10) business days following resolution of the dispute). The time periods in this Section shall be separately calculated for each Related Lease.

(2) As used in this subsection, the following terms shall have the following meanings:

(i) "**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 Lessee) transferred or assigned in one transaction or a series of related transactions (other than an Excluded Transfer) occurring during the VAR Period; 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."

(ii) “**Beneficial Residual Interest**” shall refer to the ultimate direct or indirect Ownership Interests in Lessee, 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.

(iii) “**Documented Transaction Costs**” shall mean reasonable commissions, legal expenses, financial advisor fees, title and escrow costs, documentary transfer taxes, sales and use taxes and other bona fide closing costs actually paid to third parties and documented to the reasonable satisfaction of District, which costs were directly attributable to the consummation of the particular transaction giving rise to the obligation to pay District the Value Appreciation Rent.

(iv) “**Excluded Transfer**” shall mean any of the following:

(a) A transfer by any direct or indirect partner, shareholder, or member of Lessee (or of a limited partnership, corporation, or limited liability company that is a direct or indirect owner in Lessee’s ownership structure), to any other direct or indirect partner, shareholder, or member of Lessee (or of a limited partnership, corporation, or limited liability company that is a direct or indirect owner in Lessee’s ownership structure), 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 Lessee 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 Lessee or in constituent entities of Lessee (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 Lessee, 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 Lessee 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, or is otherwise excluded in accordance with subsections (a) – (d) above; or

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

(g) Any assignment of this Lease consistent with the terms of Section 12.H of this Lease.

(h) Any transfer of this Lease resulting from a foreclosure sale or deed in lieu of foreclosure, however any funds left over after payment of outstanding liens shall be a part of Total Revenue and distributed pursuant to this Lease to the District and Lessee after such foreclosure sale or deed in lieu of foreclosure.

(v) “**Gross Transfer Proceeds**” shall mean an amount equal to the gross sale or transfer proceeds and other consideration given for the interests transferred (but in the case of a transfer to a party affiliated with or otherwise related to the transferor which constitutes a Lessee Sale 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).

b) “**Lessee Sale**” shall for purposes of this Subsection H mean (a) any transfer by Lessee of the leasehold interest in this Lease or (b) any transaction or series of related transactions that constitute an “Aggregate Transfer” of more than fifty percent (50%) of the “Beneficial Residual Interests” in Lessee, 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 (the owners of which directly or indirectly own such Ownership Interest) shall be treated as a transfer of the Beneficial Residual Interests.

(vi) “**Net Transfer Proceeds**” shall mean, in the case of a Lessee Sale for which Value Appreciation Rent is payable, the Gross Transfer Proceeds from the transfer, less Documented Transaction Costs, the amount of unpaid balance of Leasehold Mortgage (including interest and prepayment fees, if applicable) if the Lessee Sale requires payment in full of the Leasehold Mortgage, and any outstanding Equity Contributions (including interest).

(vii) “**Ownership Interests**” shall mean the stock, partnership interests, membership interests, or other direct or indirect ownership interests in Lessee, including Beneficial Residual Interests.

I. Triple Net Rent. It is the intent of the parties that all Rent shall be absolutely net to District and that, except as otherwise provided herein, Lessee 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 Lessee’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 District 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.

10. RECORDS; ANNUAL OPERATING BUDGETS.

A. Records. Throughout the Term of this Lease, Lessee shall keep and maintain, in accordance with cash basis accounting principles consistently applied, accurate and complete books, records and accounts of Total Revenue, Project Costs, Equity Contribution balances, and all other items constituting deductions for purposes of calculating Net Revenue.

B. Annual Operating Budgets. On or before December 1 annually during the Term of this Lease, Lessee shall provide Chief Real Estate Officer with an annual operating budget (the “**Annual Operating Budget**”) for the next calendar year, which shall identify (as applicable) all anticipated Total Revenue, Debt Service, Project Costs (including, without limitation, any necessary or advisable update of the annual Capital Replacement Reserve amount), Fixed Ground Rent, Equity Contributions and Net Revenue. The Annual Operating Budget shall also include projections on the anticipated operating budget for each year during the remaining term of the Subleases in effect at that time. The Annual Operating Budget shall be substantially in the form of the sample budget attached as Exhibit G to this Lease. Chief Real Estate Officer shall approve or disapprove the proposed Annual Operating Budget within thirty (30) days following submittal by Lessee. If Chief Real Estate Officer disapproves of any cost item within the Annual Operating Budget it shall specifically identify the reasons for such disapproval. If the Annual Operating Budget is not approved before January 1 of the applicable year, then Lessee shall continue to operate and conduct its business at the Premises during the new year in accordance with the prior year’s Annual Operating Budget (but excluding any capital improvement or replacement items completed during such prior year) until the Annual Operating Budget for the new year is approved; provided, however, if there are capital improvement or replacement items identified in a Study (defined below), then such items will be deemed approved as of January 1 without District’s approval of the entire Annual Operating Budget. When the applicable Annual Operating Budget is approved, such approval shall be retroactive to January 1 of the then current year. Notwithstanding the above, if Lessee identifies an unanticipated expense that is not included in an approved or pending Annual Operating Budget, and Lessee desires to begin reserving for such expense, Lessee may request in writing District’s approval of the same and such reserve item, once approved by District, shall be deemed included within the approved Annual Operating Budget for the year in which the expenditure is to be made.

C. Capital Reserve Study. Every seventh (7<sup>th</sup>) year after the completion of the first Construction Phase for the Premises, Lessee shall hire an independent outside consultant to prepare a capital reserve study (the “**Study**”) for the Facilities. The cost of the Study shall be a Project Cost. This Study shall include an inspection of the Facilities to determine what capital improvements will require replacement so as to maintain the Facilities in good working condition and repair with a neat and clean, attractive appearance, throughout the Term of this Lease. The results of such Study shall be reviewed and approved by Chief Real Estate Officer within sixty (60) days, and shall become the basis (in addition to any requirements of a Leasehold Mortgagee) for determining what amount should be contributed to and maintained in

the Capital Replacement Reserve in subsequent Annual Operating Budgets. If disapproved by Chief Real Estate Officer, such written notice of disapproval shall identify the specific reasons for such disapproval. Notwithstanding the above, if Lessee identifies a previously unanticipated capital improvement or replacement expense that is not included in the most recent Study or not required by a Leasehold Mortgagee or not otherwise included in the approved Annual Operating Budget, and Lessee desires to begin reserving for such expense, Lessee may request in writing District's approval of the same and such reserve item, once approved by District, shall be deemed included within the approved Annual Operating Budget for the year(s) in which the reserve fund is to be accumulated.

D. Inspection. All Lessee'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 Lessee's principal place of business. Within five (5) business days following written request by District, District shall, through its duly authorized agents or representatives, have the right to inspect, examine and audit said books of account and records and supporting source documents for the then current and seven (7) immediately preceding calendar years for the purpose of determining the accuracy thereof. Such inspection shall take place Monday through Friday, 9:00 AM to 5:00 PM, holidays excluded.

E. Audit. District shall, following the prior written notice and during the time and at the place specified in Section 10.D above, have the right to cause an audit of Lessee's operation of the Project and of Total Revenue and all items constituting deductions for purposes of calculating Net Revenue for the then current and seven (7) immediately preceding calendar years.. If such audit discloses that the calculation of Net Revenue previously provided to District by Lessee is understated (either intentionally or unintentionally) by a greater margin than one percent (1%) of Lessee's Total Revenue for the period of review, then Lessee will immediately pay to District the cost of such audit; otherwise the cost of the audit will be paid by District. In all events, Lessee shall pay to District the additional payments shown to be payable to District by Lessee plus simple interest thereon as set forth in Section 9.F above, from the date such payment should have been made to District. Such payment plus interest shall be a Project Cost.

## 11. IMPROVEMENTS, MAINTENANCE AND REPAIR.

A. No District Obligation. During the Term of this Lease, District shall have no responsibility or obligation for any maintenance, repair or replacement of the Facilities or Premises, or for the development and construction of the Facilities.

B. Maintaining the Premises. Throughout the Term of this Lease, Lessee shall maintain, or cause to be maintained, as a Maintenance and Operations Expense, the Premises and the Facilities in a safe and sanitary condition in compliance with the sanitation laws and regulations of the State of California, and in good condition and repair (including the making of any necessary replacements, both structural and nonstructural), ordinary wear and tear excepted, and in accordance with (i) all applicable laws, rules, regulations and orders of all federal, state, county, municipal, and other governmental agencies and bodies having jurisdiction, and (ii) the directives of all insurance companies insuring all or any part of the Premises or the Facilities or both. Lessee's obligations under this Section 11.B shall include, but not be limited to, all structural and nonstructural portions of the Premises and the Facilities located thereon, all

heating, ventilating and air conditioning systems, underground private utilities, perimeter wall, the Premises Storm Water Drainage System (described in Section 1.U above) and Off-Site Drainage Facilities (but only to the extent expressly provided in Section 1.Z above), parking lots, driveways, driving lanes, sidewalks, walkways, common areas and landscaped areas. Prior to making any alterations, modifications or additions to any of the Facilities in excess of \$100,000.00, Lessee shall first obtain approvals from District, as provided in the Work Letter, and obtain any insurance as required under the Work Letter. In connection with its routine maintenance of the Off-Site Drainage Facilities, Lessee acknowledges that such work will include any repair of damage caused by rodentia.

C. Capital Replacement Reserve. Lessee shall also, or cause its property manager or permanent lender to, commencing no later than the first month following the first anniversary of the completion of the first Construction Phase (as such completion is evidenced by the issuance of a certificate of occupancy by City as to the first Construction Phase) set aside a Capital Replacement Reserve. The Capital Replacement Reserve shall be deposited into an interest-bearing bank account. Except as expressly provided in this Section 11.C or elsewhere in this Lease, funds in the Capital Replacement Reserve shall be used only for capital replacements to the Facilities and the fixtures and equipment located in the Facilities which are normally capitalized under generally accepted accounting principles for this type of property, including without limitation, the roof, parking lots and private driveways, and office areas, or as otherwise identified in a Study. The Capital Replacement Reserves shall not be used to fund any Construction Phase. As capital replacements of the Facilities become necessary, the Capital Replacement Reserve shall be the first source of payment therefor. The non-availability of funds in the Capital Replacement Reserve does not in any manner relieve Lessee of the obligation to undertake necessary capital replacements and to continue to maintain the Premises in the manner prescribed in Section 11.B above. Lessee, at its expense, shall submit to District, concurrently with its submission of the proposed Annual Operating Budget, an accounting of the Capital Replacement Reserve. Based on such annual accounting, any amounts in the Capital Replacement Reserve in excess of the reserve amounts required by the Leasehold Mortgagee, by the most recent Study, and by the current Annual Operating Budget shall be included in Total Revenue. The Parties acknowledge and agree that any amounts remaining in the Capital Replacement Reserve at the end of the Term of this Lease in excess of the amount recommended by the most recent Study shall be included in Total Revenue (and the amount of the Capital Replacement Reserve recommended by the most recent Study shall be delivered to District), unless the buildings are to be razed pursuant to Section 31.D below, in which case any remaining money in the Capital Replacement Reserve may be used for such purpose, and any excess amounts (following payment of the costs of such razing) shall be included in Total Revenue for purposes of the final accounting and distribution of Net Revenue to District and Lessee.

D. Failure to Maintain. If Lessee shall fail to perform any of its obligations under this Section 11, District may, but shall not be obligated to, give Lessee written notice specifying such failure in reasonable detail. If Lessee does not remedy such failure or does not commence to remedy such failure within thirty (30) days following receipt of such notice and thereafter diligently pursue such remedy to completion, District may, but shall not be obligated to, remedy such failure. If District remedies any such failure, all resulting reasonable costs and expenses incurred by District shall be paid to District by Lessee within ten (10) days following written



demand, which shall be accompanied by copies of receipts for all such expenses incurred. The amount paid shall be treated as a Project Cost.

12. ASSIGNMENT.

A. Lessee shall not assign this Lease or its rights or duties hereunder or any estate created hereunder, in whole or in part (hereafter, an “**Assignment**”), until after completion of all the Facilities identified as the “Project Scope” in the applicable Work Letter (whether pursuant to this Lease or a Related Lease).

B. Lessee shall not assign this Lease or its rights or duties hereunder or any estate created hereunder, in whole or in part, except with the prior written consent of District, which consent will not be withheld unreasonably or delayed; provided, that it shall be reasonable for District to withhold its consent if a partial assignment is proposed, or if the assignee presented is not a proper and fit person or entity with financial resources, character, reputation, and demonstrated business experience and acumen sufficient in District’s reasonable business judgment to be capable of performing the obligations hereunder which are the subject of the Assignment. Further, any Assignment will be specifically subject to all provisions of this Lease. Except as provided in Sections 12.G and 12.H below, any Assignment without the prior written consent of District is void. District must approve or disapprove the proposed Assignment within sixty (60) days following submittal by Lessee as more fully set forth in Subsection D, below.

C. Any voluntary or involuntary transfer in the aggregate within one (1) year that exceeds fifty percent (50%) or more of Lessee’s or any permitted successor’s or assign’s voting common stock, or the transfer in the aggregate that exceeds fifty percent (50%) or more of the partnership or membership interest, or the acquisition or transfer in the aggregate that exceeds fifty percent (50%) or more of Lessee’s ownership, or the transfer of substantially all of the assets of Lessee or any such successor or assign will be deemed an Assignment requiring the prior written consent of District; however any transfers by partners or members of Lessee or shareholders of partners or members of Lessee to each other or for estate purposes or upon death will not be considered an Assignment hereunder.

D. If Lessee desires at any time to enter into an Assignment for which District’s consent is required hereunder, Lessee shall provide District with written notice (“**Assignment Notice**”) at least sixty (60) days prior to the proposed effective date of the Assignment. The Assignment Notice shall include: (i) the name and address of the proposed assignee, (ii) articles of incorporation or organization and certificates of good standing for the proposed assignee, (iii) the nature of the Assignment, (iv) the proposed effective date of the Assignment, (v) income statements and “fair market” balance sheets of the proposed assignee for the two (2) most recently completed fiscal or calendar years (provided however, if the proposed assignee 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 and/or principal ownership entities), (vi) a detailed description of the proposed assignees qualifications and experience that demonstrates the assignee has the knowledge, experience and expertise to develop, finance, lease and manage the Premises as established by this Lease and has preferably had experience working with public agencies, (vii) a bank or other credit reference, and (viii) whether any Value Appreciation Rent is due. Thereafter, Lessee shall furnish such supplemental information as District may reasonably

request concerning the proposed assignee. District shall, no later than thirty (30) days after District's receipt of the information specified above, deliver written notice to Lessee which shall indicate whether District gives or withholds its consent to the proposed Assignment, which consent shall not be unreasonably withheld, and if District withholds its consent to the proposed Assignment, setting forth a detailed explanation of District's grounds for doing so. If District consents to a proposed Assignment, then Lessee may thereafter effectuate such Assignment to the proposed assignee based upon the specific terms of the District's approval and after execution of a consent to Assignment, in a form approved by the District. Each permitted assignee of this Lease shall expressly assume in writing all of the terms, covenants and conditions of this Lease which are the subject of the Assignment.

E. All assignees 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 Assignment will not release the assignor (Lessee) from its obligations under this Lease arising or incurred prior to the effective date of the Assignment, but shall release the assignor (Lessee) from all obligations under this Lease arising after the effective date of the Assignment.

F. District may withhold consent to an Assignment at its sole and absolute discretion if any of the following conditions exist:

- (1) An Event of Default exists under this Lease.
- (2) The prospective assignee has not agreed in writing to keep, perform, and be bound by all the terms, covenants, and conditions of this Lease.
- (3) The Facilities identified as the "Project Scope" in the applicable Work Letter have not been completed.
- (4) The Assignment Notice and information required by Section 12.D of this Lease has not been provided.
- (5) The processing fee required by District and set out below has not been paid to District by delivery of said fee to District.
  - (i) A fee of \$5,000 shall be paid to District for processing each consent to Assignment requested by Lessee as required by this Lease. This processing fee shall be deemed earned by District when paid and shall not be refundable.
  - (ii) If a processing fee has been paid by Lessee for another phase of the same transaction, a second fee will not be charged. Such fee shall be increased every ten (10) years during the Lease term based on any increase in the CPI Index during the applicable intervening 10-year period. Under no circumstances shall the fee decrease. As used in this Lease, "**CPI Index**" means the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index for All Urban Consumers (all items for the geographical Statistical Area in which the Premises are located on the basis of 1982-1984=100).

G. Notwithstanding any language to the contrary in this Lease, the above provisions of this Section 12 relating to Assignment shall not be applicable to a Leasehold Mortgage hypothecating or encumbering Lessee's interest in this Lease and the leasehold estate created thereby and the Facilities located on the Premises as permitted hereunder, and further shall not be applicable to any sale by judicial foreclosure or pursuant to a power of sale by any Leasehold Mortgagee or to a transfer in lieu of such sale to the Leasehold Mortgagee (or any Affiliate, parent or subsidiary of such Leasehold Mortgagee that acquires title to Lessee's interest in this Lease and the leasehold estate created thereby and the Facilities as a result of a transfer in lieu of such sale).

H. Notwithstanding anything in this Lease to the contrary, the sale or other transfer of some or all of the beneficial ownership interests in Lessee shall not be deemed an Assignment of Lessee's rights under or estate created by this Lease requiring District's prior consent or approval if made in connection with a larger transaction involving the sale or other transfer of some or all of Edward P. Roski, Jr.'s beneficial ownership interests in Majestic Realty Co. or its affiliates (whether held directly or indirectly through trusts or limited partnerships or otherwise), or the sale or other transfer of at least thirty percent (30%) of the assets of or beneficial ownership interest in Majestic Realty Co. or its affiliates, but District shall be provided written notice of any such sale or other transfer thirty (30) days prior to its anticipated effective date. In the event of such a transfer of some or all of the beneficial ownership interests in Lessee, the District shall be notified of such transfer and provided: (i) the name and address of the assignee, (ii) articles of incorporation or organization and certificates of good standing for the proposed assignee, (iii) the nature of the transfer, (iv) the proposed effective date of the transfer, (v) income statements and "fair market" balance sheets of the assignee for the two (2) most recently completed fiscal or calendar years (provided however, if the assignee 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 and/or principal ownership entities), and (vi) a detailed description of the assignee's qualifications and experience operating businesses such as those on the Premises.

I. Should District consent to any Assignment, such consent shall not constitute a waiver of any of the terms, covenants, or conditions of this Lease nor be construed as District's consent to any further Assignment. Such terms, covenant or conditions shall apply to each and every Assignment hereunder and shall be binding upon each and every party thereto. Any document for any such Assignment 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.

J. Lessee acknowledges that each of the conditions to an Assignment, and the rights of District set forth in this Section 12 in the event of an Assignment is a reasonable restriction for the purposes of California Civil Code Section 1951.4.

13. SUBLEASING.

A. Lessee shall not sublease, sublet or rent to, or permit any persons, firms or corporations to occupy any part of the Premises or the Facilities (or amend or modify any existing Sublease), without having complied with the following:

## Attachment D

(1) Lessee may enter into Subleases with Sublessees or Tenants on terms and conditions that are satisfactory to Lessee, at fair market rental rates or higher (as reasonably determined by Lessee and as approved by the District), provided such Subleases are on standard forms that have been approved by District or such non-standard form of Sublease has been approved by District as provided below. District must approve or disapprove in writing any proposed Sublease form within sixty (60) days following submittal by Lessee. In case of a Sublease form proposed for use by a Sublessee (a "**Sublessee Form**"), Lessee shall provide District with the initial draft of such Sublessee Form within three (3) business days following receipt by Lessee, and during the course of negotiations between Lessee and such Sublessee, Lessee shall provide District with each subsequent draft of such Sublease concurrently upon Lessee's submittal to such Sublessee.

2. Lessee shall submit all final Subleases to the District for its review and approval. District shall have five (5) business days after written submittal by Lessee to approve the final Sublease. If District disapproves any proposed final Sublease, such notice shall list the specific reasons for such disapproval. District and Lessee agree to negotiate in good faith to resolve any conflicting issues that may arise from District's disapproval of any Sublease pursuant to Section 53, below.

3. Lessee shall submit the identity of all Sublessees to the District and the District shall have ten (10) days after written submittal by Lessee to approve Sublessee.

(2) All Subleases must be for purposes as permitted in Section 5.A above, and shall expressly provide that they are subject and subordinate to this Lease, and the Sublessee is bound by all applicable provisions of this Lease.

(3) Except pursuant to Subleases as provided in this Section 13, Lessee 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 District, which shall not be unreasonably withheld, conditioned, or delayed.

(4) Business interruption insurance or rental abatement insurance (as the case may be) shall be maintained (if available) by Lessee providing for the payment of at least twelve (12) months' rent, taxes, insurance and maintenance expenses payable by Sublessees or Tenants under its Sublease.

(5) If applicable, Lessee shall identify in the Sublease any personal property of Lessee that was acquired by Lessee as a Project Cost that is located at the subleased premises.

