



LEASE AGREEMENT

THIS IS A LEASE AGREEMENT (hereinafter referred to as “**Lease**”) made _____, 2022 (“**Effective Date**”), by and between COUNTY OF ORANGE, a political subdivision of the State of California (hereinafter referred to as “**County**” or “**Lessor**”) and THE IRVINE COMPANY LLC, a Delaware limited liability company (hereinafter referred to as “**Tenant**”). The County and Tenant may individually be referred to herein as a “**Party**” or collectively as the “**Parties.**”

1. DEFINITIONS (1.0 SR)

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

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

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

“**Chief Real Estate Officer**” means the Chief Real Estate Officer, County Executive Office, County of Orange, or upon written notice to Tenant, such other entity as shall be designated by the County Executive Officer.

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

“**Director of OC Parks**” or “**Director**” means the Director, Orange County Parks, OC Community Resources, County of Orange, or designee, or upon written notice to Tenant, such other person or entity acting in a similar capacity as shall be designated by the Board of Supervisors.

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

“**Live-Aboard**” or “**Living Aboard Vessels**” means the occupancy of a vessel for periods in excess of (a) seventy-two (72) hours in any seven (7) day period. or (b) six (6) weeks per calendar year. The vessel must occupy a minimum of a thirty-five (35) foot slip and be at least thirty-four (34) feet in length overall.

2. PREMISES (1.1 SR)

County leases to Tenant that certain property herein referred to as Balboa Marina located at 201 E. Coast Highway, Newport Beach (“**Premises**”) and described in Exhibit A and shown on Exhibit B, which exhibits are attached hereto and by reference made a part hereof. The Premises are

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accepted “as is” and “where is” by Tenant subject to any and all existing easements and encumbrances.

3. USE (1.2 SR)

Tenant's use of the Premises shall be limited to the construction, operation, maintenance, and repair of a commercial boat berthing facility which will be the extension of Balboa Marina. The extension will consist of twenty-six (26) private boat slips of which five (5) full boat slips and two (2) partial boat slips ranging in size from 45 to 60 linear feet will require the use of the Premises. The second boat berthing facility will contain twelve (12) boat side ties of which seven (7) side ties will require use of the Premises with the second boat berthing facility to be for public use only, and will be offered for dedication to the City as provided in Clause 64 (DEDICATION OF SECOND BOAT BERTHING FACILITY). Tenant agrees not to use the Premises for any other purpose, nor to engage in or authorize any other activity within or from the Premises, without the County approval. Tenant shall not use the Premises or any portion thereof for any illegal or unlawful purpose and will not cause or permit a nuisance or waste to be created or maintained therein.

a. The first commercial boat-berthing facility will consist of the following uses:

i. Waste pump out connection.

Tenant to be fully responsible for cleanup and all required reporting of any spills, whether listed under Clause 24(B) titled, “National Pollutant Discharge Elimination System (“NPDES”) Requirements, or not. To report a spill to the OC Public Works Water Pollution Response Unit, call 1-877-89-SPILL, or in the case of a chemical emergency, call 911. You may report online at: <http://ocwatersheds.com/wphotline>. Waste pump out equipment must be connected only while pumping waste, unless the pump out equipment, connections and installation are permitted by the City of Newport Beach (“City”). Tenant shall provide evidence of permits within 10 days of receipt of request.

ii. Water hookups.

iii. Electrical hookups.

iv. Dock boxes.

v. Dock lighting.

Tenant agrees that none of the services stated above, as items (i) through (v), can be withdrawn without the written consent by the County.

b. The second boat-berthing facility will consist of only side ties and public safety improvements required by applicable governing jurisdictions, with no other amenities.

NO ALCOHOL, TOBACCO, OR MARIJUANA PRODUCTS SHALL BE SOLD FROM THE PREMISES. DRINKING ALCOHOLIC BEVERAGES AND SMOKING OF ANY KIND IS PROHIBITED INSIDE ANY BUILDING WITHIN THE PREMISES.

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

County reserves the right from time to time, without unreasonable interference, to access the Premises for County to confirm that Tenant is using the Premises consistent with those uses articulated in Clause 3 (USE). Tenant shall cooperate with County during County's access of the Premises. County shall make best efforts to notify Tenant prior to accessing the Premises.

5. PARKING (1.4 SR) - *Intentionally Omitted*

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

7. TERM (1.6 SR)

The term of this Lease shall commence on the first day of the first full calendar month following the date of execution of this Lease by County (“**Commencement Date**”) and shall continue for thirty (30) years (“**Term**”) following the Rent Commencement Date (as defined in Clause 9 (RENT)), unless terminated sooner as provided in this Lease.

8. OPTION TO EXTEND TERM (1.7 SR)

TENANT has the option to extend the Term for one (1) additional term of fifteen (15) years (“**Extended Term**”). Under no circumstances shall the Tenant’s Term, through additional Terms or any other extension of this Lease exceed the maximum lease term as authorized in the Tidelands Grant, which maximum lease term is fifty (50) years. Tenant may exercise its option herein by giving County written notice thereof at least ninety (90) days prior to the expiration date of the Initial Term (the “**Exercise Notice**”). Notwithstanding the above, the County reserves the right to reject, in its reasonable discretion, Tenant’s exercise of such option, provided County notifies Tenant in writing of such rejection and the reason thereof within thirty (30) days after Tenant provided the Exercise Notice (the “**Rejection Notice**”). A reasonable basis for County to reject the Exercise Notice shall only be Tenant being in default under this Lease at the time of exercise beyond all applicable notice and cure periods, provided County notifies, or has notified, Tenant in writing of any such default and Tenant is given, or has been given, a reasonable opportunity to cure such default. If County does not provide the Rejection Notice within such thirty (30) day period, then the Term of the Lease shall be extended to include the Extended Term.

9. RENT (1.8 SR)

Commencing on the first day of the first full calendar month following the issuance of a temporary certificate of occupancy or final certificate of occupancy, whichever certificate is issued first by the City for the completion by Tenant of the work set out in Clause 17 (CONSTRUCTION AND/OR ALTERATIONS BY TENANT), below (“**Rent Commencement Date**”), Tenant agrees to pay to County as rent for the Premises the sum of Two Thousand Five Hundred Dollars (\$2,500.00) per month (“**Rent**”). The Parties agree that the Rent Commencement Date of this Lease will be confirmed in writing by either Party upon demand by the other. Rent shall be adjusted pursuant to the Rent Adjustment schedule in Clause 10 (RENT ADJUSTMENT) below. All Rent payments owed throughout the Term shall be owed in advance.

From the Effective Date of this Lease Agreement to the day the issuance of a temporary certificate of occupancy or final certificate of occupancy, whichever certificate is issued first by the City for the completion of work set out in Clause 17 (CONSTRUCTION AND/OR ALTERATIONS BY TENANT), Tenant shall pay County One Thousand Dollars (\$1,000.00) monthly as rent for the Premises.

The Parties agree that Rent shall be absolutely net to County and that, except as otherwise provided herein, Tenant will pay all costs, charges, insurance premiums, taxes, utilities, expenses and assessments of every kind and nature incurred for, against or in connection with the Premises which arise or become due during the Term or Extended Term, if applicable, as a result of Tenant’s use and occupancy of the Premises (not including possessory interest assessments which are

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addressed in Clause 28 (TAXABLE POSSESSORY INTEREST ASSESSMENTS). Under no circumstances is County 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. RENT ADJUSTMENT (1.9 N)

A. **Revisions Every Three Years:** The Rent specified in Clause 9 (RENT) shall be subject to automatic adjustments every three (3) years from the Rent Commencement Date throughout the Term and the Extended Term. The Rent will be automatically increased by three percent (3%) of the previous monthly Rent. For example, beginning on the fourth year after the Rent Commencement Date, monthly Rent shall be calculated as: [\$2,500] (prior monthly Rent for years 1 through 3) x 103% = \$2,575 per month for the remainder of that 3-year period.

Should the Three-Year Revision of Rent occur in the same year the Ten-Year Revision of Rent is to occur, then monthly Rent shall be either the Three-Year Revision of Rent or the Ten-Year Revision Rent, whichever is greater. Said adjusted monthly Rent shall remain fixed for three years, then adjusted according to the next Three-Year Revision of Rent as set forth in this Section 10.A.

B. **Ten-Year Revision:** In addition, County and Tenant agree the monthly Rent payable shall also be subject to periodic adjustment every ten (10) years from the Rent Commencement Date of this Lease during the Term and the Extended Term, by the greater of (1) the fair market rent (as established below) for the Premises for the Use provided for in Clause 3 (USE); or (b) adjusted in proportion to changes in the Consumer Price Index ("CPI") for Los Angeles-Long Beach-Anaheim (All Urban Consumers-All Items 1982-84=100) promulgated by the Bureau of Labor Statistics of the U.S. Department of Labor, or any replacement index thereto and consistent with the formula below:

A = \$ _____ * x B/C

A = Adjusted Rent

B = Monthly index for the fourth month prior to the month in which the rental rate adjustment is to become effective

C = Monthly index for the month of the Rent Commencement Date of this Lease agreement

\$ _____ * is the previous month's Rent paid to the County

In the event that the Consumer Price Index is not issued or published for the period for which such rent is to be adjusted and computed hereunder, or in the event that the Bureau of Labor Statistics of the U.S. Department of Labor should cease to publish said index figures, then any similar index published by any other branch or department of the U.S. Government shall be used and if none is so published, then another index generally recognized and authoritative shall be substituted by Director of OC Parks.

Should the Ten-Year Revision occur prior to the end of a Three-Year Revision period, then the Ten-Year Revision shall be implemented and take precedent over a Three-Year Revision. Ten Year Revisions of Rent will then set the rental rate for thirty-six (36) months, following which a Three-Year Revision will be implemented as set forth herein.

Fair market rent shall be determined as follows:

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Each Party shall hire their own qualified appraiser no less than a hundred and eighty (180) days prior to the next scheduled reappraisal adjustment date. Within thirty (30) days following each Party's hiring of its qualified appraiser, the two hired appraisers shall designate a third appraiser to be hired by the Parties. Each Party is responsible for the cost of the appraiser it employs, and the Parties shall share the cost of the third appraiser. The County, through its Chief Real Estate Officer, will set a pre-appraisal meeting with Tenant and all three appraisers to agree upon a "Scope of Work." The appraisers will have ninety (90) days from the pre-appraisal meeting to deliver to County and Tenant copies of a fully documented written report, prepared in accordance with the Scope of Work, containing the appraiser's independent opinion of value of the Premises. If the highest and lowest appraised amounts are within five percent (5%) of each other, then the Rent will be the mathematical mean of such two appraisals. If the highest and lowest appraised amounts are not within five percent (5%) of each other then the Rent shall be the appraised amount determined by the middle appraiser.

