

# Attachment D



El Toro Parcel

## MASTER GROUND LEASE

This **MASTER GROUND LEASE** (“**Lease**”) is made as of \_\_\_\_\_, 20\_\_\_\_ (“**Execution Date**”) by and between the **COUNTY OF ORANGE**, a political subdivision of the State of California (hereinafter referred to as “**COUNTY**”) and **LOWE ENTERPRISES REAL ESTATE GROUP**, a California corporation (hereinafter referred to as “**TENANT**”) without regard to number and gender. **COUNTY** and **TENANT** are sometimes referred to hereinafter individually as a “**Party**” or jointly as the “**Parties.**”

### RECITALS

1. COUNTY owns or it expects it will own a portion of the former Marine Corps Air Station at El Toro (“**MCAS EL Toro**”) on the southwest corner of the former base as more particularly described on **Exhibit A** hereto (“**Property**”) in the City of Irvine, California (“**City**”).
2. COUNTY is pursuing development of the Property in conjunction with the development of the neighboring Great Park, being developed by the City.
3. TENANT has entered into that certain Disposition and Development Agreement for the Master Planning, Entitlement, and Development of a Portion of the Former El Toro Marine Corps Air Station in the City of Irvine, California By And Between the County of Orange and Lowe Enterprises Real Estate Group dated as of \_\_\_\_, 2013 (“**DDA**”) pursuant to which TENANT will undertake the master planning, entitlement, and infrastructure development for the Property, entitling and developing the Property for its highest, best and most economically viable use (the “**Project**”).
4. TENANT now desires to lease from COUNTY, and COUNTY is willing to lease to TENANT, the Premises, as defined below, on the terms and conditions set forth herein. But for TENANT’s agreement to lease both the Initial Acreage and the Remainder Acreage, as defined below, pursuant to terms of this Lease, COUNTY would not have entered into this Lease with TENANT for the Initial Acreage.

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

#### 1. DEFINITIONS (AMA2.1 N)

The following words in this Lease have the meanings set forth in this Section unless otherwise apparent from context:

- (a) “**Acquisition Notice**” shall have the meaning set forth in Section 7.2.
- (b) “**Affiliate**” means, with respect to any person (which as used herein includes an individual, trust or entity), any other person which directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, such person.
- (c) “**Alternative Secondary Access Point**” means either Barranca Parkway, Alton Parkway or, if TENANT and COUNTY agree in writing, another road.

(d) “**Alternative Secondary Access Point Improvements**” has the meaning set forth in Section 2.3.

(e) “**Applicable Laws**” shall mean all standards, laws, statutes, restrictions, ordinances, requirements, and regulations applicable to the Project.

(f) “**Appraisal**” means the determination of value made in accordance with the process described in Article 13.

(g) “**Auditor-Controller**” means the Auditor-Controller (from time to time) of the County.

(h) “**business days**” shall mean a business day as set forth in Section 9 of the California Civil Code, and shall include “Optional Bank Holidays” as defined in Section 7.1 of the California Civil Code.

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

(j) “**City**” means the City of Irvine, California.

(k) “**Completion Date**” has the meaning set forth in Section 6(a).

(l) “**control**” means, for purposes of evaluating a proposed Transfer, the power to direct and have final approval of the day to day decision-making, management and policies of the entity subject to limited customary arms-length approval rights of the members set forth in a governing document, which governing document is consistent with the TENANT’s obligations under this Lease. The terms “controlling” or “controlled” have meanings correlative to the foregoing.

(m) “**Corporate Real Estate**” means the County Executive Officer, Corporate Real Estate, County of Orange, or upon written notice to TENANT, such other entity as may be designated by the Project Lead, County Executive Officer or the Board of Supervisors.

(n) “**County Counsel**” means the County Counsel, County of Orange, or designee, or upon written notice to TENANT, such other person or entity as may be designated by the County Executive Officer or the Board of Supervisors.

(o) “**County Executive Officer**” means the County Executive Officer, County Executive Office, County of Orange, or designee, or upon written notice to TENANT, such other person as may be designated by the Board of Supervisors.

(p) “**DDA**” means that certain Disposition and Development Agreement for the Master Planning, Entitlement, and Development of a Portion of the Former El Toro Marine Corps Air Station in the City of Irvine, California Between the County of Orange and Lowe Enterprises Real Estate Group dated as of \_\_\_\_, 2013.

(q) “**Developer Party**” means any entity (i) that is controlled by Lowe Enterprises Real Estate Group or Robert J. Lowe or his family; or (ii) whose managing member, manager or general partner that has control over the entity is controlled by Developer or Robert J. Lowe or his family, and in either (i) or (ii) that entity has a minimum net worth (excluding any interest in the Premises) at all times of at least

Twenty Million Dollars (\$20,000,000) and it employs the Key People as that term is defined in the DDA. For purposes of this definition, (i) the term “family” means the spouse and descendants of Robert J. Lowe, each of their respective spouses and descendants and any trusts established for the benefit of the same.

(r) “**Development Agreement**” If adopted by City or COUNTY , refers to that certain development agreement between \_\_\_\_\_ and \_\_\_\_\_ pursuant to Government Code section 65864 et seq. dated as of \_\_\_\_\_, 20\_\_.

(s) “**Entitlement(s)**” refers collectively (or individually as the case may be) to the COUNTY and City approvals required to develop the Project including [the Specific Plan, General Plan Amendment, Zoning Change, Final EIR, Vesting Tentative Map, Vesting Final Map, Development Agreement and \_\_\_\_\_].

(t) “**Final Approval**” means approval of (an) Entitlement(s) by the COUNTY, City or other governmental agency and expiration of any applicable appeals period or statute of limitations and no appeal or challenge having been filed, or, if an appeal or challenge is filed, such appeal or challenge has been finally and successfully resolved to the satisfaction of the COUNTY and TENANT.

(u) “**Final EIR**” refers to a final environmental impact report (SCH No. \_\_\_\_\_) for the Project certified by the \_\_\_\_\_ on \_\_\_\_\_, 20\_\_.

(v) “**Final Map**” refers to a final vesting subdivision tract map that substantially conforms to the Tentative Map.

(w) “**General Plan Amendment**” refers to an amendment to the City of Irvine General Plan for the Project approved by the City on \_\_\_\_\_, 20\_\_ by Resolution No. \_\_\_\_\_.

(x) “**Ground Lease**” shall mean a ground lease substantially in the form of **Exhibit C** hereto for the leasing of any portion of the Premises in conformance with the terms of this Lease and the DDA.

(y) “**Ground Rent**” means the rent TENANT must pay to the COUNTY pursuant to a Ground Lease as specified in Sections 12 and 13 hereof.

(z) “**Ground Rent Appraisal**” means the valuation for purposes of establishing the Ground Rent in accordance with Section 12 hereof, as determined by the Appraisal process described in Section 13 hereof, for the portion of the Master Ground Lease Parcel described in a proposed Ground Lease.

(aa) “**Improvements**” shall have the meaning set forth in Section 15.1 hereof.

(bb) “**Initial Acreage**” means the portion of the Property as defined in Section 2.1 hereof.

(cc) “**Master Ground Rent**” means the Rent TENANT must pay to the COUNTY pursuant to this Lease as specified in Section 7 hereof.

(dd) “**Net Acreage**” means the acreage of the Premises or a portion thereof after deducting the square footage of the Premises or portion thereof allocated in the Specific Plan to be used for infrastructure and therefore not available for sale or lease.

(ee) “**net worth**” means total assets minus total liabilities of a person or entity as determined by using U.S. Generally Accepted Accounting Principles.

(ff) “**Phase 2 Improvements**” has the meaning set forth in the DDA.

(gg) “**Premises**” means the term defined in Section 2 hereof.

(hh) “**Property**” means the real property described on Exhibit A hereto as reduced or expanded from time to time in accordance with the terms of this Lease. *//Exclude the Alton parcels from this description.* Notwithstanding the attachment of the description of the Property as a whole to this Lease, all rights of possession and the incidence of a leasehold real estate interest granted to TENANT hereunder relate solely to the Premises.

(ii) “**Project Lead**” refers to James Campbell or another person selected by the County Executive Officer.

(jj) “**Purchase Agreement**” means an agreement for the purchase and sale of all or a portion of the Premises after the Execution Date as defined in Section 12.5.

(kk) “**Remainder Acreage**” means the portion of the Property as described in Section 2.3 hereof.

(ll) “**Rent Per Net Acre**” has the meaning set forth in Section 7.1(d).

(mm) “**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 County Executive Officer.

(nn) “**Specific Plan**” refers to the specific plan as defined in the California Government Code approved for the Project by the \_\_\_\_\_ on \_\_\_\_\_, 20\_\_, by Ordinance No. \_\_\_\_\_, which shall govern, among other things, use and development of the Project.

(oo) “**TENANT Parties**” shall have the meaning set forth in Section 22.3.

(pp) “**Tentative Map**” refers to vesting tentative map no. \_\_\_\_\_ approved by the City on \_\_\_\_\_, 20\_\_.

(qq) “**Term**” means that period commencing on the date hereof, and ending on the date that this Lease terminates for any reason.

(rr) “**Transfer**” means the term defined in Section 22.1 hereof.

(ss) “**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.

(tt) “**Zoning Change**” means that change in the zoning for the Property approved by the City and/or COUNTY on \_\_\_\_\_, 20\_\_, by Ordinance No. \_\_\_\_\_.

## 2. PREMISES (AMA3.1 N)

2.1 COUNTY hereby leases to TENANT, and TENANT hereby leases from COUNTY, the portion of the Property (“**Initial Acreage**”), more particularly described in Exhibit B and shown on Exhibit C as of the Execution Date, which exhibits are attached hereto and by reference made a part hereof.

**2.2** The portion of the Property leased to the TENANT is hereinafter referred to as “**Premises**,” The Premises may be revised as necessary to add or subtract land as the COUNTY refines the area which is subject to the DDA and pursuant to the process described in this Article 2 hereof.

**2.3** The remaining portion of the Property other than the Initial Acreage is referred to in this Lease as the “**Remainder Acreage**” until that portion is added to the Premises as provided for in this Article 2. No later than ten (10) business days after the COUNTY notifies TENANT that Marine Way has been substantially completed to a four (4) lane road between Sand Canyon Road and an Alternative Secondary Access Point (“**Alternative Secondary Access Point Improvements**”), the Parties shall execute an amendment to this Lease for the sole purpose of adding the Remainder Acreage to the definition of the Premises.

