



8711 Remington Avenue – Chino, CA
Approximately 46.15 Acres

Real Estate Public Auction Bid Package
LEASE OPTION/GROUND LEASE

CONTENTS

DOCUMENTS

- BID SHEET
- HEIGHT RESTRICTION EXHIBIT - RPZ
- FORM OF LEASE OPTION AGREEMENT (WITH FORM OF
GROUND LEASE AS EXHIBIT)

BID PACKAGE FOR LEASE OPTION/GROUND LEASE OF REAL PROPERTY

PUBLIC AUCTION DATE: OCTOBER 24, 2019

The information contained in this package was obtained from sources deemed reliable, but is **NOT** guaranteed, and is furnished solely as an aid to prospective bidders.

**MINIMUM BID: Ground Lease with initial annual
rent based on Minimum Land Value of \$58,000,000 at 6%
rate of return**

TERMS:

- 60-year initial lease term for ground lease of Property with one option to extend the term for 20 years followed by one option to extend the term for 19 years.
- Initial annual rent for the ground lease shall be based on the following formula - minimum land value of \$58,000,000 at 6% rate of return with 3% annual rent escalations applied at every five-year increment of the initial 60-year lease term; bidders are bidding on the minimum land value portion of this formula.
- Initial annual rent for each option term shall be adjusted by an appraised fair market value, provided that the rent shall not be less than the annual rent existing for the year immediately prior to the commencement of each option term.
- 3-month due diligence period to investigate the Property, which may be shortened by written notice that bidder accepts the Property; in which case the remainder of the due diligence period shall be added to the entitlement period, as set forth in an option to lease agreement.
- 15-month entitlement period plus the remainder of any due diligence period following bidder's acceptance of the Property such that the total due diligence and entitlement periods shall equal 18 months, with the option to extend the entitlement period for an additional six months upon the payment by Lessee of a \$300,000 non-refundable fee that is not applicable to the lease to be set forth in an option to lease agreement; bidder shall be responsible at its sole cost and expense to cancel an existing Williamson Act Contract affecting the Property and obtain all necessary entitlements, including but not limited to environmental approvals, for bidder's intended development on the Property during the entitlement period.
- Initial bid payment due of \$1,000,000 upon County's acceptance of the bid at auction of which \$250,000 shall be retained by the County as consideration for the granting of the lease option and shall not be refundable to bidder and \$750,000 shall be retained by the County as a deposit. The \$750,000 shall be: (i) returned to the bidder if bidder terminates the lease option on or before the end of the due diligence period; (ii) returned to the bidder if, after the end of the due diligence period, the lease option is terminated without fault or cause by bidder; (iii) applied to the first year's rent of the initial term of a ground lease, if a ground lease is executed, or (iv) retained by the County as damages in the event that, after the end of the due diligence period, the lease option is terminated due to fault or cause by bidder.
- Bids will only be accepted for a lease of the entire Property.

BIDDING PROCEDURES:

1. Complete the Bid Package for Lease Option/Ground Lease of Real Property.
2. Enclose the completed form and submit the required bid payment of \$1,000,000 by certified or cashier's check in an envelope using the address and identification at the bottom of this page. **NO CASH DEPOSIT WILL BE ACCEPTED.**
3. Make bid payment payable to: **County of San Bernardino**
4. The bidder's name and mailing address should be shown on the upper left-hand corner of the envelope.
5. **ENVELOPES NOT PROPERLY MARKED, OR OPENED PRIOR TO THE AUCTION MAY BE DISQUALIFIED.**
6. **Send by certified mail, or hand deliver with check and Bid for Lease Option/Ground Lease of Real Property to arrive not later than 5:00 p.m., October 23, 2019 to:**

County of San Bernardino
Real Estate Services Department
Attn: Jennifer Goodell
385 N. Arrowhead Avenue, 3rd Floor
San Bernardino, CA 92415-0180
(909) 677-0477
jgoodell@res.sbcounty.gov

OR hand deliver to bid opening not later than 11:00 a.m., October 24, 2019
at the auction to be held at:

**County of San Bernardino
385 N. Arrowhead Avenue, 1st Floor – Covington Chambers
San Bernardino, CA 92415**

7. Bids must be made by a principal desiring to enter into the lease option/ground lease of the property or by an agent bearing a notarized authorization or power of attorney, signed by the principal, authorizing the agent to act on the principal's behalf.
 8. Minor irregularities in these procedures may be waived at the sole option of the Real Estate Services Department when such irregularities are not in conflict with law.
 9. Oral bids will be accepted in accordance with Government Code Section 25531 outlined on the last page of this bid package.
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SEALED BID:

To be opened at 11:00 a.m.

Auction Date: October 24, 2019

File No.: 5300 3617

Location of Auction:

County of San Bernardino

385 N. Arrowhead Avenue, 1st Floor –Covington Chambers

San Bernardino, CA 92415

Please direct any questions regarding this bid package to:

County of San Bernardino

Attn: Jennifer Goodell

385 N. Arrowhead Avenue, 3rd Floor

San Bernardino, CA 92415-0180

(909) 677-0477

jgoodell@res.sbcounty.gov

BID FOR LEASE OPTION/GROUND LEASE OF REAL PROPERTY

PROPERTY APN(s): APNs 1055-061-01, 1055-061-02, 1055-071-01, 1055-071-02 and portions of APNs 1055-051-01 and 1055-051-02

PROPERTY ADDRESS: 8711 Remington Avenue – Chino, CA 91710

MINIMUM BID: **Ground Lease with initial annual rent based on Minimum Land Value of \$58,000,000 at 6% rate of return.**

TERMS:

