



GROUND LEASE

THIS GROUND LEASE (“**Lease**”) is made and effective as of the ____ day of _____, or the date both Parties execute this Agreement, whichever is later (“**Effective Date**”), by and between the ORANGE COUNTY FLOOD CONTROL DISTRICT, a body corporate and politic (hereinafter called “**District**”) and SAN BERNARDINO COUNTY, a political subdivision of the State of California (hereinafter called “**Tenant**” or “**Lessee**”) (each a “**Party**” and collectively, the “**Parties**”).

Recitals

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

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

ARTICLE I DEFINITIONS

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

1.1.1. “**Additional Rent**” is defined in Section 3.5 below.

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

1.1.3. “**Annual Rent**” means the annual payment of rent, due hereunder as defined in Section 3.1 below.

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

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

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

1.1.7. **“City”** means the City of Chino, State of California.

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

1.1.9. **“Commencement Date”** is defined in Section 2.2.1 below.

1.1.10. **“County”** means the County of Orange, a political subdivision of the State of California, and shall include its Board of Supervisors, its elected and appointed officials, officers, agents, employees, and contractors.

1.1.11. **Reserved.**

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

1.1.13. **“District’s Fee Interest”** means all of District’s interest in the Property, the Premises, this Lease and District’s reversionary interest in the Premises and improvements.

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

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

1.1.16. **“Event of Default”** is defined in Section 9.1 below.

1.1.17. **“Force Majeure Event”** is defined in Article XII below.

1.1.18. **“Hazardous Material(s)”** is defined in Section 4.5.1 below.

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

1.1.20. **“Laws”** means all laws, codes, ordinances, statutes, orders and regulations now or hereafter made or issued by any federal, state, county, local or other governmental agency or entity that are binding on and applicable to the Premises and improvements, including any encroachment permits required by the Orange County Flood Control District and the Orange County Flood Control Act set forth in California uncoded Water Code, Act 5682, section 2.

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

1.1.22. “**Lease Year**” means each and every period of twelve (12) consecutive months commencing upon the Effective Date and each and every subsequent anniversary thereof.

1.1.23. “**Operating Costs**” shall have the meaning set forth in Section 3.5.5.

1.1.24. “**Option**” means the Tenant’s option to lease the Premises granted pursuant to the Option Agreement.

1.1.25. “**Option Agreement**” has the meaning set forth in the Recitals to this Lease.

1.1.26. “**Person**” includes firms, associations, partnerships, joint ventures, trusts, corporations and other legal entities, including public or governmental bodies, agencies or instrumentalities, as well as natural persons.

1.1.27. “**Premises**” means that certain real property containing approximately 65.64 acres with an address of 6875 Pine Ave. and 7065 Pine Ave. in the City of Chino, together with all easements, rights and privileges appurtenant thereto, to be leased to Tenant pursuant to this Lease. The legal description of the Premises is attached hereto as Exhibit A. A rendering showing the approximate boundaries of the Premises is attached hereto as Exhibit A-1.

1.1.28. “**Rent**” means and includes the Annual Rent.

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

1.1.30. “**Taxes**” has the meaning set forth in Section 3.5.2.

1.1.31. “**Term**” means the full term of this Lease set forth in Section 2.2.1.

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

1.1.33. “**Utility Costs**” has the meaning set forth in Section 3.5.6.

ARTICLE II

LEASE OF PROPERTY

2.1 **Lease of Premises.** District hereby leases an exclusive right to possess and use the Premises to Tenant for the Term (except as expressly set forth herein), and Tenant hereby leases an exclusive right to possess and use the Premises from District for the Term (except as expressly set forth herein), subject to the terms and conditions of this Lease.

2.2 Term.

2.2.1. **Term.** The “**Term**” of this Lease shall be ten (10) years from the Commencement Date, unless sooner terminated as a result of non-compliance with any term or condition of this Lease as hereinafter provided. The “**Commencement Date**” shall be the date of the completion of the following

items: (i) Lessee has substantially completed any improvements desired in accordance with improvement specifications approved by the District and Lessee, subject to minor punch list items; (ii) Lessee's receipt from local governing authority of a final certificate of occupancy (or similar) for the Premises; and (iii) preliminary written acceptance by District of the intended improvements for Lessee's intended use. The Commencement Date shall be confirmed in writing by the Chief Real Estate Officer.

2.2.2. Options to Extend. Tenant shall have two (2), ten (10) year options to extend the Term of this Lease. Tenant shall provide its notice to the District expressing its intent to exercise the Lease extension no more than twelve (12) months, and no less than nine (9) months, prior to the expiration of the prior Lease term, or during any holdover period permitted by District. The first option to extend the lease terms (years 11 through 20) shall be automatic after the required notice to extend so long as Tenant is not in default of this lease. The second option to extend the lease terms (years 21 through 30) shall be automatic after the required notice to extend so long as the following shall occur: (i) Tenant is not in default of this Lease, and (ii) Tenant has made a total capital investment of \$2,000,000 to the Premise from the date of the Option Agreement through year 20 of the Lease Term.

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

2.4 Condition of the Premises. **TENANT HEREBY ACCEPTS THE PREMISES "AS IS", AND ACKNOWLEDGES THAT THE PREMISES IS IN SATISFACTORY CONDITION. DISTRICT MAKES NO WARRANTY, IMPLIED OR OTHERWISE, AS TO THE SUITABILITY OF THE PREMISES FOR TENANT'S PROPOSED USES. DISTRICT MAKES NO COVENANTS OR WARRANTIES, IMPLIED OR OTHERWISE, RESPECTING THE CONDITION OF THE SOIL, SUBSOIL, OR ANY OTHER CONDITIONS OF THE PREMISES OR THE PRESENCE OF HAZARDOUS MATERIALS, NOR DOES DISTRICT COVENANT OR WARRANT, IMPLIED OR OTHERWISE, AS TO THE SUITABILITY OF THE PREMISES FOR THE PROPOSED DEVELOPMENT, CONSTRUCTION OR USE BY TENANT. DISTRICT SHALL NOT BE RESPONSIBLE FOR ANY LAND SUBSIDENCE, SLIPPAGE, SOIL INSTABILITY OR DAMAGE RESULTING THEREFROM. DISTRICT SHALL NOT BE REQUIRED OR OBLIGATED TO MAKE ANY CHANGES, ALTERATIONS, ADDITIONS, IMPROVEMENTS OR REPAIRS TO THE PREMISES. TENANT SHALL RELY ON ITS OWN INSPECTION AS TO THE SUITABILITY OF THE PREMISES FOR THE INTENDED USE. TENANT SHALL NOT BE RESPONSIBLE FOR THE EXISTENCE OF ANY HAZARDOUS MATERIALS LOCATED IN, ON, UNDER, OR ABOUT THE PREMISES, OCCURRING: (I) PRIOR TO THE EFFECTIVE DATE, AND (II) DURING THE LEASE TERM TO THE EXTENT NOT DIRECTLY AND SOLELY CAUSED BY TENANT.**

TENANT INITIALS: _____

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

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

ARTICLE III RENT

3.1 **Annual Rent.** In consideration for administering and operating the Premises as public open space for the benefit of the public, at Tenant's sole cost and expense the annual rent shall be \$31,507.20 per year (\$2,625.60 per month) (the "**Annual Rent**") conditioned on the use being exclusively for the approved Use set forth in Section 4.1. Rent shall be increased at a 3% interest rate compounded annually.