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

C. In the event that a Sublease of a portion of the Premises constitutes a change of ownership for property tax purposes, it is the desire of the Parties that such change in ownership and reappraisal of the subleased property be limited to the particular portion of the Premises

which is the subject of such Sublease and not be deemed a change of ownership for assessment purposes for any remaining portion of the Premises.

D. If Lessee 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 Lessee) and shall be used only for the purposes set forth in the applicable Sublease governing the use of such deposit. Any such security deposits may only be included in Total Revenue with District's prior approval.

E. Notwithstanding the foregoing, Lessee agrees to provide the District with any executed letters of intent prepared by, or submitted to, Lessee, related to a potential Sublease and to keep the District reasonably informed of the progress of negotiations with all prospective Sublessees.

F. All of Lessee's submittals to District contemplated under this Section 13 should be made to the Chief Real Estate Officer, and the Chief Real Estate Officer shall provide any requested consent or approval on behalf of District.

14. ATTORNMENT.

All Subleases entered into by Lessee 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 District as the successor to Lessee under their respective Subleases, and will render performance thereunder to District as if the Sublease were executed directly between District and the Sublessees; provided, however, District 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, District agrees to be bound by all of the terms and conditions of each such Sublease. All Subleases entered into by Lessee will contain the following provision:

If the underlying Lease and the leasehold estate of Lessee thereunder is terminated for any reason, Sublessee will attorn to District and recognize District as lessor under this Sublease; provided, however, District agrees that so long as Sublessee has entered into an approved form sublease and the Sublessee is not in default under the Sublease, District 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 District for their payment of rents and fees and will be subject to all the provisions and terms contained in their Subleases.

15. BINDING.

Subject to the provisions of this Lease, the terms of this Lease and provisions, covenants and conditions contained herein shall apply to and shall bind and inure to the benefit of the heirs, representatives, assigns and successors in interest of the parties hereto.

16. CONTROL OF PERSONNEL.

Lessee will, in and about the Premises, exercise reasonable control over the conduct, demeanor and appearance of its employees, agents and representatives and the conduct of its contractors and suppliers. The provisions of this Section 16 shall in no way limit the liability of Lessee with respect to the negligence, acts or omissions of its employees, agents, representatives, contractors and suppliers, nor shall such provisions limit any obligations of indemnity on the part of Lessee under this Lease.

17. SIGNS.

All signs shall be subject to sign criteria required by the City of Chino, including without limitation, placement, size, and color, provided however, all content of any signs shall be subject to District's approval. District must approve or disapprove the content of any such signs in writing within thirty (30) days following submittal by Lessee, and if disapproved, District must specify the reasons for such disapproval in its notice. Lessee agrees not to construct, maintain, or allow billboards or outdoor advertising signs upon the Premises without prior written approval of the Chief Real Estate Officer.

18. PUBLIC RECORDS.

A. Lessee acknowledges and agrees that the District, as a government agency, (i) is subject to broad disclosure obligations under Applicable Laws, including the California Public Records Act, and (ii) holds meetings which are open to the public and at which information concerning this Lease and the transactions contemplated hereunder may be disclosed, including reports to the Board of Supervisors describing the Lessee's proposed development plans, and any documents to be approved by the Board of Supervisors. Subject to the terms and conditions set forth under Section 18.B below, nothing in this Lease shall prohibit any disclosure required by Applicable Laws. Except as otherwise provided in this Section 18, Lessee acknowledges that any written information submitted to and/or obtained by District from Lessee 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 is a public record open to inspection by the public pursuant to the California Records Act (Government Code §6250, *et seq.*) as now in force or hereafter amended, or any law in substitution thereof, or otherwise made available to the public, unless such information is exempt from disclosure pursuant to the applicable sections of the California Records Act. In the event that a public records act request is made for any financial statements and records and District determines that the records must be turned over, District will give Lessee fifteen (15) days written notice of such request prior to turning over such records so that Lessee can take any necessary action. District will also keep Lessee apprised of the status of such request and all responses thereto.

B. Any written document marked "CONFIDENTIAL AND RESTRICTED DISCLOSURE" in capital letters ("**Confidential Mark**") shall be deemed to provide all recipients thereof with actual knowledge that Lessee deems such document to be confidential and proprietary pursuant to this Section 18 and the Public Records Act. If the District receives a request under the Public Records Act concerning the disclosure of any document with a Confidential Mark, the District shall provide notice to Lessee of such request. If required by

law, the District shall disclose such document with a Confidential Mark pursuant to applicable law, unless ordered otherwise by a court. Prior to such disclosure District agrees to coordinate with Lessee on any redactions that may be legally allowed under the Public Records Act. If Lessee does not want such document with a Confidential Mark to be disclosed, Lessee, at its sole cost and expense, may prosecute or defend any action concerning such document and shall indemnify, defend and hold the District harmless from all costs and expenses, including attorneys' fees, in connection with such action. In the event of any breach of this Section 18, the injured Party shall only be entitled to injunctive relief or an order of specific performance and in no event shall the District be liable for any monetary damages under this Section 18.

19. CHILD SUPPORT ENFORCEMENT

A. At all times during the term of this Lease and if applicable, Lessee shall comply with all District, State and Federal reporting requirements for child support enforcement and comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment.

B. If applicable, in order for Lessee to comply with County of Orange requirements, Lessee shall deliver to Chief Real Estate Officer the required data and certifications.

C. If applicable, failure of Lessee to comply with all County, State, and Federal reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment shall constitute a material breach of this Lease. Failure to cure such breach within thirty (30) days of Lessee's receipt of written notice from District of such breach by Lessee shall be a breach of this Lease.

20. INTENTION OF PARTIES.

This Lease is intended solely for the benefit of District and Lessee and is not intended to benefit, either directly or indirectly, any third party or member(s) of the public at large. Any work done or inspection of the Premises by District is solely for the benefit of District and Lessee.

21. LIENS.

Subject to the right to contest set forth in Section 22 below, Lessee will cause to be removed any and all delinquent tax liens from its leasehold. Lessee shall keep the Premises free from any liens arising out of any work performed, materials furnished, or obligations incurred by Lessee and shall indemnify, hold harmless and defend District from such liens and encumbrances arising out of any work performed or materials furnished by or at the direction of Lessee or Contractors of Lessee. Notice is hereby given that District shall not be liable for any work or materials furnished to Lessee on credit and no mechanic's or other lien for any such work or materials shall attach to or affect District's interest in the Premises based on any work or materials supplied to Lessee or anybody claiming through Lessee. Lessee shall within thirty (30) days after being furnished notice of filing of any such lien, take action, whether by bonding or otherwise, as will remove or satisfy any such lien. District shall have the right at all times to post and keep posted on the Premises any notices permitted or required by law or that District deems proper for its protection, and the protection of the Premises from liens. The cost of bonding

against or discharging any liens relating to construction or installation of the Facilities shall be a Project Cost unless Lessee was at fault for failing to timely pay the person filing the lien, then such costs shall be at Lessee's sole cost and expense, and not a Project Cost.

22. TAXES AND ASSESSMENTS.

A. It is understood that, pursuant to California Revenue and Taxation Code Section 107.6, this Lease may create a possessory interest subject to property taxation and Lessee may be subject to the payment of property taxes levied on such interest.

B. During the Term, Lessee shall pay directly to the taxing authorities as a Project Cost, all Taxes (as herein defined) 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 in the Premises or any payments in lieu of taxes required to be made by District, including, but not limited to, the following:

(1) 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 Lessee and District that all such new and increased assessments, taxes, fees, levies, charges and similar impositions be included within the definition of "Taxes" for the purpose of this Lease.

(2) 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 Lessee of the Premises, or any portion thereof;

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

(4) 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.

C. Lessee 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 Facilities 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 Lessee has either: (i) paid such tax, assessment or other charge under protest prior to its becoming delinquent; or (ii) obtained and maintained a stay of all proceedings for enforcement and collection of the tax, assessment or other charge by posting such bond or other matter required by law for such a stay; or (iii) delivered to District a good and sufficient undertaking in an amount specified by District and issued by a bonding corporation authorized to issue undertakings in California conditioned on the payment by Lessee 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 Lessee's contest, opposition or objection to such tax, assessment or other charge. District, if requested by Lessee, shall cooperate with Lessee in any such proceedings; provided, that all costs and expenses (including attorneys' fees and costs) incurred by District in connection therewith shall be paid by Lessee as a Project Cost.

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

E. 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.

23. EXCULPATION.

This Lease is made upon the express condition that District and County of Orange, a political subdivision of the State of California, are to be free from all liability and claims for damages by reason of any injury to any person or persons, including Lessee, or property of any kind whatsoever and to whomsoever belonging, including Lessee, from any cause or causes whatsoever while in, upon, or in any way connected with the Premises during the Term of this Lease or any occupancy hereunder, except those arising out of the concurrent active or sole negligence or willful misconduct of District (or the County of Orange) and their employees, agents, contractors and invitees. Consistent with Section 25 below, Lessee further agrees to provide necessary Workers Compensation insurance for all employees of Lessee upon the Premises at Lessee's own cost and expense (but treated as a Project Cost).

24. DISTRICT LIABILITY DISCLAIMER AND INDEMNITY.

District, including but not limited to District's General Fund, and any special self-insurance programs, not and shall not be liable for any debts, liabilities, settlements, liens or any other obligations of Lessee or its heirs, successors or assigns. Lessee hereby releases and waives all claims and recourse against District, 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 or willful misconduct of District, its officers, agents, employees and contractors. Lessee hereby agrees to indemnify, defend (with counsel approved in writing by District), and hold harmless, District, 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 property described herein, and/or Lessee's exercise of the rights under this Lease, except for liability arising out of the sole negligence of District, its elected and appointed officials, officers, agents, employees or contractors including the cost of defense of any lawsuit arising therefrom. If District is named as co-defendant in a lawsuit, Lessee shall notify District of such fact and shall represent District in such legal action unless District undertakes to represent itself as co-defendant in such legal action, in which event, District shall be responsible for its litigation costs, expenses, and attorneys' fees. If judgment is entered against District and Lessee by a court of competent jurisdiction because of the concurrent active negligence of District and Lessee, District and Lessee agree that liability will be apportioned as determined by the court. Neither Party shall request a jury apportionment.

25. INSURANCE DURING LEASE TERM.

A. Lessee agrees to purchase all required per project or location insurance at Lessee's expense as a Project Cost and to deposit with Chief Real Estate Officer certificates of insurance, including all endorsements required herein, necessary to satisfy Chief Real Estate Officer that the insurance provisions of this Lease have been complied with and to keep such insurance coverage and the certificates and endorsements therefor on deposit with Chief Real Estate Officer during the entire Term of this Lease. Subject to the notice and cure provisions of Section 28.A below, it shall constitute a default hereunder if Lessee's required insurance coverage is terminated or lapses.

B. Lessee agrees that it 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; rent however shall not be suspended. In no cases shall assurances by Lessee, its employees, agents, including any insurance agent, be construed as adequate evidence of insurance in the absence of a certificate 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.

C. If Lessee fails to provide Chief Real Estate Officer with a valid certificate of insurance and endorsements, or binder at any time during the Term of this Lease, whether or not a notice of default has or has not been sent to Lessee, and such evidence of insurance is not provided by Lessee within five (5) business days following written notice from District, District may obtain comparable insurance (i.e., with the coverage and limits described in this Section 25), the cost of which shall be reimbursed by Lessee within thirty (30) days following District's written demand.

D. All contractors performing work on behalf of Lessee pursuant to this Lease shall obtain insurance subject to the same terms and conditions as set forth herein for Lessee. Lessee

Attachment D

shall not allow contractors or subcontractors to work if contractors have less than the level of coverage required by District from Lessee under this Lease. It is the obligation of Lessee to provide written notice of the insurance requirements to every contractor and to receive proof of insurance (in the form of a certificate of insurance) prior to allowing any contractor to begin work within the Premises. Such proof of insurance must be maintained by Lessee through the entirety of this Lease and be available for inspection at Lessee's principal office by Chief Real Estate Officer at any reasonable time upon reasonable prior written notice.

E. All self-insured retentions (SIRs) shall be clearly stated on the certificate of insurance. Any self-insured retention (SIR) in excess of \$50,000 shall specifically be approved by District's Risk Manager or designee. If Lessee is self-insured, Lessee shall indemnify and defend District per the obligations in Section 24 above.

F. Qualified Insurer.

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

G. 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-/VII, the Chief Real Estate Officer retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.

H. The policy or policies of insurance maintained by Lessee shall provide the project or location minimum limits and coverage as set forth below:

Coverages	Minimum Limits
Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate
Liquor Liability (if applicable)	\$1,000,000 per occurrence
Umbrella/Excess Liability with Follow Form Coverage	\$14,000,000
Automobile Liability including coverage for owned, or scheduled, non-owned, and hired vehicles	\$1,000,000 limit per occurrence
Workers' Compensation	Statutory Minimum
Employers' Liability Insurance	\$1,000,000 per accident or disease

Coverages	Minimum Limits
Pollution Liability	\$2,000,000 per claims made or occurrence
Commercial Property Insurance on "Causes of Loss—Special Form" basis covering all buildings, contents and any Lessee improvements including Business Interruption/Loss of Rents with a 12-month limit	100% of the Replacement Cost Value and no coinsurance provision

I. Required Coverage Forms.

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

J. 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.

K. **Required Endorsements.** The Commercial General Liability policy shall contain the following provisions (whether or not provided by endorsement):

(a) An Additional Insured endorsement using ISO form CG 20 26 04 13 10 or a form at least as broad naming the Orange County Flood Control District, its elected and appointed officials, officers, employees, and agents as Additional Insureds. Blanket coverage may also be provided which will state- *As Required by Written Contract.*

(b) A primary non-contributing endorsement using ISO form 20 01 04 13 or a form at least as broad evidencing that Lessee’s insurance is primary and any insurance or self-insurance maintained by District shall be excess and non-contributing. The Pollution Liability policy shall contain the following provisions (whether or not provided by endorsement):

- i. An Additional Insured endorsement naming the County of Orange, its elected and appointed officials, officers, employees, and agents as Additional Insureds, or provide blanket coverage which shall state As Required by Written Contract.
- ii. A primary non-contributory endorsement evidencing that the Contractor’s insurance is primary, and any insurance or self-insurance maintained by the District shall be excess and non-contributing.

L. The Pollution Liability insurance must include coverage for bodily injury and property damage, including coverage for loss of use and/or diminution in property value, and for clean-up costs arising out of, pertaining to, or in any way related to the actual or alleged discharge, dispersal, seepage, migration, release or escape of contaminants or pollutants resulting from any

services or work performed by, or behalf of, Contractor, including the transportation of hazardous waste, hazardous materials, or contaminants.

M. All "Claims Made" policies shall agree to the following:

(a) The retroactive date must be shown at the beginning of the Contract services.

(b) Insurance must be maintained, and evidence of insurance must be provided for at least three (3) years after expiration or earlier termination of Contract services.

(c) If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of the Contract services, Contractor must purchase an extended reporting period for a minimum of three (3) years after expiration of earlier termination of the Contract.

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

O. To the extent available and pursuant to the terms and conditions of the respective insurance policies, insurance policies required by this Lease shall give District thirty (30) days' notice in the event of cancellation and ten (10) days' notice for non-payment of premium. This shall be evidenced by policy provisions or an endorsement separate from the certificates of insurance.

P. The Commercial General Liability policy shall contain a severability of interests clause, also known as a "separation of insureds" clause.

Q. Insurance certificates should be forwarded to District address provided in Section 38 below or to an address provided by Chief Real Estate Officer.

R. District expressly retains the right to require Lessee to increase or decrease limits of insurance of any of the above insurance types throughout the Term of this Lease to a level consistent with then commercially reasonable limits of coverage required by commercial landowners or commercial lenders for improvements similar to the Facilities that are used for purposes similar to those for which the Facilities are used.

S. Chief Real Estate Officer shall notify Lessee in writing of changes in the insurance requirements consistent with subsection (R) above. If Lessee does not deposit copies of certificates of insurance and endorsements with Chief Real Estate Officer incorporating such changes within thirty (30) days of receipt of such notice, it shall constitute a default.

The procuring of such required policy or policies of insurance shall not be construed to limit Lessee's liability hereunder or 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. Any liability policy limits may be satisfied through the use of primary and excess or umbrella liability policies.

26. SUBROGATION WAIVED.

To the extent authorized by any property insurance policy issued to Lessee with respect to the Premises and Facilities, Lessee hereby waives the subrogation rights of the insurer, and releases District from liability for any loss or damage covered by said insurance. The Workers' Compensation policy shall contain a waiver of subrogation endorsement (if needed) waiving all rights of subrogation against the Orange County Flood Control District, 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.

27. DAMAGE AND DESTRUCTION.

A. In the event that any Facilities located on the Premises are damaged or destroyed, and the net proceeds of insurance are sufficient to cover Lessee's estimated cost of rebuilding (or if Lessee failed to maintain insurance it is required to maintain under this Lease and the proceeds of such insurance, had it been maintained, would have been sufficient to cover Lessee's estimated cost of rebuilding), Lessee shall repair and rebuild the Facilities, and this Lease shall continue in full force and effect, and Lessee shall commence and continue such repair or rebuilding with reasonable diligence and shall complete such repair and rebuilding within a reasonable time after the same is commenced; provided, however, that any delay in the completion of the such repairs resulting from fire or other casualty, strikes, shortages of material or labor, governmental laws, rules and regulations, the elements or matters beyond the reasonable control of Lessee, shall extend such reasonable time within which Lessee may complete such repairs or rebuilding by the period of such delay. Subject to the terms of any Leasehold Mortgage, the net proceeds of any insurance, to the extent that such proceeds are received by any Leasehold Mortgagee, less any expenses of recovery thereof (including reasonable attorneys' fees), shall be made available to Lessee to be applied to the cost and expense of repair or rebuilding the damage or destruction insured against, subject to reasonable conditions and payable on receipt of the usual architect's certificates respecting the progress of the work, but any Leasehold Mortgagee holding such insurance proceeds may withhold an amount reasonably necessary to ensure completion of such repairs or rebuilding (not to exceed ten percent (10%) of such proceeds) until completion and the expiration of the period within which mechanics' or materialmen's liens may be filed and until receipt of satisfactory evidence that no such liens exist or have been satisfied or otherwise removed.

B. In the event Lessee maintains the insurance it is required to maintain under this Lease and the proceeds of insurance are not sufficient to cover Lessee's estimated cost of rebuilding, or in the event the damage or destruction occurs during the last seven (7) years of the Term, Lessee will have the option to terminate this Lease, subject to the rights of any Leasehold Mortgagee, which option will be exercisable by written notice to District within forty-five (45) days after the occurrence of such event. Lessee will only have such option to terminate this Lease (or any Related Lease) as to the specific legal parcel or parcels upon which the damaged or destroyed Facilities are located. In the event Lessee elects to terminate this Lease (or any Related Lease) based upon such damage, destruction, or substantial loss, Lessee will be responsible (as a Project Cost) for the demolition and razing of the Facilities (including the foundation of any buildings, but not any other underground improvements) or (also as a Project Cost) for payment to District of funds necessary for District or any succeeding Lessee to perform

such work (collectively, “**Lessee’s Post-Termination Duties**”). The obligation to perform Lessee’s Post-Termination Duties shall survive the termination of this Lease. Upon such termination, neither Party shall have any further obligations to the other under this Lease (or the applicable Related Lease) other than those obligations that have accrued prior to the date of such termination or those that expressly survive the expiration or earlier termination of this Lease (or the applicable Related Lease). To the extent available, Lessee shall first use insurance proceeds to discharge Lessee’s Post-Termination Duties before using the Capital Replacement Reserve and the razing reserve fund established pursuant to Section 31.D. Any funds remaining in the Capital Replacement Reserve (or in the razing reserve fund established pursuant to Section 31.D below) after discharge of Lessee’s Post-Termination Duties shall be included in Total Revenue for purposes of the final accounting and distribution of Net Revenue to District and Lessee.

C. In connection with the performance of Lessee’s Post-Termination Duties, District agrees that: (1) Lessee need not remove any Off-Site Improvements, and need not restore the Premises to the pre-development grade; (2) subject to District’s prior written approval, Lessee may leave on-site the demolished building materials or sell such materials, the proceeds of which may be used to offset the cost of Lessee’s Post-Termination Duties.

28. DEFAULT BY LESSEE.

A. Default. Lessee will be considered in default under this Lease in the event of any one or more of the following occurrences:

(1) Lessee fails to pay the Rent or any other money payments required by this Lease when the same are due and the continuance of such failure for a period of thirty (30) days after they are due to District.

(2) Lessee fails to perform any other material covenant contained in this Lease and such failure continues for a period of thirty (30) days after written notice thereof from District to Lessee; provided, however, that if a material nonmonetary default cannot be cured with reasonable diligence within such thirty (30) day period, then District shall not have the right to terminate this Lease or pursue any other remedy against Lessee, as long as Lessee commences the curing of such default within such thirty (30) day period and continuously proceeds with the curing of such default to completion with reasonable diligence, with allowance for delays due to the action or failure to act of governmental authorities, strikes, acts of God or other matters beyond the reasonable control of Lessee (except Lessee’s inability to fulfill its financial obligations).