**2.4** If TENANT wishes to amend the definition of the Premises to add the entire Remainder Acreage prior to substantial completion of the Alternative Secondary Access Point Improvements, TENANT shall notify COUNTY in writing. Unless a default by TENANT exists under this Lease or the DDA, the Parties shall execute an amendment to this Lease for the sole purpose of adding the Remainder Acreage to the definition of the Premises within ten (10) business days of COUNTY’s receipt of the above notice.

**2.5** If TENANT wishes to amend the definition of the Premises to add only a portion of the Remainder Acreage prior to substantial completion of the Alternative Secondary Access Point Improvements, TENANT shall notify COUNTY in writing. COUNTY, in its sole and absolute discretion, may accept or reject TENANT’s request in writing. If the COUNTY accepts TENANT’s request, and unless a default by TENANT exists under this Lease or the DDA, the Parties shall execute an amendment to this Lease for the sole purpose of adding the agreed upon portion of the Remainder Acreage to the definition of the Premises within ten (10) business days of COUNTY’s acceptance of TENANT’s request.

**2.6** Once Marine Way is substantially completed to a four (4) lane road between Sand Canyon Road and Great Park Boulevard West, upon substantial completion of each four hundred (400) linear foot extension, or such greater distance as is reasonably acceptable to the Project Lead, of Marine Way east of Great Park Boulevard West to a four (4) lane road, COUNTY may add the portion of the Remainder Parcel with frontage along that extended portion of Marine Way to the Premises provided the portion of the Remainder Parcel to be added is twenty (20) acres or more. The Parties shall execute an amendment to this Lease for the sole purpose of adding the COUNTY designated portion of the Remainder Acreage to the definition of the Premises within ten (10) business days of TENANT’s receipt of written notice from the COUNTY.

**2.7** If the COUNTY had not acquired fee simple title to a portion of the Remainder Acreage prior to full execution of an amended Lease purporting to add that portion of the Property to the Premises, the relevant portion of the Remainder Acreage as of that date will not include that portion of the Property not owned in fee title by the COUNTY. Following the full execution of the amended Lease, to the extent that the COUNTY acquires fee simple title to a portion of the Remainder Acreage during the Term, the definition of the Premises shall be automatically revised to include that additional real property and the Parties agree to attach a revised legal description and depiction as Exhibit A and Exhibit C and those documents will be deemed to replace the then existing legal description and depiction as if originally attached thereto.

**2.8** With respect to any additions to or subtraction from the Premises, other than the addition of the Remainder Acreage as provided for in this Article 2, if the COUNTY and TENANT agree to the change and upon written notice from COUNTY to TENANT of such revision, the revised legal description shall be substituted for Exhibit B and Exhibit C attached hereto. Such written notice, when provided by Project

Lead, shall amend this Lease and the new legal description and depiction will be deemed to replace the then existing legal description and depiction as if originally attached hereto.

### **3. LIMITATIONS OF THE LEASEHOLD (AMA5.1 S)**

This Lease and the rights and privileges granted TENANT in and to the Premises are subject to all covenants, conditions, restrictions, and exceptions of record or apparent. Nothing contained in this Lease or in any document related hereto shall be construed to expressly grant or imply the conveyance to TENANT of rights in the Premises which exceed those owned by COUNTY, or any representation or warranty, either express or implied, relating to the nature or condition of the Premises or COUNTY's interest therein. TENANT acknowledges that TENANT has conducted a complete and adequate investigation of the Premises and TENANT accepts the Premises in its "as is" condition including, without limitation, the conditions described in Article 22 hereof.

### **4. USE (AMB1.1 N)**

TENANT's use of the Premises shall be limited to the construction, development, entitlement, operation, maintenance and repair of the Phase 2 Improvements and the Premises and such other activities expressly authorized by the DDA. 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 and in Section 6 below. TENANT agrees not to knowingly conduct or permit to be conducted any activities in, on or from the Premises that would be considered a public or private nuisance (as defined in California Civil Code Sections 3479 and 3480).

### **5. TERM (AMB2.1 S)**

The term of this Lease ("**Term**") shall commence on the Execution Date, as defined below, and shall expire on the tenth (10<sup>th</sup>) anniversary of the Execution Date, subject to extension as provided herein or earlier termination in accordance with the terms of this Lease, Article 6 and General Condition 15 below or by mutual agreement of the Parties.

### **6. OPTION TO EXTEND TERM (2.3 S)**

#### **6.1 Option to Extend Term**

TENANT shall have the option ("**Extension Option(s)**") to extend the Term for three (3) five (5) year option terms ("**Option Term(s)**") on the terms and conditions set forth in this Section 6. Upon TENANT's proper exercise of the Extension Option in accordance with this Section and the COUNTY's acceptance thereof, the Term shall be extended for the additional five (5) year period.

#### **6.2 Exercise of Extension Option**

The Extension Options may only be exercised by TENANT in the following manner: (a) not earlier than two hundred seventy (270) days or later than one-hundred and eighty (180) days prior to the expiration of the Term or prior Option Term, as applicable, TENANT shall deliver to COUNTY a written notice signed by TENANT stating that TENANT is interested in exercising the Extension Option ("**Notice of Interest**"); (b) within ninety (90) days of COUNTY's receipt of a Notice of Interest, COUNTY shall deliver to TENANT a written notice stating COUNTY's determination as to whether the request to exercise the Extension Option is approved based on the standards specified in this Article 6 ("**Option Determination Notice**"); and (c) if the Option Determination Notice gives COUNTY's consent to an Extension Option, on or before 5:00 p.m.

(Pacific Time) of the thirtieth (30th) day after the date of COUNTY's delivery of the Option Determination Notice ("**Extension Election Deadline**"), TENANT shall deliver to COUNTY a written notice signed by TENANT ("**Extension Election Notice**") indicating TENANT's exercise of one of the following elections: (i) TENANT elects to waive its Extension Option which will result in this Lease terminating at the expiration of the Term or the previously exercised Option Term, as applicable, or (ii) TENANT elects to exercise the Extension Option at the Option Rent provided for in Article 7 hereof. If COUNTY does not timely receive the Notice of Interest or receives the Extension Election Notice after the Extension Election Deadline, TENANT shall be deemed to have waived its Extension Option (as well as any future Extension Option(s), if any), the terms and conditions of this Section shall automatically expire, and the Extension Option shall no longer be exercisable.

### **6.3 Limitation on Extension Options**

Notwithstanding anything to the contrary set forth above, TENANT shall not have the right to exercise the Extension Option and neither the Term nor any Option Term, as applicable, shall be extended (i) during the time commencing from the date COUNTY gives TENANT a written notice that TENANT is in default under any material provision of this Lease and continuing until the default described in said notice is cured, (ii) during the period of time commencing on the day after a monetary obligation to COUNTY is due from TENANT and unpaid and continuing until the obligation is paid, (iii) at any time that a default exists under the DDA by a party other than the COUNTY and such default has not been cured, (iv) if the Parties have not fully executed an amended Lease that adds the entire Remainder Acreage owned by the County in fee title to the Premises; or (iv) if the DDA has terminated. The period of time within which the Extension Option may be exercised shall not be extended or enlarged by reason of TENANT's inability to exercise such option prior to satisfaction of the foregoing conditions precedent.

## **7. RENT (AMC 3.1 N)**

Commencing on the Execution Date until the expiration of the Term, TENANT shall pay COUNTY for the rights granted to TENANT under this Lease, including, without limitation, those described in Section 12 hereof, as "**Rent**" in the following sums:

### **7.1 Master Ground Rent**

(a) For the period commencing on the Execution Date and terminating on the date that is the first anniversary of Marine Way (4 lanes) between Sand Canyon Road and Great Park Boulevard West having been substantially completed (the "**Completion Date**"), the sum of Fifty Thousand Dollars (\$50,000.00) per year, payable in twelve (12) equal installments with the first payment due in advance on the Execution Date and the remaining payments due on the first day of each month during such period, prorated for any partial months at the beginning or end of such period.

(b) For the period commencing on the first anniversary of the Completion Date and continuing for the balance of the initial Term and through the last day of the first Extension Option, if exercised, the sum of One Hundred Fifty Thousand Dollars (\$150,000.00) per year, payable in twelve (12) equal installments on the first day of each month during such period, prorated for any partial months at the beginning or end of such period.

(c) During the second and third Extension Options, if exercised, once Marine Way has been substantially completed to a four (4) lane road between Sand Canyon Road and an Alternative Secondary Access Point, the Rent shall be increased from One Hundred Fifty Thousand Dollars (\$150,000.00) per year to the sum of Two Hundred Fifty Thousand Dollars (\$250,000.00) per year, payable

in twelve (12) equal installments on the first day of each month during such period, prorated for any partial months at the beginning or end of such period.

(d) Rent payable pursuant to Sections 6(b) and 6(c) shall be reduced as Ground Leases or Purchase Agreements become effective or close escrow, respectively, for portions of the Premises. Such reduction shall be pro rata based on dividing the annual Rent per each year by the Net Acreage (as defined in the DDA) of the Property, to determine the “**Rent Per Net Acre**,” and then reducing the Rent for such year by the number which results from multiplying (x) the Net Acreage being removed from this Lease as Ground Leases or Purchase Agreements become effective or close escrow, respectively, by (y) the Rent per Net Acre.

## **7.2 Place of Payment and Filing**

Rent payments shall be delivered to 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 Project Lead upon ten (10) days’ written notice to TENANT. Rent payments may be made by check made payable to the County of Orange. TENANT assumes all risk of loss if payments are made by mail. The COUNTY offers electronic payment for any payments hereunder, thus the TENANT shall utilize such COUNTY electronic payment system for any payments under this Lease, unless otherwise directed in writing by the Project Lead. For electronic payments, the TENANT shall submit their payment using the following information:

Bank Name:	Wells Fargo Bank
Account Name:	Revenue Recovery
Routing / ABA:	_____
Account #:	_____
Lease Name:	El Toro Master Ground Lease

## **7.3 Insufficient Funds**

(a) If any payment of Rent or other fees made by check is returned due to insufficient funds, or otherwise, more than once during the Term, COUNTY shall have the right to require TENANT to make all subsequent Rent payments by cashier’s check, certified check or ACH automatic debit system.