Notwithstanding the foregoing, in no event shall the Rent be reduced by reason of any such adjustment. The adjustment under this Ten-Year Revision is capped at five percent (5%) over the previous month's Rent paid to the County. The Parties may forego the expense and process of the fair market value determination if the CPI adjustment results in reaching such five percent (5%) cap.

11. RENT PAYMENT PROCEDURE (2.0 SR)

Rent payments shall be delivered to and filed with:

Orange County Treasurer-Tax Collector
Revenue Recovery/Accounts Receivable Unit
P.O. Box 4005
Santa Ana, California 92702-4005

County may change the designated place of payment and filing at any time upon ten (10) calendar days' written notice to Tenant. Rent payments may be made by check payable to the County of Orange. Tenant assumes all risk of loss if payments are made by mail.

No payment by Tenant or receipt by County of a lesser amount than the payment due shall be deemed to be other than on account of the payment due, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed an accord and satisfaction, and County shall accept such check or payment without prejudice to County's right to recover the balance of the amount due or pursue any other remedy in this Lease. Nor shall County's acceptance of a lesser amount due or delay in pursuing full payment act as a legal bar against County's recovery of any amount due under this Lease.

All sums due under this Lease shall be paid in lawful money of the United States of America, without offset or deduction or prior notice or demand.

12. CHARGE FOR LATE PAYMENT (2.1 SR)

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

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Accordingly, if any payment of Rent as specified in Clause 9 (RENT) or of any other sum due County under this Lease is not received by County within five (5) days after the due date, a late charge of one- and one-half percent (1.5%) of the payment due and unpaid plus One Hundred Dollars (\$100) shall be added to the payment, and the total sum shall become immediately due and payable to County. An additional charge of one hundred dollars (\$100) shall be added for each additional month that said payment remains unpaid.

Tenant and County hereby agree that such late charges represent a fair and reasonable estimate of the costs that County will incur by reason of Tenant's late payment. Acceptance of such late charges (and/or any portion of the overdue payment) by County shall in no event constitute a waiver of Tenant's Default (as defined in Clause 30 (DEFAULTS AND REMEDIES)) with respect to such overdue payment or prevent County from exercising any of the other rights and remedies granted hereunder.

13. LEASE ADMINISTRATIVE COST (2.2 SR)

Tenant shall compensate County for the reasonable administrative costs absorbed by County which occur as a result of negotiating and administering documents requested by Tenant that are related to this Lease (*i.e.*, SNDA, assignments, subleases) to the extent that County has provided Tenant with a good faith estimate of such administrative costs prior to incurring in such costs for which Tenant shall be responsible under this Clause 13. The foregoing compensation obligation does not include this Lease itself, nor the City Lease (as defined in Clause 27 [ASSIGNMENT AND SUBLETTING] below). Said compensation amount shall be determined by multiplying the standard hourly rate of the County staff member who provides such services by the number of hours spent to negotiate, prepare and execute said documents and shall be paid to County within thirty (30) days of Tenant's receipt of County's invoice for said administrative services, which invoice shall identify the applicable staff member, the hourly rate and the number of hours spent related to such document. Should Tenant fail to compensate County within said thirty (30) days, Tenant will be in Tenant Default and County has the right to pursue any and all remedies including, but not limited those remedies defined in Clause 30 (DEFAULTS AND REMEDIES).

14. SECURITY DEPOSIT (2.3 SR)

On the Effective Date, Tenant shall deposit with the Treasurer-Tax Collector (consistent with Clause 11 (RENT PAYMENT PROCEDURE)) the sum of Five Thousand Dollars (\$5,000) (the "**Security Deposit**"), to be held by County as security for the full and faithful performance of Tenant's obligations under this Lease, to pay any rental sums, including without limitation such Additional Rent as may be owing under any provision hereof, and to maintain the Premises as required by Clause 16 (MAINTENANCE OBLIGATIONS OF TENANT) or any other provision of this

Lease. Upon any breach of the foregoing obligations by Tenant or any Tenant Default, County may apply all or part of the Security Deposit as full or partial compensation. If any portion of the Security Deposit is so applied, Tenant shall within five (5) days after written demand by County deposit cash with County in an amount sufficient to restore the Security Deposit to its original amount.

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

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A. Cash

B. An instrument or instruments of credit, such as but not limited to Letter of Credit, from one or more financial institutions in Orange, Los Angeles or San Diego counties, subject to regulation by the state or federal government, pledging that funds necessary to secure performance of the Lease terms, covenants, and conditions are on deposit and guaranteed for payment, and agreeing that said funds shall be trust funds securing Tenant's performance and that all or any part shall be paid to County of Orange, OC Community Resources, upon demand by the Director, without the credit institution requiring the consent of Tenant. Both the financial institutions and the form of the instruments must be approved by the Director.

Regardless of the form in which Tenant elects to make said security deposit, all or any portion of the principal sum shall be available unconditionally to Director for correcting any default or breach of this Lease by Tenant, its successors or assigns, or for payment of expenses incurred by County as a result of the failure of Tenant, its successors or assigns, to faithfully perform all terms, covenants and conditions of this Lease. County shall not be deemed a trustee of the security deposit.

In the event Tenant elects to make said security deposit in cash, County shall not be required to keep this security deposit separate from its general or enterprise funds, and Tenant shall not be entitled to any interest on such deposit.

Should Tenant elect to provide an Instrument of credit to fulfill the security deposit requirements of this Lease, said instrument shall have the effect of releasing the depository or creditor therein from liability to Tenant on account of the payment of any or all of the principal sum to County of Orange, OC Community Resources, or order upon demand by Director. Any fees will be the sole responsibility of Tenant.

The agreement entered into by Tenant with a financial institution to establish the deposit necessary to permit issuance of an instrument as provided above may allow the payment to Tenant, or order, of interest accruing on account of said deposit.

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

In no event may Tenant utilize all or any portion of the Security Deposit as a payment toward any Rent or Additional Rent due under this Lease. Any unapplied balance of the Security Deposit shall be returned to Tenant or, at County's option, to the last assignee of Tenant's interest in this Lease within thirty (30) days following the termination of this Lease and Tenant's vacation of the Premises.

Tenant hereby waives the provisions of Section 1950.7 of the California Civil Code, or any similar or successor laws now or hereafter in effect, in connection with County's application of the Security Deposit to prospective rent that would have been payable by Tenant but for the early termination due to Tenant's Default as defined in Clause 30 (DEFAULTS AND REMEDIES).

15. RECORDS AND ACCOUNTS (2.4 N)

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A. Records. Tenant shall, at all times during the term of this Lease, keep or cause to be kept true and complete books, records, and accounts of all financial transactions in the operation of all business activities, of whatever nature, conducted on the Premises in pursuance of the rights granted herein. The records must be supported by source documents such as sales slips, cash register tapes, purchase invoices, or other pertinent documents. Copies of voided documents should be retained, along with the reasons for voiding and signature of person approving the void.

B. The Accounting Year. The accounting year shall be twelve (12) full calendar months commencing on January 1 and ending on December 31 each year. The accounting year may be established by Tenant, provided Tenant notifies Auditor-Controller in writing of the accounting year to be used. Said accounting year shall be deemed to be approved by Auditor-Controller unless Auditor-Controller has objected to Tenant's selection in writing within sixty (60) days of Tenant's written notification.

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

Once an accounting year is established, it shall be continued through the Term of the Lease unless Auditor-Controller specifically approves in writing a different accounting year. Auditor-Controller shall only approve a change in accounting years in the event of undue hardship being placed on either the Tenant or Lessor, and not because of mere convenience or inconvenience.

C. Audits. County shall, through its duly authorized agents or representatives, have the right to examine and audit said books of account and records and supporting source documents at any and all reasonable times upon at least thirty (30) business days' written notice for the purpose of determining the accuracy thereof, financial statements which financial statements may include but are not limited to monthly Gross Receipts from which records shall be retained for a period not less than five (5) years from the date the required financial statements have been submitted to County by Tenant. County shall not exercise its right to audit such records more than once each accounting year.

County, upon written request of Tenant and at County's sole discretion, may authorize the above-referenced books and records and supporting source documents to be kept in a single location outside the limits of Orange County provided Tenant shall agree to pay all expenses including but not limited to transportation, food, and lodging necessary for the County to send a representative to audit said books and records.

The full cost of any audit described above, as determined by Director of OC Parks, shall be borne by Tenant if either of the following conditions exist: (1) The audit reveals an underpayment of more than four percent (4%) between the rent due as reported and paid by Tenant in accordance with this Lease and the rent due as determined by said audit; (2) Tenant has failed to maintain true and complete books, records, accounts and supporting source documents in the ordinary course of Tenant's business, consistent with past practices and in accordance with Section A, "Records", above. The adequacy of records shall be consistent with industry standards at the time of the audit. Otherwise, County shall bear the cost of that audit, excluding the aforementioned expenses related to audit of documents kept outside the limits of Orange County.

Upon the request of Auditor-Controller, Tenant shall promptly provide, at Tenant's expense, necessary data to enable County to fully comply with any and every requirement of the State of California, the United States of America and Generally Accepted Accounting Principles for

Standard Revenue Lease Form

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information or reports relating to this Lease and to Tenant's use of the Premises. In addition to any other remedies available to County at law or in equity or under this Lease, in the event the Tenant fails, in the normal course of Tenant's business, to accurately and completely maintain and keep books, records, and accounts from the Premises and/or source documents relating thereto, or to make the same available to County for examination and audit, or to record accurately and completely sales and/or to maintain accurately and completely registers to record sales, or to provide accurate and complete financial statements and other information to County regarding gross sales as required by this Lease, County, shall provide written notice to Tenant within thirty (30) business days following any of the above alleged failures in this paragraph 15E, and at County's option, may:

- 1) Require the Tenant to pay a one-time fine of one thousand dollars (\$1,000) per occurrence; or
- 2) Perform such examinations, audits, and/or investigations itself or through agents or employees as County and/or its auditors may deem appropriate to confirm the amount of percentage rents payable by Tenant under this Lease, and require TENANT to reimburse County for any and all reasonable costs and/or expenses incurred by County in connection therewith, which shall be reimbursed by Tenant to County within fifteen (15) business days upon receipt by Tenant of any such written demand from County.

The above costs payable by Tenant shall include reimbursement to County of County-provided services at such rates as County may from time to time, in good faith, establish for such services. In the case of services provided by County's employees, such rates shall be sufficient to reimburse County for employees' salaries, and County's reasonable expenses associated with any such audit or third-party auditor.