3.2 **Percentage Rent.** In addition, the Tenant shall pay District twenty percent (20%) of the Gross Receipts, defined below, generated from the annual revenue produced directly from the on-site use of the Premises once the gross revenue exceeds the monthly Base Rent ("**Annual Percentage Rent**"). The District shall be entitled to a yearly accounting for the revenue generated by the on-site use of the Premises and events hosted by the Tenant on the adjacent Tenant property located within the Prado Regional Park that utilize the Premises and is entitled to audit Tenant's accounting of this subject matter, in addition to audit rights regarding revenue generation on the Premises. The Parties shall meet and confer, at the County's request, regarding any such revenue generation to ensure the District receives its agreed upon rent for the Premises and that the Premises are not being utilized to unduly subsidize revenue generation on the adjacent Prado Regional Park property in the District's reasonable discretion.

3.3 **Payment of Rent.**

3.3.1. **Rent Payment Generally.** Annual Rent shall be payable in advance and without any deduction, offset, prior demand or notice, commencing upon the Commencement Date and thereafter on the first day of each successive year during the Term. Annual Rent due under this Lease for any partial year shall be calculated by dividing the number of days for which Annual Rent is actually owing by the actual number of days in the year, and multiplying the resulting percentage by the Annual Rent amount then in effect. Annual Percentage Rent shall be paid based on the calendar year, or portion thereof if the Commencement Date is not at the beginning of a calendar year, in arrears on or before April 1st for the prior calendar year, or portion thereof, which shall be paid along with a correct statement of all applicable Gross Receipts for that portion of the accounting year which ends with and includes the last day of the preceding calendar year for which Gross Receipts have been reported ("**Gross Receipts Statement**"). The Gross Receipts Statement shall be signed by Tenant or Tenant's responsible agent certifying as to its truthfulness and accuracy and shall be in the form reasonably prescribed by the Auditor-Controller. Each Gross Receipts Statement shall indicate:

- (a) The total Gross Receipts for said portion of the calendar year, itemized as to each category of Gross Receipts, including a breakdown of each separate concession conducted on the Premises by Tenant where the concessions are run by more than one business operator;
- (b) An itemized accounting of any exclusions from Gross Receipts claimed by Tenant for said portion of the accounting year;
- (c) The total Annual Percentage Rent calculated based on the total Gross Receipts for said portion of the accounting year;
- (d) The amount by which the Annual Percentage Rent exceeds the Annual Minimum Rent for said portion of the accounting year (if any) calculated by Tenant based on the total Gross

Receipts received less the Minimum Annual Rent paid by Tenant for said portion of the accounting year (such excess, if any, is referred to herein as the “**Excess Percentage Rent**”);

(e) The total rent previously paid by Tenant for the accounting year within which the preceding month falls, and;

(f) The rent due for the preceding month.

All Annual Rent, Annual Percentage Rent or other amounts owing to District under this Lease shall be paid, in lawful currency of the United States of America, by check delivered to District or by electronic payment as District shall direct. All monetary payments owing by Tenant to District under this Lease other than Annual Rent shall be deemed additional rent owing under this Lease. Rent payments shall be delivered to, and statements required by this Lease shall be filed with the Orange County Treasurer-Tax Collector, Revenue Recovery/Accounts Receivable Unit, P.O. Box 4005, Santa Ana, California 92702-4005 (or may be delivered to 11 Civic Center Plaza, Room G58, Santa Ana 92702). The designated place of payment and filing may be changed at any time by the Chief Real Estate Officer upon ten (10) days’ written notice to Tenant. Tenant assumes all risk of loss if payments are made by mail. The District offers electronic payment for any payments hereunder, thus the Tenant shall utilize such District electronic payment system for any payments under this Lease, unless otherwise directed in writing by the Chief Real Estate Officer.

3.3.2. Definition of Gross Receipts. As used in this Section, the term “**Tenant**” shall include Tenant, Tenant’s agents, sublessee concessionaires or licensees, including rent to use the Premises by sublessee concessionaires or licensees and license fees paid by sublessee concessionaires or licensees that are based on sales or any other services on which Gross Receipts are calculated, or any person acting under contract with Tenant. The term “**Gross Receipts**” upon which the Annual Percentage Rent is based, shall include:

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

a. entry, rental, and other fees of any nature or kind charged by Tenant (including but not limited to deposits accepted by Tenant);

b. sales of merchandise, food, beverages and services;

c. gift certificates;

d. any sums deposited into any coin-operated vending machine or other device maintained on the Premises, regardless of the ownership of the machine or device, or whether such sums are removed and counted by Tenant or others, and regardless of what percentage thereof Tenant is entitled to receive except for pay telephones and newspaper racks,

e. any commission or surcharge received by Tenant from the operation of any automatic teller machines on the Premises;

f. if pay telephones are owned by Tenant, gross receipts shall be the gross amount deposited or charged for use of the telephones or if pay telephones are owned and operated by a third party, gross receipts shall be the commission or payment received by Tenant;

g. for newspaper racks gross receipts shall be the commission or payment received by Tenant from racks owned and operated by a third party;

h. all sums received for officer and employee meals, including meals, snacks and drinks from vending machines provided solely for use by employees, the actual charge, if any, paid by officers or employees for food and beverage while on duty, and;

i. all other funds received by Tenant from sales by any sublessee, concessionaire or licensee of Tenant on the Premises, subject to the exclusions set forth hereinbelow.

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

(3) Gross Receipts shall exclude the following (but Tenant shall keep separate records as part of its records): (i) any and all customer refunds, including any cash or credit refunds upon any sale made in or from the Premises, (ii) merchandise returns to shippers or manufacturers, (iii) proceeds from the sale of used equipment or trade fixtures, (iv) annual or weekly entrance and use fees honored and collected at other recreational areas operated by San Bernardino County that do not include the Premises, and (v) sales and excise taxes and fees payable by Tenant to federal, state, county, or municipal governments as a direct result of operations under this Lease.