(b) All Rent shall be paid in lawful money of the United States of America, without offset or deduction or prior notice or demand. No payment by TENANT or receipt by COUNTY of a lesser amount than the Rent due shall be deemed to be other than on account of the Rent due, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction, and COUNTY shall accept such check or payment without prejudice to COUNTY’s right to recover the balance of said Rent or pursue any other remedy in this Lease.

## **7.4 Processing Fee (AMC6.4 S)**

Within thirty (30) days of the Execution Date of this Lease, TENANT shall pay to COUNTY a processing fee of three thousand dollars (\$3,000) for issuance of this Lease. Said processing fee is deemed earned by COUNTY and is not refundable. COUNTY shall provide TENANT with an invoice for processing fee and TENANT shall promptly pay the total processing fee amount within thirty (30) days after receipt of invoice and delivered to COUNTY at the address provided in Section 29 (NOTICES), below.



## **7.5 Charge for Late Payment (AMC7.1 S)**

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

(b) Accordingly, if any payment of Rent as specified in Section 7 (RENT) or of any other sum due COUNTY is not received by COUNTY within three (3) business days of TENANT's receipt of notice from COUNTY that such payment is due, a late charge of one and one half percent (1.5%) of the payment due and unpaid plus \$100 shall be added to the payment, and the total sum shall become immediately due and payable to COUNTY. An additional charge of one and one half percent (1.5%) of said payment, excluding late charges, shall be added for each additional month that said payment remains unpaid.

(c) TENANT and COUNTY hereby agree that such late charges represent a fair and reasonable estimate of the costs that COUNTY will incur by reason of TENANT's late payment. Acceptance of such late charges (and/or any portion of the overdue payment) by COUNTY shall in no event constitute a waiver of TENANT's default with respect to such overdue payment, or prevent COUNTY from exercising any of the other rights and remedies granted hereunder.

## **8. CONSTRUCTION BY TENANT (AMD1.1 S)**

### **8.1 DDA Obligations**

All TENANT's construction related obligations under the DDA, including, without limitation Article 5, are incorporated herein by this reference.

### **8.2 Additional Construction and/or Alteration by TENANT (AMD2.1 N)**

Other than the Phase 2 Improvements approved by Project Lead (including the maintenance, repair and replacement thereof), no additional structures, improvements, or facilities shall be constructed, erected, altered, or made within the Premises without prior written consent of Project Lead, which consent may be withheld, conditioned or delayed in the COUNTY's sole and absolute discretion. Any obligations relating to the manner, method, design, and construction of the Phase 2 Improvements or the other approved structures, improvements, or facilities authorized by the Project Lead and the applicable issuing governmental agency as a condition to granting such consent, shall be conditions hereof as though originally stated herein.

### **8.3 Payment of the Cost of Constructing the Phase 2 Improvements**

The DDA describes the Parties respective obligations to pay the costs of constructing the Phase 2 Improvements.

## **9. TENANT'S ASSURANCE OF CONSTRUCTION COMPLETION (AMD3.1 S)**

### **9.1 Completion Bond, Letter of Credit or Cash**

Prior to commencement of any Phase 2 Improvements or other construction authorized by Article 8 hereof, TENANT shall furnish to COUNTY evidence that assures COUNTY that sufficient monies will be available to complete the proposed construction. The amount of money available shall be equal to at least the total

estimated construction cost that must be paid by an entity other than COUNTY pursuant to Section 8.3 hereof and such evidence of funds may take one or more combinations of the following forms:

- (a) Completion bond issued to COUNTY as obligee;
- (b) Irrevocable letter of credit issued to COUNTY from a financial institution to be in effect until COUNTY acknowledges satisfactory completion of construction;
- (c) Cash deposited with COUNTY; and/or
- (d) Evidence satisfactory to the County from the entity financing the Phase 2 Improvements that (i) sufficient funds exist to pay for TENANT's share of the Phase 2 Improvements Costs, (ii) those funds are set aside for the Phase 2 Improvements and, (iii) subject to appropriate holdbacks, that those funds will only be disbursed to TENANT or the contractor for the Phase 2 Improvements as construction work is completed on a lien free basis.

All bonds and letters of credit must be issued by a company qualified to do business in the State of California and acceptable to Project Lead. All bonds and letters of credit shall be in a form acceptable to Project Lead and shall insure faithful and full observance and performance by TENANT of all terms, conditions, covenants, and agreements relating to the construction of improvements within the Premises. Bonds may be provided by TENANT or TENANT's contractor, provided said bonds are issued jointly to TENANT and COUNTY as obligees.

## **10. MECHANICS LIENS OR STOP NOTICES (AMD4.1 S)**

### **10.1 Indemnification**

So long as COUNTY has timely made any payment required by Section 8.3 hereof, TENANT shall not permit any lien or charge to attach to the Property or Premises and TENANT shall at all times indemnify, defend with counsel approved in writing by COUNTY and save COUNTY harmless from all claims, losses, demands, damages, cost, expenses, or liability costs for labor or materials in connection with construction, repair, alteration, or installation of structures, improvements, equipment, or facilities within the Premises, and from the cost of defending against such claims, including attorney fees and costs.

### **10.2 Recordation of Lien or Stop-Notice**

In the event a lien or stop notice is imposed upon the Premises as a result of such construction, repair, alteration, or installation, TENANT shall either:

- (a) Record a valid Release of Lien,
- (b) Procure and record a bond in accordance with Section 3143 of the Civil Code, which releases the Premises from the claim of the lien or stop notice and from any action brought to foreclose the lien, or
- (c) Should TENANT fail to accomplish either of the two optional actions above within 15 days after TENANT receives notice of the filing of such a lien or stop notice, TENANT shall be in default and this Lease shall be subject to immediate termination by COUNTY.

## 11. “AS BUILT” PLANS AND CONSTRUCTION COSTS (AMD5.1 N)

Within sixty (60) days following completion of any substantial improvement within the Premises, TENANT shall furnish the Project Lead a complete set of reproducibles and two sets of prints of “As-Built” plans and a magnetic tape, disk or other storage device containing the “As-Built” plans in a form usable by COUNTY, to COUNTY’s satisfaction, on COUNTY’s computer aided mapping and design (CAD) equipment. CAD files are also to be converted to Acrobat Reader (\*.pdf format), which shall be included on the disk or CD ROM. In addition, TENANT shall furnish to the Project Lead an itemized statement of the actual construction cost of such improvement. The statement of cost shall be sworn to and signed by TENANT or his responsible agent under penalty of perjury. TENANT must obtain the Project Lead’s approval of “As Built” plans, and the form and content of the itemized statement.

## 12. GROUND LEASES AND PURCHASE AGREEMENTS

### 12.1 Takedown Thresholds

Following completion of the Phase 2 Improvements for the portion of the Premises identified in an Acquisition Notice for a proposed Ground Lease, Developer Party shall have the right to enter into a Ground Lease in accordance with the takedown plan specified in the approved Phase 2 Business Plan required by the DDA. To comply with its obligations under this Lease, Developer Party must enter into the first Ground Lease within one (1) year after substantial completion of Marine Way (4 lanes) between Sand Canyon Road and Great Park Boulevard West (“**First Takedown Threshold**”), and the Net Acreage of that portion of the Premises included within that first Ground Lease must be a minimum of ten (10) acres. Developer Party must enter into additional Ground Leases for either (i) a Net Acreage of at least ten (10) acres per year, or (ii) no fewer than a Net Acreage of thirty (30) acres by the third (3rd) anniversary of the earlier of the effective date of the first Ground Lease or the date of the First Takedown Threshold. Once Marine Way has been substantially completed as a four (4) lane road between Sand Canyon Road and an Alternative Secondary Access Point (“**Second Takedown Threshold**”), Developer Party must enter into a Ground Lease for an additional minimum Net Acreage of (A) ten (10) acres per year, or (B) thirty (30) acres (for a cumulative total Net Acreage subject to Ground Leases of at least sixty (60) acres) within three (3) years of the Second Takedown Threshold. Thereafter, Developer Party must enter into additional Ground Leases for an additional minimum Net Acreage of (I) ten (10) acres per year, and (II) the remainder of the Premises within six (6) years of the Second Takedown Threshold. The COUNTY shall have the right to terminate this Lease for cause if Developer Party does not timely satisfy any of its obligations hereunder. For purposes of determining TENANT’s compliance with this Section, if the COUNTY designates a portion of the Premises for sale, close of escrow on that portion of the Premises will be treated the same as a Ground Lease.

### 12.2 Delivery of Acquisition Notice

TENANT shall deliver to COUNTY a written notice (the “**Acquisition Notice**”) designating the parcel or parcels within the Premises that the Developer Party wishes to Ground Lease. If (i) the Acquisition Notice is consistent with the takedown plan identified in the approved Phase 2 Business Plan required by the DDA, (ii) the TENANT has secured Final Approval of the Final Map, (iii) the Ground Rent has been established as provided for in Sections 13.1-13.3 or, to the extent applicable, updated as provided for in Section 13.4, (iv) the on-site and off-site Phase 2 Improvements are substantially complete for the portion of the Premises at issue in the Acquisition Notice, (v) the proposed use and development the Developer Party identified in the Acquisition Notice conforms to the Entitlements, (vi) no default by TENANT exists with respect to this Lease or the DDA, and (vii) the TENANT is in compliance with the above Takedown Thresholds (collectively, “**Ground Lease Preconditions**”), the delivery of an Acquisition Notice shall trigger the

COUNTY's obligation to enter into the Ground Lease contemplated in the Acquisition Notice with the Developer Party within the later of sixty five (65) business days after (a) delivery of an applicable Acquisition Notice that complies with this Section; or (b) the establishment of the Ground Rent pursuant to Article 13 hereof. Unless the Acquisition Notice satisfies the criteria established in the previous sentence, the delivery of the Acquisition Notice shall not be deemed effective and shall not create any COUNTY obligations.