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

A. Tenant shall, to the satisfaction of County, keep and maintain, or cause to be kept and maintained, the Premises and all Tenant Improvements (as defined in this Clause 16) of any kind in place and used, occupied, or otherwise operated or maintained by the Tenant on the Premises during the Term or any Extended Term of this Lease, or which may be erected, installed, or made thereon by Tenant, during the Term or Extended Term of this Lease, in good condition and in substantial repair, provided that in the event (i) of substantial damage to any such Tenant Improvements it shall be at Tenant's option whether to repair or replace such improvements (provided that if the improvements are not to be repaired or replaced, then they shall be placed into a safe condition or, at Tenant's option, removed), as provided in Clause 20 (OPERATIONAL REQUIREMENTS OF TENANT) below or (ii) Tenant ceases to use any improvements, it shall be at Tenant's option to not repair or replace any such improvement so long as the improvement is maintained in a safe condition or, at Tenant's option, removed. Subject to the foregoing, it shall be Tenant's responsibility to take all steps necessary or appropriate to maintain such a standard of condition and repair.

B. Tenant shall keep the Premises clean and in good repair during any time which Tenant, its agents, or employees use the Premises at its sole cost and expense. Except as otherwise expressly

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set forth in this Lease, Tenant shall be responsible for all costs relating to the operation and maintenance of the Premises.

C. Tenant shall be solely responsible for all costs and expenses for any maintenance and repairs necessitated by the actions of Tenant, or Licensee(s), resulting in an extraordinary load imposed on underground utilities outside the Premises or contamination of Common Areas and Harbor waterways.

D. If Tenant fails to maintain or make repairs or replacements as required herein, County shall notify Tenant in writing of said failure. Should Tenant fail to correct the situation within five (5) days after receipt of written notice specifying the condition to be corrected (provided that such 5-day period may be extended accordingly if a longer time is necessary to correct the condition and Tenant promptly commences such cure and diligently prosecutes it to completion), County may make the necessary correction or cause it to be made and the cost thereof, including but not limited to the cost of labor, materials, equipment, and an administrative fee equal to fifteen percent (15%) of the sum of such items, shall be paid by Tenant within ten (10) days of receipt of a statement, including reasonable supporting documentation, of said cost from County. County may, at its sole option, choose other remedies available herein, or by law.

E. If Tenant receives an inspection notice or a deficiency notice following an inspection by any public or regulatory agency having jurisdiction, Tenant agrees to make any and all corrections in the manner reasonably required promptly upon receipt of by such notice, provided that Tenant shall have the right to pursue any objections to such requirement for corrections so long as County is not at risk for the costs required to be incurred with respect to such correction pending resolution of Tenant's objections.

F. County shall have no obligation or responsibility to dredge, remove debris, or to maintain, repair, or replace improvements constructed within the Premises, except as otherwise provided by law. Tenant shall have no obligation to dredge the Premises nor to maintain, supervise, repair or replace any improvements installed by County or any other party (other than Tenant's Licensees) nor for debris or materials which are not deposited by Tenant or its Licensees and which comes onto or out of the Premises.

17. CONSTRUCTION AND/OR ALTERATIONS BY TENANT (2.6 SR)

Tenant is in the process of obtaining appropriate permits from the City, the California Coastal Commission and Army Corps of Engineers, in each case to the extent required, regarding the construction of two (2) commercial boat-berthing facilities. The first commercial boat-berthing facility consists of twenty-four (24) boat slips which will expand Tenant's existing marina to facilitate demand. Of the twenty-four (24) slips, five (5) full slips and two (2) partial slips, which slip size is defined in Clause 3 (USE), require use of County Tidelands. The second boat-berthing facility will contain twelve (12) public slips. Tenant has the right and will offer to dedicate this second boat-berthing facility to the City. Of the twelve (12) slips, seven (7) slips encroach into County tidelands. The seven (7) slips are all side ties. County has not reviewed or otherwise authorized the improvements as contained therein. Tenant must obtain an Access Permit from OC Parks/Permit Department in conjunction with the City, California Coastal Commission and Army Corps of Engineer permits.

County's Consent. No structures, improvements, or facilities shall be constructed, erected, altered, or made within the Premises without prior written consent of County, which consent shall not be unreasonably withheld, conditioned or delayed. Any conditions relating to the manner, method, design, and construction of said structures, improvements, or facilities fixed by the County as a

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condition to granting such consent, shall be conditions hereof as though originally stated herein. Tenant may, at any time and at its sole expense, install and replace business fixtures and equipment constructed by Tenant, within the Premises.

Strict Compliance with Plans and Specifications. All improvements constructed by Tenant within the Premises shall be constructed in strict compliance with detailed plans and specifications approved by County and, to the extent applicable as to the second boat-berthing facility, shall be constructed in compliance with the requirements of California Public Contract Code Section 22000 *et seq.*, and Labor Code Sections 1720-1824, which may require that certain of the improvements to be constructed as if such improvements had been constructed under the direction and supervision, or under the authority, of County.

Permits. All County approved improvements to the Premises shall be constructed in accordance with valid permits and all applicable laws (which shall include but not be limited to the satisfaction of all regulatory agencies who may exercise jurisdiction of the Premise such as the City, the State Lands Commission and the California Coastal Commission) and in a good and workmanlike manner, including, but limited to, to the extent applicable to and required in connection with the second boat-berthing facility: (a) Tenant shall be required to secure the faithful performance of construction and completion of construction of the improvement by appropriate contractor's bonds under the California Public Contracts Code, and shall require its contractor or contractors to pay the prevailing rate of per diem wages for work of a similar character in the locality of the County and not less than the general prevailing rate of per diem wages for holiday and overtime work, as provided in Clause 31 (LABOR CODE COMPLIANCE) of this Lease; and (b) Tenant shall publicly advertise for bids for such improvements, as provided in Orange County Codified Ordinances 1-8-1 *et seq.*, and shall provide County a list of all bids received for the contract; and (c) thereafter, with the prior written approval of County as to the winning bid, Tenant shall award the contract or contracts for such improvements.

All preparation and processing for environmental clearance shall be at Tenant's sole cost and expense. In the event that the environmental process results in any required mitigation measures, performance of such mitigation measures, including all associated costs and expenses shall be the sole responsibility of Tenant.

County has no obligation to notify Tenant regarding requirements for permits, licenses, approvals or other consents from governmental agencies, including the County of Orange in its regulatory capacity, nor shall County have any obligation to obtain permits, licenses, approvals or other consents from governmental agencies on behalf of Tenant. County agrees to give its consent as property owner to any application made with regard to any such permits, licenses, approvals or other consents which may be required by any governmental agency or by the County of Orange in its regulatory capacity related to activities or design and construction of improvements approved by County in accordance with this Lease. Any such consent given by County as the property owner is not to be interpreted to obligate County to pay any fees related to the application or issuance of any such permit, license, approvals or other consents, nor shall such consent be deemed a waiver of any fee which may be charged by County's Property Permit department. Any conditions placed on Tenant's design and construction or operation of the Premises as a result of the issuance of permits, licenses, approvals or other consents shall be the sole obligation of Tenant with regard to performance responsibilities, cost and expense.

Any approvals or consents given by County under this Lease, as a party to this Lease, shall not be deemed approval as to compliance or conformance with applicable governmental codes, laws, rules and/or regulations or approval from the standpoint of structural safety, suitability for purpose or

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conformance with building or other codes or other governmental requirements nor shall County, as a party to this Lease be responsible for permitting of any construction and/or maintenance, design, assumptions or accuracy of Tenant's construction and/or maintenance plans.

All planning and architectural/design costs required to accomplish the construction shall be Tenant's responsibility.

18. OWNERSHIP OF IMPROVEMENTS (2.7 SR)

Tenant shall provide all equipment necessary for use of the Premises consistent with this Lease. All buildings, improvements, and facilities, exclusive of trade fixtures, constructed or placed within the Premises by Tenant ("**Tenant Improvements**") must, upon completion, be free and clear all liens, claims, or liability for labor or material and at County's option shall be the property of County at the expiration of this Lease or upon earlier termination hereof. County retains the right to require Tenant, at Tenant's cost, to remove all Tenant Improvements located on the Premises at the expiration or termination hereof by written notice to Tenant at least ninety (90) days prior to the expiration of the Term or the Extended Term, or within fifteen days following any termination of this Lease on account of an Event of Default. In the event that County provides such notice and Tenant thereafter fails to remove said Tenant Improvements within thirty (30) days following the expiration or sooner termination of the Term or the Extended Term, such Tenant Improvements will be deemed abandoned and Tenant shall lose all right, title and interest in and thereto, and County may elect (i) at Tenant's cost, to remove, demolish, or otherwise dispose of some or all of such items or (ii) sell or make use of any or all such items.

19. MECHANICS LIENS OR STOP NOTICES (2.8 SR)

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

In the event a lien or stop notice is imposed upon the Premises as a result of such construction, repair, alteration, or installation, Tenant shall within thirty (30) days after such imposition, either:

- A. Record a valid Release of Lien, or
- B. Procure and record a bond in accordance with Section 8424 or 9000 et seq. of the Civil Code, which frees the Premises from the claim of the lien or stop notice- and from any action brought to foreclose the lien.

20. OPERATIONAL REQUIREMENTS OF TENANT (2.9 SR)

A. Quality and Service Standards. Tenant shall at all times operate the Premises in a manner consistent with Clause 3 (USE).

B. Standards of Operation. Tenant shall operate the Premises in a manner similar to other comparable facilities in Southern California which offer similar services and amenities. Tenant shall, at its sole expense, take reasonable steps to provide security measures for the protection of persons and property within the Premises.

C. Protection of Environment. Tenant shall take all reasonable measures to prevent:

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1. Littering within the Premises.
2. Excessive noise emanating from the Premises.
3. Excessive light and glare from light fixtures within the Premises that could impact the safe operation of automobiles, watercraft and aircraft in the area.
4. Discharge or runoff of pollutants, including petroleum products, waste and debris from any source on the Premises into the waters within or adjacent to the Premises or other activities that are harmful to water quality.
5. Tenant shall immediately report any spillage, leakage, or discharge of any toxic, hazardous or polluting materials caused by Tenant to the proper authorities.

D. Availability of Slips. As provided in the Clause 55 (NONDISCRIMINATION) of this Lease, Tenant shall make boat slips available on fair and reasonable terms and without discrimination, consistent with the law of the State of California and the United States.

Tenant shall make a reasonable effort to contact those persons registered and to allow them an opportunity to rent boat slips of appropriate length as such slips become available for rent. Tenant may require persons so registered to provide evidence of financial ability to occupy the slip requested. Tenant may further require compliance with reasonable rules and regulations with respect to the use of the Premises that are not inconsistent with this Lease and the Tidelands Grant. Tenant may cancel any agreement for the rental of such boat slips for due cause or noncompliance with rules and regulations. Tenant may prohibit Live-Aboard Vessels within the Premises. Should Tenant allow Live Aboard Vessels on slips in County's tideland Premises, then, Tenant must obtain prior approval from County which approval shall not be unreasonably withheld and pay additional rent for said living aboard vessels.