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

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

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

3.5 **Additional Rent.**

3.5.1. **Additional Rent.** During the Term, the Annual Rent shall be absolutely net to District so that this Lease shall yield to District the rental amounts specified above in each year of the Term,

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

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

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

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

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

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

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

3.5.3. **Contest of Taxes.** Tenant shall have the right to contest, oppose or object to the amount or validity of any Taxes or other charge levied on or assessed against the Premises or any part thereof; provided, however, that the contest, opposition or objection must be filed before the Taxes or other charge at which it is directed becomes delinquent. Furthermore, no such contest, opposition or objection shall be continued or maintained after the date the tax, assessment or other charge at which it is directed becomes delinquent unless Tenant has either: (i) paid such tax, assessment or other charge under protest prior

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

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

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

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

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

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

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

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

3.7 **The Accounting Year.** The accounting year shall be twelve full calendar months. The accounting year may be established by Tenant, provided Tenant notifies Auditor-Controller in writing of the accounting year to be used. Said accounting year shall be deemed to be approved by Auditor-Controller unless Auditor-Controller has objected to Tenant's selection in writing within sixty (60) days of Tenant's written notification.

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

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

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

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

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

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

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

representative to audit said books and records. Said right shall not be exercised by Auditor-Controller more than once each accounting year.

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

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

(b) Tenant has failed to maintain true and complete books, records, accounts and supporting source documents in accordance with Section 3.6 "Records" above. The adequacy of records shall be determined at the sole discretion of Auditor-Controller.

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

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

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

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

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

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

3.8.7. The above costs payable by Tenant shall include reimbursement to District of District-provided services at such rates as District may from time to time, in good faith, establish for such services. In the case of services provided by District's employees, such rates shall be sufficient to reimburse District for employees' salaries, including employee taxes and benefits and District's overhead or, at District's

option, may be the rate for such services that would be charged by a qualified third party or parties, approved by District, if engaged by District to perform such services.

ARTICLE IV USE OF PREMISES

4.1 **Permitted Use of Premises.** Tenant shall use the Premises for the development of a parking lot, active park/recreation, and outdoor entertainment, including but not limited to open air competitive sports and activity park, stadium, and amphitheater for Tenant's purposes ("**Use**"). Use of the Premises will meet the requirements and approval of the District and will ensure that the underlying flood control purpose for the Premise will be addressed by Tenant with USACE and other applicable land use authority. The permitting of the development design and construction of the Use will be through the City as the permitting authority. Tenant agrees not to use the Premises for any other purpose nor to engage in or permit any other activity within or from the Premises, except as set forth herein with the prior written approval of the Chief Real Estate Officer, which approval may be granted or withheld in the sole discretion of the Chief Real Estate Officer. Tenant shall not suspend parking usage on Tenant's adjacent Prado Regional Park property in reliance on parking use at the Premises. Tenant will provide traffic signs along Euclid and Pine with crossing and parking guards as necessary during Tenant events. Pedestrian safety is of utmost concern to the District and Tenant shall take appropriate measures to ensure this safety.

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

4.2.1. **Required Services and Uses.** District's purpose for entering into this Lease is to promote the development of open space for a parking lot, active park/recreation and outdoor entertainment purposed by Tenant consistent with this Lease consistent with District use. In furtherance of that purpose, permitted uses shall include park uses that uphold the property's natural, scenic and open space attributes that do not interfere with flood control operations in the District's sole and absolute discretion. Recreational activities shall include passive recreational uses only such as hiking, biking, picnicking and picnic areas, nature tours, educational programs, and non-motorized recreation, as well as other uses which are in compliance with applicable Laws and approved by the Chief Real Estate Officer in writing from time to time (the "**Permitted Uses**").

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

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

4.2.4. **Continuous Use.** During the Term, Tenant shall continuously conduct Tenant's business in the Premises in the manner provided under this Lease and shall not discontinue use of the Premises for any period of time except as permitted in advance and in writing by the Chief Real Estate Officer.

4.2.5. Alcohol Restrictions. Tenant may sell beer, wine or alcoholic beverages on the Premises upon receipt of applicable permits allowing such sales, which shall be included in Gross Receipts.

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

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

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

4.5 Hazardous Materials.

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

4.5.2. Use of Hazardous Materials. Except for those Hazardous Materials which are customarily used in connection with any permitted use of the Premises under this Lease (which Hazardous Materials shall be used in compliance with all applicable Laws), Tenant or Tenant's employees, agents, independent contractors or invitees (collectively "**Tenant Parties**") shall not cause or permit any Hazardous Materials to be brought upon, stored, kept, used, generated, released into the environment or disposed of on, under, from or about the Premises (which for purposes of this Section shall include the subsurface soil and ground water).

4.5.3. Tenant Obligations. If the presence of any Hazardous Materials on, under or about the Premises caused or permitted by Tenant or Tenant Parties results in (i) injury to any person, (ii) injury to or contamination of the Premises (or a portion thereof), or (iii) injury to or contamination of any real or personal property wherever situated, Tenant, at its sole cost and expense, shall promptly take all actions necessary or appropriate to return the Premises to the condition existing prior to the introduction of such Hazardous Materials to the Premises and to remedy or repair any such injury or contamination. Without limiting any other rights or remedies of District under this Lease, Tenant shall pay the cost of any cleanup or remedial work performed on, under or about the Premises as required by this Lease or by applicable Laws in connection with the removal, disposal, neutralization or other treatment of such Hazardous Materials caused or permitted by Tenant or Tenant Parties. Notwithstanding the foregoing, Tenant shall not take any remedial

action in response to the presence, discharge or release, of any Hazardous Materials on, under or about the Premises caused or permitted by Tenant or Tenant Parties, or enter into any settlement agreement, consent decree or other compromise with any governmental or quasi-governmental entity without first obtaining the prior written consent of the Chief Real Estate Officer. All work performed or caused to be performed by Tenant as provided for above shall be done in good and workmanlike manner and in compliance with all applicable Laws and with all plans, specifications, permits and other requirements for such work approved by District.

4.5.4. Indemnification for Hazardous Materials.

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

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

(c) District shall indemnify, defend (with counsel reasonably approved by Tenant), protect, and hold harmless Tenant and its officers, employees, agents, and volunteers, from any and all claims, actions, losses, damages, judgments, costs, expenses, penalties, and/or liability, including, but not limited to, attorneys' and consultant's fees, arising out of or related to the existence of any Hazardous Materials located in, on, under, or about the Premises occurring: (i) prior to the Effective Date and (ii) during the Lease Term to the extent not directly and solely caused by Tenant or Tenant Parties.