- 60-year initial lease term for ground lease of Property with one option to extend the term for 20 years followed by one option to extend the term for 19 years.
- Initial annual rent for the ground lease shall be based on the following formula - minimum land value of \$58,000,000 at 6% rate of return with 3% annual rent escalations applied at every five-year increment of the initial 60-year lease term; bidders are bidding on the minimum land value portion of this formula.
- Initial annual rent for each option term shall be adjusted by an appraised fair market value, provided that the rent shall not be less than the annual rent existing for the year immediately prior to the commencement of each option term.
- 3-month due diligence period to investigate the Property to be set forth in an option to lease agreement.
- 15-month entitlement period with the option to extend for an additional six months upon the payment by Lessee of a \$300,000 non-refundable fee that is not applicable to the lease to be set forth in an option to lease agreement; bidder shall be responsible at its sole cost and expense to cancel an existing Williamson Act Contract affecting the Property and obtain all necessary entitlements, including but not limited to environmental approvals, for bidder's intended development on the Property during the entitlement period.
- Initial payment due of \$1,000,000 upon County's acceptance of the bid at auction \$250,000 of which \$250,000 shall be retained by the County as consideration for the granting of the lease option and shall not be refundable to bidder and \$750,000 shall be retained by the County as a deposit. The \$750,000 shall be: (i) returned to the bidder if bidder terminates the lease option on or before the end of the due diligence period; (ii) returned to the bidder if, after the end of the due diligence period, the lease option is terminated without fault or cause by bidder; (iii) applied to the first year's rent of the initial term of a ground lease, if a ground lease is executed, or (iv) retained by the County as damages in the event that, after the end of the due diligence period, the lease option is terminated due to fault or cause by bidder.
- Bids will only be accepted for a lease of the entire Property.

REQUIRED BID PAYMENT: **\$1,000,000 (submit with bid in the form of a cashier's or certified check)**

ADDITIONAL TERMS & CONDITIONS: **Bidder's Duty of Due Diligence:** The property being offered for lease option/ground lease at

auction is offered on an “as is” basis only. Therefore, each bidder shall alone bear the duty of due diligence to inspect the property offered and investigate all title matters; judgment, nuisance abatement, tax, or other liens; encumbrances; easements; covenants; restrictions; servitudes; boundaries; the existence, condition, and legal status of all improvements and appurtenances; compliance with all applicable zoning ordinances; building and other codes; permit requirements; notices of violation; other recorded notices; bankruptcy proceedings; height restrictions due to the runway protection zone (RPZ) from the nearby airport, and all other conditions affecting the property.

Each bidder shall alone bear the burden to thoroughly research the property prior to the auction as to any and all matters relevant to its decision(s) to bid on a lease option/ground lease of the property. Each bidder who desires a survey of the property shall obtain the survey at its own expense. Each bidder bears the burden of determining the actual location of the property and its boundaries, property lines, and the actual location of all rights-of-way and easements affecting the property.

No Warranties by County: The property offered for lease option/ground lease at this auction is offered on an “as is” basis only. The County assumes no liability and make no warranties whatsoever as to the property regarding each of the following:

1. The accuracy or veracity of its legal description; locations; boundaries and property lines;
2. The existence of any liens of any kind, easements, rights-of-way, servitudes, covenants, restrictions, or other encumbrances of any kind, whether or not recorded, affecting the property;
3. Its suitability for or the legality of any land use contemplated by the bidder;
4. The status of compliance with all applicable local codes, permit requirements, zoning and land use regulations;
5. The status of compliance with all environmental regulations imposed by local, state, or federal law;
6. The status of compliance with procedural requirements concerning required notices and the lease option/ground lease itself.
7. The status of creditors’ rights or the rights of the Trustee in any proceeding before the U.S. Bankruptcy Court;
8. The accuracy or veracity of any County or City General Plan Map or equivalent, County Assessor’s Parcel map;

9. The accuracy or veracity of any other map, or any photograph;
10. The accuracy or veracity of any property profile or title report; and
11. The accuracy or veracity of any information presented in a County Property Information Management System (PIMS) report.

Bidder's Acknowledgment of and Agreement to Terms and Conditions: Each bidder participating in this auction shall be deemed to have read, acknowledged, and agreed to be bound by the Terms and Conditions for this auction as herein stated upon payment of the bid payment.

This Lease Option Agreement and the Ground Lease are subject to the approval of the Board of Supervisors for the County of San Bernardino (County). The successful bidder will be required to enter into a Lease Option Agreement substantially in the attached form upon the County's acceptance of the bid. The successful bidder will also be required to enter into a Ground Lease substantially in the attached form upon valid exercise of the option to lease contained in the Lease Option Agreement.

The successful bidder shall execute and deliver to COUNTY within three (3) business days of delivery thereof by COUNTY to the successful bidder a LEASE OPTION AGREEMENT substantially in the attached form.

BIDDING PROCEDURE

In accordance with California Government Code Section 25531, "Oral Bids", the following will apply with respect to the lease option/ground lease of property:

Before accepting any written proposal, the board shall call for oral bids. If, upon the call for oral bidding, any responsible person offers for lease option/ground lease of the property upon the terms and conditions specified in the resolution, for a land value exceeding by at least five percent, the highest written proposal which is made by a responsible person, such highest oral bid shall be finally accepted.

PLEASE COMPLETE THE BID INFORMATION BELOW

Bidder acknowledges and agrees that by executing and submitting this bid information form Bidder is agreeing that a portion of the bid payment required to be delivered with this bid in the amount of \$250,000 is non-refundable.

Name of Bidder:

Named Developer on Lease Option Agreement:

Address:

Phone Number:

Bid Amount for Land Value for initial year of ground lease:
(Minimum land value bid is \$58,000,000 at 6% rate of return):

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Bidder Signature:

***Please submit with the required bid payment of \$1,000,000 in the form of a certified or cashier's check.**

DRAFT LEASE OPTION AGREEMENT

This Lease Option Agreement (this “Agreement”) is entered into by and between the County of San Bernardino, a political subdivision of the State of California, (“**COUNTY**”) and _____ (“**DEVELOPER**”) and shall be effective on the date the last of the parties executes this Agreement (“Effective Date”).