(3) Lessee voluntarily abandons the Premises and does not cure such abandonment within sixty (60) days following written notice from District to Lessee.

4. Insolvency.

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

b) A case is commenced by or against Lessee 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 Lessee, 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 Lessee's assets located at the Premises or of Lessee's interest in this Lease, where such seizure is not discharged within thirty (30) days; provided, however, that the appointment of a trustee or receiver at the request of either District or a Leasehold Mortgagee shall not be considered default hereunder.

B. Pursuit of Remedies for Default By Lessee. If default is made by Lessee as described in Section 28.A above and such default is not cured as provided in Section 28.A above, District shall provide Lessee and all Leasehold Mortgagee(s) with an additional written notice thereof, and if such failure to cure continues for an additional period of thirty (30) days (or within any additional time for cure or foreclosure provided a Leasehold Mortgagee pursuant to Section 32 below), District shall be entitled to pursue any and all rights and remedies which it may have under this Lease or at law or in equity, including, without limitation, the right to terminate this Lease. All of such rights and remedies shall be cumulative and not alternative. District agrees to not exercise its right to terminate as to any such portion of the Premises until each Leasehold Mortgagee has been given its rights to cure or foreclose as set forth in Section 32 below. If District elects to terminate this Lease, it will in no way prejudice the right of action for payment of any rental arrearages owed by Lessee as of the effective date of such termination. In the event of a termination of this Lease due to default of the Lessee, the Lessee shall not be entitled to the return of any outstanding Equity Contribution or any further portion of Net Revenue hereunder.

## 29. DEFAULT BY DISTRICT.

A. Default. District will be considered in default of this Lease if District fails to fulfill any of the material terms, covenants or conditions set forth in this Lease if such failure shall continue for a period of more than sixty (60) days after delivery by Lessee of a written notice of such default.

B. Cure. If the default cannot be cured with reasonable diligence within such sixty (60) day period, then Lessee shall not have the right to terminate this Lease or pursue any other remedy against District, as long as District commences the curing of such default within such sixty (60) day period and thereafter proceeds with the curing of such default to completion with reasonable diligence, with allowance for delays due to the action or failure to act of governmental authorities (other than obligations specifically required of District in this Lease), strikes, acts of God or other matters beyond the reasonable control of District.

C. Remedies. If default is made by District as described in Section 29.A above, and is not cured as provided in Section 29.B above, Lessee shall provide District with an additional written notice thereof and if such failure to cure continues for an additional period of sixty (60) days, Lessee shall be entitled to pursue any and all rights and remedies which it may have under this Lease or at law or in equity, including, without limitation, the right to terminate this Lease. All of such rights and remedies shall be cumulative and not alternative. Upon such termination,



neither Party shall have any further obligations to the other under this Lease other than those obligations that have accrued prior to the date of such termination or those that expressly survive the expiration or earlier termination of this Lease.

30. WAIVERS AND ACCEPTANCE OF FEES.

A. No waiver of default by either Party hereto of any of the terms, covenants or conditions hereof to be performed, kept or observed will be construed to be or act as a waiver of any subsequent default of any of the terms, covenants, conditions herein contained to be performed, kept and observed.

B. No acceptance of fees or other money payments in whole or in part for any period or periods during or after default of any of the terms, conditions or covenants to be performed, kept or observed by Lessee will be deemed a waiver on the part of District of any right or remedy which it may have under this Lease or at law or in equity.

C. No acceptance of fees or other money payments in whole or in part for any period or periods during or after default of any of the terms, conditions or covenants to be performed, kept or observed by District will be deemed a waiver on the part of Lessee of any right or remedy which it may have under this Lease or at law or in equity.

31. SURRENDER AT END OF TERM.

A. Subject to the rights of a Sublessee provided in Section 14 above, Lessee covenants that at the termination of this Lease, howsoever caused, it will quit and surrender Lessee's right, title and interest in the Premises and Facilities in a safe, sanitary and good condition and repair, excepting reasonable wear and tear, unless District elects to have the Facilities razed, as provided in Section 31.D below. Notwithstanding the above, District and Lessee acknowledge and agree that given the age of the Facilities at the end of the Term they may have reached the end of their useful life and that nothing in this Section 31 shall obligate Lessee to make any capital improvements or expend any funds not fully reserved for pursuant to a Study.

B. All Facilities located on the Premises at the expiration or earlier termination of the Term of this Lease, howsoever caused, shall, without payment or compensation of any kind to Lessee, then become District's property, in fee simple, free and clear of all claims, liens and encumbrances imposed by or against Lessee, any Leasehold Mortgagee, any Sublessee or Tenant, or any other third party claiming by or through Lessee (collectively, the "**Prohibited Encumbrances**"). Upon termination of this Lease howsoever caused, Lessee shall remove from the Premises, within fifteen (15) days following the date of such termination, all office equipment, trade fixtures and personal property (collectively "**Lessee's Personal Property**") belonging to Lessee located in any management office maintained by Lessee on the Premises, provided Lessee repairs any damage caused by such removal. All of Lessee's Personal Property that is not removed by Lessee within thirty (30) days following the termination of this Lease, shall become the property of District; provided, however, that if District has required Lessee to raze the Facilities pursuant to Section 31.D below, Lessee shall have up to ninety (90) days to remove Lessee's Personal Property.

C. Without limiting the provisions of this Section 31, Lessee agrees that upon the expiration or earlier termination of this Lease, howsoever caused, it will execute, acknowledge and deliver to District, within thirty (30) days after written demand from District, all such documents and instruments as shall be reasonably necessary to evidence and confirm the transfer of ownership of the Facilities from Lessee to District, in the condition provided in Section 31.A above, free and clear of any Prohibited Encumbrances thereon. Lessee shall perform its obligations set forth in the preceding sentence without any further consideration required from District to Lessee, any Sublessee or Tenant or third party, and Lessee shall defend and hold District harmless from all liability arising from any claims arising from the existence of any Prohibited Encumbrances. Concurrently with its delivery of the above documents and instruments, Lessee shall also deliver to District copies of all documents reasonably required for the operation of the Facilities, including, without limitation, copies of all Subleases and service contracts.

D. Notwithstanding anything contained in this Lease to the contrary, Lessee shall raze and remove all Facilities (including the foundation of any buildings, but not any other underground improvements) located on the Premises constructed thereon by Lessee, or anyone operating through Lessee, which work shall be completed within ninety (90) days after the expiration of this Lease, unless District gives Lessee written notice to not raze the Facilities or any portion thereof at least seven (7) years prior to the expiration of this Lease. The cost of such work shall be a Project Cost and sufficient reserve funds (separate from and in addition to the Capital Replacement Reserve) may be accrued by Lessee (beginning as early as ten (10) years prior to expiration of this Lease) as a Project Cost. Also, consistent with the terms of Section 11.C above, any unused funds from the Capital Replacement Reserve may be applied to such razing costs. If a separate reserve fund is established to cover the costs of such razing, any excess amounts (following payment of the costs of such razing) shall be included in Total Revenue for purposes of the final accounting and distribution of Net Revenue to District and Lessee.

32. FINANCING.

A. Prior to commencement of construction, Lessee shall provide to District evidence reasonably satisfactory to District of funding available to Lessee that is sufficient to pay for Lessee's estimated total cost of constructing the Facilities, which evidence may consist of (i) a written commitment to Lessee from an institutional lender selected by Lessee to provide a construction loan to Lessee for the purpose of constructing the Facilities (which may be secured by a permitted Leasehold Mortgage encumbering Lessee's leasehold interest under this Lease), (ii) actual equity funds then held by Lessee and set-aside for the purpose of constructing the Facilities, (iii) funds available from an existing line of credit from an institutional lender, or (iv) any combination of the foregoing. Lessee 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 Lessee's estimated remaining cost of constructing the Facilities, provided that Lessee shall promptly notify District of any such change.

B. Provided Lessee is not in material default under this Lease, and subject to the terms of this Lease, Lessee will have the right, with prior written consent of the District, to hypothecate Lessee's interest in all or part of this Lease, Lessee's interest in the Premises and the

Facilities through one or more Leasehold Mortgages, or to modify or refinance existing Leasehold Mortgages, so long as each such Leasehold Mortgage, or refinancing or modification of such Leasehold Mortgage, meets the minimum following requirements, including but not limited to:

(1) The financing secured by the Leasehold Mortgage has been incurred for, and the proceeds of which are used for, the purpose of financing the construction of the Facilities and the payment of other Project Costs or refinancing an existing Leasehold Mortgage, subject to the terms of this Lease.

(2) The financing that such Leasehold Mortgage secures is held by a Leasehold Mortgagee that is an Institutional Lender at the time the Leasehold Mortgage is entered into; provided, however, that in case of a participation or syndicated loan with multiple lenders, only the lead lender need be an Institutional Lender at the time the Leasehold Mortgage is entered into.

(3) Any Leasehold Mortgage for construction financing of a Construction Phase, may not be for a loan less than eighty percent (80%) or more than one hundred percent (100%) of the Approved Construction Budget for such Construction Phase without District's approval. Any Leasehold Mortgage for interim or permanent financing to replace a construction loan for a Construction Phase may not exceed the face amount of the construction loan being replaced without the approval of the District. The face amount of any Leasehold Mortgage which is a refinancing of a permanent financing must be approved by the District.

(4) The proceeds of any refinancing, to the extent not used to pay off the Leasehold Mortgage being refinanced, shall be considered part of Total Revenue.

(5) The loan term for any Leasehold Mortgage may not extend beyond the Term of this Lease without the prior written approval of District.

Lessee shall send a request for approval of a Leasehold Mortgage (or Leasehold Mortgage modification or refinancing) concurrently with its delivery to District of a copy of the executed term sheet between Lessee and the Leasehold Mortgage, which will be provided to District within three (3) business days following its full execution. Following Lessee's receipt of the initial drafts of the Leasehold Mortgagee's loan documents, Lessee shall provide District (concurrently with its delivery to the Leasehold Mortgagee) with copies of all subsequently negotiated drafts of such loan documents. District shall approve or disapprove the final draft of the proposed loan documents within five (5) business days following submittal to District. If disapproved, District will inform Lessee in writing of its disapproval and District's specific reasons for such disapproval. District and Lessee agree to negotiate in good faith to resolve any conflicting issues that may arise from District's disapproval pursuant to Section 53, below.

C. Unless otherwise expressly provided in this Lease, any Leasehold Mortgage allowed hereunder may contain such terms and conditions as are acceptable to Lessee and Lessee will have the right, without the consent or approval of District, at any time during the Term hereof to execute and deliver to any or all of its Leasehold Mortgagees any documents which

will operate as collateral security for any loan or loans made, even if such document or documents result in a different form or type of conveyance or assignment of the leasehold interest demised hereunder. It is hereby agreed that Lessee or any such Leasehold Mortgagees will have the right to immediately record such document or document(s) with an appropriate public official or officials as an encumbrance on Lessee's leasehold interest. Lessee agrees that copies of all such recorded documents of conveyance or assignment as provided in this Section 32 will be provided to District forthwith. District agrees to cooperate in executing any documents reasonably requested of District by Lessee or the Leasehold Mortgagee in connection with any such Leasehold Mortgage transaction.

D. HOWEVER, AND, NOTWITHSTANDING ANY TERM OR PROVISION OF ANY SUCH LEASEHOLD MORTGAGE OR THIS LEASE TO THE CONTRARY, UNDER NO CIRCUMSTANCES SHALL DISTRICT BE OBLIGATED TO ENCUMBER ITS FEE INTEREST IN THE PREMISES WITH ANY LEASEHOLD MORTGAGE OR OTHER LIEN, CHARGE, PLEDGE OR ENCUBRANCE, AND UNDER NO CIRCUMSTANCES SHALL ANY SUCH LEASEHOLD MORTGAGE CONSTITUTE AN INDEBTEDNESS OR OBLIGATION OF DISTRICT NOR SHALL DISTRICT BE LIABLE IN ANY WAY FOR THE PAYMENT OF ANY PORTION OF THE INDEBTEDNESS EVIDENCED BY SUCH LEASEHOLD MORTGAGE OR FOR THE PAYMENT OR PERFORMANCE OF ANY OTHER OBLIGATION THEREUNDER OR SECURED THEREBY. IN THE EVENT OF A CONFLICT BETWEEN THIS SUBSECTION AND ANY OTHER TERM OR PROVISION OF THIS LEASE, THIS SUBSECTION SHALL CONTROL.

E. District will deliver to any such Leasehold Mortgagee (concurrently with District's delivery of such notice to Lessee) written notice of any default of Lessee under the terms of this Lease that could lead to an Event of Default under Section 28 and such notice will specify the nature of the default. Before terminating this Lease, District will allow such Leasehold Mortgagee the opportunity to cure or commence to cure any default of Lessee in accordance with the provisions of this Lease. The time period to cure any default of Lessee will commence when such notice is delivered to Leasehold Mortgagee and Leasehold Mortgagee shall have the same lengths of time to cure the specified default as are permitted Lessee in Section 28 above; provided that if no such cure period is stated, the cure period afforded to Leasehold Mortgagee should be thirty (30) days after notice from District. In the event Lessee fails to timely cure a default after receipt of written notice and expiration of any applicable cure period, District agrees to provide any Leasehold Mortgagee with a second written notice and provide such Leasehold Mortgagee with an additional thirty (30)-day cure period. Provided, however, for defaults that cannot be cured by the payment of money, District will not have the right to exercise any remedies under this Lease arising from such default (except that the District will be permitted to request that a court of law appoint a receiver to run the project to prevent waste to the extent a Leasehold Mortgagee has not already done so) so long as a Leasehold Mortgagee is diligently prosecuting to complete a cure of any default pursuant to Section 28 above and in fact cures such default within twelve (12) months after such additional thirty (30)-day period. If such default is of a nature which is incapable of being cured by Leasehold Mortgagee because the Leasehold Mortgagee is not the holder of Lessee's interest in this Lease and in the Premises, District agrees not to exercise any remedy to terminate this Lease arising from such default for one hundred eighty (180) days (or so longer period as may be required to complete the foreclosure and become the holder of Lessee's interest in this Lease, the Facilities

and in the Premises) and in fact cures such default within twelve (12) months or diligently pursues such cure after such additional thirty (30)-day period if: (i) Leasehold Mortgagee notifies District in writing within such additional thirty (30)-day cure period that Leasehold Mortgagee intends to foreclose its Leasehold Mortgage and Leasehold Mortgagee commences and diligently pursues such foreclosure; and (ii) Leasehold Mortgagee makes all payments due by Lessee under this Lease through the date of foreclosure, to the extent the amount of such payments can be reasonably determined by the Leasehold Mortgagee, and otherwise cures any defaults that are nonetheless susceptible of cure.

F. Any default by Lessee in the payment of money as required under the terms of this Lease may be cured by the Leasehold Mortgagee in accordance with the terms of Sections 28 and 32.C hereof, and District will accept any such payment or cure from such Leasehold Mortgagee during the term of the Leasehold Mortgage.

G. If any default by Lessee that is susceptible of cure has been cured by a Leasehold Mortgagee or its Affiliate, District agrees that upon completion of any foreclosure proceedings or sale under the deed of trust or other security instrument securing the Leasehold Mortgage, or upon delivery of a deed in lieu of foreclosure, the: (a) Leasehold Mortgagee; (b) any purchaser at such foreclosure sale other than the Leasehold Mortgagee (“**Purchaser**”); or (c) any successor or assign of any Leasehold Mortgagee or Purchaser that is approved by District pursuant to Section 12 above (“**Permitted Assignee**”), will be recognized by District as the lessee under the terms of this Lease for all purposes for the remaining Term hereof. The leasehold interest of the Leasehold Mortgagee, Purchaser or Permitted Assignee will not be adversely affected or terminated by reason of any non-monetary default occurring prior to the completion of such proceedings or sale, provided such default has been promptly remedied, or if such default requires possession to cure, provided such Leasehold Mortgagee, Purchaser or Permitted Assignee promptly commences and diligently and continuously prosecutes such cure upon taking possession of the Premises and complete such cure on the terms and within the time periods set forth in Subsection E above.

H. Notwithstanding any language to the contrary in this Lease, in the event the Lease is terminated for any reason other than a voluntary termination consented to by the Leasehold Mortgagee, and other than the occurrence of an uncured material default with respect to which Leasehold Mortgagee had the opportunity to cure, but failed to cure pursuant to the terms and conditions of this Lease, District shall enter into a new lease (the “**New Lease**”) with a Leasehold Mortgagee holding a first priority interest covering the Premises, or its Affiliate or any Purchaser or Permitted Assignee, provided that any such party (i) requests such New Lease by written notice to District at any time prior to such termination, and (ii) cures all prior defaults of Lessee under this Lease that are capable of being cured. The New Lease shall be for the remainder of the Term, effective at the date of such termination, at the same rent and on the same covenants, agreements, conditions, provisions, restrictions and limitations contained in this Lease as would apply to such remainder of the Term. The New Lease shall have the same title priority as this Lease and shall be subject only to the exceptions to title having priority over this Lease or such additional exceptions to which such Leasehold Mortgagee or other party has consented in writing; provided that District makes no representation or warranty that the New Lease will in fact have such priority. In the event District and such party enter into any such New Lease, title to all the Facilities located upon the Premises and previously owned by the Lessee hereunder as

of the date of such New Lease shall automatically vest in such party. If requested by such party, District agrees to execute and deliver to such party within ten (10) days after written request, a quitclaim deed in recordable form conveying title to such Facilities to such party. As applicable, District also agrees to assign to such party all Subleases with Tenants which attorned to District upon the termination of this Lease.

I. A Leasehold Mortgagee will not become personally liable under the terms and obligations of this Lease unless and until it assumes the obligations and is recognized or deemed recognized by District as lessee under this Lease and will be liable only so long as such Leasehold Mortgagee maintains ownership of the leasehold interest or estate and recourse to such Leasehold Mortgagee shall be limited solely to Leasehold Mortgagee's interest in the Premises and Facilities.

J. The bankruptcy or insolvency of Lessee will not operate or permit District to terminate this Lease as long as all Rent or other monetary payments required to be paid by Lessee continue to be paid and other required obligations are performed in accordance with the terms of this Lease.

K. Every Leasehold Mortgage shall contain a provision requiring that copies of all notices of default by Lessee thereunder must be sent to District. In the event of any default by Lessee under any Leasehold Mortgage, District reserves the right to make any payments due to the Leasehold Mortgagee before the Leasehold Mortgagee resorts to any foreclosure or sale proceedings under its deed of trust or other security instrument. In the event that District makes such payments, they shall be reimbursed out of available Total Revenue on par with any outstanding Project Costs prior to calculation of Net Revenue.

L. Any Leasehold Mortgagee shall have the right to participate in any settlement or adjustment of losses under insurance policies maintained by Lessee under this Lease. Such Leasehold Mortgagee shall be named as a loss payee or additional insured, as applicable, in accordance with any loan documents executed by Lessee, under the insurance policies required under this Lease. Notwithstanding this, any proceeds of insurance shall first be used for the purposes provided for in this Lease before any portion thereof is applied to repay any indebtedness or other amounts due under such Leasehold Mortgage.

M. So long as any Leasehold Mortgage is in effect, there shall be no merger of the leasehold estate created by this Lease into the fee simple estate in the Premises without the prior written consent of the Leasehold Mortgagee.

N. District shall consider amending this Lease from time to time to add any provision which may reasonably be requested in writing by any Leasehold Mortgagee or prospective Leasehold Mortgagee for the purpose of implementing the mortgagee protection provisions contained in this Lease and allowing such Leasehold Mortgagee or prospective Leasehold Mortgagee reasonable means to protect or preserve the lien of its security documents and the value of its security. Any amendment to this Lease will require the approval of the Board of Supervisors. If any such requested amendment is acceptable to District, District agrees to execute and deliver (and to acknowledge if necessary for recording purposes) any agreement necessary to effect any such amendment. Notwithstanding the foregoing, no such amendment

shall in any way affect or change the Term of this Lease or the Rent (or Fixed Ground Rent, if applicable) or other amounts payable to District under this Lease, encumber the fee interest of District in the Premises, or otherwise in any respect adversely affect any rights of District under this Lease.

O. In the event of default by Lessee under a Leasehold Mortgage and the subsequent foreclosure by the Leasehold Mortgagee or its Affiliate, or in the event of a deed in lieu of foreclosure in favor of the Leasehold Mortgagee or its Affiliate, the Leasehold Mortgagee or its Affiliate, as of the date of the foreclosure sale or recording of the deed in lieu of foreclosure, or any third-party purchaser, as applicable, shall be entitled, with regard to the Leasehold Mortgage, to receive, prior to the calculation of Net Revenue pursuant to Section 1.DD, above, an amount each year equal to the loan payment that the Leasehold Mortgagee would have otherwise been entitled in the amount of the Debt Service for that particular calendar year (or portion thereof) as set forth in a Leasehold Mortgage amortization schedule approved by District in accordance with Section 32(B), above, attached hereto and incorporated herein as Exhibit K, to be paid out of Total Revenue in the same priority position as the payment of Debt Service as set forth in Section 1.DD, above (the “Annual Debt Service Equivalent Payment”). If there is insufficient Total Revenue in any given year during the Term of this Lease to make the full Annual Debt Service Equivalent Payment as shown on Exhibit K, the recipient of such payment shall only be entitled to amount actually available and shall not be entitled to any such deficiency amount during any subsequent year during the Term of this Lease and any such deficiency amount shall be waived and not be a liability, expense or debt to the Project or under this Lease. In the event the Leasehold Mortgagee or its Affiliate or any third-party purchaser (or their immediate successor or assign) acquires the leasehold interest under this Lease, the defaulting Lessee shall not be entitled to any outstanding Equity Contributions and shall not be entitled to any further portion of Net Revenues to repay its Equity Contributions.