4.6 Access by District. District reserves the right for District and District's authorized representatives to enter the Premises at any reasonable time during business hours, in order to (i) determine whether Tenant is complying with Tenant's obligations hereunder, or (ii) enforce any rights given to District under this Lease. Tenant acknowledges that District has the authority to enter the Premises to perform work on the Premises at any time as needed to provide flood control protection for the general public, subject, however, provided that District must make every effort to cause any such work to be performed in a manner that does not materially disrupt or damage the improvements or Tenant's operations on the Premises, District will not permit any mechanic's or other liens to stand against the Leasehold Estate for work or material furnished by District in, on, under or adjacent to the Premises, and District will take all necessary measures not to unreasonably interfere with Tenant's (or any subtenant's permitted under this Lease) business at the Premises in exercising its rights under this Section.

ARTICLE V
REPAIRS, MAINTENANCE, ADDITIONS AND RECONSTRUCTION

5.1 **Maintenance by Tenant.** Throughout the Term of this Lease, Tenant shall, at Tenant's sole cost and expense, keep and maintain the Premises in good order, condition and repair (*i.e.*, so that the Premises does not deteriorate more quickly than its age and reasonable wear and tear would otherwise dictate) and in a safe and sanitary condition and in compliance with all applicable Laws in all material respects.

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

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

5.4 **Flood Control Purposes of Premises; District's Reservation of Certain Rights.** Tenant acknowledges and understands that the Premises lies within an area required for the construction, maintenance and operation of Prado Dam, the Santa Ana River and other flood control and protection improvements in and around Prado Basin which are an integral part of a flood control and water conservation system that District operates to fulfill its primary function of protecting life and property in within San Bernardino, Riverside and Orange Counties. District reserves the right for itself, from time to time, without unreasonable interference, to access, enter and use the Premises. All rights reserved to the District in this Lease shall be exercised by District at its sole and absolute discretion. Use of the Premises by Tenant shall be at all times subordinate to use by the District for activities related to flood control or water conservation, including potential flooding of Premises. Tenant shall cooperate with District and or any of the person or entity acting for, on behalf of or cooperating with the District, during scheduled operations or unanticipated events that require access to the Premises. District shall make best efforts to plan and notify Tenant in advance of its intent to access the Premises. District's work in and around Prado Dam may intermittently affect the Premises including work on the Santa Ana River Mainstem Project, which may cause temporary closure of a portion of the Premises ("**Mainstem Project**"). No action by District in exercise of its flood control and water conservation purposes shall be a basis for claim by Tenant of damage, expense, loss, or liability of any kind or nature. Tenant waives all claims and recourse against District, including the right of contribution for loss or damage of persons or property arising from growing out of or in any way connected with this Lease, including each and every type of damage caused by flooding, erosion, closures, or otherwise to the Premises that may result from the District's flood control facilities, work on or near the Premises, or the Mainstem Project except claims arising from the concurrent active or sole negligence of the District.

5.5 **Accessibility Disclosure.** In compliance with its disclosure obligations under Section 1938 of the California Civil Code, District hereby notifies Tenant that, as of the Effective Date, the Property has not

been inspected by a Certified Access Specialist (as referred to in Section 1938 of the California Civil Code). As such, District hereby advises Tenant as follows:

“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.”

If Tenant elects to have a Certified Access Specialist (“CAsp”) inspect the Property, then Tenant shall: (a) provide District with prior written notice of such election and mutually agree with District on the arrangements for the time and manner of the CAsp inspection, (b) promptly give District a copy of the resulting report (the “CAsp Report”) upon receipt, (c) be responsible, at its sole cost and expense, for the cost of the CAsp Report and for completing any repairs or modifications that are necessary to correct violations of construction-related accessibility standards noted in the CAsp Report and any additional work necessitated thereby (all of which Tenant shall complete as expeditiously as possible following the issuance of the CAsp Report and in compliance with this Lease (including without limitation Section 5), unless District elects at its option to perform such work at Tenant’s expense), and (d) not disclose and cause its partners, members, officers, directors, managers, shareholders, employees, agents, brokers and attorneys to not disclose the CAsp Report to any person other than District (and except as necessary for Tenant to complete the repairs and corrections of violations noted in the CAsp Report) without first obtaining the prior written consent of the Chief Real Estate Officer. Tenant’s obligation to indemnify District, County, and the District Parties under Section 6.2 below shall apply equally to Claims arising out of any CAsp investigation initiated by Lessee, including as a result of any violations discovered thereby.

ARTICLE VI

INSURANCE AND INDEMNITY

6.1 Tenant’s Required Insurance.

6.1.1. Tenant agrees to purchase all required insurance or maintain a program of self-insurance at Tenant’s expense and to deposit with Chief Real Estate Officer certificates of insurance, including all endorsements required herein, necessary to satisfy Chief Real Estate Officer that the insurance provisions of this Lease have been complied with and to keep such insurance coverage and the certificates and endorsements therefore on deposit with Chief Real Estate Officer during the entire term of this Lease. It shall constitute an Event of Default hereunder if Tenant’s insurance coverage is terminated and not reinstated within ten (10) business days after notice from District of such termination.

6.1.2. Tenant agrees that it shall not operate on the Premises at any time the required insurance is not in full force and effect as evidenced by a certificate of insurance and necessary endorsements or, in the interim, an official binder being in the possession of Chief Real Estate Officer; rent however shall not be suspended. In no cases shall assurances by Tenant, its employees, agents, including any insurance

agent, be construed as adequate evidence of insurance. Chief Real Estate Officer will only accept valid certificates of insurance and endorsements, or in the interim, an insurance binder as adequate evidence of insurance. Tenant also agrees that upon cancellation, termination, or expiration of Tenant's insurance, Chief Real Estate Officer may take whatever steps are necessary to interrupt any operation from or on the Premises until such time as the Chief Real Estate Officer reinstates the Lease.

6.1.3. If Tenant fails to provide Chief Real Estate Officer with a valid certificate of insurance and endorsements, or binder upon request within thirty (30) days during the term of the Lease, District and Tenant agree that this shall constitute a material breach of the Lease. If Tenant fails to provide a valid certificate of insurance within thirty (30) days, said material breach shall permit Chief Real Estate Officer to take whatever steps are 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 the Chief Real Estate Officer is provided with adequate evidence of insurance required herein. Tenant further agrees to hold District 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 Chief Real Estate Officer's action.