WITNESSETH

A. WHEREAS, **COUNTY** is the owner of record of certain real property consisting of approximately 46.15 acres of vacant land (commonly known as APNs 1055-061-01, 1055-061-02, 1055-071-01, 1055-071-02 and portions of APNs 1055-051-01 and 1055-051-02), hereinafter referred to herein as the “Property,” located on the southeast corner of Remington Avenue and Flight Avenue in the City of Chino with an address of 8711 Remington Avenue, Chino, CA, as the Property is more particularly described on Exhibit “A” attached hereto and incorporated herein by reference; and

B. WHEREAS, **COUNTY** held a public auction on October 24, 2019 wherein bidders bid on a lease option/ground lease of the Property pursuant to the terms set forth in **COUNTY**’s bid package; and

C. WHEREAS, **COUNTY** has accepted **DEVELOPER**’s bid at the public auction as the successful bid; and

D. WHEREAS, the parties now desire to enter into this Agreement to set forth **DEVELOPER**’s option to lease the Property on the terms and conditions set forth herein.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, **COUNTY** and **DEVELOPER** hereby agree as follows:

1. Incorporation of Recitals. The recitals set forth above are true and correct and are incorporated herein by this reference.

2. Grant of Lease Option. **COUNTY** hereby grants to **DEVELOPER**, and **DEVELOPER** hereby accepts from **COUNTY**, an option to lease the Property in its entirety (“Lease Option”) on the terms and conditions set forth in this Agreement.

3. Option Deposit: On or before the Effective Date, **DEVELOPER** shall pay to **COUNTY** the sum of ONE MILLION AND 00/100 DOLLARS (\$1,000,000.00) (“Option Deposit”). The parties agree that TWO HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS (\$250,000.00) of the Option Deposit shall be non-refundable to **DEVELOPER** as consideration to **COUNTY** for granting the Lease Option (“Non-Refundable Option Fee”). In the event that this Agreement is terminated for any reason, **COUNTY** shall return the Option Deposit less the Non-Refundable Option Fee and less any amounts due from **DEVELOPER** under this Agreement.

Notwithstanding anything to the contrary in this Section 3, in the event that **DEVELOPER** validly exercises the Lease Option and a ground lease in substantially the form attached here to as Exhibit "D" is executed by the parties for the Property ("Ground Lease"), the Option Deposit (including the Non-Refundable Option Fee) shall be applied to the monthly rent payments due under the Ground Lease for the first year of the initial term.

4. Due Diligence.

a. Due Diligence Period. **DEVELOPER** shall have a period of time not to exceed three (3) months after the Effective Date ("Due Diligence Period") to perform, at its sole cost and expense, any and all due diligence that **DEVELOPER** deems necessary to evaluate the condition and suitability of the Property for **DEVELOPER**'s intended development of the Property, including but not limited to title review, utilities review, and non-invasive investigations of the Property, such as surveys, Phase I environmental site assessment, geotechnical analysis, and related engineering studies, provided that **DEVELOPER** shall not be permitted to perform any intrusive testing, meaning a Phase II environmental site assessment or any testing that involves digging, drilling, cutting, or boring into the ground of the Property without in each instance obtaining **COUNTY**'s prior written consent, which consent shall be granted or denied at **COUNTY**'s sole discretion. **DEVELOPER** shall, at no cost to **COUNTY**, provide **COUNTY** with a copy of all investigations, studies, and reports received by **DEVELOPER** as a result of its due diligence investigation of the Property. **DEVELOPER** acknowledges and agrees that the Ground Lease, if executed by the parties, shall be subject to all existing interests, easements, liens, encumbrances, or other matters whether recorded or not ("Encumbrances") and that **COUNTY** shall have no obligation whatsoever to remove or release any Encumbrances.

b. Access to Property. During the Due Diligence Period, **DEVELOPER** and its employees, contractors, consultants, and agents may enter onto the Property during **COUNTY**'s normal business hours for the purpose of performing permitted due diligence investigations. **DEVELOPER** shall provide **COUNTY** with prior written notice not less than two (2) business days prior to each entry onto the Property to perform any permitted due diligence investigations, which notice shall include the proposed date and purpose of the entry along with the names and/or affiliations of the persons who will be entering the Property to perform such permitted due diligence investigations. **COUNTY** shall have the right to be present during the performance of any permitted due diligence investigations. In exercising the rights granted herein, **DEVELOPER** shall not interfere with **COUNTY**'s use or operation of the Property, shall perform all permitted due diligence investigations in a diligent, expeditious and safe manner, and shall comply with all applicable laws in connection with its entry onto the Property and its performance of any permitted due diligence investigations. **DEVELOPER** shall not bring onto the Property any material which would be in violation of any applicable environmental law, rule, ordinance or regulation or create or permit any dangerous or hazardous conditions to

exist on the Property. Upon completion of **DEVELOPER's** permitted due diligence investigations which involve the disturbance of any physical conditions of the Property, **DEVELOPER** shall restore the Property or any affected portion to substantially the same condition as existed at the commencement of the Due Diligence Period. In the event **DEVELOPER** fails to restore the Property, **COUNTY** shall have the right to perform such restoration and **DEVELOPER** shall reimburse **COUNTY** upon demand for such costs incurred.

c. Termination Option. In the event that, during the Due Diligence Period, **DEVELOPER** is not satisfied with the Property for any reason, **DEVELOPER** shall have the right to terminate this Agreement at any time on or before the expiration of the Due Diligence Period by providing written notice to **COUNTY** and this Agreement shall automatically terminate effective on **COUNTY's** receipt of said notice; in which case, **DEVELOPER** shall have no interest whatsoever in the Property, **COUNTY** shall return a portion of the Option Deposit in accordance with Section 3, and neither party shall have any further obligations hereunder except for any accrued obligations and those obligations that expressly survive the termination hereof. In the event that **DEVELOPER** does not validly exercise its termination option during the Due Diligence Period, said option shall be deemed waived by **DEVELOPER** and the Agreement shall continue on its terms and condition.