### **12.3 Establishment of Ground Rent for a Ground Lease**

In accordance with the process established by Article 13 hereof, the Ground Rent Appraisal(s) process shall be commenced for each applicable lot or parcel within the Premises that is addressed in an Acquisition Notice within ten (10) business days of the occurrence of the: (i) commencement of construction of the off-site and on-site Phase 2 Improvements required for the use and occupancy of such lot or parcel; and (ii) subsequent receipt by COUNTY of written notice and appropriate documentation from TENANT demonstrating TENANT's reasonable belief that TENANT will have satisfied all the Ground Lease Preconditions (other than the establishment of the applicable Ground Rent) no later than eighty five (85) business days after the date of the written notice. The Ground Rent Appraisal(s) shall address the portion of the Premises identified in the Acquisition Notice and determine (1) the current fee simple value of each applicable lot or parcel, (2) the current market rate of return utilized in the market area to establish ground rent for new ground leases; and (3) the resultant annual Ground Rent for each applicable lot or parcel. The appraisers shall assume that all Phase 2 Improvements have been installed and the completion of all other off-site improvements, including without limitation Marine Way, that will be reasonably likely to be available to the tenant at the time of occupancy of the improvements contemplated by the Ground Lease. The appraisers shall also reduce the fee simple value of the applicable lot or parcel by the dollar amount determined by multiplying the Net Acreage of that lot or parcel by \_\_\_\_\_ dollars (\$\_\_\_\_\_) [**insert the Developer Phase 2 Improvement Costs per Net Acre as determined in accordance with Section 8.3 of the DDA**]. The appraisers shall take into account all requirements for development imposed in the Entitlements or by Applicable Laws.

### **12.4 Third Party Ground Leases**

TENANT acknowledges that the Acquisition Notice procedures described above, and any COUNTY obligations to enter into a Ground Lease based thereon, cannot and do not apply to any potential Ground Lease to an entity other than a Developer Party. Nothing in this Article 12 authorizes the COUNTY to enter into a Ground Lease with a party other than a Developer Party if such an action is otherwise prohibited under this Lease, the DDA or Applicable Laws.

### **12.5 Purchase Agreement**

If TENANT recommends the sale of all or a portion of the Premises in a transaction that would terminate this Lease as it relates to the property at issue in that sale, the COUNTY will decide in its sole and absolute discretion whether it wishes to enter into a contract to sell ("**Purchase Agreement**") and then sell the property at issue. The process for the COUNTY selling all or a portion of the Premises pursuant to this Section will be conducted in accordance with the Applicable Laws. Upon the close of escrow of a sale pursuant to this Section, this Lease will terminate as to the property sold. Nothing in this Lease restricts or limits the COUNTY's right, in its sole and absolute discretion, to sell all or a portion of the Premises in a transaction that does not terminate this Lease as to the property at issue.

## **12.6 Execution of Ground Lease; Modification of Master Ground Lease**

After the delivery of an effective Acquisition Notice as specified above, the COUNTY and Developer Party shall enter into a ground lease for such parcel substantially in the form of the Ground Lease. Each Ground Lease shall lease a separate developable area of the Premises. Such area may consist of one parcel which is intended for further subdivision, or may consist of multiple subdivided lots which will be developed as one coordinated development but the minimum Net Acreage of a Ground Lease shall be ten (10) acres. As of the date that Ground Rent payments commence for a Ground Lease, or upon the close of escrow under a Purchase Agreement, the applicable lot or parcel shall be removed from this Lease and the Rent under this Lease shall be proportionately reduced as set forth in Section 7.1(d) hereof.

## **13. GROUND RENT APPRAISAL**

### **13.1 Appraisal by COUNTY and TENANT**

Within the time frame required by Section 12 to conduct a Ground Rent Appraisal, the COUNTY and TENANT shall each engage an MAI (or a successor organization of appraisers) appraiser with at least ten (10) years of experience appraising (i) undeveloped, but entitled, land similar to the applicable lot or parcel located in Orange, Los Angeles or San Diego Counties; and (ii) land that is subject to a ground lease, with each Party paying the expense for its own appraiser. Each Party shall give the other notice of engagement of its appraiser within five (5) business days after such engagement. Upon receipt of its Appraisal, each Party shall, within five (5) business days, deliver a copy thereof to the other Party.

### **13.2 Differences in the Appraisals**

If the Party's Appraisals of the resultant Ground Rent are within 10% (higher or lower) of each other, then the two Appraisals shall be averaged to set the applicable value. Under all other circumstances, Section 13.3 hereof shall apply.

### **13.3 Third Appraisal to Determine Ground Rent**

(a) If the two Appraisals of the resultant Ground Rent are not within 10% (higher or lower) of each other, then the two appraisers shall choose a third appraiser within twenty (20) business days, and the two closest of the three appraisals will be averaged to determine the value at issue. The Parties shall each pay 50% of the costs and fees charged by the third appraiser. The third appraiser shall not be affiliated in any business relationship with either of the Parties.

(b) All Appraisals pursuant to this Article must be completed within eighty five (85) business days by an MAI (or a successor organization of appraisers) appraiser with at least ten (10) years of experience appraising (i) undeveloped, but entitled, land similar to the applicable lot or parcel located in Orange, Los Angeles or San Diego Counties; and (ii) land that is subject to a ground lease.

### **13.4 Reappraisal**

Ground Rent Appraisals shall be valid for six (6) months from the date issued. After the expiration of such period, the appraiser(s) who issued the Ground Rent Appraisal(s) shall be engaged to update the no longer valid Ground Rent Appraisal(s) and shall be directed to do so within twenty (20) business days from the date engaged. If a Party's original appraiser is not reasonably available to conduct the reappraisal, the Party shall select a new MAI (or a successor organization of appraisers) with at least ten (10) years of experience

appraising (i) undeveloped, but entitled, land similar to the applicable lot or parcel, located in Orange, Los Angeles or San Diego Counties; and (ii) land that is subject to a ground lease.

#### **14. OWNERSHIP OF IMPROVEMENTS (AMD 6.1 S)**

All Improvements and facilities constructed or placed within the Premises by TENANT must, upon completion, be free and clear of all liens, claims, or liability for labor or material. After the expiration of the Term or earlier termination of this Lease any Improvements shall become the property of COUNTY.

#### **15. MAINTENANCE OBLIGATIONS OF TENANT (AM2.1 N)**

##### **15.1 Maintenance**

TENANT shall, to the satisfaction of the Project Lead and at TENANT's sole cost and expense, keep and maintain the Premises and any improvements thereon (hereinafter referred to as "**Improvements**") of any kind which may be erected, installed, or made thereon, in good condition and substantial repair. Maintenance and repair shall be in accordance with all Applicable Laws of:

- (a) Federal, State, County, City and other governmental agencies, authorities, and bodies having or claiming jurisdiction, and all their respective departments, bureaus, and officials;
- (b) The insurance underwriting board or insurance inspection bureau having or claiming jurisdiction;
- (c) All insurance companies insuring all or any part of the Premises or improvements, installations, or facilities.

##### **15.2 Repair**

TENANT shall promptly and diligently repair, restore and replace said Improvements and the Premises, at TENANT's sole cost and expense, as required to remedy all damages to or destruction of all or any part of the Improvements resulting wholly or in part from causes covered by fire or extended coverage insurance.

##### **15.3 Quality**

All workmanship and materials used in the maintenance, repair, restoration, or replacement of the Improvements shall be equal in quality, and durability of workmanship and materials of the Improvements existing before the event giving rise to the work.

##### **15.4 COUNTY's Right to Repair**

If TENANT fails to maintain or make repairs or replacements as required by this Lease, the Project Lead may notify TENANT in writing of said failure. Should TENANT fail to correct the situation within (i) three (3) business days or (ii) if the Project Lead determines additional time is required to effectuate the maintenance, repair or replacement, the time frame set forth in an action plan prepared by TENANT and approved by the Project Lead, then the COUNTY may make such maintenance, repairs, replacements, and necessary correction(s) or cause them to be made and the cost thereof, including but not limited to the cost of labor, materials, and equipment and an administrative fee equal to fifteen percent (15%) of the sum of such items shall be paid by TENANT within ten (10) days of receipt of a statement of said cost from Project Lead. Should TENANT fail to correct the situation within the time frame identified in the COUNTY's written

notice, the COUNTY may also, at its option, choose other remedies available herein or by law including, without limitation, termination of the Lease.

### **15.5 Regulations**

(a) TENANT shall at all times comply with all Applicable Laws.

(b) If TENANT receives an inspection notice or a deficiency notice following an inspection by any public or regulatory agency having jurisdiction, TENANT agrees to make any and all corrections in the manner required immediately upon receipt of such notice. If within thirty (30) days of date of such notice, TENANT fails to comply with the provisions of this Section, TENANT's failure to comply shall constitute a material default under this Lease, and without providing TENANT with an additional notice or opportunity to cure, COUNTY may exercise the remedies for a default and this Lease may be subject to immediate termination. Notwithstanding the foregoing, if the inspection notice or deficiency notice is of such a nature that the condition or deficiency cannot reasonably be remedied within thirty (30) days, the time period for TENANT's obligation to correct such condition or deficiency shall be extended to a commercially reasonable period of time for correction. In the event that the TENANT alleges that the condition or deficiency cannot reasonably be remedied within thirty (30) days, TENANT shall provide evidence of such and an estimate of completion of the remedial work.

## **16. OBLIGATIONS OF TENANT DURING THE TERM (PSB3.1 N)**

### **16.1 Compliance with DDA**

TENANT shall comply with the terms of the DDA during the Term and a breach or default by a party other than the COUNTY under the DDA shall be deemed to be a material default under the Lease. In the event that the DDA is terminated pursuant to its terms, then the COUNTY shall have the right, in its sole and absolute discretion, to terminate this Lease. Unless otherwise provided for therein, such termination shall not act to terminate any Ground Lease or Purchase Agreement that has been duly executed prior to the date of such termination.

### **16.2 Protection of Environment**

TENANT shall take all reasonable measures available to:

(a) Avoid any pollution of the atmosphere or littering of land or water caused by or originating in, on, or about the Premises.

(b) Prevent pollutants from the Premises from being discharged, including petroleum products of any nature, except as may be permitted in accordance with any Applicable Laws. 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 Laws.

(c) The COUNTY may enter the Premises and/or review TENANT records at any time to assure that activities conducted on the Premises comply with the requirements of this Section.

### **16.3 On Site Manager**

TENANT shall employ a competent manager who shall be responsible for the day-to-day construction management and the level of maintenance, cleanliness, and general order for the Premises. Such person shall be vested with the authority of TENANT with respect to the supervision over the construction and maintenance of the Premises, including the authority to enforce compliance by TENANT's agents, employees, concessionaires, or licensees with the terms and conditions of this Lease and any and all rules and regulations adopted hereunder. TENANT expressly agrees that any notice herein required to be served upon TENANT may, at the option of COUNTY or Project Lead, be personally served upon said manager and that such service shall have the same force and effect as service upon TENANT. TENANT shall notify COUNTY in writing of the name of the manager currently so employed as provided in Section 30 (NOTICES) of this Lease.