33. ESTOPPEL CERTIFICATE.

District and Lessee shall, from time to time, upon not less than thirty (30) days prior written request by the other Party or a an existing or prospective Leasehold Mortgagee, as applicable, execute, acknowledge and deliver a statement in writing, certifying to any Leasehold Mortgagee or prospective Leasehold Mortgagee that this Lease is unmodified and in full force and effect and that responding Party has no knowledge of any uncured defaults of the other Party under this Lease (or, if there have been any modifications that the same are in full force and effect as modified and stating the modifications and, if there are any defaults, setting them forth in reasonable detail), the Commencement Date of the Term, and the dates to which the rent and other charges under this Lease have been paid (“**Estoppel Certificate**”). Such Estoppel Certificate shall be substantially in the form attached as Exhibit E to this Lease or such other form (whether provided by Lessee or its Leasehold Mortgagee or prospective Leasehold Mortgagee or prospective assignee) approved by District. District and Lessee shall consider requests for additional statements (“**Supplemental Statements**”) in such writing, provided that District or Lessee shall not be obligated to undertake any investigations or expend any funds in providing any Supplemental Statements. Such Supplemental Statements may require approval of the Board of Supervisors for District if they constitute an amendment to this Lease. Any such statement delivered pursuant to this clause of this Lease may be relied upon by the recipient.

34. EMINENT DOMAIN.

A. In the event of any acquisition of or damage to all or any part of the Premises or any interest therein by eminent domain, whether by condemnation proceeding or transfer in avoidance of an exercise of the power of eminent domain or otherwise during the Term of this Lease, the rights and obligations of the Parties with respect to such appropriation shall be as provided in this Section 34. As used herein:

(1) **“Taking”** shall mean any taking or damage, including severance damage, by eminent domain or by inverse condemnation or for any public or quasi-public use under any statute. The transfer of title may be either a transfer resulting from the recording of a final order in condemnation or a voluntary transfer or conveyance in lieu of an exercise of eminent domain or while condemnation proceedings are pending. The taking shall be deemed to take place on the earlier of (i) the date actual physical possession is taken by the condemnor or (ii) the date on which the title passes to the condemnor.

(2) **“Total Taking”** shall mean the taking of fee title to all of the Premises or so much of the Premises that the portions of the Premises not so taken are, in the reasonable judgment of Lessee, not reasonably suited for the uses of the Premises that have been previously made by Lessee. A Temporary Taking, defined below, may be treated as a Total Taking if it meets the test set forth above.

(3) **“Partial Taking”** shall mean any taking of fee title that is not a Total Taking.

(4) **“Temporary Taking”** shall mean the taking for temporary use of all or any portion of the Premises for a period ending on or before the expiration of the Term.

(5) **“Award”** shall mean all compensation paid for the taking whether pursuant to a judgment or by agreement or otherwise.

(6) **“Notice of Intended Taking”** shall mean any notice or notification on which a reasonably prudent person would rely and which such person would interpret as expressing an existing intention of taking as distinguished from a mere preliminary inquiry or proposal and shall include without limitation the service of a condemnation summons and complaint on either District or Lessee or the receipt by either District or Lessee from a condemning agency or entity of a written notice of intent to take containing a description or map of the taking reasonably defining the extent thereof.

B. Upon receipt of any of the following by either Party hereto, such Party shall promptly deliver a copy thereof, endorsed with the date received, to the other and any Leasehold Mortgagee which has given its name and address in writing to such Party for such purpose.

(1) Notice of Intended Taking;

(2) Service of any legal process relating to the condemnation of all or any part of the Premises;



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(3) Notice in connection with any proceedings or negotiations with respect to any such condemnation; and

(4) Notice of intent or willingness to make or negotiate a private purchase, sale or other transfer in lieu of condemnation.

C. District, Lessee and any Leasehold Mortgagee that would be affected by such taking shall each have the right to represent its respective interest in each proceeding or negotiation with respect to any taking or intended taking and to make full proof of its claims. No consensual agreements, settlement, sale or transfer to or with the condemning authority shall be made without the prior written consent of District, Lessee and Leasehold Mortgagee, which consent shall not be unreasonably withheld. Each of the Parties hereto agrees to execute and deliver to the other any instruments that may be required to effectuate or facilitate any of the provisions of this Section 34 where such execution or delivery will not adversely affect the right of such Party to receive just compensation for any loss sustained in such negotiation or proceeding.

D. In the event of a Total Taking, this Lease and all interests, rights, liabilities and obligations of the Parties hereunder shall terminate as of the date of Taking, except for liabilities and obligations arising out of events occurring prior to the date of termination.

E. In the event of a Taking of fee title to less than all of the Premises which Lessee reasonably believes to be a Total Taking, Lessee may, by written notice to District approved by all Leasehold Mortgagees, within one hundred twenty (120) days after Lessee receives Notice of Intended Taking thereof, elect to treat such taking as a Total Taking. If Lessee fails to make such timely election, such Taking shall be deemed to be a Partial Taking for all intents and purposes.

F. Any taking determined to be a Total Taking in accordance with this Section 34 shall be treated as a Total Taking if (i) Lessee delivers possession of the Premises to District within one hundred twenty (120) days after Lessee shall have delivered written notice to District electing to treat such taking as a Total Taking and (ii) Lessee has complied with all of the provisions hereof relating to the apportionment of the awards.

G. In a Total Taking, all sums, including damages and interest, awarded for the leasehold shall be distributed and disbursed as finally determined by the court with jurisdiction over the condemnation proceedings in accordance with applicable law. In a Total Taking, sums awarded for the leasehold interest (but in no event any award for the District's fee interest, which shall go directly to the District) shall be distributed, sums awarded for the leasehold interest shall be disbursed in the following order of priority:

(1) First, to Leasehold Mortgagees to the extent of the then balance due on all Leasehold Mortgages;

(2) Second, the remaining sum shall be included in Total Revenue for purposes of the final accounting and distribution of Net Revenue to District and Lessee (after the payment of outstanding items set forth above in Section 1.DD).

All sums awarded for the leasehold (i) be delivered to District and Lessee (or to Leasehold Mortgagee), respectively, if such award has been apportioned between District and Lessee by such condemning authority, or (ii) deposited promptly with Leasehold Mortgagee (if required pursuant to such Leasehold mortgage) (or, if not so required or in the event that there is no Leasehold Mortgage of record, with an escrow agent jointly selected by District and Lessee). Sums attributable to the leasehold being held by the escrow agent pending disbursement shall be deposited in a federally insured interest bearing account and, upon distribution, each party having a right to any of the sums being disbursed shall be entitled to receive the interest attributable to its share of such sums.

H. In the event of a Partial Taking, this Lease shall remain in full force and effect as to the portion of the Premises remaining, and there shall be no adjustment to any Rent or other amounts payable to District hereunder, except to the extent of a reduction in Net Revenue resulting from such Partial Taking. In the event of a Partial Taking, all sums, including damages and interest, awarded for the leasehold shall be distributed in the following order of priority:

(1) First, to Lessee an amount equal to the cost of making all repairs and restorations to any Facilities on the Premises affected by such taking to the extent necessary to restore the same to a complete architectural and economically viable or functioning units (to the extent permitted, however, taking into consideration the amount of land remaining after such taking or purchase);

(2) Second, to any Leasehold Mortgagee to the extent that the security if its Leasehold Mortgage has been impaired as a result of the Partial Taking or as required by its loan documents, whichever is greater;

(3) Third, the remaining sum shall be included in Total Revenue for purposes of the final accounting and distribution of Net Revenue to District and Lessee (after the payment of outstanding items set forth above in Section 1.DD).

All sums awarded for the leasehold fee shall (i) be delivered to District and Lessee (or to Leasehold Mortgagee), respectively, if such award has been apportioned between District and Lessee by such condemning authority, or (ii) deposited promptly with Leasehold Mortgagee (or in the event that there is no Leasehold Mortgage of record, with an escrow agent jointly selected by District and Lessee). Sums attributable to the leasehold being held by the escrow agent pending disbursement shall be deposited in a federally insured interest bearing account and, upon disbursement, each party having a right to any of the sums being disbursed shall be entitled to receive the interest attributable to its share of such sums. All sums awarded for the fee shall be delivered promptly to District.

I. In the event of a Temporary Taking, this Lease shall remain in full force and effect, neither the rents reserved hereunder nor the Term hereof shall be reduced or affected in any way, and, subject to Section 1.NN above, Lessee shall be entitled to any award for the use or estate taken, subject to the requirements of any Leasehold Mortgagee.

J. Unless the respective values are determined by the court in the eminent domain proceeding, the values of the interests for which District and Lessee are entitled to compensation

in the event of a Total or Partial Taking shall be determined by the mutual written agreement of District and Lessee. If District and Lessee are unable to agree on the value of such interests within thirty (30) days after the deposit of the sums awarded with the escrow agent or Leasehold Mortgagee, as applicable, then within thirty (30) days after the expiration of that period, each such Party shall submit its good faith estimate of the value of such interests as of the date of the taking. If the higher of such estimates is not more than one hundred five percent (105%) of the lower of such estimates, the value shall be the average of the submitted estimates. If otherwise, then within ten (10) days the question shall be submitted to arbitration pursuant to the rules of the American Arbitration Association.

35. ENVIRONMENTAL.

A. Policy.

(1) Lessee agrees to comply, and require, in any Sublease, that its Sublessees and Tenants comply, with all applicable federal, state, and local regulations pertaining to Hazardous Materials use, storage, and disposal on the Premises. Lessee shall indemnify and hold harmless District and its agents and representatives for any violation of Environmental Laws caused by Lessee or Lessee's representatives (which shall include any employees, agents, contractors, vendors, tenant, subtenant, guests or invitees of Lessee). Furthermore, Lessee shall reimburse District for any and all costs related to investigation, clean up, and/or fines incurred by District for environmental regulation non-compliance by Lessee or Lessee's representative.

(2) If Lessee is required to prepare a "Business Plan," as specified by Health and Safety Code Section 25500, *et seq.*, or a Hazardous Waste Contingency Plan, as specified in 22 CCR 66264.51 *et seq.*, then a copy of the plan shall be submitted first to District.

(3) If Lessee or Lessee's representative generates any regulated Hazardous Material on District's property, Lessee agrees to dispose of such wastes in accordance with all applicable federal, District, and local regulations. Copies of all hazardous waste manifests or disposal certificates shall be submitted to District.

(4) Storage of Hazardous Material shall comply with 22 CCR 66264 *et al.*, and all applicable fire regulations. Lessee shall not apply to become a "permitted" hazardous waste storage facility without written permission from District.

(5) District or its representatives reserves the right to inspect all areas which are leased or rented by Lessee, for the purpose of verifying environmental compliance, subject to the terms of Section 7 above.

(6) At the written request of District, Lessee shall provide copies of Material Safety Data Sheets (MSDS) for all Hazardous Materials used by Lessee or its Sublessees and Tenants on the Premises.

(7) Any violation in federal, District, or local Environmental Laws reasonably deemed material by District will be grounds for termination of Lease in accordance with

applicable sections herein; provided, however, that any such right of termination is subject to the terms of Sections 28 and 32 above. Termination of Lease by either Party or evacuation of leased property by Lessee shall not relieve Lessee of environmental or Hazardous Materials related liabilities incurred by District during Lessee's occupancy or incurred as a result of Lessee's actions prior to such termination.

B. Violation of Environmental Laws.

During the Term of this Lease, Lessee will not cause or permit any Hazardous Material to be used, generated, manufactured, produced, stored, brought upon, or released on, under or about the Premises, or transported to and from the Premises, by Lessee, its Sublessees and Tenants, or their respective agents, employees, contractors, or invitees in violation of the Environmental Laws.

(1) Lessee, at District's reasonable request, as a Project Cost, will conduct such testing and analysis as necessary to ascertain whether Lessee is using the Premises in compliance with Environmental Laws. Any such tests will be conducted by qualified independent experts chosen by Lessee and subject to District's reasonable written approval. Copies of such reports from any such testing will be provided to District.

(2) Lessee will promptly provide to District copies of all notices, reports, claims, demands or actions concerning any release or threatened release of Hazardous Materials.

C. Contamination Of Premises.

(1) If the use or presence of any Hazardous Material on, under or about the Premises (but expressly excluding any Hazardous Material Lessee proves was (a) existing on, under or about the Premises prior to the date this Lease is entered into, (b) migrating on, under or about the Premises after the date this Lease is entered into and not caused by Lessee, or (c) brought onto the Premises by District, its agents, employees, contractors or invitees during the Term) results in any contamination of the Premises in violation of Environmental Laws, Lessee will promptly take all actions as are necessary to remediate the Premises to the extent required by applicable Environmental Laws and to bring the Premises into compliance with all applicable Environmental Laws, and except as otherwise set forth herein, shall be considered a Project Cost. Provided, however, that if any such contamination is a result of the actions of (a) third parties (not including Lessee) or (b) Lessee or its employees or anyone acting through Lessee that were the result of simple negligence but not intended to contaminate the Premises, the portion of the costs attributable to such acts necessary to bring the Premises into compliance with Environmental Laws shall be a Project Cost.

(2) District will be solely responsible for any environmental condition existing on or about the Premises on or prior to the date this Lease is entered into or any environmental conditions caused by District, its agents, employees, contractors or invitees on or after the date this Lease is entered into or for any Hazardous Material migrating on, under or about the Premises during the Term of this Lease not caused by

Lessee. District will promptly take all actions, at its cost and expense, as are necessary to remediate the Premises to the extent required by applicable Environmental Laws to bring the Premises into compliance with all applicable Environmental Laws.

(3) If the illegal use of any Hazardous Material on, under or about the Premises by Sublessees and Tenants, their respective agents, employees, contractors, or invitees results in any contamination of the Premises in violation of Environmental Laws, Lessee will promptly take all actions, as a Project Cost (or cause its Sublessee or Tenant to take such actions), as are necessary to remediate the Premises to the extent required by applicable Environmental Laws and to bring the Premises into compliance with all applicable Environmental Laws. All costs incurred to bring the Premises into such compliance with Environmental Laws shall be a Project Cost, including Lessee's reasonable costs of recovery. All amounts recovered (whether by way of settlement of a claim, judgment, indemnity or otherwise) by Lessee from any such Sublessee, Tenant, agent, employee, contractor, or invitee in connection with the foregoing matters (and not reimbursed to Lessee as a Project Cost) shall first be used to repay Lessee for all such remediation and recovery costs incurred, and then be included in Total Revenue for the full or partial calendar year of the Term of this Lease in which it is recovered, or if recovered following the expiration or termination of the Term of this Lease (and Lessee has continued to pursue such recovery after the termination of this Lease), such recovery shall first be used to repay Lessee for all such remediation and recovery costs incurred (provided such costs have not been reimbursed to Lessee as a Project Cost), and then fifty percent (50%) of the balance of such recovery shall be promptly paid over to District, with the remaining fifty percent (50%) of the balance being retained by Lessee.

(4) If reasonably requested in writing by District (but not more often than once in any 10-year period), Lessee shall pay, as a Project Cost, the sum of One Hundred Thousand Dollars (\$100,000.00), as may be adjusted over time for inflation, in premium for a policy of pollution legal liability insurance (or its equivalent) with respect to the Premises. If such insurance (or its equivalent) is not available, Lessee shall not have any such obligation, and in no event shall Lessee be obligated to provide such coverage for any period beyond the Term of this Lease. The inflation-based adjustment referenced above in this Section 35.C(4) shall be as follows: The premium amount shall be increased in accordance with the increase in the United Districts Department of Labor, Bureau of Labor Statistics, Consumer Price Index for All Urban consumers (all items for the geographical Statistical Area in which the Premises are located on the basis of 1982-1984=100).

D. Compliance With All Governmental Authorities.

During the Term of this Lease, Lessee will promptly make all submissions required of Lessee and comply with all requirements of the appropriate governmental authority under all Environmental Laws. From the date this Lease is entered into, District will promptly make all submissions required of District, if any, to, and comply with, all requirements of the appropriate governmental authority under all Environmental Laws.

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(1) Should any governmental agency having authority over such matters determine that a site characterization, site assessment, and/or cleanup plan be prepared or that a cleanup should be undertaken because of any spills or discharges of hazardous materials at the Premises by Lessee, its agents, employees or contractors which occur during the Term of this Lease, then Lessee shall prepare and submit the required plans and financial assurances, and carry out the approved plans. If any such spills or discharges are a result of the gross negligence of Lessee or its employees, or anyone acting through Lessee, or if Lessee or its employees, or anyone acting through Lessee, intentionally spilled or discharged hazardous materials at the Premises, all costs incurred to prepare and submit the required plans and carry out the approved plans shall be at Lessee's cost and expense and not as a Project Cost. If any such contamination is a result of the actions of agents, contractors, third parties or the actions of Lessee that were not intended to contaminate the Premises, all costs incurred to bring the Premises into compliance with Environmental Laws shall be a Project Cost.

(2) Lessee hereby agrees to indemnify, defend and hold District harmless from all costs incurred in connection with any investigation of site conditions or any cleanup, remediation, removal or restoration work required by any Federal, District or local governmental agency or political subdivision because of an environmental condition on, under or about the Premises caused by Lessee, its Sublessees, their agents, employees, contractors or invitees. If any such environmental condition is a result of the gross negligence of Lessee or its employees or if Lessee or its employees intentionally caused such environmental condition, all costs incurred to bring the Premises into compliance with Environmental Laws shall be at Lessee's cost and expense and not as a Project Cost. If any such environmental condition is a result of the actions of Sublessees, agents, contractors, third parties or the actions of Lessee that were not intended to contaminate the Premises, all costs incurred to bring the Premises into compliance with Environmental Laws shall be a Project Cost. District hereby agrees to indemnify Lessee from all costs incurred in connection with any investigation of site conditions or any cleanup, remediation, removal or restoration work required by any Federal, District or local governmental agency or political subdivision because of an environmental condition on, under or about the Premises that existed on or prior to the date this Lease was entered into or migrated on, under or about the Premises (provided that such migration was not caused by Lessee) or was caused by District, its agents, employees, contractors or invitees on or after the date this Lease was entered into.

(3) Should any governmental agency having authority over such matters determine that a site characterization, site assessment, and/or cleanup plan be prepared or that a cleanup should be undertaken because of any spills or discharges of hazardous materials at the Premises by Sublessees and Tenants, and their respective agents, employees, contractors or invitees which occur during the Term of this Lease, then Lessee shall (as a Project Cost) prepare and submit the required plans and financial assurances, and carry out the approved plans. Lessee will promptly provide all information requested by District to determine the applicability of the Environmental Laws to the Premises, or to respond to any governmental investigation or to respond to any claim of liability by third parties which is related to such environmental contamination. All amounts recovered (whether by way of settlement of a claim,

judgment, indemnity or otherwise) by Lessee from any such Sublessee, Tenant, agent, employee, contractor, servant or invitee in connection with the foregoing matters shall be included in Total Revenue for the full or partial calendar year of the Term of this Lease in which recovered (Lessee's reasonable costs of recovery shall be deducted as a Project Cost), or if recovered following the expiration or termination of the Term of this Lease (and Lessee has continued to pursue such recovery after the termination of this Lease), fifty percent (50%) of such recovery (after deducting from such recovery Lessee's reasonable costs of recovery not theretofore included in Project Costs) shall be promptly paid over to District.

E. Survival. All of Lessee's and District's obligations under this Section 35 shall survive any termination of this Lease.

36. FORCE MAJEURE.

Neither District, Lessee or any Leasehold Mortgagee will be deemed to be in breach of this Lease by reason of failure to perform any of its obligations hereunder if, while and to the extent that such failure is due to strikes, boycotts, imposition of a stay or injunction, labor disputes, embargoes, shortages of materials, acts of God, acts of the public enemy, unusual weather conditions, floods, riots, rebellion or sabotage, or atypical waiting periods for obtaining governmental permits or approvals or in obtaining required utility services. However, the provisions of this Section 36 will not excuse any failure by either Party to pay monies owed to the other Party (including, in case of Lessee, Rent) under the provisions, covenants or agreements contained in this Lease, or to pay monies owed to any other person. No express reference in this Lease to a Force Majeure event shall create any inference that the terms of this Section 36 do not apply with equal force in the absence of such an express reference.

37. QUIET ENJOYMENT.

Subject only to any encumbrances of record as of the date of this Lease and the terms of this Lease, District agrees that on payment of the Rents and fees and performance of all of the covenants, conditions and agreements on the part of Lessee to be performed hereunder, Lessee and its Tenants and Sublessees (and their respective employees, agents, contractors and invitees) shall have the right to peaceably occupy and enjoy the Premises.