5. Entitlement.

a. Initial Entitlement Period. **DEVELOPER** shall have a period of time not to exceed fifteen (15) months after the expiration of the Due Diligence Period ("Initial Entitlement Period") to diligently and in good faith process and obtain, at **DEVELOPER's** sole cost and expense, all of the following entitlements, which shall be final and shall not have expired (collectively, "Entitlements"). For avoidance of doubt, the term "final" as used in this section shall mean that all applicable appeal and statute of limitation periods related thereto shall have expired without the filing of any appeal or legal challenge or any such appeal or legal challenge shall have been finally resolved, without possibility of further appeal, in favor of **DEVELOPER** and in a manner permitting construction and operation of the Property consistent with **DEVELOPER's** proposed development plans.

i. Cancellation of Williamson Act Contract. Cancellation of the California Land Conservation Act of 1965 (Williamson Act) contract, currently affecting the Property, including but not limited to the payment, at **DEVELOPER's** sole cost and expense, of any cancellation fees; and

ii. Environmental Approvals. Performance of all environmental studies, environmental impact reports, and any other environmental reviews for **DEVELOPER's** intended development of the Property pursuant to the California Environmental Quality Act ("CEQA"), the National Environmental Policy Act, or any other

applicable federal, state or local statute, regulation or rule and obtain approvals from all relevant governmental agencies, including but not limited to any determinations from **COUNTY** as a responsible agency under CEQA. **DEVELOPER** shall not enter into any agreements that allow for the development of the Property in any manner until the requirements in this Agreement are met; and

iii. Permitting Approvals. Obtain any other approvals necessary to entitle the Property for **DEVELOPER**'s proposed development, including but not limited to, amendments to the general plan covering the Property, a zoning change, a tentative subdivision map, a final subdivision map, associated development and related permits, site plan approval, building permit issuance, and any other agreements and approvals required by any governmental agency having jurisdiction over the Property.

b. Entitlement Period Extension Option. **DEVELOPER** shall have one (1) option to extend the Initial Entitlement Period for six (6) months following the expiration of the Initial Entitlement Period ("Entitlement Period Extension Option," and if exercised, "Extended Entitlement Period"). To validly exercise the Entitlement Period Extension Option, **DEVELOPER** shall provide written notice to **COUNTY** not less than sixty (60) days prior to the expiration of the Initial Entitlement Period, **DEVELOPER** shall not be in default of this Agreement on the date the Entitlement Period Extension Option is exercised nor on the date the Extended Entitlement Period commences, and **DEVELOPER** shall pay to **COUNTY** the sum of THREE HUNDRED THOUSAND AND 00/100 DOLLARS (\$300,000.00) ("Entitlement Extension Fee") on or before the date the Extended Entitlement Period commences. The parties agree that the entirety of the Entitlement Extension Fee shall be non-refundable to **DEVELOPER** as consideration to **COUNTY** for granting the Extended Entitlement Period and that in no event shall the Entitlement Extension Fee be applied toward the Ground Lease, if executed by the parties. The Initial Entitlement Period and the Extended Entitlement Period, if any, shall collectively be referred to as the "Entitlement Period."

c. **COUNTY**'s Cooperation. **COUNTY** shall cooperate in good faith with **DEVELOPER** in **DEVELOPER**'s efforts to obtain all Entitlements during the Entitlement Period, provided that **COUNTY** shall not incur any costs nor shall **COUNTY** be obligated to undertake any actions as a result of its cooperation. **COUNTY** does not guarantee that any Entitlements will be obtained. **DEVELOPER** acknowledges and understands that the City of Chino retains full and absolute discretionary authority with respect to the development of the Property and the City of Chino may condition, deny, or approve the development of the Property or any portion thereof. The City of Chino may, among other things,: (i) modify the proposed development of the Property to mitigate significant adverse impacts, (ii) select feasible alternatives that avoid significant adverse impacts of the proposed development, (iii) reject the development of the Property as proposed if the economic and social benefits of the

development do not outweigh otherwise unavoidable significant adverse impacts of the proposed development, or (iv) approve the proposed development upon a finding that the economic, social, or other benefits of the proposed development outweigh unavoidable significant adverse impacts of the proposed development. **DEVELOPER** acknowledges and agrees that nothing set forth in this Agreement commits or otherwise requires the City of Chino to approve, in whole in part, the development of the Property.

6. Lease Option.

a. Exercise. If **DEVELOPER** obtains all Entitlements for the Property on or before the expiration of the Entitlement Period, **DEVELOPER** shall have the right to exercise the Lease Option. To validly exercise the Lease Option, **DEVELOPER** shall provide written notice to the County on or before the expiration of the Entitlement Period, **DEVELOPER** shall not be in default of this Agreement on the date the Lease Option is exercised nor on the commencement date of the Ground Lease, and **DEVELOPER** shall submit to **COUNTY** along with its notice all documents verifying, to **COUNTY**'s satisfaction, that all Entitlements have been received by **DEVELOPER**. Following **COUNTY**'s verification, the **COUNTY** shall process the Ground Lease for approval by the **COUNTY**'s Board of Supervisors.

b. Expiration. If, despite its diligently and good faith efforts, **DEVELOPER** fails to obtains all Entitlements for the Property on or before the expiration of the Entitlement Period, the Lease Option shall expire and this Agreement shall automatically terminate effective on the last day of the Entitlement Period; in which case, **DEVELOPER** shall have no interest whatsoever in the Property, **COUNTY** shall return a portion of the Option Deposit in accordance with Section 3, and neither party shall have any further obligations hereunder except for any accrued obligations and those obligations that expressly survive the termination hereof.