### **16.4 Preparation and Recordation of CCRs**

Within ninety (90) days of the Execution Date, TENANT shall prepare a Declaration of Covenants, Conditions and Restrictions for the Premises that establishes such use rights and restrictions, common area management and financial obligations, and other provisions as TENANT may deem appropriate and submit that document for review and approval by the COUNTY in the COUNTY's sole and absolute discretion. Within thirty (30) days of the addition of any portion of the Remainder Acreage to the Premises, TENANT shall prepare an amendment to the Declaration of Covenants, Conditions and Restrictions that includes the revised Premises and that establishes such use rights and restrictions, common area management and financial obligations, and other provisions as TENANT may deem appropriate and submit that document for review and approval by the COUNTY in the COUNTY's sole and absolute discretion. Following COUNTY approval, TENANT shall record that Declaration of Covenants, Conditions, and Restrictions against the Premises. TENANT shall establish any owners' association required under such document and manage such association until such management is, by the terms of the recorded document, assigned.

### **17. MAINTENANCE RESPONSIBILITY OF COUNTY (PME3.1 N)**

COUNTY shall have no obligation or responsibility to remove debris, or to otherwise maintain, repair, restore or replace the Improvements or the Premises.

### **18. DAMAGE TO OR DESTRUCTION OF IMPROVEMENTS (AM6.5 S)**

In the event of damage to or destruction of Improvements or Phase 2 Improvements on the Premises or in the event such Improvements or Phase 2 Improvements on the Premises are declared unsafe or unfit for use or occupancy by a public entity with the authority to make and enforce such declaration, TENANT shall, within thirty (30) days, commence and diligently pursue to complete the repair, replacement, or reconstruction to the condition that existed immediately prior to the event causing the damage or destruction at TENANT's sole cost and expense. Repair, replacement, or reconstruction of Improvements off of or Phase 2 Improvements shall be accomplished in a manner and according to plans approved by the Project Lead.

### **19. CONDEMNATION (N)**

#### **19.1 Total Taking**

If the entire Premises are taken for any public or quasi-public use under any statute by right of eminent domain, or by purchase by public authority in lieu thereof, this Lease shall terminate as of the date that possession of the Premises is taken by the public authority or TENANT is deprived of its practical use of the



Premises, whichever date is earlier. The net proceeds of the award shall be distributed in the following order of priority:

- (a) COUNTY shall receive that portion of the award which shall constitute compensation for the value of its fee simple interest in the Premises as encumbered by this Lease;
- (b) TENANT shall be compensated for its interest in the Premises, including direct loss of investment in improvements constructed on the Premises at TENANT's cost and expense, the cost of removal of any fixtures and equipment paid for by TENANT, and the loss of the economic benefit of TENANT's leasehold estate.
- (c) The remainder of the award, if any, shall go to the COUNTY.

### **19.2 Partial Taking**

If any portion of the Premises is taken for any public or quasi-public use under, any statute by right of eminent domain, or by purchase by public authority in lieu thereof, then:

- (a) The Lease shall continue in full force and effect;
- (b) The net proceeds of the award shall be allocated in the following order of priority:
  - (i) The payment of the costs of prompt restoration by TENANT, of the Premises to a safe condition;
  - (ii) Compensation to COUNTY for the value of its fee interest in the portion of the Premises taken as encumbered by this Lease;
  - (iii) Compensation to TENANT for its interest in the portion of the Premises taken, including without limitation, the value of the leasehold estate, direct loss of investment in improvements constructed on the Premises at TENANT's sole cost and expense, the cost of removal and reinstallation of any fixtures and equipment paid for by TENANT, and the loss of the economic benefit of that portion of TENANT's leasehold estate; and
  - (iv) The remainder of the award, if any, shall go to the COUNTY.

### **19.3 Temporary Taking.**

If all or a portion of the Premises shall be taken for any public or quasi-public use on a temporary basis, then:

- (a) This Lease shall continue in full force and effect without reduction of Rent; and
- (b) TENANT shall be entitled to claim, recover and retain any award with respect to such taking, except that if such taking shall be for a period extending beyond the expiration of the Term of the Lease, COUNTY shall be entitled to receive such portion of the award as shall be attributable to the period occurring after such expiration.

### **19.4 Miscellaneous**

- (a) COUNTY and TENANT each agree to promptly notify the other Party upon receipt of any notice from a condemning authority or agency expressing an intention to commence a taking or

condemnation of any part of the Premises. The foregoing shall include not only a formal service of legal process received by either COUNTY or TENANT, but also any preliminary indication of such intent. Thereafter, COUNTY and TENANT shall keep each other fully informed as to all aspects of such proceedings and/or negotiations.

(b) COUNTY and TENANT shall each have the right to represent their respective interests in each proceeding or negotiation with respect to a taking or intended taking and to make full proof of their respective claims. No agreement, settlement, sale, or transfer to or with the condemning authority shall be made without the consent of COUNTY and TENANT. COUNTY and TENANT each agree to execute and deliver to the other any instruments that may be required to effectuate or facilitate the provisions of this Lease relating to condemnation.

## **20. INSURANCE (AME5.1.1 N)**

**20.1 Insurance Requirements.** Prior to Effective Date of this Lease, the TENANT agrees to purchase all required insurance at TENANT's expense and to deposit with the COUNTY Certificates of Insurance, including all endorsements required herein, necessary to satisfy the COUNTY that the insurance provisions of this Lease have been complied with and to keep such insurance coverage and the certificates therefore on deposit with the COUNTY during the entire term of this Lease. The COUNTY reserves the right to request the declarations pages showing all endorsements and a complete certified copy of the policy. In addition, all consultants, agents and general contractors/subcontractors (hereinafter referred to as "**TENANT Parties**"), performing work on behalf of TENANT pursuant to this Lease shall obtain insurance subject to the same terms and conditions exclusive of insurance limits as set forth herein for TENANT. Subcontractor insurance limits will be established by mutual agreement between COUNTY and TENANT.

TENANT shall ensure that all TENANT Parties performing work on behalf of TENANT pursuant to this Lease shall be covered under TENANT's insurance or maintain insurance subject to the terms and conditions as set forth herein. TENANT shall not allow any TENANT Parties to commence work until the insurance requirements have been satisfied. It is the obligation of the TENANT to provide notice of the insurance requirements to all TENANT Parties and to obtain evidence of insurance prior to allowing any TENANT Parties to commence work. Evidence of insurance must be maintained by TENANT through the entirety of this Lease for inspection by COUNTY at any reasonable time.

TENANT will require Builders Risk insurance during any construction. The Builders Risk policy shall be written on a Special Causes of Loss Form with the exclusion of earthquake and flood. The limit of insurance shall be 100% of the completed project value with no coinsurance and replacement cost valuation.

All self-insured retentions (SIRs) or deductibles shall be clearly stated on the Certificate of Insurance. If no deductibles or SIRs apply, TENANT shall indicate this on the Certificate of Insurance with a zero (0) by the appropriate line of coverage. Any deductible or self-insured retention (SIR) in an amount in excess of \$25,000 (\$5,000 for automobile liability) carried by TENANT or a TENANT Party, shall specifically be approved by the COUNTY Executive Office (CEO)/Office of Risk Management. TENANT shall be responsible for reimbursement of any deductible to the insurer. Upon notice of any actual or alleged claim or loss arising out of TENANT Parties work hereunder, such TENANT Party shall immediately satisfy in full the SIR provisions of the policy in order to trigger coverage for the TENANT and additional insureds.

If the TENANT fails to maintain insurance required by this Lease, the COUNTY may terminate this Lease after providing TENANT a thirty (30) day period in which to cure. If within ten (10) business days after termination under this section, TENANT obtains and provides evidence of the required insurance coverage acceptable to Project Lead, this Lease may be reinstated at the sole discretion of the Project Lead. TENANT

shall pay COUNTY Seven Hundred Fifty Dollars (\$750), or such greater cost recovery amount as identified by the COUNTY, for processing the reinstatement of this Lease.

**20.2 Qualified Insurer.** The policy or policies of insurance must be issued by an insurer licensed to do business in the State of California (California Admitted Carrier) or have a minimum rating of A- (Secure A.M. Best's Rating) and VII (Financial Size Category) as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com**.

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

**Insurance Requirements for TENANT**

Commercial General Liability	\$5,000,000 per occurrence \$5,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per occurrence
Professional Liability Insurance	\$1,000,000 per claims made or per occurrence \$2,000,000 aggregate

**Insurance Requirements for Architects, Engineers and other Licensed Professionals**

Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per occurrence
Professional Liability Insurance	\$2,000,000 per claims made or per occurrence \$4,000,000 aggregate

**Insurance Requirements for Contractors**

Commercial General Liability	\$5,000,000 per occurrence \$5,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$5,000,000 per occurrence

Workers' Compensation

Statutory

Employers' Liability Insurance

\$1,000,000 per occurrence

Subcontractor insurance limits will be established by mutual agreement between COUNTY and Developer.

If the TENANT's insurance carrier is not an admitted carrier in the State of California and does not have an A.M. Best rating of A-/VII, the CEO/Office of Risk management retains the right to approve or reject a carrier after a review of the company's performance and financial ratings. TENANT is responsible to enforce this requirement with the TENANT Parties.

**20.3 Required Coverage Forms.** The Commercial General Liability coverage shall be written on Insurance Services Office (ISO) form CG 00 01, or a substitute form providing equivalent liability coverage. The Business Auto Liability coverage shall be written on ISO form CA 00 01, or a substitute form providing equivalent liability coverage.

**20.4 Required Endorsements.** The Commercial General Liability shall contain the following endorsements, which shall accompany the Certificate of Insurance:

(a) An Additional Insured endorsement using ISO form CG 2010 or CG 2033 or an equivalent form naming the COUNTY, the members of the Board, its elected and appointed officials, officers, employees and agents as Additional Insureds.

(b) A primary non-contributing endorsement evidencing that the TENANT's insurance is primary and any insurance maintained by the COUNTY shall be excess and non-contributing.