COUNTY shall, through its duly authorized agents or representatives, have the right to examine said waiting list at any and all reasonable times for the purpose of determining the accuracy thereof. Private information of prospective slip tenants will not be made available to the public.

21. INSURANCE (3.0 SR)

Tenant agrees to purchase all required insurance at Tenant's expense and to deposit with the County certificates of insurance, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this Lease have been complied with and to keep such insurance coverage and the certificates and endorsements therefore on deposit with the County during the entire term of this Lease. Tenant shall deposit the Certificate of Insurance with CEO Real Estate, consistent with the Notice clause, through electronic correspondence on or before the Effective Date of this Lease and annually throughout the Term, as necessary, to: insurance.ceore@ocgov.com

Tenant agrees that Tenant shall not operate on the 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 Director. In no cases shall assurances by Tenant, its employees, agents, including any insurance agent, be construed as adequate evidence of insurance. Director will only accept valid certificates of insurance and endorsements, or in the interim, an insurance binder as adequate evidence of insurance. Tenant also agrees that upon cancellation, termination, or expiration of Tenant's insurance, County may take whatever steps are necessary to interrupt any operation from or on the Premises until such time as the insurance is reinstated.

If Tenant fails to provide Director with a valid certificate of insurance and endorsements, or binder at any time during the term of the Lease, County and Tenant agree that this shall constitute a

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material breach of the Lease. Whether or not a notice of default has or has not been sent to Tenant, the material breach shall permit County to take whatever steps necessary to interrupt any operation from or on the Premises, and to prevent any persons, including, but not limited to, members of the general public, and Tenant's employees and agents, from entering the Premises until such time as Director is provided with adequate evidence of insurance required herein. Tenant further agrees to hold County harmless for any damages resulting from such interruption of business and possession, including, but not limited to, damages resulting from any loss of income or business resulting from the County's action. County shall make a reasonable attempt to provide Tenant with written notice of any such failure by Tenant prior to taking any such action.

Tenant may occupy the Premises only upon providing to County the required insurance stated herein and maintain such insurance for the entire term of this Lease. County reserves the right, but does not have the obligation, to terminate this Lease at any time Tenant's insurance is canceled or terminated and not reinstated within ten (10) days of said cancellation or termination. As a courtesy, and not intended to create any obligation for the County, the County will provide Tenant with 5 days' prior notice of County exercising its right to terminate the Lease based on of any lapse, termination or cancellation of Tenant's insurance of which County becomes aware. If Tenant provides proof of reinstatement of Tenant's insurance at the levels required by this Lease prior to County exercising its termination rights, then Tenant shall be deemed in compliance with its insurance requirements. Tenant shall pay County a fee of Five Hundred Dollars (\$500.00) for processing the reinstatement of the Lease. Tenant shall provide to County immediate notice of any insurance cancellation or termination.

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

All self-insured retentions (SIRs) shall be clearly stated on the Certificate of Insurance. Any SIRs in excess of Fifty Thousand Dollars \$50,000 shall specifically be approved by the County's Risk Manager, or designee. The County reserves the right to require current audited financial reports from LESSEE. If LESSEE is self-insured, LESSEE will indemnify and defend County for any and all claims resulting or arising from LESSEE'S use of the premises, services, or other performance in accordance with the indemnity provision stated in this License.

Qualified Insurer

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**). It is preferred, but not mandatory, that the insurer be licensed to do business in the state of California (California Admitted Carrier).

If the insurance carrier does not have an A.M. Best Rating of A-/VIII, the CEO/Office of Risk Management retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.

The policy or policies of insurance maintained by the Tenant shall provide the minimum limits limits 451

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and coverage as set forth below:

<u>Coverages</u>	<u>Minimum Limits</u>
Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 limit per occurrence
Marina Operator's Legal Liability (applicable to Tenant only)	\$1,000,000 per occurrence
Longshore and Harbor's Workers' Compensation (if applicable)	Statutory
Employers' Liability Insurance	\$1,000,000 per occurrence
Pollution Liability	\$1,000,000 per claims-made or per occurrence; \$2,000,000 aggregate
Commercial Property Insurance on an "All Risk" or "Special Causes of Loss" basis covering all, contents and any Tenant improvements including Business Interruption/Loss of Rents with a 12 month limit.	100% of the Replacement Cost Value and No coinsurance provision

Required Coverage Forms

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

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

Required Endorsements

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

- 1) An Additional Insured endorsement using ISO form CG 20 26 04 13, or a form at least as broad naming the ***County of Orange, its elected and appointed officials, officers, employees, agents*** as Additional Insureds. Blanket coverage may also be provided which will state- ***As Required By Written Agreement***.
- 2) A primary non-contributing endorsement using ISO form CG 20 01 04 13, or a form at least as broad, evidencing that the Tenant's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

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The Pollution Liability policy shall contain the following endorsements, which shall accompany the Certificate of Insurance:

- 1) An Additional Insured endorsement naming the County of Orange, its elected and appointed officials, officers, employees and agents as Additional Insureds.
- 2) A primary and non-contributing endorsement evidencing that Tenant's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

The Workers' Compensation polic(ies) shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the ***County of Orange, its elected and appointed officials, officers, agents and employees***. Blanket coverage may also be provided which will state- ***As Required By Written Agreement***.

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

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

If Tenant's Pollution Liability policy is a claims-made policy, Tenant shall agree to maintain coverage for two (2) years following termination of the Lease.

Insurance certificates should be forwarded to the County address provided in the Clause entitled "NOTICES" below or to an address provided by Director. Tenant has ten (10) business days to provide adequate evidence of insurance, or this Lease may be cancelled as set forth above.

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

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

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

22. INDEMNIFICATION (3.1 SR)

A. **Tenant's Indemnity**. Tenant hereby agrees to indemnify, hold harmless, and defend County, its elected and appointed officials, officers, agents, employees, and those special districts and agencies which the Board of Supervisors acts as the governing board, with counsel reasonably approved by County, against any and all claims, loss, demands, damages, costs, expenses or liability arising out of the ownership, maintenance, or use of the Premises, except for liability arising out of the negligence or willful misconduct of County, its elected and appointed officials, officers, agents, or employees, including the cost of defense of any lawsuit arising therefrom.

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In the event County is named as co-defendant, Tenant shall notify County of such fact and shall represent County, with counsel reasonably approved by County, in such legal action unless County undertakes to represent itself as co-defendant in such legal action, in which event Tenant shall pay to County its reasonable litigation costs, expenses and attorneys' fees. In the event judgment is entered against County and Tenant because of the concurrent negligence of County and Tenant, their officers, agents, or employees, an apportionment of liability to pay such judgment shall be made by a court of competent jurisdiction.

B. County's Non-liability. County shall not be liable to Tenant and Tenant hereby waives all claims against County, its employees and agents for loss of or damage to any property, or any injury to any person, resulting from any condition including, but not limited to, acts or omissions (criminal or otherwise) of third parties, or their agents, employees or invitees, fire, explosion, falling plaster, steam, gas, electricity, water or rain which may leak or flow from or into any part of the Premises or from the breakage, leakage, obstruction or other defects of the pipes, sprinklers, wires, appliances, plumbing, air conditioning, electrical works or other fixtures in the Premises, regardless of the negligence of County, its agents or any and all affiliates of County in connection with the foregoing. It is understood that any such condition may require the temporary evacuation or closure of all or a portion of the Premises. Should Tenant elect to receive any service from a concessionaire, licensee or third-party Tenant of County, Tenant shall not seek recourse against County for any breach or liability of that service provider. Notwithstanding anything to the contrary contained in this Lease, in no event shall County be liable for Tenant's loss or interruption of business or income (including without limitation, Tenant's consequential damages, lost profits or opportunity costs), or for interference with light or other similar intangible interests. Tenant shall immediately notify County in case of fire or accident in the Premises and of defects in any improvements or equipment within the Premises.

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

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

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

C. Waiver of Subrogation. County and Tenant each hereby waives all rights of recovery against the other on account of loss and damage occasioned to the Premises of such waiving Party to the extent that the waiving Party is entitled to proceeds for such loss and damage under any property insurance policies carried or otherwise required to be carried by this Lease; provided however, that the foregoing waiver shall not apply to the extent of Tenant's obligation to pay deductibles under any such policies and this Lease. By this waiver it is the intent of the Parties that neither County nor Tenant shall be liable to any insurance company (by way of subrogation or otherwise) insuring the other Party for any loss or damage insured against under any property insurance policies, even though such loss or damage might be occasioned by the negligence of such Party, its agents, employees, contractors or invitees.

23. HAZARDOUS MATERIALS (3.2 SR)

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A. Definition of Hazardous Materials. For purposes of this Lease, the term “**Hazardous Materials**” shall mean any hazardous or toxic substance, material, product, byproduct, or waste which is or shall become regulated by any governmental entity, including, without limitation, County, acting in its governmental capacity, the State of California or the United States government.

B. Use of Hazardous Materials. Tenant or Tenant’s employees, agents, independent contractors or invitees (collectively “**Tenant Parties**”) shall not cause or authorize any Hazardous Materials to be brought upon, stored, kept, used, generated, released into the environment or disposed of on, under, from or about the Premises (which for purposes of this clause shall include the subsurface soil and ground water). Notwithstanding the foregoing, Tenant and Tenant Parties may keep on or about the Premises small quantities of Hazardous Materials that are used in the ordinary, customary, and lawful cleaning of and business operations on the Premises. Said permitted Hazardous Materials shall be stored in a safe location and shall be disposed of in a manner provided by law.

C. Tenant Obligations. If the presence of any Hazardous Materials on, under or about the Premises caused or authorized by Tenant or Tenant Parties results in (i) injury to any person, (ii) injury to or contamination of the Premises (or a portion thereof), or (iii) injury to or contamination of any real or personal property wherever situated, Tenant, at its sole cost and expense, shall promptly take all actions necessary or appropriate to return the Premises to the condition existing prior to the introduction of such Hazardous Materials to the Premises and to remedy or repair any such injury or contamination. Without limiting any other rights or remedies of County under this Lease, Tenant shall pay the cost of any such cleanup or remedial work performed on, under, or about the Premises as required by this Lease or by applicable laws in connection with the removal, disposal, neutralization or other treatment of such Hazardous Materials caused or authorized by Tenant or Tenant Parties to be introduced on, under or about the Premises. Notwithstanding the foregoing, Tenant shall not take any remedial action in response to the presence, discharge or release, of any Hazardous Materials on, under or about the Premises caused or authorized by Tenant or Tenant Parties, or enter into any settlement agreement, consent decree or other compromise with any governmental or quasi-governmental entity without first obtaining the prior written consent of the Director, which consent shall not be unreasonably withheld, conditioned or delayed. All work performed or caused to be performed by Tenant as provided for above shall be done in good and workmanlike manner and in compliance with plans, specifications, permits and other requirements for such work approved by Director, which approval shall not be unreasonably withheld, conditioned or delayed.