6.1.4. All contractors performing work on behalf of Tenant pursuant to this Lease shall obtain insurance subject to the same terms and conditions as set forth herein for Tenant. Tenant shall not allow contractors or subcontractors to work if contractors have less than the level of coverage required by District 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 Chief Real Estate Officer at any reasonable time.

6.1.5. All self-insured retentions (SIR)'s shall be clearly stated on the Certificate of Insurance. Any SIR in excess of Fifty Thousand Dollars \$50,000 shall specifically be approved by the County's Risk Manager, or designee. 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 Lease.

6.1.6. All commercial policies of insurance required under this Article VI 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**).

(a) If the commercial insurance carrier does not have an A.M. Best rating of A-/VIII, the Chief Real Estate Officer retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.

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

Coverages	Minimum Limits
Builder's Risk	TBD and commensurate by the approved Tenant use on the Premises _____

Professional Liability	\$2,000,000 per claims made
Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate
Sexual Misconduct including Abuse and Molestation	\$1,000,000 per occurrence \$2,000,000 aggregate
Liquor Liability (if applicable)	\$1,000,000 per occurrence
Umbrella/Excess Liability with Follow Form Coverage	\$25,000,000
Automobile Liability including coverage for owned or scheduled , non-owned and hired vehicles	\$1,000,000 limit per occurrence
Workers' Compensation	Statutory Minimum
Employers' Liability Insurance	\$1,000,000 per accident or disease
Commercial Property Insurance on an "All Risk" or "Special Causes of Loss" basis covering all buildings, contents and any tenant improvements including Business Interruption/Loss of Rents with a 12 month limit	100% of the Replacement Cost Value and no coinsurance provision
Environmental/Pollution Liability	\$1,000,000 per claims made or per occurrence

6.1.7. Required Coverage Forms.

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

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

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

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

(b) A primary non-contributing endorsement using ISO form 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 District and County shall be excess and non-contributing.

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

(d) An Additional Insured endorsement naming the County of Orange, its elected and appointed officials, officers, employees, and agents as Additional Insureds.

(e) A primary non-contributory endorsement evidencing that Lessee's insurance is primary, and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

(f) Pollution Liability insurance must include coverage for bodily injury and property damage, including coverage for loss of use and/or diminution in property value, and for clean-up costs arising out of, pertaining to, or in any way related to the actual or alleged discharge, dispersal, seepage, migration, release or escape of contaminants or pollutants resulting from any services or work performed by, or behalf of, Lessee, including the transportation of hazardous waste, hazardous materials, or contaminants.

(g) If Lessee's Pollution Liability policy or Professional Liability Policy is a claims-made policy, Lessee shall agree to the following:

(1) The retroactive date must be shown and must be before the date of the contract or the beginning of the Lease.

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

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

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

(i) The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the District, 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 Contract.

(j) The Commercial Property policy shall be endorsed to include County of Orange as a Loss Payee. A Loss Payee endorsement shall be submitted with the Certificate of Insurance as evidence of this requirement.

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

(l) 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).

(m) Insurance certificates should be forwarded to County address provided in Section 15.19 below or to an address provided by Chief Real Estate Officer. Tenant has ten (10) business days to provide adequate evidence of insurance or it shall constitute an Event of Default.

(n) District expressly retains the right to require Tenant to increase or decrease insurance of any of the above insurance types throughout the term of this Lease to a level consistent with then commercially reasonable limits of coverage required by commercial landowners or commercial lenders.

(o) Chief Real Estate Officer shall notify Tenant in writing of changes in the insurance requirements consistent with subsection (i) above. If Tenant does not deposit copies of certificates of insurance and endorsements with Chief Real Estate Officer incorporating such changes within thirty (30) days of receipt of such notice, it shall constitute an Event of Default.

(p) 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.

6.2 Indemnification. Tenant and District hereby release and waive all claims and recourse against the other, including the right of contribution for loss or damage of persons or property, arising from, growing out of or in any way connected with or related to each's performance of its respective obligations under this Lease except claims arising from the concurrent active or sole negligence of the other Party, or their respective Boards, officers, agents, employees and contractors and except for District's liability for any pre-existing Hazardous Materials within the Premises not directly and solely caused by Tenant.

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.

Tenant's Initials

District 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.

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

District's Initials

Tenant hereby agrees to indemnify, defend (with counsel approved in writing by District), and hold harmless, District and County, their respective Boards, elected and appointed officials, officers, agents, employees and contractors against any and all claims, losses, demands, damages, cost, expenses or liability for injury to any persons or property, arising out of the operation or maintenance of the property described herein, and/or Tenant's exercise of the rights under this Lease, except for liability arising out of the concurrent active or sole negligence of District or County, their respective Boards, elected and appointed officials, officers, agents, employees or contractors including the cost of defense of any lawsuit arising therefrom, and also except for liability arising out of the existence of Hazardous Materials located in, on, under, or about the Premises, occurring: (i) prior to the Effective Date and (ii) during the Lease Term to the extent not directly and solely caused by Tenant. If District and/or County are named as co-defendant(s) in a lawsuit, Tenant shall notify District and County of such fact and shall represent District and County in such legal action unless District and/or County undertakes to represent itself as co-defendant in such legal action, in which event, Tenant shall pay to District and/or County their respective litigation costs, expenses, and attorneys' fees for indemnification obligations arising out of Tenant's operation or maintenance of the property described herein, and/or Tenant's exercise of the rights under this Lease. If judgment is entered against District and/or County and Tenant by a court of competent jurisdiction because of the concurrent active negligence of District and/or County and Tenant, District and Tenant agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.

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

ARTICLE VII CONDEMNATION

7.1 Definitions.

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

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

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

7.1.4. “**Condemnor**” means any public or quasi-public authority or private corporation or individual having the power of condemnation.

7.1.5. “**Total Taking**” means the taking by Condemnation of all of the Premises.

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

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

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

7.2 **Notice and Representation.**

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

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

7.3 **Total or Substantial Taking.**

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

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

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

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

7.4 **Partial Taking.**

7.4.1. **Effect on Rent.** On a Partial Taking this Lease shall remain in full force and effect covering the remainder of the Premises, except that the Annual Rent (including any adjustments thereto) shall be equitably reduced based on the impact (if any) of such Partial Taking on the operating income and revenue derived from Tenant's operations and the decrease (if any) in the market value of the leasehold interest.

7.4.2. **Restoration of improvements.** After a Partial Taking, Tenant may repair, alter, modify or reconstruct the improvements (“**Restoring**”) so as to make them reasonably suitable for Tenant’s continued occupancy for the uses and purposes for which the Premises are leased.