38. NOTICES.

All notices or other communications required or permitted hereunder shall be in writing, and may be personally delivered (including by means of professional messenger service) or sent by a commercial overnight courier, or sent by registered or certified mail, postage prepaid, return receipt requested, by U.S. Mail or electronic mail (provided a confirming notice is sent by another approved method, in case of electronic mail) to the addresses set forth below. All such notices or other communications shall be deemed received upon the earlier of (1) if personally delivered or if delivered by commercial overnight courier, the date of delivery to the address of the person to receive such notice or (2) if mailed through U.S. Mail, three (3) business days after the date of posting by the United States Postal Service, (4) if given by electronic mail, when received if before 5:00 p.m., otherwise on the next business day, or (5) if mailed as otherwise

provided above, on the date of receipt or rejection, when received by the other Party if received Monday through Friday between 6:00 a.m. and 5:00 p.m. Pacific Time, so long as such day is not a state or federal holiday and otherwise on the next day provided that if the next day is Saturday, Sunday, or a state or federal holiday, such notice shall be effective on the following business day.

To Lessee:

Majestic [**SPECIAL PURPOSE ENTITY TBD**], LLC  
c/o Majestic Realty Co.  
13191 Crossroads Parkway North  
City of Industry, California 91746  
Attn: Ed Konjoyan

To District:

County of Orange  
c/o CEO/Corporate Real Estate  
ATTN: Chief Real Estate Officer  
400 W. Civic Center Dr., 5<sup>th</sup> Floor  
Santa Ana, CA 92701  
Email: thomas.miller@ocgov.com

and to:

Orange County Flood Control District  
ATTN: Director, OC Public Works  
601 North Ross Street, 4<sup>th</sup> Floor  
Santa Ana, CA 92701  
Email: james.treadaway@ocgov.com

Notice of change of address shall be given by written notice in the manner described in this Section 38. Lessee is obligated to notice all District offices listed above. Failure to provide notice to all District offices will be deemed to constitute a lack of notice.

39. HEADINGS, TITLES OR CAPTIONS.

Section headings, titles or captions are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope or extent of any provision of this Lease.

40. INVALID PROVISIONS.

It is expressly understood and agreed by and between the Parties hereto that in the event any covenant, condition or provision herein contained is held to be invalid by any court of competent jurisdiction, the invalidity of such covenant, condition or provision will in no way affect any other covenant, condition or provision herein contained; provided, however, that the



invalidity of any such covenant, condition or provision does not materially prejudice either District or Lessee in their respective rights and obligations contained in the valid covenants, conditions or provisions of this Lease.

41. STATE OF CALIFORNIA LAW.

This Lease will be interpreted under and governed by the internal laws of the State of California, without regard to principles of conflicts of law.

42. UTILITIES.

Lessee shall either itself, as a Project Cost, or through Sublessees, make arrangements for and pay for all water, gas, heat, light, power, telephone service, trash disposal and other utilities and services supplied to the Premises and the Facilities located thereon, together with any taxes thereon.

43. OWNERSHIP OF IMPROVEMENTS.

Except as provided herein, from the date of this Lease and continuing through expiration or termination all Facilities constructed on the Premises by Lessee shall be vested in and owned by Lessee. At the expiration or termination of this Lease, all Facilities constructed on the Premises by Lessee and all Lessee's Personal Property and fixtures at the Premises acquired as a Project Cost shall vest in and be owned by District, and Lessee shall deliver all Facilities to District in the condition required by Section 31 above.

Assuming District has not elected to have Lessee raze the Facilities at the expiration of the Term of this Lease, in the event the Facilities are not delivered to District in the condition required by Section 31 above, District shall give notice to Lessee that it intends to perform the necessary maintenance and repairs if Lessee does not do so within ninety (90) days. Alternatively, Lessee, within such 90-day period may submit evidence as to why the condition it left the Facilities was in compliance with this Lease. If Lessee and District agree on the required maintenance and repairs and Lessee chooses to let District perform the same, Lessee shall be liable to and shall reimburse District for fifty percent (50%) of the costs of any such expenditures made in excess of the amount in the Capital Replacement Reserve and the reserve maintained to raze the Facilities.

If requested by Lessee, any Leasehold Mortgagee or title insurance company, District agrees to execute and deliver to Lessee within thirty (30) days after request therefor, a quit-claim deed in recordable form conveying or confirming title in Lessee to all Facilities and any and all fixtures located at the Premises, and a quit-claim bill of sale conveying or confirming title in Lessee to any and all Lessee's Personal Property at the Premises. All such Facilities constructed and fixtures installed upon the Premises by Lessee are and shall remain real property and may not be severed from this Lease or the leasehold estate created hereby.

44. LEASING COMMISSIONS.

In the event Lessee retains the services of Majestic Realty Co. or any other Affiliate of Lessee to sublease the Premises and the Facilities, the leasing commissions paid to Majestic

Realty Co. or any such other Affiliate, as a Project Cost, shall not exceed the negotiated market rate commissions for similar services charged by the major brokerage companies operating in the County of San Bernardino, California.

45. LOSSES.

District will not be responsible for loss or damage to Lessee's Personal Property.

46. RIGHT TO WORK AND MINIMUM WAGE LAWS.

A. In accordance with the United States Immigration Reform and Control Act of 1986, Lessee 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. To the extent required by applicable law, Lessee shall also require that its contractors or any other persons servicing the Premises on behalf of Lessee 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.

B. Pursuant to the United States of America Fair Labor Standard Act of 1938, as amended, and State of California Labor Code, Section 1178.5, Lessee 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. To the extent required by applicable law, Lessee shall require that all its contractors or other persons servicing the Premises on behalf of Lessee pursuant to the terms and conditions of this Lease also pay their employees no less than the greater of the Federal or California Minimum Wage.

C. To the extent required by applicable law, Lessee shall verify that its contractors servicing the Premises on behalf of Lessee pursuant to the terms and conditions of this Lease comply with all other Federal and State of California laws for minimum wage, overtime pay, record keeping, and child labor standards.

47. SIGNATORY AUTHORITY.

If Lessee is a public, private or non-profit corporation or partnership or limited liability company each individual executing this Lease on behalf of the entity represents and warrants that he/she is duly authorized to execute and deliver this Lease on behalf of such entity in accordance with a duly adopted resolution of the governing body of such entity or in accordance with the bylaws or operating agreement of such entity and that this Lease is binding upon such entity in accordance with its terms. Lessee shall, within thirty (30) days after full execution of this Lease deliver to District a copy of the minutes of the Board of Directors or other governing body or a certified copy of the resolution of the Board of Directors or other governing body of the entity ratifying the execution of this Lease.

48. NO PARTNERSHIP.

Lessee and any and all agents and employees of Lessee shall act in an independent capacity and not as officers or employees of District. Nothing herein contained shall be construed as constituting the Parties herein as partners.

49. TIME.

Time is of the essence of each and all of the provisions, covenants and conditions of this Lease.

50. PROTECTION OF PREMISES.

A. Lessee is not permitted to dump refuse in or around any area of the Premises.

B. Lessee 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 Facilities or any part thereof. Lessee shall not commit or allow to be committed any waste in or upon the Premises or Facilities and shall keep the Premises and the Facilities thereon in good condition, repair and appearance.

C. Lessee agrees not to cut or remove any trees or brush thereon except as approved in writing by District prior to obtaining City's approval to construct the Facilities at the Premises pursuant to plans approved by District. District must approve or disapprove the proposed plan for cutting or removal within fifteen (15) days following submittal by Lessee. If District gives written notice of its disapproval, such notice shall District the specific reasons for such disapproval. Thereafter, Lessee may cut and remove trees consistent with its construction on the Premises pursuant to such plans and consistent with reasonable landscaping maintenance standards.

51. LESSEE/DISTRICT AVAILABILITY.

District and Lessee shall each have a person readily available either on or offsite at all times when the facility is in use that has authority to make any and all decisions on behalf of District and Lessee in the event of an emergency that immediately jeopardizes life or health.

52. NONDISCRIMINATION.

Lessee 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.

53. APPROVALS.

A. If not otherwise specifically set forth herein, it is understood and agreed that District's approval shall be required for any costs to be incurred by Lessee pursuant to this Lease that will be deducted from Total Revenue prior to the calculation of Net Revenue for Rent calculation purposes, including, but not limited to, Project Costs, Equity Contributions or any other costs incurred which are to be attributed to the Project and paid from Total Revenue. Notwithstanding any language to the contrary in this Lease, District's approval for any Project Cost included within an Annual Operating Budget or Approved Construction Budget will be deemed given upon District's approval of any such budget, and if a proposed additional net Project Cost of \$5,000 or more is not included in any such Annual Operating Budget, or if a proposed net expenditure of \$10,000 or more is not included in any Construction Budget, such

additional expenditures must be separately approved by District before it can be treated as a Project Cost.

B. Except as otherwise expressly provided in this Lease, whenever this Lease grants District or Lessee the right to take any action, grant any approval or consent, or exercise any discretion, District and Lessee 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.

C. Without limiting the generality of the language contained in Section 53.B above, it is understood and agreed that for all provisions of this Lease that require approval by District such approvals shall be given by the Chief Real Estate Officer, or designee, and will receive timely responses and such approvals will not be unreasonably withheld, conditioned or delayed, unless otherwise specified. Unless another time limit is otherwise specified in this Lease, any approval or disapproval must be given within twenty (20) days. If disapproved, District will inform Lessee in writing of its disapproval and District's specific reasons for such disapproval. District and Lessee agree to negotiate in good faith to resolve any conflicting issues that may arise from District's disapproval. If District fails to timely respond to Lessee's written request for an approval (or Lessee disagrees with District's written or stated reasons to withhold such an approval), then Lessee may notify District in writing that if District fails to respond (or reach a resolution with Lessee) within fourteen (14) days of District's receipt of such second request, Lessee may pursue a resolution by the procedures set forth below, if District agrees to participate in the use of such alternative dispute resolution procedures.

D. If the Parties cannot agree upon the item or matter that was disapproved, a neutral third party with at least ten (10) years' experience in real estate developments similar to those constructed or proposed to be constructed on the Premises will be selected by District to arbitrate the disputed issue. If, however, Lessee does not accept the neutral third party selected by District, Lessee will be allowed to select a second neutral party with similar experience. The two selected parties will then select a third neutral party with at least ten (10) years' experience in real estate developments similar to those constructed or proposed to be constructed on the Premises, and such third arbitrator shall arbitrate the disputed issue. District and Lessee agree to be bound by the decision reached by the arbitrator. District and Lessee will cause the arbitrator to make a determination within fourteen (14) days following submittal. District and Lessee agree that each Party will bear its own costs and expenses incurred for attorney's fees, and preparation and presentation costs for the arbitration process, but they shall share the cost of any third arbitrator. Notwithstanding the foregoing, in the event of an emergency, Lessee may take immediate, commercially reasonable action to prevent loss, injury or damage to persons or property or to preserve the Premises and the Facilities without the prior approval of District and any costs reasonably incurred in connection therewith shall be a Project Cost. If District or Lessee does not agree to participate in the alternative dispute resolution procedures described above in this Section 53, then the other Party may pursue any other remedy available at law or in equity.

54. BEST MANAGEMENT PRACTICES REGARDING STORMWATER.

B. Lessee and all of Lessee's Sublessees, agents, employees and contractors shall conduct operations under this Lease so as to assure, to the extent practicable, 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, 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), consistent with the requirements and guidelines (including best management practices) of the governing MS4 (municipal separate storm water sewer systems) permit, as will be memorialized by a separate BMP agreement with Lessee that will be recorded against the Premises before commencement of construction by Lessee. All costs incurred by Lessee in compliance with any and all such requirements and guidelines shall be a Project Cost.

C. Subject to Section 7 above, Chief Real Estate Officer may enter the Premises and/or review Lessee’s records at any time to assure that activities conducted on the Premises comply with the requirements of this section. Without limiting the generality of the foregoing, Lessee shall be responsible for compliance with all Applicable Laws concerning stormwater with respect to the Project. All costs incurred by Lessee in compliance with any and all such requirements and guidelines shall be a Project Cost.

55. LEGAL FEES.

In any action brought by either Party pursuant to the Lease terms, the Parties shall bear their own attorney’s fees, litigation costs and other costs.

56. ENTIRE AGREEMENT.

This Lease, together with its exhibits, which are incorporated herein by this reference, contains all the agreements of the Parties hereto with respect to the subject matter of this Lease and supersedes any prior negotiations. There have been no representations by District or understandings made between District or Lessee other than those set forth in this Lease and its exhibits. This Lease may not be modified except by a written instrument duly executed by the Parties hereto.

57. SEVERABILITY.

If any provision, covenant or condition of this Lease or any application thereof, to any extent, is found invalid, void, or unenforceable by a court of competent jurisdiction, the remainder of this Lease will not be affected thereby, and will be valid and enforceable to the fullest extent permitted by law.

58. CUMULATIVE REMEDIES.

No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

59. RECORDATION.

This Lease shall not be recorded; provided, however, a Memorandum of Ground Lease (attached hereto as Exhibit H) may be recorded at the request of either District or Lessee. If Lessee is the party recording the Memorandum of Lease it shall, upon expiration or earlier termination of this Lease and at its sole cost and expense, record a quit-claim deed in favor of District with respect to the Premises. The Parties acknowledge and agree that a separate Memorandum of Lease may be prepared and recorded for each Related Lease.

60. BINDING.

The terms of this Lease and provisions, covenants and conditions contained herein shall apply to and shall bind and inure to the benefit of the heirs, representatives, assigns and successors in interest of the Parties hereto.

61. SUBDIVISION OF THE PREMISES AND SEPARATE RELATED LEASES.

A. The Parties hereto acknowledge and agree that the Premises will be developed by Lessee with Facilities, in multiple phases, over a number of years. As part of the process of the obtaining the Entitlements and as a Project Cost, Lessee has subdivided the Premises to create separate legal parcels, as depicted and described on Exhibit A to this Lease. At any time, and from time to time during the Term of this Lease, District agrees to, within fifteen (15) business days after the written request of Lessee, execute and deliver such instruments as may be appropriate, necessary, or required for: (i) the grant or dedication of any easement, right of way or other property right to any public entity or service corporation for ingress, egress, road or utility purposes and reasonably required for the development of the Premises, or (ii) the obtaining of governmental approvals, consents, zoning changes, conditional uses, variances, subdivision maps, lot line adjustments, parcel mergers, vacations, dedications or the like, or for the purpose of providing adequate utility services to the Premises, or permitting Lessee to construct the Facilities or other improvements on the Premises or make any alteration or addition to the Facilities; provided however that all such instruments and grants shall be consistent with any Approved Final Plans as defined in the Work Letter. Prior to or concurrently with the execution and delivery of this Lease, Lessee, with District's prior written approval, may create CC&Rs as between or among any such separate legal parcels comprising the Premises, for the efficient management and operation of such parcels, which CC&Rs may include easements for ingress, egress, road or utility purposes (including storm water drainage and runoff), or provisions for the maintenance and administration of common areas and their related expenses, and to specify the uses of the Premises. Any such CC&Rs will be subject to the prior written reasonable approval of all then existing Leasehold Mortgagees. Lessee shall subordinate its interests in this Lease to such CC&Rs, and any Leasehold Mortgagee shall also subordinate the lien of its Leasehold Mortgage to such CC&Rs. District, as the record owner of the Premises, shall agree to allow Lessee to place the CC&Rs of record and sign any required documentation to do so.

B. The Parties further acknowledge that as a result of the phased development of the Premises on the separate parcels depicted on the attached Exhibit A, Lessee will obtain construction, interim and permanent financing for the development of the Premises and the

Facilities at different times during the Term of this Lease as provided in Section 32 above. In order to facilitate such phased development and to facilitate separate financing for each phase, prior to the construction of such phase, the Lessee, with prior written approval of the District, may have one or more parcels comprising the Premises removed from the legal description of the Premises and to have District and Lessee enter into a new separate lease (a “**Related Lease**”) covering the portion of the Premises so removed from this Lease. The Parties also agree that the area of any such parcel that is the subject of a Related Lease may be modified by Lessee through the use of a lot line adjustment, parcel merger or the like, to the extent Lessee determines such modification is necessary or convenient for development of the Premises in accordance with the “Project Scope” identified in the Work Letter, with District’s reasonable approval. Each Related Lease shall be substantially in the form of this Lease, with appropriate deletions and additions consistent with the purpose of such Related Lease. In such an event:

(1) The term of any Related Lease shall be for only the remainder of the Term of this Lease and shall be on substantially the same terms and conditions as this Lease, except District may include in any Related Lease, and require an amendment to this Lease, to provide for the subordination of the same to the CC&Rs described in Section 61.A above, in which case Lessee shall agree to such amendment to this Lease and use commercially reasonable efforts to cause any Leasehold Mortgagee to so agree. An amendment to this Lease shall include a new description of the Premises, as reduced by that portion which will be the subject of the new Related Lease.

(2) Concurrently with the execution of each such amendment and new Related Lease, the Parties shall execute a memorandum in recordable form evidencing the existence of such new Related Lease, the portion of the Premises subject to such separate Related Lease, the effective date and termination date of such Related Lease. Concurrently with the execution of such amendment and Related Lease, the Parties shall also execute a memorandum in recordable form evidencing the existence of such amendment to this Lease. Any Related Lease shall have the same title priority as this Lease, and shall be subject only to the exceptions to title having priority over this Lease or such additional exceptions to which the parties have approved in writing; provided that District makes no representation or warranty that the New Lease will in fact have such priority with respect to items not created by District.

(3) The creation of a Related Lease under this Section 61.B for a portion of the initial Premises hereunder is intended to merely continue the initial grant under this Lease. The amendment of this Lease to delete that portion of the Premises that are the subject of the Related Lease and the creation of any Related Lease is not intended to: (a) expand the rights or interests created by the initial conveyance of this Lease; (b) constitute a “creation” of a taxable possessory interest; (c) constitute a “renewal” or “extension” of a taxable possessory interest; and/or (d) grant any additional property or authorize uses not already permitted by this Lease.

(4) Once fully executed and delivered, the terms, conditions and provisions of a Related Lease shall control over the terms, conditions of provisions of this Lease with respect to that portion of the Premises that are the subject of the Related Lease, and the provisions of this Lease shall no longer be applicable to that portion of the Premises that

is the subject of the Related Lease, except to the extent otherwise specifically provided in the amendment to this Lease referenced in Section 61.B(3) above or in the Related Lease.

62. LESSEE'S FILL DIRT WORK.

A. Concurrently with the execution and delivery of this Lease, District and Lessee shall execute and deliver an agreement (substantially in the form of that attached as Exhibit J to this Lease [the "Fill Dirt License Agreement"]) allowing, subject to certain terms and conditions, Lessee to excavate and permanently remove dirt and material located on the Excess Fill Dirt Site (and on the Other District Property, if applicable) for its use on the Premises, in order to offset the storm water storage capacity that may be eliminated in connection with Lessee's development of the Premises.

63. ADDITIONAL CONDITIONS AND MEASURES.

The Parties shall abide by the additional conditions and measures set forth on Exhibit L, attached hereto and made a part hereof, during the entire Term of this Lease. Lessee's failure to comply with its obligations under Exhibit L after the giving of notice and the expiration of the cure period set forth in Section 28.A(2) above shall constitute a default by Lessee under this Lease.

*[Intentionally left blank—signature page to follow]*



Attachment D

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

**District:**

**Lessee:**

**ORANGE COUNTY FLOOD CONTROL DISTRICT**, a body corporate and politic

**MAJESTIC [SPECIAL PURPOSE ENTITY TBD], LLC**, a Delaware limited liability company

By: \_\_\_\_\_  
Chief Real Estate Officer  
Orange County, California, pursuant to Board of Supervisors Minute Order Dated \_\_\_\_\_, 2024

By: MAJESTIC REALTY CO., a California corporation, Manager's Agent

Date Executed: \_\_\_\_\_

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

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

Date Executed: \_\_\_\_\_

APPROVED AS TO FORM:  
COUNTY COUNSEL

DocuSigned by:  
*Michael Haubert*  
By: \_\_\_\_\_  
Deputy

**EXHIBIT A**

**LEGAL DESCRIPTION AND DEPICTION OF PREMISES**

**(Attached)**

Attachment D

**EXHIBIT B**  
**FORM OF WORK LETTER**  
**(Attached)**

**EXHIBIT B**

**WORK LETTER**

This Work Letter sets forth the terms and conditions pertaining to the work to be performed by Lessee in connection with a Construction Phase at the Premises. All references in this Work Letter to Articles or Sections of “this Lease” shall mean the relevant portions of the Development Ground Lease (including any Related Lease, if applicable) to which this Work Letter is attached as Exhibit B. All references in this Work Letter to Sections of “this Work Letter” shall mean the relevant portions of this Work Letter. Any undefined capitalized terms used in this Work Letter shall have the meanings ascribed to such terms in this Lease.