24. BEST MANAGEMENT PRACTICES (3.3 N)

A. Tenant shall conduct operations under this Lease so as to assure that Tenant’s actions do not cause pollutants do not enter municipal storm drain systems which systems are comprised of, but are not limited to curbs and gutters that are part of the street systems (“**Stormwater Drainage System**”), and to ensure that Tenant’s actions do not cause pollutants to directly impact Receiving Waters (as used herein, “**Receiving Waters**” include, but are not limited to, rivers, creeks, streams, estuaries, lakes, harbors, bays and oceans) in violation of applicable law or regulations.

B. The Santa Ana and San Diego Regional Water Quality Control Boards have issued National Pollutant Discharge Elimination System (“**NPDES**”) permits (“**Stormwater Permits**”) to the County, and to the Orange County Flood Control District and cities within Orange County, as co-permittees (hereinafter collectively referred to as **County Parties**) which regulate the discharge of urban runoff from areas within the County, including the Premises leased under this Lease. The

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County Parties have enacted water quality ordinances that prohibit conditions and activities that may result in polluted runoff being discharged into the Stormwater Drainage System.

C. To assure compliance with the Stormwater Permits and water quality ordinances, the County have developed a Drainage Area Management Plan (“**DAMP**”) which includes a Local Implementation Plan (“**LIP**”) for each jurisdiction that contains Best Management Practices (“**BMP(s)**”) as provided in Exhibit C, and which may change from time to time in connection with changes to the MS4 permit requirements on the County, that Tenant’s using properties within Orange County must adhere to. As used herein, a BMP is defined as a technique, measure, or structural control that is used for a given set of conditions to manage the quantity and improve the quality of stormwater runoff in a cost effective manner. These BMPs are found within County’s LIP in the form of Model Maintenance Procedures and BMP Fact Sheets (the Model Maintenance Procedures and BMP Fact Sheets contained in the DAMP/LIP shall be referred to hereinafter collectively as “**BMP Fact Sheets**”) and contain pollution prevention and source control techniques to eliminate non-stormwater discharges and minimize the impact of pollutants on stormwater runoff.

D. BMP Fact Sheets that apply to uses authorized under this Lease include the BMP Fact Sheets that are attached hereto as Exhibit C. These BMP Fact Sheets may be modified during the term of the Lease in connection with changes to the MS4 permit requirements on the County; and County shall provide Tenant with any such modified BMP Fact Sheets. Tenant, its sub-Tenants, agents, contractors, representatives and employees and all persons authorized by Tenant to conduct activities on the Premises shall, throughout the term of this Lease, comply with the BMP Fact Sheets as they exist now or are modified in connection with changes to the MS4 permit requirements on the County, and shall comply with all other requirements of the Stormwater Permits, as they exist at the time this Lease commences or as the Stormwater Permits may be modified in connection with changes to the MS4 permit requirements on the County. Tenant agrees to maintain current copies of the BMP Fact Sheets with respect to the Premises throughout the term of this Lease. The BMPs applicable to uses authorized under this Lease must be performed as described within all applicable BMP Fact Sheets.

E. Tenant may propose alternative BMPs that meet or exceed the pollution prevention performance of the BMP Fact Sheets. Any such alternative BMPs shall be submitted to County for review and approval prior to implementation.

F. County may enter the Premises and/or review Tenant’s records at any reasonable time and upon reasonable prior written notice, to assure that activities conducted on the Premises comply with the requirements of this clause. Tenant may be required to implement a self-evaluation program to demonstrate compliance with the requirements of this clause.

G. Among other requirements, the industrial NPDES permit requires periodic stormwater inspections by the State and/or County OC Watersheds staff to ensure facility compliance, which may include annual inspections of the Premises, with follow up inspections as a result of observed violations requiring corrective actions.

H. The BMP’s shall stipulate the process for the Tenant to take corrective actions, and state the consequences of non-compliance or County options under the Lease to self-remedy the matter. The Santa Ana and San Diego Regional Water Quality Control Boards have established penalties/consequences for non-compliance and those are to be included in this Lease. County to have the option to terminate the Lease if the Tenant does not correct a non-compliance situation

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in a timely manner after written notice from County to Tenant notifying Tenant of such non-compliance situation, and the security deposit reflects this circumstance.

I. Reasonable Environmental Indemnification language may be added or amended from time to time if in response to changes to the MS4 permit requirements on the County.

J. Work activities are to be conducted in a controlled area where pollutants shall be contained and any heavy metals detected at significantly higher levels than the benchmarks set by the Regional Board shall be addressed. All applicable BMPs are to be properly implemented, including any and all future modifications, updates, or replacement BMPs that may be issued from time to time, shall be used by Tenant.

K. Site modifications, such as distinctly designated work areas with controls to prevent pollutants from escaping and wastewater drain, will be required to be segregated from stormwater drain.

L. In the event Tenant fails to comply with all applicable BMPs, County, in addition to any and all remedies available in Clause 30 (DEFAULTS AND REMEDIES), shall have the right to self-help remedies or terminate the Lease as follows:

1. Terminate the Lease due to non-compliance with the BMPs incorporated in the Lease and as BMPs may change from time to time if Tenant does not cure such non-compliance within ten (10) business days after written notice from County to Tenant notifying Tenant of the non-compliance, or;

2. Remedy a non-compliance situation with a chargeback to the Tenant for the cost. The details regarding notification, timeline, and procedure are to be drafted and mutually agreed upon by both Parties to ensure all water quality issues are addressed within the Lease. In the event the Tenant's BMP implementation is lacking or if the Tenant allows a prohibitive discharge to occur, then the Regional Board will only take enforcement action against County. Therefore, this Lease must establish a BMP compliance partnership with the Tenant and the Lease must ensure the protection of water quality is inherent in the Tenant's day-to-day operations.

25. BUILDING AND SAFETY REQUIREMENTS (3.4 SR)

During the Term and any Extended Term of this Lease, Tenant, at Tenant's sole cost, agrees to maintain the Premises in compliance with all applicable laws, rules, regulations, building codes, statutes, and orders, including but not limited to the California Building Code, Title 24, Seismic Code, Fire and Life Safety requirements and, if applicable, California Green Building Standard Code.

Included in this provision is compliance with the Americans with Disabilities Act ("ADA") and all other federal, state, and local codes, statutes, and orders relating to disabled access and all regulations issued by the U. S. Attorney General or other agencies under the authorization of the ADA. However, Tenant shall not be responsible for any ADA violations resulting from alterations made by County or the placement of fixtures or equipment by County.

Tenant shall use commercially reasonable efforts to comply with, and to repair and maintain the Premises as necessary for such compliance, as a "safe place of employment," as defined in the California Occupational Safety and Health Act (California Labor Code, Division 5, Part 1, Chapter 3, beginning with Section 6400) and the Federal Occupational Safety and Health Act, where the

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provisions of such Act exceed, or supersede, the California Act. County agrees to notify Tenant of any repair or maintenance necessary within the Premises to comply with such Act and if compliance is required of Tenant with respect to the particular repair or maintenance, Tenant agrees to diligently act to repair or maintain appropriately.

In the event Tenant neglects, fails, or refuses to comply with the foregoing requirements to the extent reasonably applicable to the Premises as aforesaid, following thirty (30) days after written notice from County to Tenant providing notice of such neglect, failure or refusal, County may, at County's sole option, cure any such failure by performance of any act, including payment of money, and add the cost thereof plus reasonable administrative costs (ten percent (10%)) to the Rent.

Tenant agrees to reimburse and indemnify, and defend County for any expenses incurred because of the failure of Tenant to comply with any and all such applicable laws, rules, regulations, building codes, statutes, and orders, including the costs of making any alterations, renovations, or accommodations required by the ADA, or any governmental enforcement agency, or any court, any and all fines, civil penalties, and damages awarded against County resulting from a violation or violations of the above-cited laws, rules, regulations, building codes, statutes, and orders and regulations, and all reasonable legal expenses incurred in defending claims made under the above-referenced laws, rules, regulations, building codes, statutes, and orders, including reasonable attorneys' fees.

26. DAMAGE TO OR DESTRUCTION OF PREMISES AND/OR TENANT IMPROVEMENTS (3.5 SR)

Premises. In the event of destruction of the Premises or in the event the Premises are declared unsafe or unfit for use or occupancy by a public entity with the authority to make and enforce such declaration, County shall have the right, but not the obligation, at County's expense, to rebuild, reconstruct and restore the Premises, excluding any Tenant Improvements and Tenant's personal property and trade fixtures, which shall be the responsibility of Tenant. Tenant understands and acknowledges that County shall be free to make such changes and modifications to the Premises as County deems appropriate in the exercise of its reasonable and good faith discretion. During any period when County determines in its reasonable and good faith discretion that there is substantial interference with Tenant's use of the Premises by reason of such casualty, the monthly Rent payable hereunder shall be temporarily abated in proportion to the degree of such substantial interference. With respect to damage or destruction which County elects to repair, Tenant waives and releases its rights under California Civil Code Sections 1932 (2) and 1933 (4).

Tenant Improvements. In the event of damage to or destruction of Tenant Improvements located within the Premises or in the event Tenant Improvements located within the Premises are declared unsafe or unfit for use or occupancy by a public entity with the authority to make and enforce such declaration, Tenant shall, within thirty (30) days, commence and diligently pursue to completion the repair, replacement, or reconstruction of Tenant Improvements to the same size as they existed immediately prior to the event causing the damage or destruction, as necessary to permit full use and occupancy of the Premises for the purposes required by the Lease. Repair, replacement, or reconstruction of Tenant Improvements within the Premises shall be accomplished in a manner and according to plans approved by the Director, which approval shall not be unreasonably withheld, delayed or conditioned, provided however that if the event causing the damage was an extraordinary occurrence not caused by Tenant (e.g. earthquake, hurricane, tornado, tsunami, explosion, act of terror, war, fire or other casualty beyond the reasonable control of Tenant), Tenant may elect not to so repair or replace such improvements, in its sole discretion (provided that if the improvements are

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not to be repaired or replaced, then they shall be placed into a safe condition or removed), and the Rent shall be reduced accordingly based upon the reduction in use.