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

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

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

**20.5 Other Terms.** TENANT shall notify COUNTY in writing prior to any lapse of insurance coverage and provide a copy of the cancellation notice to COUNTY. Failure to provide written notice of cancellation may constitute a material breach of this Lease, upon which the COUNTY may suspend or terminate this Lease.

If the Professional Liability policy is a "claims made" policy, TENANT and/or the TENANT Party shall agree to maintain professional liability coverage for three years following completion of the applicable contract.

The TENANT is granted the option of procuring insurance under a single policy or by a combination of underlying policies with the balance provided by an excess or Umbrella policy with Follow Form coverage to the total per occurrence and aggregate limits required under this Lease.

COUNTY will have the right, but not the obligation of prohibiting the TENANT from entering the Premises until such evidence of insurance has been submitted to the COUNTY.

Failure of COUNTY to demand delivery of or identify deficiency with such evidence of insurance shall not be construed as a waiver of TENANT's obligations under this section.

By requiring insurance, the COUNTY does not represent that coverage and limits will necessarily be adequate to protect the TENANT. Insurance procured by the TENANT will not reduce or limit the TENANT's contractual obligation to indemnify and defend the COUNTY as required by this Lease or otherwise.

TENANT shall not be relieved of its responsibility for any and all loss, damage or liability stemming from any risk or exposure that is not insured, or not covered within any deductibles or self-insured retentions, or not covered as a result of policy exclusions or limitations.

Insurance certificates should be forwarded to the Project Lead.

COUNTY expressly retains the right to request a change in insurance requirements. If so requested, TENANT and COUNTY will strive to mutually agree to increase or decrease insurance of any of the above insurance types throughout the term of this Lease. Any increase or decrease in insurance will be as deemed by the COUNTY Risk Manager as appropriate to adequately protect COUNTY.

Following mutual agreement, TENANT will then deposit copies of acceptable certificates of insurance and endorsements with COUNTY incorporating such changes within thirty days of procuring such revised insurance.

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 act in any way to reduce the policy coverage and limits available from the insurer.

## **21. ASSIGNING, SUBLETTING, AND ENCUMBERING PROHIBITED (AME7.1 N)**

### **21.1 General.**

(a) Except as expressly provided for in this Lease, no mortgage, pledge, hypothecation, transfer or encumbrance ("**Transfer**") of TENANT's interest in the Premises or this Lease, or any part or portion thereof, shall be permitted during the Term absent the COUNTY's written consent, which consent may be withheld or granted in the COUNTY's sole and absolute discretion.

(b) Any attempt by TENANT to Transfer TENANT's interest in the Premises or Lease, or any part or portion thereof, except as expressly provided for in this Lease shall be invalid and shall constitute a material default under this Lease which default must be cured within the time frame provided for in this Lease.

### **21.2 Permitted Transfers**

(a) Subject to the COUNTY's reasonable, prior written approval based on factors such as the proposed transferee's financial capability and relevant experience being equal to or better than TENANT's, TENANT shall be permitted to assign all its rights and obligations under this Lease to a Developer Party that is also the Developer under the DDA. Further, TENANT shall deliver to the COUNTY

a copy of an assignment and assumption agreement by and between TENANT and the approved transferee whereby the transferee agrees to assume all of the duties and obligations of TENANT hereunder, for consideration by COUNTY.

(b) A Transfer, whether in one transaction or a series of transactions, of any stock or ownership interest in the TENANT entity in the aggregate in excess of twenty-five percent (25%) shall be deemed a Transfer, and will require the prior written consent of the COUNTY, which consent may be withheld or granted in the COUNTY's sole and absolute discretion.

(c) With prior COUNTY written consent, TENANT may assign its interest in this Lease to any Subsidiary. At a minimum the TENANT must be the managing member that controls the entity and directly owns fifty percent (50%) or more of the equity interest therein (a "**Subsidiary**") and TENANT must demonstrate to the reasonable satisfaction of the COUNTY that the Subsidiary has sufficient net worth and relevant experience to ensure performance of TENANT's obligations under this Lease and that the Subsidiary employs the Key People (as defined in the DDA) to perform the TENANT's obligations. Further, TENANT shall deliver to the COUNTY a copy of an assignment and assumption agreement by and between TENANT and Subsidiary whereby Subsidiary agrees to assume all of the duties and obligations of TENANT hereunder, for consideration by COUNTY.

(d) Any Transfer permitted by COUNTY shall not be entered into as a subterfuge to avoid the obligations and restrictions of the Lease. Absent the express written approval of the County, TENANT originally named in the Lease shall remain liable for all obligations under the Lease notwithstanding the Transfer.

(e) All Transfers consented to by COUNTY shall be subject to the COUNTY receiving, at or prior to the effectiveness of the Transfer, a monetary payment from TENANT equal to fifty percent (50%) of the amount of consideration to be received by TENANT as a result of the approved Transfer less the reasonable transaction costs incurred by TENANT in making the approved Transfer. TENANT shall also pay a processing fee of \$5,000 to the COUNTY at the time TENANT requests approval of the Transfer and that fee shall be deemed earned by COUNTY when paid and shall not be refundable.

## **22. HAZARDOUS MATERIALS (AMF9.1 S)**

**22.1 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, , including, without limitation, petroleum (including crude oil or any fraction or additive thereof), asbestos or asbestos containing materials, radon, radiation and radioactive materials, lead-based paints, and polychlorinated biphenyls, 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.

**22.2 Prior Use.** The Parties acknowledge that the Property is part of the former Marine Corps Air Station ("MCAS") El Toro and that environmental conditions exist, including but not limited to, the release of Hazardous Materials to soil and groundwater. MCAS El Toro is listed on the U.S. Environmental Protection Agency National Priorities List under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") and the United States Department of the Navy has taken, and is currently undertaking, corrective action pursuant to CERCLA, the Resource Conservation and Recovery Act, and associated state laws and regulations. Information regarding the environmental conditions has been provided by the COUNTY to TENANT. TENANT further acknowledges and accepts the disclosures, restrictions and obligations established by and identified in that certain Quitclaim Deed and Environmental

Restriction Pursuant to Civil Code Section 1471 (For Parcels: \_\_\_\_\_) Recorded on \_\_\_\_\_, in Official Records, Orange County, as Instrument Number \_\_\_\_\_, and attached hereto as Exhibit \_\_\_\_ (“**Navy Quitclaim**”).

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

**22.4 TENANT Obligations.** If the presence of any Hazardous Materials on, under or about the Premises caused or permitted by TENANT or TENANT Parties, or otherwise located on the Premises for any reason (unless deposited there by the COUNTY) results in (i) injury to any person, (ii) injury to or contamination of the Premises (or a portion thereof), or (iii) injury to or contamination of any real or personal property wherever situated, TENANT, at its sole cost and expense, shall promptly take all actions necessary or appropriate to return the Premises to the condition existing prior to the introduction of such Hazardous Materials to the Premises and to remedy or repair any such injury or contamination. Without limiting any other rights or remedies of COUNTY under this Lease, TENANT shall pay the cost of any cleanup or remedial work performed on, under, or about the Premises as required by this Lease or by applicable laws in connection with the removal, disposal, neutralization or other treatment of such Hazardous Materials located on the Premises. Notwithstanding the foregoing, TENANT shall not take any remedial action in response to the presence, discharge or release, of any Hazardous Materials on, under or about the Premises, 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 COUNTY. All work performed or caused to be performed by TENANT as provided for above shall be done in good and workmanlike manner and in compliance with plans, specifications, permits and other requirements for such work approved by COUNTY. If there are Hazardous Materials on the Premises caused by the United States Department of the Navy, then TENANT may assert and pursue any and all claims available against the United States Department of the Navy and use commercially reasonable efforts to cause the United States Department of the Navy to remediate or otherwise address such Hazardous Materials, with regard to which the COUNTY shall reasonably cooperate and assist at no out-of-pocket expense to the COUNTY, other than customary office supplies. This section and the obligations herein are intended to address the respective rights and obligations of the TENANT and COUNTY and not intended to relieve or affect any legal obligations of the United States Department of the Navy under the Navy Quitclaim or the Applicable Laws.

**22.5 Indemnification for Hazardous Materials.**

(a) To the fullest extent permitted by law, TENANT shall indemnify, hold harmless, protect and defend (with attorneys acceptable to COUNTY) COUNTY, its elected officials, officers, employees, agents, independent contractors, and the Premises from and against any and all liabilities, losses, damages (including, but not limited to, damages for the loss or restriction on use of rentable or usable space or any amenity of the Premises but not damages arising from any adverse impact on marketing or 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 (“**Claims**”), 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, and Claims relating to Hazardous Materials

arising out of the actions or use of the Premises by TENANT or TENANT Parties, unless the Hazardous Materials are deposited onto the Premises by the COUNTY.

(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.

**22.6 Pollution Legal Liability Insurance Policy.** Unless the Parties mutually agree otherwise, prior to TENANT's commencement of the Phase 2 Improvements on the Premises, the COUNTY shall procure, as part of the costs of the Phase 2 Improvements, the Legal Liability insurance policy identified in Section 11.34 of the DDA. Provided TENANT gave COUNTY written notice forty five (45) business days prior to the anticipated date of the commencement of construction, the policy will name the COUNTY and TENANT as Named Insureds.

### **23. BEST MANAGEMENT PRACTICES (AMF 9.2 S)**

(a) 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).

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

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

(d) BMP Fact Sheets that apply to uses authorized under this Lease include the BMP Fact Sheets that are attached hereto as **Exhibit E**. These BMP Fact Sheets may be modified during the term of the Lease; and the Project Lead 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.

(e) TENANT may propose alternative BMPs that meet or exceed the pollution prevention performance of the BMP Fact Sheets. Any such alternative BMPs shall be submitted to the Project Lead for review and approval prior to implementation.

(f) COUNTY's Project Lead may enter the Premises and/or review TENANT's records at any time 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.

#### **24. NOTICES (AMF10.1 S)**

(a) All notices pursuant to this Lease shall be addressed as set forth below or as either Party may hereafter designate by written notice and shall be sent through the United States mail in the State of California, duly registered or certified, return receipt requested, with postage prepaid.

(b) If any notice is sent by registered or certified mail, as aforesaid, the same shall be deemed to have been served or delivered twenty-four (24) hours after mailing thereof as above provided. Notwithstanding the above, COUNTY may also provide notices to TENANT by personal delivery or by regular mail and any such notice so given shall be deemed to have been given upon receipt.