7.4.3. **Apportionment of Award.** On a Partial Taking, District shall be entitled to receive the entire award for such Partial Taking, except that (i) the proceeds of such Partial Taking shall first be applied towards the cost of Restoring the Premises pursuant to Section 7.4.2 and (ii) Tenant shall be entitled to receive any portion of such award allocated to Tenant’s interest in any of Tenant’s improvements, personal property and trade fixtures taken.

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

ARTICLE VIII

ASSIGNMENT, SUBLETTING AND ENCUMBERING

8.1 **General.** Tenant shall not assign (including an assignment by operation of law), transfer or encumber this Lease, or any interest therein, nor sublet the Premises or improvements. All assignments and transfers shall require the consent of District.

8.2 **Mortgages.** Tenant shall not mortgage, encumber or hypothecate District’s Fee Interest or the Leasehold Interest under any circumstances.

8.3 **Transfers.** Tenant shall not transfer its interest in this Lease.

ARTICLE IX

DEFAULT AND REMEDIES

9.1 **Event of Default.** Each of the following events shall constitute an “**Event of Default**” by Tenant:

9.1.1. **Miscellaneous Events of Default.** Any event or circumstance expressly referenced to elsewhere in this Lease as an “Event of Default”.

9.1.2. **Failure to Pay.** Tenant’s failure or omission to pay any Rent or other sum payable hereunder on or before the date due where such failure shall continue for a period of three (3) business days after written notice thereof from District to Tenant; provided, however, that any such notice shall be in lieu of, and not in addition to, any notice required under California Code of Civil Procedure §1161 *et seq.*

9.1.3. **Failure to Perform.** The failure or inability by Tenant to observe or perform any of the provisions of this Lease to be observed or performed by Tenant, other than specified in Sections 9.1.2 or 9.1.4 herein, where such failure shall continue for a period of ten (10) days after written notice thereof from District to Tenant; provided, however, that any such notice shall be in lieu of, and not in addition to, any notice required under California Code of Civil Procedure Section 1161 *et. seq.*; provided, further, that if the nature of such failure is such that it can be cured by Tenant but that more than ten (10) days are reasonably required for its cure (for any reason other than financial inability), then Tenant shall not be deemed to be in

default if (i) Tenant commences such cure within said ten (10) days, (ii) thereafter diligently prosecutes such cure to completion, and (iii) completes such cure to District's reasonable satisfaction within sixty (60) days from the date that Tenant first received written notice of the default.

9.1.4. **Abandonment.** The abandonment (as defined in California Civil Code Section 1951.3) or vacation of the Premises by Tenant; provided, however, vacancy of a portion of the Premises due to remodeling, reconstruction or as a result of casualty, condemnation, tenant vacancies or other factors beyond the reasonable control of Tenant shall not constitute a default hereunder.

9.1.5. **Assignments.**

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

(b) A case is commenced by or against Tenant under Chapters 7, 11 or 13 of the Bankruptcy Code, Title 11 of the United States Code as now in force or hereafter amended and if so commenced against Tenant, the same is not dismissed within sixty (60) days of such commencement;

(c) the appointment of a trustee or receiver to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where such seizure is not discharged within thirty (30) days; or

(d) Tenant's convening of a meeting of its creditors or any class thereof for the purpose of effecting a moratorium upon or composition of its debts. In the event of any such default, neither this Lease nor any interests of Tenant in and to the Premises shall become an asset in any of such proceedings and, in any such event and in addition to any and all rights or remedies of the District hereunder or by law; provided, it shall be lawful for the District to declare the term hereof ended and to re-enter the Premises and take possession thereof and remove all persons therefrom, and Tenant and its creditors (other than District) shall have no further claim thereon or hereunder.

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

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

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

(b) The worth at the time of award of the amount by which the unpaid rent and other charges which would have been earned after the date of the termination hereof until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; plus

(c) The worth at the time of award of the amount by which the unpaid rent and other charges for the balance of the term hereof after the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided; plus

(d) Any other actual amounts necessary to compensate District for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including, but not limited to, the cost of recovering possession of the Premises, expenses of reletting, including necessary repair, renovation and alteration of the Premises, reasonable attorneys' fees, expert witness costs, and any other reasonable costs; plus

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

The term "rent" as used herein shall be deemed to be and to mean the annual rent and all other sums required to be paid by Tenant pursuant to the terms of this Lease. All such sums, other than the annual rent, shall be computed on the basis of the average monthly amount thereof accruing during the 24-month period immediately prior to default, except that if it becomes necessary to compute such rental before such 24-month period has occurred, then such sums shall be computed on the basis of the average monthly amount during such shorter period. As used in Sections 9.2.1(a) and 9.2.1(b) above, the "worth at the time of award" shall be computed by allowing interest at the maximum rate permitted by law. As used in Sections 9.2.1 (c) above, the "worth at the time of award" shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%), but not in excess of the Interest Rate.

9.2.2. **Continue Lease in Effect.** Continue this Lease in effect without terminating Tenant's right to possession even though Tenant has breached this Lease and abandoned the Premises and to enforce all of District's rights and remedies under this Lease, at law or in equity, including the right to recover the rent as it becomes due under this Lease; provided, however, that District may at any time thereafter elect to terminate this Lease for such previous breach by notifying Tenant in writing that Tenant's right to possession of the Premises has been terminated.

9.2.3. **Removal of Personal Property Following Termination of Lease.** District shall have the right, following a termination of this Lease and Tenant's rights of possession of the Premises under Section 9.2.1 above, to re-enter the Premises and, subject to applicable law, to remove Tenant's personal property from the Premises. Such property may be removed and stored in a public warehouse or elsewhere at the cost of and for the account of Tenant in accordance with applicable California law.

9.3 **District's Right to Cure Tenant Defaults.** If Tenant shall have failed to cure, after expiration of the applicable time for curing, a particular default under this Lease, District may at its election, but is not obligated to, make any payment required of Tenant under this Lease or perform or comply with any term, agreement or condition imposed on Tenant hereunder, and the amount so paid plus the reasonable cost of any such performance or compliance, plus interest on such sum at the Interest Rate from the date of payment, performance or compliance until reimbursed shall be deemed to be additional rent payable by Tenant on District's demand. No such payment, performance or compliance shall constitute a waiver of default or of any remedy for default, or render District liable for any loss or damage resulting from the same.