County shall not be liable for any damage to Tenant Improvements or Tenant personal property or of others located on the Premises, nor for the loss of or damage to any property of Tenant or others by theft or otherwise. All property of Tenant kept or stored on the Premises shall be so kept or stored at the risk of Tenant, unless such damage is caused by County willful misconduct or gross negligence.

Notwithstanding the foregoing, should the Premises be substantially damaged (and not repaired by County) or the improvements be substantially damaged (and not repaired by Tenant) such that Tenant cannot make use of the Premises as contemplated by this Lease, Tenant shall have the right to terminate this Lease upon thirty (30) days' written notice to County.

27. ASSIGNMENT AND SUBLETTING (3.6 SR)

Any mortgage, pledge, hypothecation, encumbrance, transfer, lease, or assignment (hereinafter in this Clause referred to collectively as “**Encumbrance**”) of Tenant’s interest in the leasehold created by this Lease, or any part or portion thereof is prohibited without the prior written approval of County. Such written approval by County shall not be unreasonably withheld. County may reasonably withhold such approval. Any attempted Encumbrance without such prior written approval shall be null and void and shall confer no right, title, or interest in or to this Lease.

Subject to prior review and approval by County, Tenant may allow for the rental, licensing, permitting, or subletting, etc. of the Premises, when doing so results in providing for the uses permitted in Clause 3 (USE) above. However, Tenant shall remain subject to the terms and conditions of this Lease and any such rental, licensing, permitting, or subletting shall not relieve Tenant from complying, or causing the compliance, of Tenant’s obligations set forth herein.

Should County consent to any Encumbrance, such consent shall not constitute a waiver of any of the terms, covenants, or conditions of this Lease or be construed as County's consent to any further Encumbrance. Any document to mortgage, pledge, hypothecate, encumber, transfer, sublet, or assign the Premises or any part thereof shall not be inconsistent with the provisions of this Lease and in the event of any such inconsistency, the provisions of this Lease shall control.

Tenant may, with prior notice, engage the services of a professional management company and such employment shall not be construed to be an assignment or transfer of the Lease. Any license, sublease, permit, etc. issued by Tenant shall be consistent with and subject to the terms and conditions of this Lease and shall be subject to review and approval by the County, whose approval shall not be unreasonably withheld. Each license, sublease, permit, etc. issued by Tenant shall require adequate insurance, as determined by the County, with the County of Orange named as additional insured, and shall indemnify the County of Orange, its elected officials, agents, officers, and employees.

In connection with such dedication of twelve (12) side ties to the City as addressed in Section 64, below, if the City accepts the dedication, then the County and City will execute a separate lease in a form substantially the same as this Lease, together with any modifications only to the extent mutually approved by County and the City (the “**City Lease**”), the form of which City Lease shall be agreed upon and approved by each of the City and the County on or before the Effective Date, except the premises under such City Lease shall only be for the City’s use.

28. TAXABLE POSSESSORY INTEREST ASSESSMENTS (3.7 SR) Standard Revenue ~~456~~ 451

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Should this Lease create any possessory interest, which is subject to the payment of taxes levied on such interest, it is understood and agreed that all assessments associated with said taxable possessory interest shall be the full responsibility of the Tenant, and Tenant shall cause said assessments to be paid promptly.

29. ESTOPPEL CERTIFICATE (3.8 SR)

County agrees within fifteen (15) days following request by Tenant, to provide to Tenant a certificate on the County's standard form executed on behalf of County confirming, among other things, that this Lease is in full force and effect, the date to which all Rent has been paid by Tenant, that Tenant is not in default under this Lease, and such other matters as may be reasonably requested by Tenant.

30. DEFAULTS AND REMEDIES (3.9 SR)

A. **Tenant Default:** Tenant shall be deemed in default of this Lease if: a) in the event of any monetary breach of this Lease by Tenant, County shall notify Tenant in writing of such breach, and Tenant shall have three (3) days from such notice in which to cure said breach or b) in the event of any non-monetary breach of this Lease, Tenant fails within fifteen (15) days after receipt by Tenant of written notice specifying wherein such obligation of Tenant has not been performed; provided however, that if the nature of Tenant's obligation is such that more than fifteen (15) days after such notice are reasonably required for its performance, then Tenant shall not be in breach of this Lease if performance is commenced as soon as reasonably possible within such fifteen (15) day period and thereafter diligently pursued to completion (each, a "**Tenant Default**").

B. **County Default:** County shall be deemed in breach of this Lease if: a) in the event of any monetary breach of this Lease by County, Tenant shall notify County in writing of such breach, and County shall have ten (10) days from such notice in which to cure said breach or b) in the event of any non-monetary breach of this Lease, County fails within fifteen (15) days after receipt by County of written notice specifying wherein such obligation of County has not been performed; provided however, that if the nature of County's obligation is such that more than fifteen (15) days after such notice are reasonably required for its performance, then County shall not be in breach of this Lease if performance is commenced as soon as reasonably possible within such fifteen (15) day period and thereafter diligently pursued to completion (each, a "**County Default**").

C. **Tenant Remedies:** Tenant's sole remedy for a County Default shall be against the County's interest in the Premises (including, without limitation, proceeds from the rental or sale of the Premises, condemnation awards to which County is entitled under the terms of the Lease and proceeds from insurance policies that County maintains under the Lease) and includes only the right to damages and/or injunctive relief (collectively, "**Tenant Remedies**"), and in no event shall Tenant have the right to terminate this Lease or to rent abatement hereunder.

D. **County Remedies:** If the Tenant Default is a result of a monetary breach by Tenant in the payment of the Rent or Additional Rent, pursuant to Clause 9 (RENT), County may, at the County's sole discretion, a) declare all Rent payments to the end of Tenant's current fiscal year to be due, including any delinquent rent from prior budget years or b) terminate the Lease. County's remedies as the result of Tenant Default for monetary or non-monetary breach shall be the right to damages, injunctive relief, and/or any other rights at law or in equity. No delay or omission of County to exercise any right or remedy shall be construed as a waiver of such right or remedy or of any Tenant Default hereunder.

31. LABOR CODE COMPLIANCE (4.0 SR)

Tenant acknowledges and agrees that any and all improvements or modifications performed by Tenant could be governed by, and if so, shall be performed in accordance with, the provisions of Article 2 of Chapter 1, Part 7, Division 2 of the Labor Code of the State of California (Sections 1770, *et seq.*), only as applicable. These provisions may be applicable to improvements or modifications performed by County costing more than \$1,000, unless an exception applies, including but not limited to the exception to the definition of public works under § 1720.2.

Pursuant to the provisions of Section 1773 of the Labor Code of the State of California, the Orange County Board of Supervisors has obtained the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality applicable to this Lease for each craft, classification, or type of workman needed to execute the aforesaid improvements or modifications from the Director of the State Department of Industrial Relations. Copies of said prevailing wage rates may be obtained from the State of California, Department of Industrial Relations or Chief Real Estate Officer.

If the aforementioned Labor Code sections apply to the construction, alteration, repair, or maintenance of the Tenant's improvements or modifications, then Tenant hereby agrees to pay or cause its contractors and/or subcontractors to pay said prevailing wage rates at all times for all improvements or modifications to be completed for Tenant within the Premises. Tenant herein agrees that Tenant shall post, or cause to be posted, a copy of the most current, applicable prevailing wage rates at the site where the improvements or modifications are performed.

Prior to Tenant's commencement of any improvements or modifications to which any prevailing wage requirements may apply, Tenant shall provide Director with the applicable certified payroll records for all workers that will be assigned to the improvements or modifications, to the extent providing Director with such information will not violate privacy laws and protections to which such workers are entitled. Subject to the foregoing limitation, said payroll records shall contain, but not be limited to, the complete name, address, telephone number, social security number, job classification, and wage rate for each worker. Tenant shall provide Director, bi-weekly updated, certified payroll records for all workers that include, but not be limited to, the weekly hours worked, hourly wage rates, and total wages paid.

Except as expressly set forth in this Lease, nothing herein is intended to grant authority for Tenant to perform improvements or modifications on space currently leased by County or for which County has entered into a lease or lease amendment.

32. RIGHT TO WORK AND MINIMUM WAGE LAWS (4.1 SR)

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

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

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servicing the Premises on behalf of the Tenant also pay their employees no less than the greater of the Federal or California Minimum Wage.

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

33. SIGNAGE (4.2 SR)

Subject to prior review and approval by County, Tenant may install and maintain signs or displays on the Premises. Such signage must comply with all applicable laws and zoning and site plan requirements. Unapproved signs, awnings, banners, flags, etc., may be removed by County without prior written notice to Tenant provided a reasonable period of time prior to any such proposed removal.

34. AUTHORITY (4.3 SR)

The Parties executing this Lease on behalf of County or Tenant warrant that they have the power and authority to bind County or Tenant to this Lease.

35. LEASE ORGANIZATION (4.4 SR)

The various headings in this Lease, the numbers thereof, and the organization of the Lease into separate sections and paragraphs are for purposes of convenience only and shall not be considered otherwise.

36. SUCCESSORS IN INTEREST (4.5 SR)

Unless otherwise provided in this Lease, the terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators, and assigns of all the Parties hereto, all of whom shall be jointly and severally liable hereunder.

37. AMENDMENTS (4.6 SR)

This Lease sets forth the entire agreement between Lessor and County and any modification must be in the form of a written amendment.

38. PARTIAL INVALIDITY (4.7 SR)– *Intentionally Omitted*

39. WAIVER OF RIGHTS (4.8 SR)

The failure of Tenant or County to insist upon strict performance of any of the terms, conditions, and covenants in this Lease shall not be deemed a waiver of any right or remedy that Tenant or County may have, and shall not be deemed a waiver of any right or remedy for a subsequent breach or default of the terms, conditions, and covenants herein contained. Any waiver, in order to be effective, must be signed by the Party whose right or remedy is being waived.

40. HOLDING OVER (4.9 SR)

In the event Tenant shall continue in possession of the Premises after the term of this Lease, such possession shall not be considered a renewal of this Lease but a tenancy from month to month

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and shall be governed by the conditions and covenants contained in this Lease, EXCEPT that monthly Rent shall be equal to one hundred and fifty percent (150%) of the Rent due during the last month of the Term or Extended Term.

41. EARTHQUAKE SAFETY (5.0 SR)

Tenant accepts the Premises “as is” and “where is” and County offers no warranties or representations whatsoever that the Premises is or has been in compliance with applicable seismic safety regulations and building codes at the time of construction. All such seismic, safety and building regulation compliance is the responsibility of the Tenant.

42. QUIET ENJOYMENT (5.1 SR)

County agrees that, subject to the terms, covenants and conditions of this Lease, Tenant may, upon observing and complying with all terms, covenants and conditions of this Lease, peaceably and quietly occupy the Premises.