TO COUNTY:	Name:	County of Orange
	Address:	County Executive Office 445 Civic Center Drive West Santa Ana, CA 92701
	Attn:	James Campbell
	Name:	County of Orange
	Address:	County Executive Office 333 West Santa Ana Boulevard, 3 <sup>rd</sup> Floor Santa Ana, CA 92701-4084
	Attn:	Scott Mayer, Chief Real Estate Officer
	Name:	County of Orange
	Address:	Counsel's Office 333 W. Santa Ana Boulevard, 4 <sup>th</sup> Floor Santa Ana, CA 92701-4084
	Attn:	Mat Miller
TO TENANT:	Name:	Lowe Enterprises Real Estate Group
	Address:	11777 San Vicente Boulevard, Suite 900 Los Angeles, CA 90049
	Attn:	Corporate Counsel

and a copy to: Lowe Enterprises Real Estate Group  
5560 Overland Avenue, Suite 210  
San Diego, CA 92123  
Attn: Michael W. McNerney

and a copy to: Manatt, Phelps & Phillips, LLP  
11355 W. Olympic Boulevard  
Los Angeles, CA 90064  
Attn: Timi Anyon Hallem

**25. ATTACHMENTS TO LEASE (AMF11.1 S)**

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

**I. GENERAL CONDITIONS**

**II. EXHIBITS**

- Exhibit A – Property Legal Description
- Exhibit B – Premises Legal Description
- Exhibit C – Depiction of Premises
- Exhibit D – Ground Lease
- Exhibit E – Best Management Practices (BMP Fact Sheets)
- Exhibit F – Child Support Enforcement Certificate

[SIGNATURES ON NEXT PAGE]

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

APPROVED AS TO FORM:

TENANT

COUNTY COUNSEL

LOWE ENTERPRISES REAL ESTATE GROUP,  
a California corporation

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

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

Date \_\_\_\_\_

RECOMMENDED FOR APPROVAL:

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

Chief Real Estate Officer, County Executive Office

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

SIGNED AND CERTIFIED THAT A COPY OF  
THIS DOCUMENT HAS BEEN DELIVERED  
TO THE CHAIR OF THE BOARD  
OF SUPERVISORS PER  
GC § 25103, RESO. 79-1535

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

ATTEST:

\_\_\_\_\_  
Chair, Board of Supervisors  
Orange County, California

\_\_\_\_\_  
SUSAN NOVAK  
Clerk of the Board of Supervisors  
Orange County, California

## **I. GENERAL CONDITIONS (PMG1.1-29.1)**

### **1. TIME (PMG1.1 S)**

Time is of the essence of this Lease. Failure to comply with any time requirement of this Lease shall constitute a material breach of this Lease, subject to any notice and cure periods prescribed.

### **2. SIGNS (PMG2.1 S)**

TENANT agrees not to construct permanent wall or freestanding signage without the benefit of appropriate County permits and any other approvals required by the Applicable Laws.

### **3. PERMITS AND LICENSES (PMG3.1 S)**

TENANT shall be required to obtain any and all approvals, permits and/or licenses which may be required in connection with the Phase 2 Improvements, the Improvements and the maintenance, operation, repair and use of the Premises as set out herein. No permit, approval, or consent given hereunder by COUNTY, in its governmental capacity, shall affect or limit TENANT's obligations hereunder, nor shall any approvals or consents given by COUNTY, as a party to this Lease, be deemed approval as to compliance or conformance with applicable governmental codes, laws, rules, or regulations.

### **4. LEASE ORGANIZATION (PMG5.1 S)**

The various headings and numbers herein, the grouping of provisions of this Lease into separate Sections and paragraphs, and the organization hereof, are for the purpose of convenience only and shall not be considered otherwise.

### **5. AMENDMENTS (PMG6.1 S)**

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.

### **6. UNLAWFUL USE (PMG7.1 S)**

TENANT agrees no improvements shall be erected, placed upon, operated, nor maintained within the Premises, nor any business conducted or carried on therein or therefrom, in violation of the terms of this Lease, or of any regulation, order of law, statute, bylaw, or ordinance of a governmental agency having jurisdiction.

### **7. NONDISCRIMINATION (PMG8.1 S)**

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

**8. INSPECTION (PMG9.1 S)**

COUNTY or its authorized representative shall have the right at all reasonable times to inspect the Premises to determine if the provisions of this Lease are being complied with.

**9. HOLD HARMLESS (PMGE10.1 S)**

TENANT hereby releases and waives all Claims and recourse against COUNTY, including the right of contribution for injury to or death of any person or loss of or damage to property, arising from, growing out of or in any way connected with or related to this Lease, except claims arising from the concurrent active or sole negligence of COUNTY, its officers, agents, employees and contractors. TENANT shall indemnify, defend (with counsel approved in writing by COUNTY), protect and hold COUNTY and the COUNTY Parties harmless from all Claims arising from or related to (i) the lease, use or occupancy of the Premises, the Phase 2 Improvements and the Improvements, (ii) Claims made by any tenant, resident, employee, agent, contractor or invitee to the Premises, (iii) the conduct of TENANT's business, or (iv) any activity, work or thing done, permitted or suffered by TENANT in or about the Premises, the Phase 2 Improvements or the Improvements. TENANT shall further indemnify, defend and hold COUNTY and the COUNTY Parties harmless from all Claims arising from any breach or default in the performance of any obligation to be performed by TENANT under the terms of this Lease, or arising from any act, neglect, fault or omission of TENANT or of its agents or employees, and from and against all costs, attorneys' fees, expenses and liabilities incurred in or about such Claim or any action or proceeding brought thereon. In case any action or proceeding shall be brought against COUNTY or a member of the COUNTY Parties by reason of any such Claim, TENANT, upon notice from COUNTY, shall defend the same at TENANT's expense, by counsel designated by TENANT and approved in writing by COUNTY, which approval shall not be unreasonably withheld. TENANT, as a material part of the consideration to COUNTY, hereby assumes all risk of damage to property or injury to person in, upon or about the Premises from any cause whatsoever except that which is caused by COUNTY's concurrent active or sole negligence or willful misconduct. Neither COUNTY nor the COUNTY Parties shall be liable to TENANT or any TENANT Party for any loss, injury or damage to TENANT or to the TENANT Parties or to any other person, or to its or their property, irrespective of the cause of such injury, damage or loss, unless and to the extent caused by or resulting from the concurrent active or sole negligence or willful misconduct of COUNTY or the COUNTY Parties. The provisions of this Section shall survive the expiration or earlier termination of this Lease as to all matters arising prior to such expiration or termination or prior to TENANT's vacation of the Premises. If judgment is entered against COUNTY and TENANT by a court of competent jurisdiction because of the concurrent active negligence of COUNTY and TENANT, COUNTY and TENANT agree that liability will be apportioned as determined by the court. Neither Party shall request a jury apportionment.

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

“A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which, if known by him or her must have materially affected his or her settlement with the debtor.”

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

**10. TAXES AND ASSESSMENTS (PMG11.1 S)**

This Lease may create a possessory interest which is subject to the payment of taxes levied on such interest. It is understood and agreed that all taxes and assessments (including but not limited to said possessory interest tax) which become due and payable upon the Premises or upon fixtures, equipment, or other property installed or constructed thereon, shall be the full responsibility of TENANT, and TENANT shall cause said taxes and assessments to be paid promptly.

**11. SUCCESSORS IN INTEREST (PMG12.1 S)**

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

**12. CIRCUMSTANCES WHICH EXCUSE PERFORMANCE (PMG13.1 S)**

If the Parties are delayed or prevented from the performance of any act required hereunder by reason of war, terrorism, Acts of God, restrictive governmental laws or regulations, or other cause without fault and beyond the control of the Party obligated (financial inability excepted), performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay.

**13. PARTIAL INVALIDITY (PMG14.1 S)**

If any term, covenant, condition, or provision of this Lease is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

**14. WAIVER OF RIGHTS (PMG15.1 S)**

The failure of COUNTY or TENANT to insist upon strict performance of any of the terms, covenants, or conditions of this Lease shall not be deemed a waiver of any right or remedy that COUNTY or TENANT may have, and shall not be deemed a waiver of the right to require strict performance of all the terms, covenants, and conditions of the Lease thereafter, nor a waiver of any remedy for the subsequent breach or default of any term, covenant, or condition of the Lease. Any waiver, in order to be effective, must be signed by the Party whose right or remedy is being waived.

**15. DEFAULT AND REMEDIES (PMG16.1 S)**

**15.1 Events Of TENANT Default**

The occurrence of any one or more of the following events shall constitute a default hereunder by TENANT:

- (a) The abandonment or vacation of the Premises by TENANT.
- (b) The failure by TENANT to make any payment of Rent or any other sum payable hereunder by TENANT, as and when due, where such failure shall continue for a period of three (3) days after written notice thereof from COUNTY to TENANT; provided, however, that any such notice shall be in lieu of, and not in addition to, any notice required under California Code of Civil Procedure §1161 et seq.
- (c) The default by TENANT under the DDA which is not timely cured.

(d) 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 subparagraphs (a) or (b) above, where such failure shall continue for a period of ten (10) days after written notice thereof from COUNTY to TENANT; provided, however, that any such notice shall be in lieu of, and not in addition to, any notice required under California Code of Civil Procedure §1161 et seq.; 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 TENANT shall commence such cure within said ten (10) days, and thereafter diligently prosecutes such cure to completion.

(e) The making by TENANT of any general assignment for the benefit of creditors;

(f) 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;

(g) 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

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

## **15.2 COUNTY Remedies.**

(a) In the event of any default by TENANT, then, in addition to any other remedies available to COUNTY under this Lease, at law or in equity, COUNTY may exercise the following remedies:

(i) COUNTY may terminate this Lease and all rights of TENANT hereunder by giving written notice of such termination to TENANT. In the event that COUNTY shall so elect to terminate this Lease, then COUNTY may recover from TENANT:

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

(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;

(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;

(D) Any other amount necessary to compensate COUNTY for all the detriment proximately caused by TENANT's failure to perform its obligations under this Lease or which in

the ordinary course of things would be likely to result therefrom, including, but not limited to, the cost of recovering possession of the Premises, expenses of reletting, including necessary repair, renovation and alteration of the Premises, reasonable attorneys' fees, expert witness costs, and any other reasonable costs; and

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

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

(iii) COUNTY shall have the right, following a termination of this Lease and TENANT's rights of possession of the Premises, to re-enter the Premises and, subject to Applicable Laws, 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.