1. Preliminary Plans; Final Plans; Construction Budget; Construction Phase Schedule; Commencement of Construction.

1.1 Preliminary Plans. Unless previously approved by District pursuant to the Option Agreement, or if Lessee desires to propose a new or to modify preliminary plans previously approved by District, within one hundred twenty (120) days following full execution and delivery of this Lease (or a Related Lease, if applicable) by District and Lessee, Lessee shall submit to District schematic drawings and written specifications, completed by a licensed architect/registered engineer (the “**Preliminary Plans**”) describing those Facilities and Off-Site Improvements to be completed by Lessee as part of the Construction Phase that is the subject of this Work Letter, which work is generally described on Attachment 1 to this Work Letter (the “**Project Scope**”). The work described on Attachment 1 and included within the Project Scope is sometimes referred to below as the “**Proposed Improvements.**” The Preliminary Plans shall include, as applicable, survey dimensions, building lines, column lines, perimeter walls, openings and clearances, clear heights, exterior elevations, as well as all interior obstructions to use (such as piping, conduits, drains, equipment, devices, mezzanines), utility entrances and assemblies for the sprinkler system, communication lines, water, gas, electricity, and sewer, foundation walls and footings extending above the surface of the floor, and building systems, if any, such as mechanical, plumbing, docks, and compactor pads, as well as adjacent grades and docks. Such Preliminary Plans shall also include landscaping plans, parking plans, utility plans, plans for any Off-Site Improvements known to be required by any government agency to obtain Building Permits for the Proposed Improvements for the Construction Phase, but may not include plans for specific tenant improvements. Such plans, as well as any other plans Lessee provides to District pursuant to this Work Letter shall be in a AutoCAD Version 2012 “DWG” format, or such other format as may be reasonably required by District, and shall include notations of colors and materials, where appropriate.

1.2 Preliminary Construction Phase Schedule; Approved Construction Phase Schedule. Unless previously approved by District pursuant to the Option Agreement, or if Lessee desires to propose a new or to modify a previous schedule approved by District, concurrently with Lessee’s delivery of the Preliminary Plans to District, Lessee shall also provide a proposed construction schedule for the completion of the Proposed Improvements (the “**Preliminary Construction Phase Schedule**”), which shall be consistent with the Project Schedule attached as part of Exhibit C to this Lease. Within thirty (30) days following submission of the Preliminary Construction Phase Schedule, District shall approve the

Preliminary Construction Phase Schedule or disapprove and require Lessee to modify the Preliminary Construction Phase Schedule. If disapproved, District shall provide Lessee with the specific reasons for such disapproval. Once approved, the Preliminary Construction Phase Schedule shall be referred to below as the “Approved Construction Phase Schedule” and a copy shall be attached as Attachment 2 to this Work Letter. From time-to-time following such approval, Lessee may propose changes to the Approved Construction Phase Schedule based on changed circumstances, which District shall have the right to reasonably approve or disapprove within the time and according to the procedure set forth above. Once approved, the modified schedule shall be referred to as the Approved Construction Phase Schedule and substituted for the version initially attached as Attachment 2 to this Work Letter.

1.3 District’s Approval of Preliminary Plans. Within forty-five (45) days following submission of the Preliminary Plans, District shall approve the Preliminary Plans or disapprove and require Lessee to modify the Preliminary Plans as District may deem reasonable; provided, however, District may only disapprove those items and/or require modifications to those items if it reasonably deems that such items are (i) materially inconsistent with the Project Scope, or (ii) do not comply with Applicable Law (defined below). If any such items are disapproved, District shall provide Lessee with the specific reasons for such disapproval. Should District disapprove of the Preliminary Plans and require modifications to the Preliminary Plans, Lessee shall resubmit the modified Preliminary Plans to District and within thirty (30) days following District’s receipt of Lessee’s modified Preliminary Plans District shall either approve such Preliminary Plans or disapprove (which shall District the specific reasons for such disapproval) and require further modification to the Preliminary Plans for the reasons noted above, and so on, until such Preliminary Plans are approved by District.

1.4 Preparation of Final Plans and District’s Approval of Final Plans. Within sixty (60) days following District’s written approval of the Preliminary Plans, Lessee shall provide District with the final plans for the Proposed Improvements in form and substance sufficient for submission to City for City’s plan check and approval and for submission to all other relevant governmental agencies (collectively, the “**Relevant Authorities**”) for receipt of the necessary building permits, licenses, and other grants of authority or approval (collectively, the “**Relevant Building Permits**”) that may be required for construction of the Proposed Improvements (the “**Final Plans**”). The Final Plans shall include all previous District-requested and mutually approved modifications to the Preliminary Plans. Within forty-five (45) days following District’s receipt of the Final Plans, District shall approve the Final Plans or disapprove and require Lessee to modify the Final Plans as District may deem reasonable; provided, however, District may only disapprove those items and/or require modifications to those items if it reasonably deems that such items are (i) materially inconsistent with the Project Scope, or (ii) do not comply with Applicable Law. If any such items are disapproved, District shall provide Lessee with the specific reasons for such disapproval. Should District disapprove of the Final Plans and require modifications to the Final Plans, Lessee shall resubmit the modified Final Plans to District and within thirty (30) days following District’s receipt of Lessee’s modified Final Plans District shall either approve such Final Plans or disapprove (which shall District the specific reasons for such disapproval) and require further modification to the Final Plans for the sole reasons noted above, and so on, until the Final Plans are approved by District. Once approved, the Final Plans shall be referred to below as the “**Approved Final Plans.**”

1.5 Obtaining Relevant Building Permits. Once the Final Plans become the Approved Final Plans, Lessee at its own cost and expense shall promptly apply to all Relevant Authorities for the Relevant Building Permits, and Lessee shall keep District fully informed of the status of the application(s) for the Relevant Building Permits and of the status of any negotiations with the Relevant Authorities relating to their issuance. If requested in writing by District, District and Lessee shall confer (by telephone) at least weekly to discuss the status of obtaining the Relevant Building Permits until they are obtained. If prior to issuance of the Relevant Building Permits District objects to any required changes to the Approved Final Plans imposed by the Relevant Authorities that District reasonably determines will significantly disrupt or interfere with the flood control capacity of the Premises, then Lessee shall revise such plans to satisfy District's reasonable concerns and the requirements of the Relevant Authorities. The Approved Final Plans, once approved by the Relevant Authorities in connection with their issuance of the Relevant Building Permits are referred to below as the "**Building Permit Plans.**"

1.6 Proposed Construction Budget. Unless previously approved by District pursuant to the Option Agreement, or if Lessee desires to propose a new budget or to modify a budget previously approved by District, concurrently with its first submission of Final Plans to District for review and approval, Lessee shall also deliver to District a written and detailed construction budget for the Proposed Improvements (the "**Proposed Construction Budget**"). The Proposed Construction Budget shall show all reasonably anticipated costs (i) related to the design, construction, and financing of the Facilities and Off-Site Improvements for the applicable Construction Phase, and (ii) for the leasing of the leasable space at the Facilities.

1.7 District's Approval of Proposed Construction Budget. Within thirty (30) days following District's receipt of the Proposed Construction Budget, District shall review and approve or disapprove the Proposed Construction Budget. If any portion of the Proposed Construction Budget is disapproved, District shall provide Lessee with the specific reasons for such disapproval. Any Lessee's Development Fee included within the Proposed Construction Budget shall not exceed three percent (3%) of direct construction costs, architectural and engineering costs, and the cost of tenant improvements completed by Lessee. Once approved by District, the Proposed Construction Budget shall be referred to below as the "**Approved Construction Budget.**" Notwithstanding the above, District and Lessee acknowledge and agree that Approved Construction Budget is subject to further modifications due to changes in the Final Plans imposed by the Relevant Authorities (including District), which District shall review and approve or disapprove within thirty (30) days following District's receipt of any such modifications. If any portion of the modified Approved Construction Budget is disapproved by District, District shall provide Lessee with the specific reasons for such disapproval.

1.8 Dispute Resolution Procedure for Construction Budget. Lessee shall, within fourteen (14) days following receipt of District's written disapproval, provide District with clarification of the budget elements or with a modified Proposed or Approved Construction Budget, as applicable, that is reasonably satisfactory to District, and District shall have an additional fourteen (14) days within which to approve or disapprove the modified Proposed or Approved Construction Budget. If any portion of the Proposed or Approved Construction Budget is disapproved, District shall provide Lessee with the specific reasons for such disapproval. District and Lessee agree to negotiate in good faith to resolve any remaining issues that may arise with respect to the Proposed or Approved Construction Budget.

If, however, the Parties cannot agree upon the provisions of the Proposed Construction Budget and/or the elements contained in the proposed budget, or, if disputes arise concerning the Approved Construction Budget which the Parties are unable to resolve through good faith negotiation, a neutral third party with at least ten (10) years' experience in cost estimating and preparing budgets for real estate developments similar to that constructed or proposed to be constructed on the Premises will be selected by District to arbitrate the disputed budget terms. If, however, Lessee does not accept the neutral third party selected by District, Lessee will be allowed to select a second neutral party with similar experience. The two selected parties will then select a third neutral party with similar experience and the three arbitrators will then arbitrate the disputed terms. District and Lessee agree to be bound by the decision reached by the selected arbitrator(s) and will cause the arbitrator(s) to make a determination within fourteen (14) days following submittal.

District and Lessee agree that each will bear its own costs and expenses incurred for attorney's fees and all other preparation and presentation costs for the arbitration process. If only one arbitrator is selected, the Parties will equally share the cost of such arbitrator. If three arbitrators are used, each Party will bear the cost of the arbitrator selected by it and the Parties will equally share the cost of the third arbitrator. Notwithstanding the above, any obligations of District for the costs of arbitration shall be initially paid by Lessee, with the cost to be a Project Cost under this Lease.

Lessee shall be entitled to expend funds in accordance with the Approved Construction Budget for the Construction Phase. All costs of the Construction Phase shall be a "**Project Cost**" as defined in this Lease. In the event Lessee is "over-budget" on a particular line item in the Approved Construction Budget, Lessee may reallocate excess funds from one line item to another line item to cover any short falls in any line item. Any expenses not covered by the Approved Construction Budget which increase the total cost of the Construction Phase by more than ten percent (10%) are subject to the reasonable written approval of District. Any Equity Contribution required to cover any such additional Project Cost shall be the responsibility of Lessee.

1.9 Related Lease. Upon obtaining the Relevant Building Permits for the Proposed Improvements for a Construction Phase, (i) except for the last Construction Phase or if the Proposed Improvements for the subject Construction Phase do not include any buildings, but only include improvements such as mass grading work, the Premises Storm Water Drainage System or other infrastructure work, Lessee and District shall enter into a Related Lease, as appropriate and provided for in this Lease; and (ii) subject to Section 1.12 below, Lessee shall diligently pursue until completion construction of the Proposed Improvements in a good workmanlike manner consistent with the Building Permit Plans for the subject Construction Phase as provided in this Work Letter and according to the Approved Construction Phase Schedule. Notwithstanding the foregoing to the contrary, if Lessee determines that it needs a Related Lease in order to be able to apply for and/or pull the Relevant Building Permits, Lessee and District shall enter into a Related Lease as provided for in this Lease prior to obtaining the Relevant Building Permits for the Proposed Improvements.

1.10 Subsequent Construction Phases. Consistent with the terms of the Project Schedule, Lessee shall also provide District with plans, schedules, and budgets for any

subsequent Construction Phase. Lessee shall submit such plans, schedules and budgets to District for its approval in the same manner set forth above in this Work Letter. Upon obtaining Relevant Building Permits for each subsequent Construction Phase, Lessee shall diligently pursue construction of the Proposed Improvements for the applicable Construction Phase (including, grading, fencing, paving, lighting, driveways, roads, utilities, parking lots, drainage, buildings and other improvements both on-site and off-site) until completed pursuant to the Approved Construction Phase Schedule, all pursuant to the terms of this Work Letter and this Lease (or the applicable Related Lease, as the case may be).

1.11 Compliance with Laws. All Proposed Improvements or any alterations to the Facilities shall be constructed by Lessee in accordance with all applicable governmental laws, ordinances, rules and regulations (collectively, “**Applicable Law**”). Upon completion of the Proposed Improvements for a Construction Phase, Lessee shall provide “as-built” drawings of the same to District along with Lessee’s certification of the final costs of such work. Such drawings shall be submitted to District in electronic PDF format and Computer Assisted Drafting and Design (CADD) format (AutoCAD 2012). Notwithstanding any approvals by District of any plans or specifications of the Facilities or Off-Site Improvements, or any inspections thereof by District, District shall not be responsible in any manner whatsoever for any failure of the Facilities or Off-Site Improvements to be in compliance with Applicable Law.

1.12 Construction Commencement. Lessee shall not commence construction of the Proposed Improvements until the following have been satisfied: (1) Lessee has received written approval by District of the Building Permit Plans, including compliance of the same with applicable codes and regulations over which it has jurisdiction, including the California Building Code (Title 24), (2) Lessee or its general contractor has obtained the bonds and insurance described below in this Work Letter, and (3) Lessee issues a Notice to Proceed to Lessee’s general contractor for completion of the proposed work.

Once the above conditions are satisfied, Lessee shall commence construction of the Proposed Improvements according to the Approved Construction Phase Schedule. In making those improvements, Lessee shall not materially deviate from the Building Permit Plans without obtaining written approval from District. District shall give written approval for such material deviations and amendments of the Building Permit Plans proposed by Lessee unless District determines that such material deviations do not comply with building codes or other Applicable Law. No material modification, amendment or alterations to Building Permit Plans shall be valid unless it is in writing and signed by the Parties hereto.

Without limiting the generality of Section 36 of this Lease, Lessee’s performance under this Work Letter may be excused and the time periods set forth in this Work Letter for such performance (including those set forth in the Approved Construction Phase Schedule) may be tolled if a lawsuit, moratorium, referendum, or initiative is pending that challenges or involves the Entitlements (including any Relevant Building Permit) for the Premises or otherwise challenging the validity of this Lease or Lessee’s performance of its obligations under this Work Letter.



1.13 Miscellaneous Construction Provisions.

1.13.1 Lessee shall be responsible for payment of District's costs related to its administration and management of the Option and this Lease (and any subsequent Related Lease) and the Premises during the construction of the Facilities, including but not limited to staff time, legal expenses, third party consultant costs, expended in connection with reviews and approvals necessary to complete all construction contemplated hereunder (including any such costs incurred by District in connection with any and all Related Leases) (collectively, the "**District Administrative Costs**"). Because of the difficulty in estimating the total amount of the District Administrative Costs, District and Lessee have agreed that Lessee's obligation to pay the District Administrative Costs (however or whenever arising and regardless of the number of Related Leases), not including the Asset Management Fee payable pursuant to the Lease, shall be fully discharged by Lessee's payment of \$300,000.00 (the "**DAC Payment**"), with the DAC Payment to be made within fifteen (15) days following full Lease execution pursuant to the payment procedure set forth in Section 9.E of the Lease.

1.13.2 Lessee agrees to comply with any laws, regulations and provisions regarding payment of prevailing wages as may be determined to be applicable to Lessee in connection with its construction of the Proposed Improvements.

1.13.3 If requested by Lessee, District will reasonably cooperate with Lessee in identifying one or more suitable temporary off-site staging areas for Lessee's use during the first Construction Phase.

1.14 Bifurcation of Plans, Etc. Notwithstanding any language in this Section 1 to the contrary, with respect to any Construction Phase, Lessee may prepare and shall as provided herein seek District's approval of plans (both Preliminary Plans and Final Plans) for a stage of the Proposed Improvements (for example, for grading work), without the necessity of preparing Preliminary Plans and Final Plans for the entirety of the Proposed Improvements (the "**Limited Plans**"). Similarly, Lessee may seek to obtain from the Relevant Authorities the Relevant Building Permits pertaining to that stage of the Proposed Improvements that is the subject of the Limited Plans, and to commence construction of such limited work, without the necessity of obtaining the Relevant Building Permits for the entirety of the Proposed Improvements. In the event of the above, the Approved Construction Phase Schedule may be revised accordingly with the approval of District and Lessee.

1.15 District's Cooperation. Provided Lessee is not in material breach of any of its obligations hereunder, District shall cooperate with Lessee in obtaining all necessary governmental permits, approvals and authorizations necessary to construct the Proposed Improvements, but District shall not be required to make any contributions or incur any out-of-pocket costs with respect to such cooperation. District's cooperation shall include, without limitation, the execution of any applications or other documents in its capacity as the owner of the Property, as may be required to obtain such permits, approvals and authorizations.

2. Bonds and Insurance.

2.1 Bonds.

## Attachment D

Prior to the commencement of any work on the Premises, Lessee or its general contractor shall obtain and submit to District a Performance Bond in an amount equal to one hundred percent (100%) of the construction costs as set forth in the construction contract between Lessee and its general contractor for the subject Construction Phase, whereby a surety binds itself unto District for performance by the general contractor, which is for the general contractor to commence and diligently prosecute construction to completion in accordance with the requirements set out in the Building Permit Plans and to otherwise carry out and comply with all other terms and conditions of this Work Letter. In lieu of such performance bond, Lessee may elect to secure its performance by an alternate plan of security, provided such plan is approved in writing by District. Notwithstanding the above, District may upon written request by Lessee elect to waive the above bond or alternate security requirement if Lessee provides District with reasonable evidence that Lessee's general contractor possesses the financial ability and experience and reputation to complete the subject work.

Prior to commencement of work on the Premises, Lessee shall obtain or cause to be obtained, at its sole expense, and submit to District a Payment Bond in the amount of fifty percent (50%) of the cost of construction as set forth in the construction contract between Lessee and its general contractor for the subject Construction Phase, and covering the payment of any and all contractors, subcontractors, material suppliers, services, materials or supplies for or in connection with the construction of the subject improvements. In lieu of such payment bond, Lessee may elect to secure its performance by an alternate plan of security, provided such plan is approved in writing by District. Notwithstanding the above, District may upon written request by Lessee elect to waive the above bond or alternate security requirement if Lessee provides District with reasonable evidence that Lessee's general contractor possesses the financial ability and experience and reputation to pay the subcontractors and suppliers described above in accordance with the terms of their agreement with such general contractor.

The bonds referred to herein above shall be issued by a surety with a A.M. Best Company Financial Strength Rating of "A-" or better and a Financial Size Category of "VII" or higher, and licensed to do business in State of California.

The bonds referred to above must be written on payment and performance bond forms generally used for similar projects in the State of California and approved by District. Lessee will require its general contractor to require the attorney-in-fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of his or her power of attorney.

2.2 Insurance.

Prior to commencement of any work on the Premises related to the construction of any Proposed Improvements or any equipment installation on or about the Premises, Lessee's general contractor shall procure and maintain (except as otherwise expressly provided below) the following insurance with coverage and limits commercially reasonable in the industry for such construction and installation protecting Lessee and District, as well as the general contractor:

- (a) Commercial General Liability on an "occurrence" basis only.
- (b) Automobile Liability.
- (c) Builder's Risk equal to the maximum contract cost of the Proposed Improvements, if not obtained and maintained by Lessee.
- (d) Lessee's general contractor's liability insurance will be primary as respects District and Lessee, their officers, employees and authorized agents. Any other coverage carried by or available to District, its officers, employees and authorized agents will be excess over the insurance required of Lessee or its general contractor and shall not contribute with it.
- (e) Lessee's general contractor will maintain worker's compensation insurance in the amounts and form as required by California law. Certificates evidencing the valid, effective insurance policies will be provided to District.
- (f) As required by this Lease or any Related Lease, Lessee shall maintain property insurance covering the Facilities from time to time constructed by it upon and within the Premises to the extent of not less than the full replacement value of such improvements from time to time (without deduction for depreciation in the event the Facilities are to be restored).
- (g) As required by this Lease or any Related Lease, Lessee shall obtain and keep in full force and effect a policy(s) of commercial general liability insurance on an "occurrence" basis only and not "claims made" basis. The coverage must be provided either on an ISO Commercial General Liability form, or equivalent, approved by District. Any exceptions to coverages must be fully disclosed on the required Certificate of Insurance. If a policy form other than the above described form is submitted as evidence of compliance, complete copies of such policy forms will be submitted to District within ten (10) days after written notice to Lessee. Such policies must include, but need not be limited to, coverages for bodily injury, property damage, personal injury, Broad Form property damage, premises and operations, severability of interest, products and completed operations, contractual and independent contractors with no

## Attachment D

exclusions of coverage for liability resulting from the hazards of explosion, collapse, and underground property damage.

(h) As required by this Lease or any Related Lease, Lessee shall obtain Automobile Liability coverage.

(i) All insurance coverage required hereunder shall be in force for the complete term of the construction contract, and evidenced by a current Certificate(s) of Insurance. Such Certificates will include, but will not be limited to, the following:

(1) All Certificates for each insurance policy are to be signed by a person authorized by that insurer and licensed by the State of California. Any required endorsements requested by District must be physically attached to all Certificates of Insurance and not substituted by referring to such coverage on the Certificate of Insurance.

(2) Each insurance company's rating as shown in the latest Best's Key Rating Guide will be fully disclosed and entered on the required Certificates of Insurance. All insurance companies providing coverage must carry an A.M. Best Company Financial Strength Rating of at least "A-" and a Financial Size Category of not less than "VII." The compliance of the insurance supplied by Lessee (or its general contractor), including the Best's rating of each insurance company providing coverage, with the requirements hereof shall be evaluated by District.