7. Indemnification. **DEVELOPER** agrees to indemnify, defend (with counsel reasonably approved by **COUNTY**) and hold harmless **COUNTY** and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages, and/or liability arising out of this Agreement from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by **COUNTY** on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of indemnitees. **DEVELOPER**'S indemnification obligation applies to **COUNTY**'s "active" as well as "passive" negligence but does not apply to **COUNTY**'s "sole negligence" or "willful misconduct" within the meaning of Civil Code Section 2782. **DEVELOPER**'s indemnity obligations herein shall survive the expiration or the earlier termination of this Agreement.

8. Insurance.

a. **DEVELOPER** agrees to provide insurance set forth in accordance with the requirements herein. If **DEVELOPER** uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, **DEVELOPER** agrees to amend, supplement or endorse the existing coverage to do so.

Without in anyway affecting the indemnity herein provided and in addition thereto, **DEVELOPER** shall secure and maintain throughout the term of this Agreement the following types of insurance with limits as shown:

i. Workers' Compensation/Employers Liability. A program of Workers' Compensation insurance or a state-approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits covering all persons including employees and volunteers of **DEVELOPER** providing services on behalf of **DEVELOPER** and all risks to such persons under this Agreement.

ii. If **DEVELOPER** has no employees, it may certify or warrant to **COUNTY** that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Workers' Compensation coverage will be waived by **COUNTY**'s Director of Risk Management.

If, **DEVELOPER** is a non-profit corporation, organized under California or Federal law, volunteers for **DEVELOPER** are required to be covered by Workers' Compensation insurance.

iii. Commercial/General Liability Insurance. **DEVELOPER** shall carry General Liability Insurance covering all operations performed by or on behalf of **DEVELOPER** providing coverage for bodily injury and property damage with a combined single limit of not less than One Million Dollars (\$1,000,000), per occurrence. The policy coverage shall include:

- (a) Premises operations and mobile equipment.
- (b) Products and completed operations.
- (c) Broad form property damage (including completed operations).
- (d) Explosion, collapse and underground hazards.
- (e) Personal injury
- (f) Contractual liability.
- (g) \$2,000,000 general aggregate limit.

iv. Commercial Property Insurance providing all risk coverage for the building, fixtures, equipment, and the Property. Coverage shall be sufficient to insure One Hundred percent (100%) of the replacement cost.

v. Automobile Liability Insurance. Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than One Million Dollars (\$1,000,000) for bodily injury and property damage, per occurrence.

If **DEVELOPER** is transporting one or more non-employee passengers in the use of this Agreement, the automobile liability policy shall have a combined single limit of Two Million Dollars (\$2,000,000) for bodily injury and property damage per occurrence.

If **DEVELOPER** owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.

vi. Umbrella Liability Insurance. An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury and shall include a “dropdown” provision providing primary coverage for any liability not covered by the primary policy. The coverage shall also apply to automobile liability.

vii. Subcontractor Insurance Requirements. **DEVELOPER** agrees to require all parties or subcontractors, including architects or others it hires or contracts with related to the performance of this Agreement to provide insurance covering the contracted operation with the requirements in this Section 8 (including waiver of subrogation rights) and naming COUNTY as an additional insured. **DEVELOPER** agrees to monitor and review all such coverage and assumes all responsibility ensuring that such coverage is provided as required here.

b. Additional Insured. All policies, except for the Workers’ Compensation, shall contain endorsements naming **COUNTY** and their officers, employees, agents and volunteers as additional insureds with respect to liabilities arising out of the use under this Agreement. The additional insured endorsements shall not limit the scope of coverage for **COUNTY** to vicarious liability but shall allow coverage for **COUNTY** to the full extent provided by the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85.

c. Waiver of Subrogation Rights. **DEVELOPER** shall require the carriers of required coverages to waive all rights of subrogation against **COUNTY**, their officers, employees, agents, volunteers, contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit **DEVELOPER** and **DEVELOPER**’s employees or agents from waiving the right of subrogation prior to a loss or claim. **DEVELOPER** hereby waives all rights of subrogation against **COUNTY**.

d. Policies Primary and Non-Contributory. All policies required herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by **COUNTY**.

e. Severability of Interests. **DEVELOPER** agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross liability exclusions that preclude coverage for suits between **DEVELOPER** and **COUNTY** or between **COUNTY** and any other insured or additional insured under the policy.

f. Proof of Coverage. **DEVELOPER** shall furnish Certificates of Insurance to **COUNTY**'s Real Estate Services Department (RESA) administering the Agreement evidencing the insurance coverage, including endorsements, as required, prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to RESA, and **DEVELOPER** shall maintain such insurance from the time **DEVELOPER** commences use under the Agreement hereunder until the end of the period of the Agreement. Within fifteen (15) days of the commencement of this contract, **DEVELOPER** shall furnish a copy of the Declaration page for all applicable policies and will provide complete certified copies of the policies and endorsements immediately upon request.

g. Acceptability of Insurance Carrier. Unless otherwise approved by **COUNTY** Department of Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum "Best" Insurance Guide rating of "A- VII".

h. Deductibles: Any and all deductibles or self-insured retentions in excess of \$10,000.00 shall be declared to and approved by **COUNTY**'s Risk Management.

i. Insurance Review. Insurance requirements are subject to periodic review by **COUNTY**. **COUNTY**'S Director of Risk Management or designee is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever **COUNTY**'S Department of Risk Management determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interests of **COUNTY**. In addition, **COUNTY**'S Director of Risk Management or designee is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against **COUNTY**, inflation, or any other item reasonably related to **COUNTY**'S risk.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this Agreement. **DEVELOPER** agrees to execute any such amendment within thirty (30) days of receipt.