43. GOVERNING LAW AND VENUE (5.2 SR)

This agreement has been negotiated and executed in the State of California and shall be governed by and construed under the laws of the State of California. In the event of any legal action to enforce or interpret this agreement, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the Parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure section 394.

44. ATTORNEYS’ FEES (5.3 SA)

In the event of a dispute between Tenant and County concerning claims arising out of this Lease, or in any action or proceeding brought to enforce or interpret any provision of this Lease or where any provision hereof is validly asserted as a defense, each Party shall bear its own attorneys’ fees and costs.

45. TIME OF ESSENCE (5.4 SR)

Time is of the essence of this Lease. Failure to comply with any time requirements of this Lease shall constitute a material breach of this Lease.

46. INSPECTION OF PREMISES BY A CERTIFIED ACCESS SPECIALIST (5.5 SR)

A Certified Access Specialist (“CASp”) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or Tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or Tenant, if requested by the lessee or Tenant. The Parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the Premises.

Pursuant to California Civil Code 1938, County hereby represents that the Premises has not
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undergone an inspection by a certified access specialist and no representations are made with respect to compliance with accessibility standards. If it is determined during this tenancy that a violation of handicapped access laws (including the Americans with Disabilities Act) exists at the Premises, Tenant shall correct such non-compliance at Tenant's cost.

47. FORCE MAJEURE (5.6 SR)

For purposes of this Lease, the term "**Force Majeure**" means any of the following events which are beyond the control of either Party: act of God, unavailability of equipment or materials (but only if such equipment and materials were ordered in a timely fashion), enemy or terrorist act, act of war, riot or civil commotion, strike, lockout or other labor disturbance, fire, earthquake, explosion, governmental delays (including nonstandard delays in issuance of any permit or other necessary governmental approval or the scheduling of any inspections or tests), nonstandard delays by third party utility providers, or any other matter of any kind or character beyond the reasonable control of the Party delayed or failing to perform under this Lease despite such Party's reasonable efforts to fulfill the obligation. "**Best Efforts**" includes anticipating any potential force majeure event and addressing the effects of any such event (a) as it is occurring and (b) after it has occurred, to prevent or minimize any resulting delay to the greatest extent possible. Force Majeure shall not include inability to obtain financing or other lack of funds. Lessor and County shall be excused for the period of any delay in the performance of any obligation hereunder when such delay is occasioned by causes beyond its control.

48. CONDEMNATION (5.7 SR)

If the Premises or any portion thereof are taken under the power of eminent domain or sold under the threat of the exercise of said power (collectively, "**Condemnation**"), this Lease shall terminate as to the part taken as of the date the condemning authority takes title or possession, whichever first occurs. If all or a material portion of the rentable area of the Premises are taken by Condemnation, Tenant may, at Tenant's option, to be exercised in writing within ten (10) days after County shall have given Tenant written notice of such taking (or in the absence of such notice, within ten (10) days after the condemning authority shall have taken possession) terminate this Lease as of the date the condemning authority takes such possession. If Tenant does not elect to terminate this Lease in accordance with the foregoing, this Lease shall remain in full force and effect as to the portion of the Premises remaining, except that the rent shall be reduced in proportion to the reduction in utility of the Premises caused by such Condemnation. Condemnation awards and/or payments shall be apportioned between County and Tenant pursuant to each of their rights under applicable law. Tenant hereby waives any and all rights it might otherwise have pursuant to Section 1265.130 of the California Code of Civil Procedure, or any similar or successor Laws.

49. CONSENT OR APPROVAL (5.8 SR)

Unless expressly stated otherwise, where the consent or approval of a Party is required, such consent or approval will not be unreasonably withheld, conditioned or delayed.

50. UNENFORCEABLE PROVISIONS (5.9 SR)

If any paragraph or clause hereof shall be determined illegal, invalid or unenforceable, it is the express intention of the Parties hereto that the remainder of the Lease shall not be affected thereby, and it is also the express intentions of the Parties hereto that in lieu of each paragraph or clause of this Lease which may be determined to be illegal, invalid or unenforceable, there may be added as

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a part of this Lease a paragraph or clause as similar in terms to such illegal or invalid or unenforceable paragraph or clause as may be possible and may be legal, valid and enforceable.

51. CONTROL OF HOURS, PROCEDURES, AND PRICES (6.0 SR)

Tenant shall at all times maintain a written schedule delineating the operating hours and operating procedures for each business operation on or from the Premises. A schedule of prices charged for all goods and/or services supplied to the public on or from the Premises shall also be maintained.

Tenant agrees that when alternate forms of packaging are available, only items packaged in a manner most compatible with the goals of reducing litter and preserving the environment shall be sold. Sale of beverages in pop-top cans or in non-returnable metal or glass containers shall not be permitted. Recyclable, push-top type beverage containers may be permitted subject to reasonable approval by the Director.

Upon written request, Tenant shall furnish the Director a copy of said schedules and procedures. Should Director, upon review and conference with Tenant, decide any part of said schedules or procedures is not justified with regard to fairly satisfying the needs of the public, Tenant, upon written notice from Director, shall modify said schedules or procedures to the reasonable satisfaction of said Director.

Primary consideration shall be given to the public's benefit in implementing this clause. All prices charged for goods and/or services supplied to the public on or from the Premises shall be fair and reasonable, based upon the market prices charged by other competing and/or comparable businesses.

Tenant agrees that it will operate and manage the services and facilities offered in a competent and efficient manner at least comparable to other well managed operations of similar type.

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

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

Tenant shall maintain a close check over attendants and employees to insure the maintenance of a high standard of service to the public. Tenant shall take prompt corrective action with, including replacing, any employee whose conduct is detrimental to the best interests of the public.

52. LIMITATION OF THE LEASEHOLD (6.1 SR)

This Lease and the rights and privileges granted Tenant in and to the Premises are subject to all covenants, conditions, restrictions, and exceptions of record or apparent. Nothing contained in this Lease or in any document related hereto shall be construed to imply the conveyance to Tenant of rights in the Premises which exceed those owned by County, or any representation or warranty, either express or implied, relating to the nature or condition of the Premises or County's interest therein. Tenant has accepted the Premises in its "as is" / "where is" condition.

53. PERMITS AND LICENSES (6.2 SR)

Tenant shall be required to obtain any and all approvals, permits and/or licenses which may be required in connection with the operation of the Premises as set out herein. No permit, approval, or consent given hereunder by County, in its governmental capacity, shall affect or limit Tenant's obligations hereunder, nor shall any approvals or consents given by County, as a party to this Lease, be deemed approval as to compliance or conformance with applicable governmental codes, laws, rules, or regulations.

54. PAYMENT CARD COMPLIANCE (6.3 SR)

Should Tenant conduct credit/debit card transactions in conjunction with their business with the County or on behalf of the County, Tenant covenants and warrants that it is currently Payment Card Industry Data Security Standard ("PCI DSS") and Payment Application Data Security Standard ("PA DSS") compliant and will remain compliant during the entire duration of this Lease. Tenant agrees to immediately notify County in the event Tenant should ever become non-compliant, and will take all necessary steps to return to compliance and shall be compliant within ten (10) days of the commencement of any such interruption.

55. NONDISCRIMINATION (6.4 SR)

Tenant agrees not to discriminate against any person or class of persons by reason of sex, age, race, color, creed, physical handicap, or national origin in employment practices and in the activities conducted pursuant to this Lease. Tenant shall make its accommodations and services available to the public on fair and reasonable terms.

56. CONDITION OF PREMISES UPON TERMINATION (6.5 SR)

Except as otherwise agreed to herein or in subsequent approval in writing by County, upon termination of this Lease, Tenant shall redeliver possession of said Premises to County in substantially the same condition that existed immediately prior to Tenant's entry thereon, reasonable wear and tear, flood, earthquakes, war, and any act of war, excepted. It is agreed that any Tenant Improvement on the Premises not otherwise removed or required to be removed by Tenant pursuant to this Lease shall be considered the personal property of County. Pursuant to Section 18 above in connection with termination of the Lease, County will notify Tenant if any such Tenant Improvements need to be removed. References to the "termination of the Lease" in this Lease shall include termination by reason of the expiration of the lease term.

57. DISPOSITION OF ABANDONED PERSONAL PROPERTY (6.6 SR)

If Tenant abandons or quits the Premises or is dispossessed thereof by process of law or otherwise, title to any personal property belonging to and left on the Premises fifteen (15) days after written notice of such personal property remaining upon the Premises shall, at County's option, be deemed to have been transferred to County. County shall have the right to remove and to dispose of such property without liability therefor to Tenant or to any person claiming under Tenant, and shall have no need to account therefor.

58. QUITCLAIM OF TENANT'S INTEREST UPON TERMINATION (6.7 SR)

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Upon termination of this Lease for any reason, including but not limited to termination because of Tenant Default, Tenant shall execute, acknowledge, and deliver to County, within thirty (30) days after receipt of written demand therefor, a good and sufficient deed whereby all right, title, and interest of Tenant in the Premises is quitclaimed to County. Should Tenant fail or refuse to deliver the required deed to County, County may prepare and record a notice reciting the failure of Tenant to execute, acknowledge, and deliver such deed and said notice shall be conclusive evidence of the termination of this Lease and of all rights of Tenant or those claiming under Tenant in and to the Premises.

59. PUBLIC RECORDS (6.8 SR)

Any and all written information submitted to and/or obtained by County from Tenant or any other person or entity having to do with or related to this Lease and/or the Premises, either pursuant to this Lease or otherwise, at the option of County, may be treated as a public record open to inspection by the public pursuant to the California Records Act (Government Code Section 6250, et seq.) as now in force or hereafter amended, or any Act in substitution thereof, or otherwise made available to the public and Tenant hereby waives, for itself, its agents, employees, subtenants, and any person claiming by, through or under Tenant, any right or claim that any such information is not a public record or that the same is a trade secret or confidential information and hereby agrees to indemnify and hold County harmless from any and all claims, demands, liabilities, and/or obligations arising out of or resulting from a claim by Tenant or any third party that such information is a trade secret, or confidential, or not subject to inspection by the public, including without limitation reasonable attorneys' fees and costs.

60. RELATIONSHIP OF PARTIES (6.9 SR)

The relationship of the Parties hereto is that of Lessor and Tenant, and it is expressly understood and agreed that County does not in any way or for any purpose become a partner of or a joint venturer with Tenant in the conduct of Tenant's business or otherwise, and the provisions of this Lease and the agreements relating to rent payable hereunder are included solely for the purpose of providing a method by which rental payments are to be measured and ascertained.

61. NO BROKERS USED (7.0 SR)

Neither Party has employed any broker or finder or incurred any liability for any brokerage fee, commission, finder's fee, or reimbursement expenses in connection with the transactions contemplated by this Lease.