(3) Lessee (or its general contractor) will furnish renewal Certificates of Insurance for the required insurance during the period of coverage required by this Work Letter. Lessee (or its general contractor) will furnish renewal Certificates of Insurance for the same minimum coverages as required in this Work Letter.

(4) District, its officers and employees shall be covered as additional insureds with respect to liability arising out of the activities by or on behalf of the named insured in connection with this Work Letter. All property insurance policies will contain a waiver of subrogation clause in favor of District.

(5) Each insurance policy supplied by Lessee (or its general contractor) must be endorsed to provide that the amount and type of coverage afforded to District by the terms of this Work Letter will not be suspended, voided, canceled or reduced in coverage or in limits except after thirty (30) days' prior written notice by mail to Lessee, District and any Leasehold Mortgagee (as defined in this Lease). Lessee and its general contractor shall provide District

## Attachment D

copies of any notice of cancellation or notice of nonrenewal for any insurance required herein, within five (5) days of Lessee's or its general contractor's receipt of any such notice.

(6) Lessee shall be responsible to pay any deductibles. Any deductible, as it relates to coverage provided under this Work Letter, will be fully disclosed on the applicable Certificate of Insurance. Any deductible provided will be reasonable and customary for the type of risk.

(7) The limits of the commercial general liability insurance coverage shall be not less than five million dollars (\$5,000,000) per occurrence or per accident and ten million dollars (\$10,000,000) in the aggregate. All aggregates must be fully disclosed and the amount entered on the required Certificate of Insurance. The "per occurrence" limits of insurance required herein must be maintained in full, irrespective of any erosion of aggregate. A modification of the aggregation limitation may be permitted if it is deemed necessary and approved by District and Lessee.

(8) If Lessee fails to maintain any of the insurance coverages required herein, then District, after ten (10) days prior notice to Lessee, may purchase replacement insurance or pay the premiums that are due on existing policies in order that the required coverages may be maintained. Lessee is responsible for any expenses paid by District to maintain such insurance and District may collect the same from Lessee.

(9) The insurance requirements specified herein do not relieve Lessee (or its general contractor) of its responsibility or limit the amount of its liability to District or other persons and Lessee is encouraged to purchase such additional insurance as it deems necessary.

(10) Lessee (or its general contractor) is responsible for and must remedy all damage or loss to any property, including property of District, caused in whole or in part by Lessee or its general contractor, any subcontractor or anyone employed, directed or supervised by Lessee; provided, however, neither Lessee nor any Leasehold Mortgagee shall be liable for any uninsured or underinsured loss relating to the Proposed Improvements or the Facilities, unless such loss is a result of Lessee's failure to obtain the insurance it is required to maintain under this Work Letter, in which event Lessee shall be liable for such loss and such loss shall not be a Project Cost. Lessee is responsible for initiating,

maintaining, and supervising all safety precautions and programs in connection with this Work Letter.

(11) Lessee and District agree and acknowledge that any Leasehold Mortgagee shall be named as an additional insured under any liability insurance policy relating to the Premises, Proposed Improvements, Facilities or otherwise required under this Work Letter. Lessee agrees to provide any Leasehold Mortgagee with appropriate Certificates of Insurance relating to all policies, as required by the agreements between Lessee and any Leasehold Mortgagee.

(12) Lessee, at its option, may satisfy its obligations hereunder to insure within the coverage of any so-called blanket or umbrella policy or policies of insurance which it now or hereafter may carry, by appropriate amendment, rider, endorsement or otherwise; provided, however, that the interests of District shall thereupon be as fully protected by such blanket or umbrella policy or policies as they would be if this option to so insure by blanket or umbrella policy were not permitted. Any premium costs for insurance required under this Work Letter that is directly paid by Lessee, including the proportionate share of any blanket or umbrella policy premium, shall be a Project Cost.

2.3 Waiver of Subrogation. With respect to any property insurance policy issued to Lessee on Lessee's behalf with respect to the Premises, Proposed Improvements, or Facilities, Lessee hereby waives the subrogation rights of the insured, and releases District from liability for any loss or damage covered by such property insurance. Notwithstanding anything within this Lease which may District or imply anything to the contrary, Lessee acknowledges and accepts that District does not maintain commercial liability insurance coverage for motor vehicular and/or general liability claims.

3. Certificate of Occupancy. Lessee shall provide District with a copy of any Certificates of Occupancy pertaining to any of the Facilities promptly following issuance thereof.

4. Miscellaneous.

4.1 Binding Effect. This Work Letter shall be binding upon and inure to the benefit of the Parties hereto and their respective successors, heirs, grantees, mortgagees, beneficiaries and under any deeds of trust (to the extent such beneficiary acquires the interest of Lessee under this Lease or any Related Lease), administrators and executors.

4.2 Attorneys' Fees. In the event any party hereto brings or commences legal proceedings to enforce any of the terms of this Work Letter, the Parties shall be responsible for their own costs, including, without limitation, attorneys' fees, litigation expenses and court costs.

4.3 No Partnership. Nothing contained in this Work Letter shall be deemed or construed by the Parties hereto, or by any third person, to create the relationship of principal and agent, or of partnership, or of joint venture, or of any association between Lessee and District.

4.4 Notices. All notices or other communications required or permitted hereunder shall be in writing, and may be personally delivered (including by means of professional messenger service) or sent by a nationally-recognized commercial overnight courier, or sent by registered or certified mail, postage prepaid, return receipt requested, by U.S. Mail or electronic mail (provided a confirming notice is sent by another approved method, in case of electronic mail) to the addresses set forth below. All such notices or other communications shall be deemed received upon the earlier of (1) if personally delivered or if delivered by nationally-recognized commercial overnight courier, the date of delivery to the address of the person to receive such notice or (2) if mailed through U.S. Mail, three (3) business days after the date of posting by the United States Postal Service, (4) if given by electronic mail, when received if before 5:00 p.m., otherwise on the next business day, or (5) if mailed as otherwise provided above, on the date of receipt or rejection, when received by the other Party if received Monday through Friday between 6:00 a.m. and 5:00 p.m. Pacific Time, so long as such day is not a state or federal holiday and otherwise on the next day provided that if the next day is Saturday, Sunday, or a state or federal holiday, such notice shall be effective on the following business day. The current addresses of the signatories to this Work Letter are set forth below:

If to Lessee:                   Majestic [**SPECIAL PURPOSE ENTITY TBD**], LLC  
  c/o Majestic Realty Co.  
  13191 Crossroad Parkway North  
  City of Industry, California 91746  
  Attn.: Ed Konjoyan  
  Email: [ekonjoyan@majesticrealty.com](mailto:ekonjoyan@majesticrealty.com)

If to District:                   County of Orange  
  c/o CEO/Corporate Real Estate  
  ATTN: Chief Real Estate Officer  
  400 W. Civic Center Dr., 5<sup>th</sup> Floor  
  Santa Ana, CA 92701  
  Email: [thomas.miller@ocgov.com](mailto:thomas.miller@ocgov.com)

and to:

Orange County Flood Control District  
ATTN: Director, OC Public Works  
601 N. Ross Street, 4<sup>th</sup> Floor  
Santa Ana, CA 92701  
Email: [james.treadaway@ocgov.com](mailto:james.treadaway@ocgov.com)

## Attachment D

Notice of change of address shall be given by written notice as described above. Lessee is obligated to notice each District office listed above. Failure to provide notice to each District office will be deemed to constitute a lack of notice.

4.5 Survival. The provisions of this Work Letter shall survive for one (1) year after the termination of this Lease or any Related Lease. Any breach by either Party under the terms of this Work Letter shall also be a breach under this Lease (or any Related Lease, if applicable).

4.6 Counterparts. This Work Letter may be executed in counterparts and, when all counterpart documents are executed, the counterparts shall constitute a single binding instrument. Receipt of facsimile signatures (regardless of the means of transmission) shall be as binding on the Parties as an original signature.

*[Intentionally left blank—signature page to follow]*



**Attachment 1**  
**to**  
**Work Letter**  
Project Scope

The scope of the Proposed Improvements for the Construction Phase that is the subject of this Work Letter includes the following Facilities and Off-Site Improvements (as applicable): **[to be supplied]**

Attachment D

**Attachment 2  
to  
Work Letter**

Approved Construction Phase Schedule

**[To be supplied]**

**EXHIBIT C**

**DEPICTION OF PROPOSED CONSTRUCTION PHASES**

**AND MASTER PROJECT SCHEDULE**

(Attached)

Attachment D

**EXHIBIT D**

**FORM OF MONTHLY NET REVENUE CALCULATION STATEMENT**

**(Attached)**

## Exhibit "D"

**Majestic Realty Co.**

PROJECT NAME

Participating Ground Lease

**Monthly Net Revenue Calculation Statement**

December 31, 20XX

Total Revenue		XXX,XXX
Less: Debt Service		XX,XXX
Asset Management Fee		XX,XXX
Fixed Ground Rent (if applicable)		XX,XXX
Management Fee		XX,XXX
Other Project Costs, including:		XX,XXX
Operating expenses		XX,XXX
Maintenance & Operating Expense Reserve		XX,XXX
Capital Replacement Reserve		XX,XXX
Lessee's Post-Termination Duties Reserve		XX,XXX
Leasehold Mortgage Reserves (if applicable)		XX,XXX
Repayment of Equity Contributions		XX,XXX
Net Revenue		<u>XX,XXX</u>
Distribution:		
Ground Lessor	50%	XX,XXX

Attachment D

**EXHIBIT E**  
**FORM OF ESTOPPEL CERTIFICATE**

**(Attached)**

**ESTOPPEL CERTIFICATE**

TO: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Attn: \_\_\_\_\_

The undersigned, \_\_\_\_\_, does hereby make the following statements:

1. It is the [Lessor or Lessee] under that certain Development Ground Lease dated \_\_\_\_\_ (the "Ground Lease"), with \_\_\_\_\_, as [Lessor or Lessee], pertaining to the premises consisting of approximately 95 acres located at the southeast corner of Bickmore Avenue and Mountain Avenue, Chino, San Bernardino County, California (the "Premises").
2. The Term of the Ground Lease began on \_\_\_\_\_, and ends on \_\_\_\_\_, and the obligation to pay Rent (as defined in the Ground Lease) begins on \_\_\_\_\_, pursuant to the terms and conditions of the Ground Lease.
3. The total Rent to be paid pursuant to the terms of the Ground Lease is 50% of the Net Revenue (as defined in the Ground Lease), no Rent has been paid more than one month in advance, and Rent has been paid through \_\_\_\_\_, 20\_\_.
4. True, correct and complete copies of the Ground Lease and all amendments, modifications and supplements thereto are attached hereto and the Ground Lease, as so amended, modified and supplemented, is in full force and effect, and represents the entire agreement between Lessor and Lessee with respect to the Premises. There are no amendments, modifications or supplements to the Ground Lease, whether oral or written, except as follows (include the date of such amendment, modification or supplement):  
\_\_\_\_\_  
\_\_\_\_\_.
5. To the actual knowledge of the undersigned, [Lessor or Lessee] is not in any respect in default in the performance of the terms and provisions of the Ground Lease, except as follows: \_\_\_\_\_.
6. [In case of a Lessee estoppel]: Lessee has not assigned, transferred or hypothecated the Ground Lease or any interest therein or subleased all or any portion of the Premises, except as follows: \_\_\_\_\_.

[LESSOR OR LESSEE]:

\_\_\_\_\_

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

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

Date: \_\_\_\_\_

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

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

Date: \_\_\_\_\_



Attachment D

**EXHIBIT F**

**ANNUAL ACCOUNTING AND RENT STATEMENT FORM**

**(Attached)**

## Exhibit "F"

**Majestic Realty Co.**

PROJECT NAME

Participating Ground Lease

**Annual Accounting and Rent Statement**

20XX

Rental income	X,XXX,XXX
Tenant expense reimbursements received	XXX,XXX
Other Income	XX,XXX
Prior year prepaid rent	XX,XXX
Current year prepaid rent	<u>( XX,XXX )</u>
<b>Total Revenue</b>	<b>X,XXX,XXX</b>
Debt Service	XXX,XXX
Asset Management Fee	XXX,XXX
Fixed Ground Rent (if applicable)	XXX,XXX
Management Fee	XXX,XXX
Other Project Costs, including:	
Operating expenses	XXX,XXX
Maintenance & Operating Expense Reserves	XXX,XXX
Capital Replacement Reserve	XXX,XXX
Lessee's Post-Termination Duties Reserve	XXX,XXX
Leasehold Mortgage Reserves (if applicable)	XXX,XXX
Repayment of Equity Contributions	XXX,XXX
Less: Ground Lessor's Share of Net Revenue	<u>( XXX,XXX )</u>
<b>Total Deductions</b>	<b>X,XXX,XXX</b>
<b>Net Revenue</b>	<b><u>XXX,XXX</u></b>
Amount that should be paid as Ground lease payments - 50%	XX,XXX
Actual amounts paid: Feb 20XX Jan 20XX	<u>XX,XXX</u>
Difference	<u><u>X</u></u>
<b>Equity</b>	
Balance of Equity at beginning of year	<u>XXX,XXX</u>
Equity Contributions	XXX,XXX
Repayments of Equity	(XXX,XXX )
Interest on Equity (at rate of ___%)	X,XXX
Balance of Equity at end of year	<u><u>XXX,XXX</u></u>

Attachment D

**EXHIBIT G**  
**ANNUAL OPERATING BUDGET FORM**

**(Attached)**

**Majestic Realty Co.**  
**ANNUAL OPERATING BUDGET**

Exhibit "G"

Property Name: NAME  
Partner Investment Number: NA

Property Type:  
Budget Year: 20XX

	Jan-20XX	Feb-20XX	Mar-20XX	Apr-20XX	May-20XX	Jun-20XX	Jul-20XX	Aug-20XX	Sep-20XX	Oct-20XX	Nov-20XX	Dec-20XX	Total CF
<b>OPERATING INCOME</b>													
RENTAL INCOME:													
RENTAL INCOME - CASH	0	0	0	0	0	0	0	0	0	0	0	0	0
RENTAL INCOME - CONCESSIONS	0	0	0	0	0	0	0	0	0	0	0	0	0
RENTAL INCOME - AMORTIZATION	0	0	0	0	0	0	0	0	0	0	0	0	0
OTHER PROPERTY INCOME	0	0	0	0	0	0	0	0	0	0	0	0	0
TOTAL RENTAL INCOME	0	0	0	0	0	0	0	0	0	0	0	0	0
REIMBURSEMENT OF EXPENSES BY TENANTS	0	0	0	0	0	0	0	0	0	0	0	0	0
TOTAL REVENUE	0	0	0	0	0	0	0	0	0	0	0	0	0
<b>OPERATING EXPENSE:</b>													
RECOVERABLE PROPERTY EXPENSE:													
REPAIRS AND MAINTENANCE	0	0	0	0	0	0	0	0	0	0	0	0	0
UTILITIES	0	0	0	0	0	0	0	0	0	0	0	0	0
PROPERTY & LIABILITY INSURANCE	0	0	0	0	0	0	0	0	0	0	0	0	0
REAL ESTATE TAXES	0	0	0	0	0	0	0	0	0	0	0	0	0
MANAGEMENT FEES	0	0	0	0	0	0	0	0	0	0	0	0	0
SUBTOTAL RECOVERABLE	0	0	0	0	0	0	0	0	0	0	0	0	0
NON RECOVERABLE PROPERTY EXPENSE:													
REPAIRS AND MAINTENANCE	0	0	0	0	0	0	0	0	0	0	0	0	0
UTILITIES	0	0	0	0	0	0	0	0	0	0	0	0	0
PROPERTY & LIABILITY INSURANCE	0	0	0	0	0	0	0	0	0	0	0	0	0
REAL ESTATE TAXES	0	0	0	0	0	0	0	0	0	0	0	0	0
MANAGEMENT FEES	0	0	0	0	0	0	0	0	0	0	0	0	0
SUBTOTAL NON RECOVERABLE	0	0	0	0	0	0	0	0	0	0	0	0	0
OTHER OPERATING EXPENSES (INCLUDES GROUND LEASE)	0	0	0	0	0	0	0	0	0	0	0	0	0
TOTAL OPERATING EXPENSE	0	0	0	0	0	0	0	0	0	0	0	0	0
INCOME FROM OPERATIONS	0	0	0	0	0	0	0	0	0	0	0	0	0
INTEREST EXPENSE	0	0	0	0	0	0	0	0	0	0	0	0	0
INCOME FROM OPERATIONS AFTER INTEREST	0	0	0	0	0	0	0	0	0	0	0	0	0
<b>OTHER INCOME/EXPENSE:</b>													
DEPRECIATION EXPENSE	0	0	0	0	0	0	0	0	0	0	0	0	0
AMORTIZATION EXPENSE	0	0	0	0	0	0	0	0	0	0	0	0	0
OTHER INCOME/EXPENSE	0	0	0	0	0	0	0	0	0	0	0	0	0
NET INCOME	0	0	0	0	0	0	0	0	0	0	0	0	0
<b>ADJUSTMENT OF NET INCOME TO NET CASH FLOW</b>													
<b>NON-CASH ADJUSTMENTS TO NET INCOME</b>													
DEPRECIATION	0	0	0	0	0	0	0	0	0	0	0	0	0
AMORTIZATION	0	0	0	0	0	0	0	0	0	0	0	0	0
ALLOWANCE FOR BAD DEBT	0	0	0	0	0	0	0	0	0	0	0	0	0
NON-CASH ADJUSTMENTS	0	0	0	0	0	0	0	0	0	0	0	0	0
<b>CHANGE IN OPERATING ASSETS &amp; LIABILITIES</b>													
CHANGE IN ACCOUNTS RECEIVABLE	0	0	0	0	0	0	0	0	0	0	0	0	0
CHANGE IN INTERCOMPANY RECEIVABLES	0	0	0	0	0	0	0	0	0	0	0	0	0
CHANGE IN PREPAID COMMISSIONS	0	0	0	0	0	0	0	0	0	0	0	0	0
CHANGE IN PREPAID EXPENSE - OTHER	0	0	0	0	0	0	0	0	0	0	0	0	0
CHANGE IN INVESTMENTS	0	0	0	0	0	0	0	0	0	0	0	0	0
CHANGE IN OTHER ASSETS	0	0	0	0	0	0	0	0	0	0	0	0	0
CHANGE IN CLEARING ACCOUNT	0	0	0	0	0	0	0	0	0	0	0	0	0
CHANGE IN ACCOUNTS PAYABLE	0	0	0	0	0	0	0	0	0	0	0	0	0
CHANGE IN ACCRUED EXPENSES	0	0	0	0	0	0	0	0	0	0	0	0	0
CHANGE IN OTHER LIABILITIES	0	0	0	0	0	0	0	0	0	0	0	0	0
CHANGE IN SECURITY DEPOSITS PAYABLE	0	0	0	0	0	0	0	0	0	0	0	0	0
CHANGE IN INCOME TAXES PAYABLE	0	0	0	0	0	0	0	0	0	0	0	0	0
CHANGE IN DEFERRED LIABILITIES	0	0	0	0	0	0	0	0	0	0	0	0	0
CHANGE IN OPERATING ASSETS & LIABILITIES	0	0	0	0	0	0	0	0	0	0	0	0	0
<b>CAPITALIZED COSTS:</b>													
UNDEVELOPED LAND	0	0	0	0	0	0	0	0	0	0	0	0	0
CONSTRUCTION IN PROGRESS	0	0	0	0	0	0	0	0	0	0	0	0	0
LAND AND LAND IMPROVEMENTS	0	0	0	0	0	0	0	0	0	0	0	0	0
BUILDINGS	0	0	0	0	0	0	0	0	0	0	0	0	0
TENANT IMPROVEMENTS	0	0	0	0	0	0	0	0	0	0	0	0	0
OTHER FIXED ASSETS	0	0	0	0	0	0	0	0	0	0	0	0	0
CAPITALIZED COSTS	0	0	0	0	0	0	0	0	0	0	0	0	0
<b>DEBT TRANSACTIONS:</b>													
MORTGAGES PAYABLE	0	0	0	0	0	0	0	0	0	0	0	0	0
CONSTRUCTION LOANS	0	0	0	0	0	0	0	0	0	0	0	0	0
LAND DEVELOPMENT LOANS	0	0	0	0	0	0	0	0	0	0	0	0	0
NOTES PAYABLE OTHER	0	0	0	0	0	0	0	0	0	0	0	0	0
PAYMENTS RECEIVED - NOTES RECEIVABLE	0	0	0	0	0	0	0	0	0	0	0	0	0
DEBT TRANSACTIONS	0	0	0	0	0	0	0	0	0	0	0	0	0
<b>EQUITY TRANSACTIONS:</b>													
CONTRIBUTIONS	0	0	0	0	0	0	0	0	0	0	0	0	0
DISTRIBUTIONS	0	0	0	0	0	0	0	0	0	0	0	0	0
ADJUSTMENTS	0	0	0	0	0	0	0	0	0	0	0	0	0
EQUITY TRANS TOTAL	0	0	0	0	0	0	0	0	0	0	0	0	0
NET INCREASE (DECREASE) IN CASH	0	0	0	0	0	0	0	0	0	0	0	0	0
CASH BALANCE - BEGINNING OF MONTH	0	0	0	0	0	0	0	0	0	0	0	0	0
CASH BALANCE - END OF MONTH	0	0	0	0	0	0	0	0	0	0	0	0	0

Attachment D

**EXHIBIT H**

**FORM OF MEMORANDUM OF GROUND LEASE**

**(Attached)**

**Recording requested by and  
when recorded mail to:**

Majestic Realty Co.  
13191 Crossroads Parkway North, 6<sup>th</sup> Floor  
City of Industry, California 91746  
Attention: Ed Konjoyan

Assessor's Parcel No. \_\_\_\_\_

(Space Above Line For Recorder's Use Only)

**MEMORANDUM OF GROUND LEASE**

THIS MEMORANDUM OF GROUND LEASE (this "**Memorandum**"), dated as of \_\_\_\_\_, 20\_\_, is by and between the ORANGE COUNTY FLOOD CONTROL DISTRICT, a body corporate and politic ("**District**"), and MAJESTIC [**SPECIAL PURPOSE ENTITY TBD**], LLC, a Delaware limited liability company ("**Lessee**").