Any failure, actual or alleged, on the part of RESD or **COUNTY** to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of RESD or **COUNTY**.

j. Failure to Procure Insurance. All insurance required must be maintained in force at all times by **DEVELOPER**. Failure to maintain said insurance, due to expiration, cancellation, etc., shall be cause for **COUNTY** to give notice to immediately suspend all **DEVELOPER'S** business activities on the Property. Failure to reinstate said insurance within the (10) days of notice to do so shall be cause for termination and for forfeiture of this Agreement, and/or **COUNTY**, at its discretion, may procure or renew such insurance and pay any and all premiums in connection therewith, and all monies so paid by **COUNTY** shall be repaid by **DEVELOPER** to **COUNTY** upon demand but only for the pro rata period of non-compliance.

k. **COUNTY** shall have no liability for any premiums charged for such coverage(s). The inclusion of **COUNTY** as additional named insured is not intended to and shall not make a partner or joint venturer with **DEVELOPER** in **DEVELOPER'S** operations.

l. **DEVELOPER** agrees to require all parties or subcontractors, or others it hires or contracts with related to the use of this Agreement to provide insurance covering such use with the requirements as this Section 8 and naming **COUNTY** as additional insured. **DEVELOPER** agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided as required herein.

9. Default. **COUNTY** shall have the right to immediately terminate this Agreement and pursue all available rights and remedies available at law or in equity: (i) if **DEVELOPER** is in default of any monetary obligations under this Agreement and does not cure such default within ten (10) days after notice of default from **COUNTY**; or (ii) if **DEVELOPER** is in default of any other obligations under this Agreement and does not cure such default within thirty (30) days after notice of default from **COUNTY**. In the event of a termination of this Agreement due to the default of **DEVELOPER**, the entire Option Deposit shall be retained by **COUNTY** as damages.

10. Representations and Warranties. **COUNTY** warrants that **COUNTY** is the owner of record of the Property.

11. Time of Essence. Time is of the essence of this Agreement and is a material term of this Agreement.

12. Quitclaim Deed. If this Agreement is terminated for any reason, **DEVELOPER** agrees, if requested by **COUNTY**, to promptly execute, acknowledge, and deliver a quitclaim deed to **COUNTY** within ten (10) days after such termination and to execute, acknowledge,

and deliver any other documents required by any title company to remove the cloud of this Agreement from the Property.

13. Notices. Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other party or any other person shall be in writing and either served personally, delivered by reputable overnight courier service, or sent by postage prepaid, first-class United States mail, certified or registered, return receipt requested. Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other party shall be addressed to the other party at the address set forth below. Either party may change its address by notifying the other party of the change of address. Notices shall be deemed delivered upon the earlier of: (i) actual receipt if personally delivered; or (ii) the date of delivery or refusal of the addressee to accept delivery if such notice is sent by reputable overnight courier service or by postage pre-paid, first-class United States mail, certified or registered, return receipt requested. Any notices received after 5:00 pm on a business day shall be deemed effective on the immediately following business day.

To COUNTY: County of San Bernardino
c/o Real Estate Services Department
385 North Arrowhead Avenue, Third Floor
San Bernardino, CA 92415-0180

To DEVELOPER: _____

14. Assignment. **DEVELOPER** shall not assign or transfer this Agreement or any of the rights under it without the prior written consent of **COUNTY** in its sole discretion. This restriction on assignment or transfer shall apply to a sale of the controlling interest of **DEVELOPER** or of its parent company.

15. Memorandum of Agreement. Following execution of this Agreement, either party, at its sole expense, shall be entitled to record a memorandum of agreement in the official records of San Bernardino County in substantially the form attached hereto as Exhibit "C".

16. Attorney Fees. If any legal action is instituted to enforce or declare any party's rights hereunder, each party, including the prevailing party, must bear its own costs and attorneys' fees. This section shall not apply to those costs and attorneys' fees directly arising from any third party legal action against a party hereto and payable under Section 7, Indemnification and Section 8, Insurance

17. Waivers. No waiver of any breach of any covenant or provision in this Agreement shall be deemed a waiver of any other covenant or provision in this Agreement and no waiver shall be valid unless in writing and executed by the waiving party.

18. Construction. Section headings are solely for the convenience of the parties and are not a part of and shall not be used to interpret this Agreement. The singular form shall include the plural and vice versa. This Agreement shall not be construed as if it had been prepared by one of the parties, but rather as if both parties have prepared it. Unless otherwise indicated, all references to sections are to this Agreement.

19. Third Party Rights. Nothing in this Agreement, express or implied, is intended to confer on any person or entity, other than the parties to this Agreement and their respective successors and assigns, any rights or remedies under or by reason of this Agreement.

20. Integration. This Agreement contains the entire agreement between the parties, and expressly supersedes all previous or contemporaneous agreements, understandings, representations, or statements between the parties respecting the option to lease the Property.

21. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which taken together will constitute one and the same instrument.

22. Amendment. This Agreement may not be amended or altered except by a written instrument executed by the parties to this Agreement.

23. Partial Invalidity. If any provision of this Agreement is determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision of this Agreement, and all such other provisions shall remain in full force and effect provided, however, that the purpose of the Agreement is not frustrated. It is the intention of the parties hereto that if any provision of this Agreement is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid.

24. Exhibits. All attached exhibits are incorporated in this Agreement by this reference.

25. Authority of Parties. All persons executing this Agreement on behalf of any party to this Agreement warrant that it has the authority to execute this Agreement on behalf of that party.

26. Governing Law & Venue. The validity, meaning, and effect of this Agreement shall be determined in accordance with California laws. The parties acknowledge and agree that this Agreement was entered into and intended to be performed in whole or substantial part in County of San Bernardino, California. The parties agree that the venue for any action or claim brought by any party to this Agreement will be the Superior Court of California, County of San Bernardino. Each party hereby waives any law, statute (including but not limited to Code of Civil Procedure Section 394), or rule of court that would allow them to request or demand a change of venue. If any third party brings any action or claim concerning this Agreement, the parties hereto agree to use their best efforts to obtain a change of venue to the Superior Court of California, County of San Bernardino.