62. NOTICES (7.1 SR)

All written notices pursuant to this Lease shall be addressed as set forth below or as either Party may hereafter designate by written notice and shall be deemed received upon personal delivery, delivery by electronic mail if an email address is set forth below, one (1) business day after deposit with a nationally recognized overnight courier service for one day delivery, or seventy-two (72) hours after deposit in the United States Mail, registered or certified mail, return receipt requested.

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To: Tenant

To: County

The Irvine Company
550 Newport Center Drive
Newport Beach, CA 92660

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

With a copy to:

With a copy to:

The Irvine Company
dba California Recreation Company
1137 Bayside Drive
Newport Beach, CA 92625

County of Orange, CEO Real Estate
Chief Real Estate Officer
County Administration North
400 Civic Center Drive – 5th Floor
Santa Ana, CA 92701

Insurance:

All insurance certificates and insurance related correspondence shall be emailed or mailed to the following with appropriate Project name, lease/license/contract # to:

insurance.ceore@ocgov.com.

Any and all insurance related mail shall include the Lease number and project name and Lessor shall mail all insurance certificates and insurance-related correspondence to: insurance.ceore@ocgov.com.

63. ATTACHMENTS TO LEASE (7.2 SR)

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

1. EXHIBITS

- Exhibit A – Description of Premises
- Exhibit B – Depiction of Premises
- Exhibit C – Best Management Practices

64. DEDICATION OF SECOND BOAT BERTHING FACILITY. (N)

Tenant shall commence and shall endeavor to complete the construction of the second boat-berthing facility as described in Clause 3 (USE) substantially at the same time as the completion of the first commercial boat berthing facility. Within thirty (30) days of completing the second boat berthing facility, Tenant intends to dedicate the second boat berthing facility to the City. City must formally accept the Tenant’s dedication of the second boat berthing facility. Completion of boat berthing facilities shall be evidenced by the appropriate governmental agency issuing a Certificate of Occupancy.

Upon acceptance of such dedication by the City, City and the County shall enter into the City Lease, without any need to amend this Lease, and the Premises shall no longer include the second

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boat-berthing facility or the improvements contained therein, and Tenant shall not have any further liability with respect to the same, and in which event there shall not be any alteration of the amount of the Security Deposit or monthly Rent under this Lease. If requested in writing by either Party, the Parties shall execute an amendment to this Lease, with the Chief Real Estate Officer executing on behalf of the County, to evidence the removal of the second boat-berthing facility and the improvements contained therein from the Premises under this Lease.

Should (i) Tenant fail to offer to dedicate the second boat berthing facility to City or (ii) City not accept the dedication of the second boat berthing facility within ninety (90) days following Tenant's offer of dedication, then such portion of the Premises shall remain subject to this Lease as a portion of the Premises hereunder until the City accepts the dedication thereof.

[signatures on following page]

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

APPROVED AS TO FORM:

OFFICE OF COUNTY COUNSEL
ORANGE COUNTY, CALIFORNIA

By: _____
Deputy

TENANT

THE IRVINE COMPANY LLC,
a Delaware limited liability company

By: _____
Roger Ploum
President, Corporate Business Properties

By: _____
Justin Kim
VP Finance & Administration, Corporate
Business Properties

COUNTY

COUNTY OF ORANGE

Chief Real Estate Officer, Orange County, California

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EXHIBIT A

LEGAL DESCRIPTION

Project: Lower Newport Bay Tideland Leases
Facility No.: HA55D

Parcel No.: 451

That portion of the tide and submerged lands of Newport Bay, in the City of Newport Beach, County of Orange, State of California, described in the decree of the Superior Court of the State of California, in and for the County of Orange, in Case No. 20436, recorded May 6, 1926 in Book 651, Page 72 of Deeds, in the office of the County Recorder of said county, described as follows:

Beginning at the angle point shown as Station No. 11 in the "Line of Mean High Tide" on Tract No. 5361, filed in Book 190, Pages 47 and 48 of Miscellaneous Maps, in said County Recorder's Office; thence South 08°14'30" West, 31.89 feet along said Line of Mean High Tide to its intersection with a line shown as a Pierhead Line on said Map, said Pierhead Line shown as being parallel with and 103.00 feet southerly of that certain course in the southerly line of said Tract shown as "N 87°18'31" E, 742.23'" on said Map; thence leaving said Line of Mean High Tide, South 87°18'31" West, 55.94 feet along said Pierhead Line to its intersection with a line shown as the "U.S. Pierhead Line" on said Map, thence along said U.S. Pierhead Line, North 08°14'30" East, 49.06 feet and North 24°56'00" East, 86.15 feet; thence leaving said U.S. Pierhead Line, North 87°18'31" East, 61.50 feet to said Line of Mean High Tide; thence South 24°56'00" West, 105.18 feet along said Line of Mean High Tide to the POINT OF BEGINNING.

Containing 0.171 Acres, more or less.

See EXHIBIT B attached and by reference made a part.

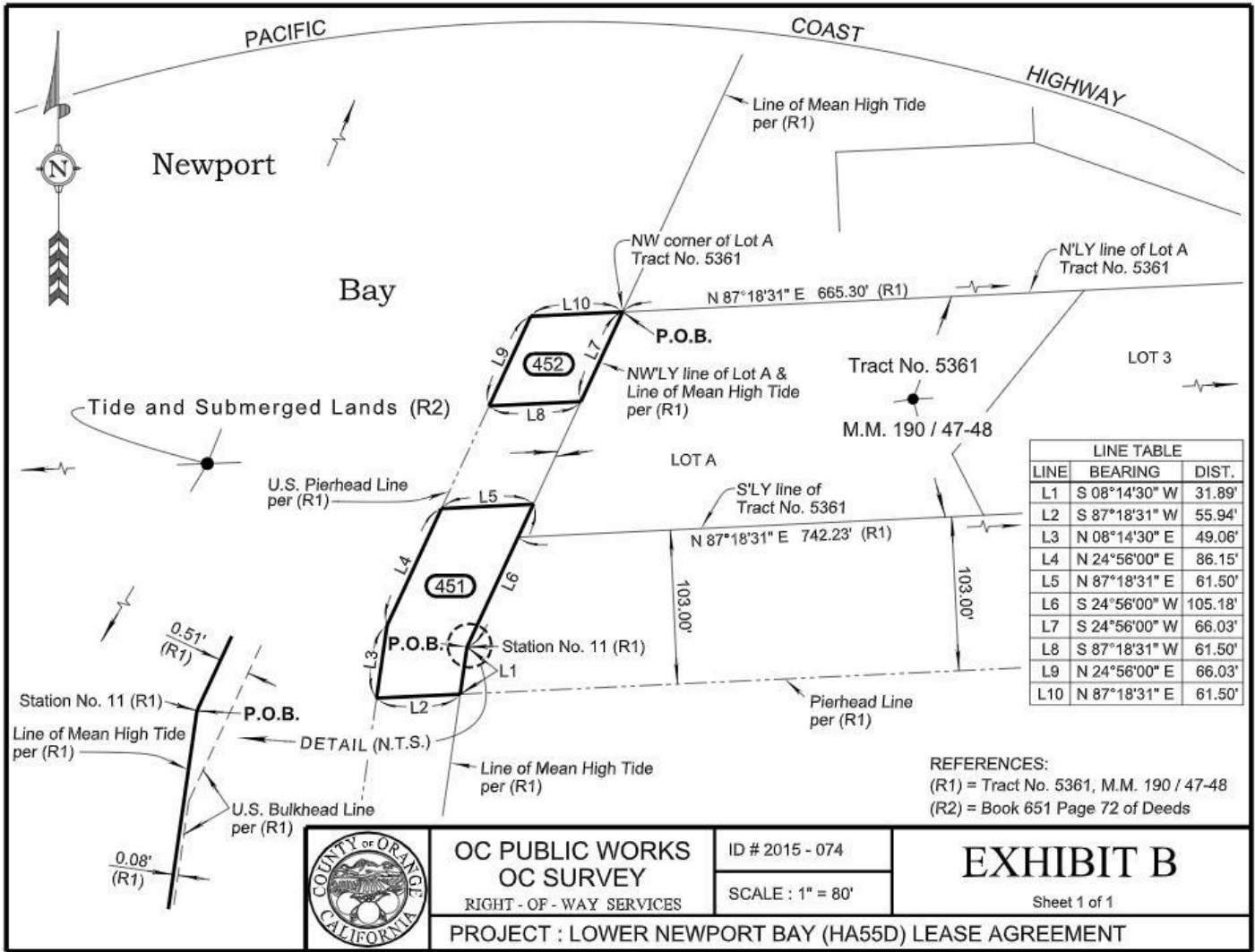
APPROVED
Kevin Hills, County Surveyor, L.S. 6617


By: Raymond J. Rivera, L.S. 8324

Date: 09-12-2022



EXHIBIT B



OC PUBLIC WORKS
 OC SURVEY
 RIGHT - OF - WAY SERVICES

ID # 2015 - 074
 SCALE : 1" = 80'

EXHIBIT B
 Sheet 1 of 1

PROJECT : LOWER NEWPORT BAY (HA55D) LEASE AGREEMENT

EXHIBIT C

Best Management Practices ("BMPs" Fact Sheets)

Tenant shall be responsible for implementing and complying with all BMP Fact Sheet requirements that apply to this Tenant's operations. Tenant is to be aware that the BMP clause within this Lease, along with all related BMP Exhibits, may be revised, and may incorporate more than what is initially being presented in this Lease.

Suggested BMPs Fact Sheets may include, but may not be limited to, the following list shown below and can be found at OC Watersheds BMP Industrial/Commercial Business Activities webpage: <http://ocwatersheds.com/documents/bmp> (website may change from time to time):

- IC3 Building Maintenance
- IC4 Carpet Cleaning
- IC5 Concrete & Asphalt Production, Application, & Cutting
- IC6 Contaminated or Erodible Surface Areas
- IC7 Landscape Maintenance
- IC9 Outdoor Drainage from Indoor Areas
- IC10 Outdoor Loading/Unloading of Materials
- IC11 Outdoor Process Equipment Operations & Maintenance
- IC12 Outdoor Storage of Raw Materials, Products, & Containers
- IC13 Over Water Activities
- IC14 Painting, Finishing, & Coatings of Vehicles, Boats, Buildings, & Equipment
- IC15 Parking & Storage Area Maintenance
- IC17 Spill Prevention & Cleanup
- IC21 Waste Handling & Disposal
- IC22 Eating & Drinking Establishments
- IC23 Fire Sprinkler Testing/Maintenance
- IC24 Wastewater Disposal Guidelines