**RECITALS:**

- A. District is the owner of an approximately 95 acres of undeveloped land located at the southeast corner of Bickmore Avenue and Mountain Avenue in Chino, San Bernardino County, California, and more particularly described on the attached Exhibit A (the "Premises").
- B. District and Lessee entered into that certain Development Ground Lease, dated \_\_\_\_\_, 20\_\_ (the "**Ground Lease**"), whereby District leased to Lessee the Premises.
- C. District and Lessee desire to enter into this Memorandum, which is to be recorded in order that third parties may have notice of (i) the leasehold estate of Lessee in the Premises, (ii) the Ground Lease, and (iii) the other matters referred to herein. The undefined capitalized terms used in this Memorandum shall have the same meanings ascribed to such terms in the Ground Lease.

NOW, THEREFORE, District and Lessee, in consideration of the above recitals and other good and valuable consideration, do hereby enter into this Memorandum, as follows:

1. Grant of Lease. District hereby leases the Premises to Lessee, subject to the terms and conditions set forth in the Ground Lease.
2. Term. The term of the Ground Lease shall commence on January 1, 20\_\_, and shall expire on December 31, 20\_\_ (the "**Term**"). Notwithstanding the above, (a) during the

period between full execution of the Ground Lease and commencement of the Term, the terms and provisions of the Ground Lease shall be effective, and (b) the Term of the Ground Lease shall be tolled while a lawsuit, referendum, or initiative is pending that challenges or involves the Entitlements for the Premises or District's authority to enter into the Ground Lease.

3. Incorporation by Reference. All the terms, conditions, provisions, and covenants of the Ground Lease are incorporated in this Memorandum by reference as though written out at length herein. In the event of any inconsistency between the terms and provisions of this instrument and the terms and provisions of the Ground Lease, the terms and provisions of the Ground Lease shall control.

4. Termination of Memorandum. This Memorandum shall automatically terminate, without the necessity of the execution of any further document or instrument, upon the date of the expiration or earlier termination of the Ground Lease. Although this Memorandum shall automatically terminate as set forth in the preceding sentence, Lessee, as required by Section 59 of the Ground Lease, shall execute and acknowledge a quit-claim deed in favor of District.

5. Counterparts. This Memorandum may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have set their hands or caused this Memorandum to be executed on the dates shown below, to be effective as of the day and date first above written.

DISTRICT:

LESSEE:

**ORANGE COUNTY FLOOD CONTROL DISTRICT**, a body corporate and politic

**MAJESTIC [SPECIAL PURPOSE ENTITY TBD], LLC**,  
a Delaware limited liability company

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

By: MAJESTIC REALTY CO., a California corporation, Manager's Agent

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

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

**A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.**

STATE OF CALIFORNIA     )  
  : ss  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, 20\_\_ , before me, \_\_\_\_\_, a Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public

**A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.**

STATE OF CALIFORNIA     )  
  : ss  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, 20\_\_ before me, \_\_\_\_\_, a Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public



**Exhibit A**  
**to**  
**Memorandum of Ground Lease**  
Legal Description of Premises

**[To be supplied]**

**EXHIBIT I**

**DEPICTION OF LOCATION OF EXCESS FILL DIRT SITE**

**(Attached)**

Attachment D

**EXHIBIT J**

**FILL DIRT LICENSE AGREEMENT**

**(Attached)**

## FILL DIRT LICENSE AGREEMENT

THIS FILL DIRT LICENSE AGREEMENT (“**Agreement**”) is made and entered into effective as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the “**Effective Date**”), by and between [MAJESTIC ENTITY], a \_\_\_\_\_ (“**Licensee**”) and ORANGE COUNTY FLOOD CONTROL DISTRICT, a body corporate and politic (“**District**”). Licensee and District are sometime referred to herein individually as a “**Party**” and collectively as the “**Parties.**”

### RECITALS:

A. Licensee and District are parties to that certain Development Ground Lease dated \_\_\_\_\_, 20\_\_ (the “**Lease**”), which lease covers approximately 95 acres of real property located at the southwest corner of Bickmore Avenue and Mountain Avenue, Chino, California, as illustrated in the depiction set forth in Exhibit “A-1” (the “**Development Premises**”). All undefined capitalized terms used in this Agreement have the same meanings ascribed to such terms in the Lease.

B. Licensee and District entered into the Lease pursuant to the terms and conditions set forth in that certain Option Agreement, dated \_\_\_\_\_, 2016 (the “**Option Agreement**”).

C. Licensee desires to develop an industrial warehouse project on the Development Premises consisting of approximately \_\_\_\_\_ square feet of warehouse, distribution and industrial building space (“**Project**”), and has obtained all necessary Entitlements therefor.

D. District is the owner of certain real property along both the southeast and the southwest corners of Euclid Avenue and Pine Avenue in the City of Chino, California (the “**City**”), as illustrated in the depiction set forth in Exhibit “A-2” (the “**Excess Fill Dirt Site**”). [As needed, include a reference to the “**Other District Property**” (as defined in Section 16 of the Option Agreement), and make conforming changes to this Agreement.]

E. The Development Premises and the Excess Fill Dirt Site lie within an area that according to District planning documents, are or may ultimately be affected by the “Prado Dam Project,” a project in which the United States of America, by and through the U.S. Army Corps of Engineers (“**Government**”), which includes plans to raise the height of the Prado Dam and spillway to increase its flood control capabilities and to increase the storage capacity of the reservoir behind the Prado Dam. Following the completion of the Prado Dam Project, the Government projects that during a 190-year flood event, water stored behind the Prado Dam may reach an elevation of 566’ feet above sea level.

F. District and Licensee desire to enter into this Agreement, whereby Licensee shall raise the ground level of the Development Premises, in part, above the 566’ foot elevation by removing fill dirt from the Excess Fill Dirt Site and depositing such fill dirt on the Development Premises (or on other sites reasonably approved by

District in the event that Licensee's creation of flood capacity results in fill dirt in excess of its needs on the Development Premises), and thereafter grading certain portions of the Development Premises to an elevation exceeding 566' feet above sea level.

**AGREEMENT:**

NOW, THEREFORE, in consideration of mutual promises set forth in this Agreement, the sufficiency of which is hereby acknowledged, and based on the facts stated in the Recitals above, which are incorporated herein as though fully set forth, the Parties agree to the following:

1. Approval of Grading Plan. Prior to any work being performed on the Excess Fill Dirt Site, District shall have the right to receive from Licensee, review, and approve (which approval shall not be unreasonably withheld, conditioned or delayed) any and all grading plans for the removal of fill materials from the Excess Fill Dirt Site **[(and the Other District Property, if applicable)]** and restorative grading of the Excess Fill Dirt Site **[(and the Other District Property, if applicable)]** after such removal, including legal description and depiction sufficient to describe the portion of the Excess Fill Dirt Site on which Licensee anticipates working. Pursuant to the terms of the Option Agreement, the Parties acknowledge and agree that Licensee has prepared and District has reviewed and approved a preliminary **[or final]** grading plan presented by Licensee to District on \_\_\_\_\_, 20\_\_, pertaining to proposed grading on the Excess Fill Dirt Site **[(and the Other District Property, if applicable)]**, **and that such final grading plan has also been approved by the U.S. Army Corps of Engineers (the "Final Grading Plans")**. **[As needed, District agrees to cooperate with Licensee and make best efforts in good faith in reviewing and approving final grading plans that would be acceptable to District and the U.S. Army Corps of Engineers ("Final Grading Plans").]**

2. Cooperation. **[Use this section only if Final Grading Plans have not yet been approved as of the Effective Date.]** District agrees to reasonably cooperate with Licensee by executing any documents as may be reasonably required in connection with Licensee's efforts to obtain the Final Grading Plans, including, without limitation, any documents requested by the City, Government or any other governmental agency.

3. Agreement to Transfer and Accept Fill Dirt. Subject to all of the terms, conditions, and provisions of this Agreement and the License issued in accordance with the provisions of Section 4 below and for the consideration herein set forth, as of the Effective Date District agrees to allow Licensee, as its sole responsibility, liability and at its sole expense, to excavate and transfer fill dirt from the Excess Fill Dirt Site **[(and the Other District Property, if applicable)]** to the Development Premises (and other sites reasonably approved by District in the event Licensee's creation of flood capacity results in fill dirt in excess of its needs on the Development Premises), pursuant to the Final Grading Plans, in a volume not to exceed, in the aggregate, a total of \_\_\_\_\_ cubic yards, and Licensee agrees to accept the transfer of such fill dirt and to be responsible for its complete removal from the Excess Fill Dirt Site and transportation to the Development Premises or to other sites as reasonably approved by District, as applicable. Licensee, as its sole responsibility, liability and at its sole expense, shall restore and re-grade the Excess Fill Dirt Site pursuant to the Final Grading Plans. District shall be permitted to inspect and approve the restoration of the Excess Fill Dirt Site to ensure that the restoration adheres to the Final Grading Plans approved by District.

4. License. As of the Effective Date, District hereby grants to Licensee and its agents, employees, representatives, and contractors a non-exclusive temporary irrevocable license (“**License**”), for ingress and egress to the Excess Fill Dirt Site [(**and the Other District Property, if applicable**)] to allow Licensee to excavate and permanently remove soil, subsoil, material and dirt from the Excess Fill Dirt Site [(**and the Other District Property, if applicable**)] (“**Licensee’s Fill Dirt Work**”). The License shall be exclusive to Licensee and include all beneficial rights held by District to excavate and remove soil, subsoil, material and dirt from the Excess Fill Dirt Site [(**and the Other District Property, if applicable**)]. The License shall be in the form of a County Public Property Permit issued by OCPW/Public Property Permits. Licensee shall pay the standard permit fees to cover the cost incurred by District in reviewing the grading plans, performing inspections as well any other costs incurred by District in connection with Licensee’s use of the Excess Fill Dirt Site. Until completion of Licensee's Fill Dirt Work, District shall not grant any other rights or interests in the Excess Fill Dirt Site [(**or the Other District Property, if applicable**)], which would (i) reduce the amount of soil, subsoil, material and dirt from the Excess Fill Dirt Site or otherwise prevent the completion of Licensee's Fill Dirt Work (or materially increase the cost or the scope of Licensee's Fill Dirt Work), or (ii) reduce the amount of flood capacity available at the Excess Fill Dirt Site [(**or the Other District Property, if applicable**)], without Lessee’s prior written consent; unless such reductions are otherwise required by (and are undertaken solely at the instance of) the U.S. Army Corps of Engineers as a part of the Santa Ana Mainstem Project.

5. Term. The term of the License shall commence upon the Effective Date of the Lease and shall terminate upon the earlier of (i) the completion of Licensee's Fill Dirt Work, or (ii) \_\_\_\_\_, 20 \_\_\_\_, unless otherwise extended in a writing signed by the Parties.

6. Insurance. Licensee and Licensee’s designated contractor (“**Contractor**”) shall obtain and provide to District, certificates of insurance and copies of endorsements necessary to satisfy District that the insurance requirements of this Agreement have been complied with. Licensee and Contractor shall maintain the required insurance at all times during the term of this Agreement. In addition, all subcontractors performing work on behalf of Contractor on the Excess Fill Dirt Site pursuant to this Agreement shall obtain insurance subject to the same terms and conditions as set forth herein for Contractor.

Licensee shall obtain the following insurance coverage and shall ensure that its Contractor(s) performing the work on District’s property and any other work included in this Agreement obtain the following insurance coverage in a form reasonably satisfactory to District. Licensee shall deliver to District appropriate certificates of insurance and the required endorsements evidencing Licensee's compliance with the requirements of this Section 6.

Required Minimum Coverage

Commercial General Liability (including broad form property	\$2,000,000 per occurrence
--	-------------------------------

damage and contractual liability)

Automobile Liability (including coverage for owned, non-owned and hired automobiles)	\$1,000,000 per occurrence
--	----------------------------

Workers Compensation	Statutory
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Each policy of insurance must be obtained and held from a company or companies licensed to do business in the State of California, having a general policyholders' rating of not less than an "A-" and a financial rating of not less than (VII) in the most current edition of the Best's Key Rating Guide/Property-Casualty/United States or ambest.com,

**Required Coverage Forms**

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

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

**Required Endorsements**

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

- (i). 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, agents as Additional Insureds with respect to this Agreement.
- (ii). A primary non-contributing endorsement evidencing that the contractor's insurance is primary and any insurance maintained by the County of Orange shall be excess and non-contributing with respect to this Agreement.
- (iii). A Products and Completed Operations endorsement using ISO Form CG2037 (ed. 10/01) or a substitute form at least as broad.

All insurance policies required by this contract shall waive all rights of subrogation against District 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 as respects this Agreement.

Licensee shall notify District in writing within thirty (30) days of any policy cancellation and ten (10) days for non-payment of premium and provide a copy of the cancellation

notice to District. Failure to provide written notice of cancellation may constitute a material breach of this Agreement.

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

District expressly retains the right to reasonably require Contractor to increase or decrease insurance of any of the above insurance types throughout the term of this Agreement. Any such increase or decrease in insurance will be reasonably determined by District's Risk Manager as appropriate to adequately protect District, and in the case of an increase, shall not result in an unreasonable financial burden on Contractor.

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

7. Indemnity. Licensee hereby agrees to indemnify, defend and hold harmless District and its respective members, partners, officers, directors and representatives from and against any and all losses, damages, claims, liabilities, obligations, causes of action, proceedings, costs and expenses, including without limitation, reasonable attorneys' fees, arising from Licensee's entry upon, excavation, grading or use of the Excess Fill Dirt Site [(or the Other District Property, if applicable)]. Licensee's indemnification and insurance obligations under this Agreement shall survive the termination of the License and this Agreement.

8. Liens. Licensee shall keep the Excess Fill Dirt Site free and clear of all mechanics' and materialmen's liens on account of work performed, materials provided or services rendered for Licensee or persons claiming under Licensee. In the event such lien is filed against the Excess Fill Dirt Site, Licensee shall promptly pay such lien or post a bond in the amount required by statute to remove such lien.

9. Condition of Fill Dirt. District makes no representations or warranties as the condition of the fill dirt that is the subject of this Agreement. Licensee acknowledges that District has owned the Excess Fill Dirt Site for a limited time and was used by previous owners as a commercial business. District shall give Licensee access to the Excess Fill Dirt Site to do reasonable investigations and Licensee is solely responsible at its cost to perform any investigations to determine if the material is free of any hazardous materials and is otherwise suitable for use as fill material for the Development Premises. Licensee takes that fill material "as is."

10. Assignment. This Agreement shall be freely assignable by Licensee without prior written consent of District to a successor entity created by Licensee and controlled by a majority of the same entities that were members of Licensee. No other assignments shall be valid except to the extent approved in writing by District, which approval shall not be unreasonably withheld, conditioned or delayed. Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective heirs, personal representatives, successors and assigns.



11. Notice. In the event that any notice is given under this Agreement, it shall be personally delivered, in which case it shall be effective upon delivery, or may be mailed by certified mail, which notice shall become effective three (3) days after mailing, to the addresses set forth below:

To Licensee: **[Majestic Entity]**  
c/o Majestic Realty Co.  
13191 Crossroads Parkway North  
City of Industry, California 91746  
Attn: Ed Konjoyan

Copy to: Ballard Spahr LLP  
201 South Main Street, Suite 800  
Salt Lake City, Utah 84111  
Attn: Michael L. Allen

To District: County of Orange  
c/o CEO/Corporate Real Estate  
ATTN: Chief Real Estate Officer  
401 W. Civic Center., 5<sup>th</sup> Floor  
Santa Ana, CA 92701  
Email: thomas.miller@ocgov.com

Copy to: Orange County Flood Control District  
ATTN: Director, OC Public Works  
601 N. Ross Street, 4<sup>th</sup> Floor  
Santa Ana, CA 92703  
Email: james.treadway@ocgov.com

Either Party may change its address for notices by giving notice to the other Party in the manner herein provided or may request that not more than two (2) additional copies of any notice be sent to addresses specified in a notice to the other Party given pursuant to this Section.

12. Required Actions. Licensee and District agree to execute such instruments and documents and to diligently undertake such actions that may be required in order to consummate the agreements contemplated herein.

13. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

14. Amendment to this Agreement. The terms of this Agreement may not be modified or amended except by an instrument in writing executed by each of the Parties hereto.

15. Waiver. The waiver or failure to enforce any provisions of this Agreement shall not operate as a waiver of any future breach of any of the provisions or any other provision hereof.

16. Attorneys' Fees. In the event of any controversy, claim or dispute between the Parties hereto, arising out of or relating to this Agreement or the breach thereof, each Party shall be responsible for his, her or its own attorneys' fees and costs incurred in any litigation, proceeding or efforts in connection therewith.

17. Severability. If any section of this Agreement is found by competent authority to be invalid, illegal or unenforceable in any respect and for any reason, the validity, legality and enforceability of the unaffected remainder of such section in every other respect and the remainder of the Agreement shall continue in effect.

18. Entire Agreement. This Agreement, along with the Lease, constitutes the entire agreement between the Parties pertaining to the subject matter hereof, and all prior and contemporaneous agreements, representations, negotiations and understandings of the Parties, oral or written, are hereby superseded and merged herein or therein.

19. Exhibits. All exhibits attached hereto and referred to herein are expressly incorporated herein.

20. Counterparts; Execution by Facsimile. This Agreement may be signed by the Parties in two or more counterparts which, when taken together, shall constitute one and the same instrument. This Agreement may also be delivered by facsimile transmission with the same force and effect as if the originally executed copies of this Agreement were delivered to all Parties.

*[Intentionally left blank—signature page to follow]*

IN WITNESS WHEREOF, the Parties hereby duly execute this Fill Dirt License Agreement as of the date written above.

**[MAJESTIC ENTITY]**

APPROVED AS TO FORM:  
County Counsel

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

**DISTRICT**

ORANGE COUNTY FLOOD CONTROL  
DISTRICT, a body corporate and politic

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

Thomas A. Miller  
Chief Real Estate Officer

Attachment D

EXHIBIT A-1

DEPICTION OF DEVELOPMENT PREMISES

(Attached)

Attachment D

EXHIBIT A-2

DEPICTION OF EXCESS FILL DIRT SITE

(Attached)

Attachment D

**EXHIBIT K**  
**DEBT SERVICE SCHEDULE**

**(Attached)**

**EXHIBIT L**

**ADDITIONAL CONDITIONS AND MEASURES**

- a. District and Lessee acknowledge and understand that the Premises shall remain in public ownership and limited to warehouse development and use compatible with the Prado Dam Project (warehouse use with finished floor at 567-ft National Geodetic Vertical Datum of 1929 [NGVD 29] elevation or above) as operated pursuant to the Prado Dam operations documents, including the Water Control Manual.
- b. District and Lessee covenant that the Premises and Project shall not be used for human habitation, including housing or overnight sleeping.
- c. District and Lessee covenant that any warehouse structures constructed within the Premises shall have finished floors at 567-ft NGVD 29 elevation or above.
- d. Lessee understands and covenants that, upon completion of construction of the Project, Lessee shall submit to the Los Angeles District, U.S. Army Corps of Engineers and District electronic copies of the as-built plans showing the new work with post completion of topographic survey information. Further, Lessee covenants that the as-built plans shall be signed by Lessee's engineer of record and that electronic copies of the as-built plans shall be submitted in .pdf format to District and the Los Angeles District, U.S. Army Corps of Engineers. Lessee understands and acknowledges that the as-built plans must be provided within 60 days of receipt of the certificate of occupancy, or the last certificate of occupancy if more than one is issued.
- e. Lessee shall maintain the Premises pursuant to Section 11 of this Lease.
- f. District and Lessee shall comply with any federal, state, or local authorizations required by law, as required under Section 6 of this Lease, including but not limited to environmental mitigation and compliance, building codes for design and construction, storage or release of hazardous materials, and underground storage tanks.

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