9.4 **District's Default.** District shall not be considered to be in default under this Lease unless Tenant has given District written notice specifying the default, and either (i) as to monetary defaults, District has failed to cure the same within ten (10) business days after written notice from Tenant, or (ii) as to nonmonetary defaults, District has failed to cure the same within thirty (30) days after written notice from Tenant, or if the nature of Tenant's nonmonetary default is such that more than thirty (30) days are

reasonably required for its cure, then such thirty (30) period shall be extended automatically so long as District commences a cure within such thirty (30) day period and thereafter diligently pursues such cure to completion. Tenant shall have no right to offset or abate alleged amounts owing by District under this Lease against Annual Rent owing by Tenant under this Lease. Additionally, Tenant's sole remedy for any monetary default shall be towards the District's interest in the property and not to any other assets. Any and all claims or actions accruing hereunder shall be absolutely barred unless such action is commenced within six (6) months of the event or action giving rise to the default.

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

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

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

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

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

ARTICLE X

HOLDING OVER

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

ARTICLE XI

ESTOPPEL CERTIFICATES

At any time and from time to time, within ten (10) business days after written request by either District or Tenant (the “**requesting party**”), the other party (the “**responding party**”) shall execute, acknowledge and deliver an estoppel certificate addressed to the requesting party, and/or to such other beneficiary (as described below) as the requesting party shall request, certifying (i) that this Lease is in full force and effect, (ii) that this Lease is unmodified, or, if there have been modifications, identifying the same, (iii) the dates to which Rent has been paid in advance, (iv) that, to the actual knowledge of the responding party, there are no then existing and uncured defaults under the Lease by either District or Tenant, or, if any such defaults are known, identifying the same, and (v) any other factual matters (which shall be limited to the actual knowledge of the responding party) as may be reasonably requested by the requesting party. Such certificate may designate as the beneficiary thereof the requesting party, and/or any third party having a reasonable need for such a certificate (such as, but not limited to, a prospective purchaser, transferee or lender).

ARTICLE XII

FORCE MAJEURE

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

ARTICLE XIII

OPERATIONAL OBLIGATIONS OF TENANT

13.1 **Standards of Operation.**

13.1.1. Tenant shall operate the Premises in a manner reasonably comparable to other comparable facilities or businesses within the County of San Bernardino. Tenant shall at all times during the Term provide adequate security measures to reasonably protect persons and property on the Premises, including a patrol of all areas in the Premises for the purpose of preserving order and preventing theft, vandalism, or other improper or unlawful use of the Premises or any of the facilities.

13.1.2. The ultimate purpose of this Lease is to promote the development of open space for park purposes by San Bernardino County. Accordingly, Tenant covenants and agrees to operate said Premises fully and continuously to accomplish said purposes and not to abandon or vacate the Premises at any time.

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

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

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

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

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

13.2.4. Prevent all pollutants from Tenant's operations on the Premises from being discharged, including petroleum products of any nature, except as may be permitted in accordance with any applicable permits. Tenant and all of Tenant's agents, employees and contractors shall conduct operations under this Lease so as to assure that pollutants do not enter the municipal storm drain system (including but not limited to curbs and gutters that are part of the street systems), or directly impact receiving waters (including but not limited to rivers, creeks, streams, estuaries, lakes, harbors, bays and the ocean), except as may be permitted by any applicable permits.

13.2.5. The District may enter the Premises and/or review Tenant records at any time to assure that activities conducted on the Premises comply with the requirements of this Section.

ARTICLE XIV

BEST MANAGEMENT PRACTICES

14.1 Tenant and all of Tenant's, subtenant, agents, employees and contractors shall conduct operations under this Lease so as to assure that pollutants do not enter municipal storm drain systems which systems are comprised of, but are not limited to curbs and gutters that are part of the street systems ("**Stormwater Drainage System**"), and to ensure that pollutants do not directly impact "**Receiving Waters**"

(as used herein, Receiving Waters include, but are not limited to, rivers, creeks, streams, estuaries, lakes, harbors, bays and oceans).

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

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

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

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

14.6 Chief Real Estate Officer may enter the Premises and/or review Tenant’s records at any reasonably time during normal business hours to assure that activities conducted on the Premises comply with the requirements of this Section. Tenant may be required to implement a self-evaluation program to demonstrate compliance with the requirements of this Section.

ARTICLE XV
GENERAL CONDITIONS & MISCELLANEOUS PROVISIONS

15.1 **Signs.** Tenant agrees not to construct, maintain, or allow any signs, banners, flags, etc., upon the Premises except as approved in writing in advance by Chief Real Estate Officer, which approval may be withheld in the sole and absolute discretion of the Chief Real Estate Officer. Tenant further agrees not to construct, maintain, or allow billboards or outdoor advertising signs upon the Premises. Unapproved signs, banners, flags, etc., may be removed by Chief Real Estate Officer without prior notice to Tenant.

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

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

15.4 **Quitclaim of Interest upon Termination.** Upon execution of this Lease, Tenant shall execute, acknowledge, and deliver to District, within thirty (30) days, or such reasonable amount of time to allow the San Bernardino County Board of Supervisors to approve execution, a good and sufficient deed, in a form as approved by the Chief Real Estate Officer, whereby all right, title, and interest of Tenant in the Premises is quitclaimed to District ("**Quitclaim Deed**"). The Quitclaim Deed shall be retained by the Chief Real Estate Officer for the Term and shall be recorded in the event of the termination of this Lease for any reason to remove any cloud on title created by this Lease.

15.5 **Public Records.** Tenant acknowledges that any written information submitted to and/or obtained by District from Tenant or any other person or entity having to do with or related to this Lease and/or the Premises, either pursuant to this Lease or otherwise is a public record open to inspection by the public pursuant to the California Records Act (Government Code §6250, *et seq.*) as now in force or hereafter amended, or any Law in substitution thereof, or otherwise made available to the public, unless such information is exempt from disclosure pursuant to the applicable sections of the California Records Act. In the event that a public records act request is made for any financial statements and records (not including Gross Receipts Statements) and the District determines that the records must be turned over, the District will give Tenant fifteen (15) days written notice prior to turning over such records so that Tenant can take any necessary action.

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

15.7 **Payment Card Compliance.** Should Tenant conduct credit/debit card transactions in conjunction with Tenant's business with the District, on behalf of the District, or as part of the business that Tenant conducts on the Premises, Tenant covenants and warrants that it will during the course of such activities be Payment Card Industry Data Security Standard ("**PCI/DSS**") and Payment Application Data Security Standard ("**PA/DSS**") compliant and will remain compliant during the entire duration of its conduct

of such activities. Tenant agrees to immediately notify District in the event Tenant should ever become non-compliant at a time when compliance is required hereunder, and will take all necessary steps to return to compliance and shall be compliant within ten (10) days of the commencement of any such interruption. Upon demand by District, Tenant shall provide to District written certification of Tenant's PCI/DSS and/or PA/DSS compliance.