27. Former County Officials. **DEVELOPER** shall provide information on former **COUNTY** administrative officials (as defined below) who are employed by or represent **DEVELOPER**. The information provided includes a list of former **COUNTY** administrative officials who terminated **COUNTY** employment within the last five years and who are now officers, principals, partners, associates or members of **DEVELOPER**. The information also includes the employment with or representative capacity and the date those individuals began employment with or representation of **DEVELOPER**. For purposes of this provision, “**COUNTY** administrative official” is defined as a member of the Board of Supervisors or such officer’s staff, **COUNTY** Administrative Officer or member of such officer’s staff, **COUNTY** department or group head, assistant department or group head, or any employee in the Exempt Group, Management Unit or Safety Management Unit. (See Exhibit “B”, List of Former County Officials).

28. Improper Consideration. **DEVELOPER** shall not offer (either directly or through an intermediary) any improper consideration such as, but not limited to, cash, discounts, service, the provision of travel or entertainment, or any items of value to any officer, employee or agent of **COUNTY** in an attempt to secure favorable treatment regarding this Agreement or the Ground Lease. **COUNTY**, by written notice, may immediately terminate this Agreement if it determines that any improper consideration as described in the preceding sentence was offered to any officer, employee or agent of **COUNTY** with respect to this Agreement or any solicitation for consideration was not reported. This prohibition shall apply to any amendment, extension or evaluation process once this Agreement has been executed and becomes effective. **DEVELOPER** shall immediately report any attempt by an officer,

employee or agent of **COUNTY** to solicit (either directly or through an intermediary) improper consideration from **DEVELOPER**. The report shall be made to the supervisor or manager charged with supervision of the employee or to **COUNTY** Administrative Office. In the event of a termination under this provision, **COUNTY** is entitled to pursue any available legal remedies at law or in equity.

29. Material Misrepresentations. If during the course of the administration of this Agreement, **COUNTY** determines that **DEVELOPER** has made a material misstatement or misrepresentation or that materially inaccurate information has been provided to **COUNTY**, this Agreement may be immediately terminated. If this Agreement is terminated according to this provision, **COUNTY** is entitled to pursue any rights and remedies available at law or in equity.

30. Public Records Disclosure. All information received by **COUNTY** from **DEVELOPER** or any source concerning this Agreement, including the Agreement itself, may be treated by **COUNTY** as public information subject to disclosure under the provisions of the California Public Records Act, Government Code Section 6250 et seq. (the "Public Records Act"). **DEVELOPER** understands that although all materials received by **COUNTY** in connection with this Agreement are intended for the exclusive use of **COUNTY**, they are potentially subject to disclosure under the provisions of the Public Records Act. In the event a request for disclosure of any part or all of any information which a **DEVELOPER** has reasonably requested **COUNTY** to hold in confidence is made to **COUNTY**, **COUNTY** shall notify **DEVELOPER** of the request and shall thereafter disclose the requested information unless **DEVELOPER**, within five (5) days of receiving notice of the disclosure request, requests nondisclosure, provides **COUNTY** a legally sound basis for the nondisclosure, and agrees to indemnify, defend, and hold **COUNTY** harmless in any/all actions brought to require disclosure. **DEVELOPER** waives any and all claims for damages, lost profits, or other injuries of any and all kinds in the event **COUNTY** fails to notify **DEVELOPER** of any such disclosure request and/or releases any information concerning this Agreement received from **DEVELOPER** or any other source.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date and year first below written.

COUNTY OF SAN BERNARDINO

[DEVELOPER]

Curt Hagman, Chairman, Board of Supervisors

By: _____
(Name)

Date: _____

Title: _____

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

Date: _____

LYNNA MONELL, Clerk of the Board of
Supervisors

By: _____
Deputy

Date: _____

Approved as to Legal Form:

MICHELLE D. BLAKEMORE,
County Counsel San Bernardino
County, California

By: _____
Agnes Cheng, Deputy County Counsel

Date: _____

EXHIBIT A

DESCRIPTION OF PROPERTY

Legal Description

Lots 2, 3, 4 and Lots 13, 14, 15 of Section 28, Township 2 South, Range 7 West, San Bernardino Base & Meridian, according to Map of Subdivision of Part of Rancho Santa Ana Del Chino, in the County of San Bernardino, State of California, as per plat map filed recorded in Book 6 of Maps, Page 15, records of said County.

Together with those portions of Baker Avenue, within said lots thereof, abandon by regular meeting of the County of San Bernardino Board of Supervisors on Tuesday, October 13, 1959; said abandonment filed in Book H of Road Deeds, Page 409, in the Office of the San Bernardino County Surveyor.

Excepting therefrom any portion of the Runway Protection Zone (RPZ) for Runway 8R- 26L, of Chino Airport, lying within Section 28, Township 2 South, Range 7 West, San Bernardino Base & Meridian, in the County of San Bernardino, State of California, more particularly described as follows:

A trapezoidal parcel with its westerly base being 500 feet in length, and its easterly base being 1,010 feet in length. A line segment running east to west at the midpoints of said bases has an overall length of 1,700.00 feet. Said line segment is coincident with and a prolongation of the centerline for said Runway 8R-26L, having a bearing of N89°21'13"E, as shown on County Surveyor's Plat 10071-01 on file in the Office of the San Bernardino County Surveyor. Said westerly and easterly base are perpendicular, measured at right angles, to said 1,700 line segment. The westerly base of said trapezoidal parcel is coincident with the most easterly terminus of the runway blast pad for said Runway 8R-26L. Said parcel affects approximately 11.7 acres of said lots.

APNs 1055-061-01, 1055-061-02, 1055-071-01, 1055-071-02 and portions of APNs 1055-051-01 and 1055-051-02 (approximately 46.15 acres)

EXHIBIT B

LIST OF FORMER COUNTY OFFICIALS

INSTRUCTIONS:

List the full name of the former COUNTY Administrative Official, the title/description of the Official's last position with COUNTY, the date the Official terminated COUNTY employment, the Official's current employment and/or representative capacity with DEVELOPER, the date the Official entered DEVELOPER's employment and/or representation.