(b) Nothing in this Section shall be deemed to affect TENANT's indemnity of COUNTY liability or liabilities based upon occurrences prior to the termination of this Lease for personal injuries or property damage under the indemnification clause or clauses contained in this Lease.

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

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

(e) 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 required to be paid by it hereunder or shall fail to perform any other act on its part to be performed hereunder, or to provide any insurance or evidence of insurance to be provided by TENANT, then in addition to any other remedies provided herein, COUNTY may, but shall not be obligated to do so, and without waiving or releasing TENANT from any obligations of TENANT, make any such payment or perform any such act on TENANT's part to be made or performed as provided in this Lease or to provide such insurance. Any payment or performance of any act or the provision of any such insurance by COUNTY on TENANT's behalf shall not give rise to any responsibility of COUNTY to continue making the same or similar payments or performing the same or similar acts. All



costs, expenses, and other sums incurred or paid by COUNTY in connection therewith, together with interest at the maximum rate permitted by law from the date incurred or paid by COUNTY shall be deemed to be additional rent hereunder and shall be paid by TENANT within ten (10) days of written notice thereof specifying the payment and enclosing copies of any invoices therefor, and any default therein shall constitute a breach of the covenants and conditions of this Lease.

### **15.3 COUNTY Default**

COUNTY shall not be considered to be in default under this Lease unless TENANT has given COUNTY written notice specifying the default, and either (i) as to monetary defaults, COUNTY has failed to cure the same within ten (10) business days after written notice from TENANT, or (ii) as to nonmonetary defaults, COUNTY has failed to cure the same within thirty (30) days after written notice from TENANT, or if the nature of TENANT's nonmonetary default is such that more than thirty (30) days are reasonably required for its cure, then such thirty (30) period shall be extended automatically so long as COUNTY commences a cure within such thirty (30) day period and thereafter diligently pursues such cure to completion. TENANT shall have no right to offset or abate alleged amounts owing by COUNTY under this Lease against Rent owing by TENANT under this Lease, except that TENANT shall have the right to fully offset against Rent or any other amounts owing under this Lease the full amount of any final arbitration award or final judgment in any court proceeding that COUNTY fails to pay within sixty (60) days after such award or judgment is entered.

### **15.4 Remedies Cumulative**

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

## **16. RESERVATIONS TO COUNTY (PMG17.1 N)**

The Premises are accepted as is and where is by TENANT subject to any and all existing easements and encumbrances. COUNTY reserves the right to install, lay, construct, maintain, repair, and operate such sanitary sewers, drains, storm water sewers, pipelines, manholes, and connections; water, oil, and gas pipelines; telephone and telegraph power lines; and the appliances and appurtenances necessary or convenient in connection therewith, in, over, upon, through, across, and along the Premises or any part thereof, and to enter the Premises for any and all such purposes, provided that COUNTY does not unreasonably interfere with TENANT's business operations on the Premises and TENANT's access to and use of the Premises for the permitted uses. COUNTY also reserves the right to grant franchises, easements, rights of way, and permits in, over, upon, through, across, and along any and all portions of the Premises, but only to the extent that COUNTY's exercise of such rights does not unreasonably interfere with TENANT's business operations on the Premises and TENANT's access to and use of the Premises for the permitted uses. No right reserved by COUNTY in this Section shall be so exercised as to interfere unreasonably with TENANT's operations hereunder or to impair the security of any secured creditor of TENANT.

COUNTY agrees that rights granted to third parties by reason of this Section shall contain provisions that the surface of the Premises shall be restored as nearly as practicable to its original condition upon the completion of any construction. COUNTY further agrees that should the exercise of these rights temporarily interfere with the use of any or all of the Premises by TENANT, the Rent shall be reduced in proportion to the interference with TENANT's use of the Premises.

**17. HOLDING OVER (PMG18.1 S)**

In the event TENANT shall continue in possession of the Premises after the term of this Lease, such possession shall not be considered a renewal of this Lease but a tenancy from month to month and shall be governed by the conditions and covenants contained in this Lease.

**18. CONDITION OF PREMISES UPON TERMINATION (PMG19.1 S)**

Except as otherwise agreed to herein, upon termination of this Lease, TENANT shall re-deliver possession of said Premises to COUNTY in good condition, reasonable wear and tear, flood, earthquakes, war, and any act of war, excepted. References to the "termination of the Lease" in this Lease shall include termination by reason of the expiration of the Term.

**19. DISPOSITION OF ABANDONED PERSONAL PROPERTY (PMG20.1 N)**

If TENANT abandons or quits the Premises or is dispossessed thereof by process of law or otherwise, title to any personal property belonging to and left on the Premises thirty (30) days after such event shall, at COUNTY's option, be deemed to have been transferred to COUNTY. COUNTY shall have the right to remove and to dispose of such property at TENANT's cost, without liability therefor to TENANT or to any person claiming under TENANT, and shall have no need to account therefore.

**20. QUITCLAIM OF TENANT'S INTEREST UPON TERMINATION (PMG21.1 S)**

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

**21. COUNTY'S RIGHT TO RE-ENTER (PMG22.1 S)**

**21.1** TENANT agrees to yield and peaceably deliver possession of the Premises to COUNTY on the date of termination of this Lease, whatsoever the reason for such termination.

**21.2** Upon giving written notice of termination to TENANT, COUNTY shall have the right to re-enter and take possession of the Premises on the date such termination becomes effective without further notice of any kind and without institution of summary or regular legal proceedings. Termination of the Lease and re-entry of the Premises by COUNTY shall in no way alter or diminish any obligation of TENANT under the lease terms and shall not constitute an acceptance or surrender.

**21.3** TENANT waives any and all right of redemption under any existing or future law or statute in the event of eviction from or dispossession of the Premises for any lawful reason or in the event COUNTY re-enters and takes possession of the Premises in a lawful manner.

**22. AUTHORITY OF TENANT (PMG 23.1 S)**

If TENANT is a corporation, each individual executing this Lease on behalf of said corporation represents and warrants that he or she is duly authorized to execute and deliver this Lease on behalf of said corporation, in accordance with the by-laws of said corporation, and that this Lease is binding upon said corporation.

**23. PUBLIC RECORDS (PMG24.1 N)**

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

**24. RELATIONSHIP OF PARTIES (PMG25.1 S)**

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

**25. CHILD SUPPORT ENFORCEMENT (PMG26.1S)**

**25.1** At all times during the term of this Lease, TENANT shall comply with all County, State and Federal reporting requirements for child support enforcement and comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment.

**25.2** In order for TENANT to comply with County of Orange requirements, TENANT shall deliver to Project Lead the required data and certifications, as shown in **Exhibit G** attached hereto concurrent with the execution of this Lease by COUNTY.

**25.3** Failure of TENANT to comply with all County, State, and Federal reporting requirements for child support enforcement, or to comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment shall constitute a material breach of this Lease. Failure to cure such breach within thirty (30) days of TENANT's receipt of written notice from COUNTY of such breach by TENANT shall constitute grounds for termination of this Lease.

**26. ATTORNEYS' FEES (PMG27.1)**

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.

**27. VENUE (PMG28.1)**

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

**28. RIGHT TO WORK AND MINIMUM WAGE LAWS (PMG 29.1 S)**

**28.1** 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.

**28.2** 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.

**28.3** 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.

**29. PROTECTION OF PREMISES (PSB13.1 N)**

TENANT shall maintain its facilities in such a manner as to protect COUNTY's property from damage, injury, loss, or liability arising from rainfall and other action of the elements, excepting such as may be caused by the active concurrent or sole negligence of officers, agents, or employees of COUNTY.

**30. DECLARATION OF KNOWLEDGE BY TENANT (PSB10.1 N)**

TENANT warrants that TENANT has carefully examined this Lease and by investigation of the Premises and Property 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 Phase 2 Improvements and the Improvements and business practices required in the operation and management of the uses contemplated hereunder.

**EXHIBIT A  
PROPERTY LEGAL DESCRIPTION**

PROJECT NO:

WRITTEN BY: DATE:

PROJECT: El Toro Parcel –

DATE: March 7, 2012

**[To be attached]**

**NOT TO BE RECORDED  
EXHIBIT B  
PREMISES LEGAL DESCRIPTION**

El Toro Parcel –

Date:

**EXHIBIT C  
DEPICTION OF PREMISES**

**EXHIBIT D  
GROUND LEASE**



**EXHIBIT E**  
**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. Although the Harbor is not the TENANT’s leased Premises, BMPs apply to the TENANT’s defined Premises and BMPs also apply to the TENANT in their conducting business operations throughout the Harbor.

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 F  
COUNTY OF ORANGE  
CHILD SUPPORT ENFORCEMENT  
CERTIFICATION REQUIREMENTS**

A. In the case of a COUNTY doing business as an individual, his/her name, date of birth, the last four digits of the Social Security number, and residence address:

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

Date of Birth: \_\_\_\_\_

Last Four Digits of Social Security No: \_\_\_\_\_

Residence Address: \_\_\_\_\_

B. In the case of a COUNTY doing business in a form other than as an individual, the name, date of birth, the last four digits of the Social Security number, and residence address of each individual who owns an interest of ten (10) percent or more in the leased Premises:

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

Date of Birth: \_\_\_\_\_

Last Four Digits of Social Security No: \_\_\_\_\_

Residence Address: \_\_\_\_\_

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

Date of Birth: \_\_\_\_\_

Last Four Digits of Social Security No: \_\_\_\_\_

Residence Address: \_\_\_\_\_

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

Date of Birth: \_\_\_\_\_

Last Four Digits of Social Security No: \_\_\_\_\_

Residence Address: \_\_\_\_\_

(Attach additional sheets if necessary)

*I certify that \_\_\_\_\_ is in full compliance with all applicable federal and state reporting requirements regarding its employees and with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignments and will continue to be in compliance throughout the term of the Lease agreement with the County of Orange dated \_\_\_\_\_. I understand that failure to comply shall constitute a material breach of the Lease and that failure to cure such breach within sixty (60) calendar days of notice from the County of Orange shall constitute grounds for termination of the Lease agreement without cost to the County.*

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Authorized Signature

Print Name

Title

Date