15.8 Right to Work and Minimum Wage Laws.

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

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

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

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

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

15.11 Venue. The Parties hereto agree that this Lease has been negotiated and executed in the State of California and shall be governed by and construed under the laws of California. In the event of any legal action to enforce or interpret this Lease, the sole and exclusive venue shall be a court of competent jurisdiction located in San Bernardino County, California, and the Parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394. Furthermore, the Parties hereto specifically agree to waive any and all rights to request that an action be transferred for trial to another county.

15.12 Headings and Titles. The captions of the Articles or Sections of this Lease are only to assist the parties in reading this Lease and shall have no effect upon the construction or interpretation of any part hereof.

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

15.14 **Ambiguities.** Each party hereto has reviewed this Lease with legal counsel, and has revised (or requested revisions of) this Lease based on the advice of counsel, and therefore any rules of construction requiring that ambiguities are to be resolved against a particular party shall not be applicable in the construction and interpretation of this Lease or any exhibits hereto.

15.15 **Successors and Assigns.** Except as otherwise specifically provided in this Lease, all of the covenants, conditions and provisions of this Lease shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns.

15.16 **Time is of the Essence.** Time is of the essence with respect to the performance of every provision of this Lease in which time of performance is a factor.

15.17 **Severability.** If any term or provision of this Lease is held invalid or unenforceable to any extent under any applicable law by a court of competent jurisdiction, the remainder of this Lease shall not be affected thereby, and each remaining term and provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

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

15.19 **Notices.** Unless otherwise expressly stated in this Agreement, all notices under this Agreement shall be effective upon (i) personal delivery, (ii) e-mail transmission, (iii) one (1) business day after deposit with an overnight courier service (e.g., Federal Express), or (iv) three (3) business days after deposit in the United States mail, registered, certified, postage fully prepaid and addressed to the applicable Party as follows:

If to District:

Orange County Flood Control District
c/o CEO Real Estate
Attn: Chief Real Estate Officer
400 W. Civic Center Drive, 5th Floor
Santa Ana, CA 92701
Facsimile: (714) 834-3046

With a copy to:

Orange County Flood Control District
c/o OC Public Works
Attn: Director
601 N. Ross Street, 4th Floor
Santa Ana, CA 92701

If to Tenant:

San Bernardino County
385 North Arrowhead Avenue, Third Floor
San Bernardin, CA 92415-0180
Attn: Director, Real Estate Services
Department

Either Party may change the address for notices by giving the other Party at least ten (10) calendar days' prior written notice of the new address.

15.20 **Amendments**. This Lease is the sole and only agreement between the Parties regarding the subject matter hereof; other agreements, either oral or written, are void. Any changes to this Lease shall be in writing and shall be properly executed by both Parties.

15.21 **Dispositions of Abandon Property**. If Tenant vacates, abandons or quits the Premises or is dispossessed thereof by process of law or otherwise, any personal property belonging to and left on the Premises shall be disposed of pursuant to California Civil Code Sections 1993 et seq., following the applicable Notice of Right to Reclaim Abandoned Property served upon Tenant.

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

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

15.24 **Recording**. This Lease shall not be recorded.

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

Exhibit A: Legal Description of the Premises
Exhibit A-1: Rendering of the Premises
Exhibit B: Best Management Practices Fact Sheets
Exhibit C: Form of Memorandum of Lease

15.26 **Consent/Duty to Act Reasonably.** Except as otherwise expressly provided herein, whenever this Lease grants District or Tenant the right to take any action, grant any approval or consent, or exercise any discretion, District and Tenant shall act reasonably and in good faith and take no action which might result in the frustration of the other Party's reasonable expectations concerning the benefits to be enjoyed under this Lease, provided that the foregoing shall only apply to the District when acting in its proprietary capacity as owner of the Premises and not as a government agency with jurisdiction over the Premises.

15.27 **Counterparts.** For the convenience of the parties to this Lease, this Lease may be executed in several original counterparts, each of which shall together constitute but one and the same agreement. Original executed pages may be assembled together into one fully executed document. The Parties shall be entitled to sign and transmit an electronic signature of the Lease (whether by facsimile, PDF or other email transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed Lease upon request.

[Signatures on Following Pages]

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

APPROVED AS TO FORM:
COUNTY COUNSEL

By: _____
Deputy

Date _____

DISTRICT

ORANGE COUNTY FLOOD CONTROL DISTRICT
a political subdivision of the State of California

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

TENANT:
SAN BERNARDINO COUNTY

By: _____
Dawn Rowe, Chair
Board of Supervisors

Date: _____

SIGNED AND CERTIFIED THAT A COPY OF
THIS DOCUMENT HAS BEEN DELIVERED TO
THE CHAIRMAN OF THE BOARD

Lynna Monell
Clerk of the Board of Supervisors
San Bernardino County

By: _____
Deputy

Date: _____

Approved as to Legal Form:

TOM BUNTON, County Counsel
San Bernardino County, California

By: _____
John Tubbs II, Deputy County Counsel

Date: _____

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

[to be attached]

Assessor Parcel Numbers:

1056-451-05-0000

1056-391-03-0000

1056-391-04-0000

EXHIBIT A-1

RENDERING OF THE PROPERTY

EXHIBIT B

BEST MANAGEMENT PRACTICES ("BMPs" Fact Sheets)

Best Management Practices can be found at: <http://ocwatersheds.com/default.aspx> which website may change from time to time.

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

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

<http://ocwatersheds.com/IndustrialCommercialBusinessesActivities.aspx> (which website may change from time to time):

[IC3 Building Maintenance](#)

[IC4 Carpet Cleaning](#)

[IC6 Contaminated or Erodible Surface Areas](#)

[IC9 Outdoor Drainage from Indoor Areas](#)

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

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

[IC14 Painting, Finishing, and Coatings of Vehicles, Boats, Buildings, and Equipment](#)

[IC17 Spill Prevention and Cleanup](#)

[IC21 Waste Handling and Disposal](#)

[IC22 Eating and Drinking Establishments](#)

[IC23 Fire Sprinkler Testing/Maintenance](#)

[IC24 Wastewater Disposal Guidelines](#)

EXHIBIT C

FORM OF MEMORANDUM OF LEASE

MEMORANDUM OF LEASE

This is a Memorandum of Lease ("**Memorandum**") made and entered into as of this _____ day of _____, 20____, by and between the ORANGE COUNTY FLOOD CONTROL DISTRICT, a body corporate and politic ("**District**"), and _____, ("**Tenant**"), residing at _____, upon the following terms:

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

DISTRICT:

TENANT:

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

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

DISTRICT:

By: _____

Name: _____

Title: _____

TENANT: SAN BERNARDINO COUNTY

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____