OFFICIAL'S NAME: REQUIRED INFORMATION

NONE N/A

DEVELOPER certifies that the foregoing information is true and accurate.

DEVELOPER:

By: _____

Title: _____

Date: _____

EXHIBIT C

FORM OF MEMORANDUM OF LEASE OPTION AGREEMENT

RECORD AT THE REQUEST OF
AND WHEN RECORDED RETURN TO:

County of San Bernardino
Real Estate Services Department
385 N. Arrowhead Avenue,
Third Floor
San Bernardino, CA 92415

[SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY]

MEMORANDUM OF LEASE OPTION AGREEMENT

THIS MEMORANDUM OF LEASE OPTION AGREEMENT (this "Memorandum") is made and entered into by and between the County of San Bernardino, a political subdivision of the State of California, ("County") and _____ ("Developer").

County and Developer are parties to a Lease Option Agreement dated _____, 2019 ("Agreement") wherein County granted to Developer an option to lease certain real property consisting of approximately 46.15 acres of vacant land (commonly known as APNs 1055-061-01, 1055-061-02, 1055-071-01, 1055-071-02 and portions of APNs 1055-051-01 and 1055-051-02), hereinafter referred to herein as the "Property," located on the southeast corner of Remington Avenue and Flight Avenue in the City of Chino, County of San Bernardino, and State of California with an address of 8711 Remington Avenue, Chino, CA, as the Property is more particularly described on Exhibit "A" attached hereto and made a part hereof.

As of the date of this Memorandum, the Lease Option for the Property shall expire on _____ unless the Agreement is earlier terminated in accordance its terms. If Developer does not exercise its Lease Option on or before said expiration date, Developer shall have no further interest in the Property.

Capitalized terms used in this Memorandum shall have the meanings ascribed to such terms in the Agreement unless otherwise expressly defined herein

This Memorandum is subject in each and every respect to the terms, covenants and conditions contained in the Agreement, which is incorporated herein by this reference, and is executed by County and Developer for the purpose of providing constructive notice of the Agreement with the understanding and agreement that nothing contained herein shall in any manner alter, modify or vary the rental or other terms, covenants or conditions of the Agreement.

[THE REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have caused this Memorandum to be executed as of the date and year first below written.

COUNTY OF SAN BERNARDINO

[DEVELOPER]

Curt Hagman, Chairman, Board of Supervisors

By: _____
(Name)

Date: _____

Title:

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

Date:

LYNNA MONELL, Clerk of the
Board of Supervisors

By: _____
Deputy

Date: _____

Approved as to Legal Form:

MICHELLE D.
BLAKEMORE, County
Counsel San Bernardino
County, California

By: _____
Agnes Cheng, Deputy County Counsel

Date: _____

EXHIBIT D

FORM OF GROUND LEASE

COUNTY OF SAN BERNARDINO

LEASE AGREEMENT

COUNTY: COUNTY OF SAN BERNARDINO
385 N. Arrowhead Avenue
San Bernardino, CA 92415-0831

TENANT: [TBD]

PREMISES: Approximately 46.15 acres of vacant land located on the southeast corner of Remington Avenue and Flight Avenue in the City of Chino with an address of 8711 Remington Avenue,
Chino, CA

COUNTY CONTRACT NO: -

COUNTY OF SAN BERNARDINO LEASE AGREEMENT

Basic Lease Terms - Reference Pages

COUNTY: County of San Bernardino

COUNTY’S NOTICE ADDRESS: County of San Bernardino
Real Estate Services Department
385 N. Arrowhead Avenue, Third Floor
San Bernardino, California 92415-0831

TENANT: [TBD]

TENANT’S NOTICE ADDRESS: [TBD]

TENANT’S TELEPHONE NO.: [TBD]

TENANT’S FACSIMILE NO.: [TBD]

PREMISES: Approximately 46.15 acres of vacant land located on the southeast corner of Remington Avenue and Flight Avenue in the City of Chino, with an address of 8711 Remington Avenue, Chino, CA, as more specifically set forth in Exhibit “A”

USE: [TBD]

COUNTY OF SAN BERNARDINO LEASE AGREEMENT

Basic Lease Terms - Reference Pages

LEASE COMMENCEMENT DATE: The first day of the first full month immediately subsequent to the full execution of this Lease

The first day of the first full month immediately subsequent to the full execution of this Lease

RENT COMMENCEMENT DATE:

Commencing on the Lease Commencement Date and expiring sixty (60) years after the Lease Commencement Date unless earlier terminated in accordance with this Lease

LEASE TERM

OPTION TO EXTEND

Two (2) options to extend the Lease Term with the first option for twenty (20) years and the second option for nineteen (19) years

LEASE TERM:

IMPROVEMENTS:

[Project] to be constructed by TENANT at its sole cost and expense in accordance with this Lease

COUNTY OF SAN BERNARDINO LEASE AGREEMENT

Basic Lease Terms - Reference Pages

RENT: See Exhibit "B" Rent Schedule

PREMISES Upon expiration of the Initial Term and upon expiration of the First
REAPPRAISAL DATES Extended Term

SECURITY DEPOSIT: [TBD]

**MINIMUM ASSIGNMENT/
SUBLEASING FEE:** \$1,500 per consent request

GUARANTOR: [TBD]

COUNTY OF SAN BERNARDINO LEASE AGREEMENT

Basic Lease Terms - Reference Pages

EXHIBITS

(initial if Exhibit attached, or mark "not applicable")

"A"	Premises – Legal Description and Plat	Applicable
"B"	Rent Schedule	Applicable
"C"	Premises Reappraisal Procedure	Applicable
"D"	Definition of Plans	Applicable
"E"	Working Plans, Specifications, and Construction Plans	Applicable
"F"	Consent to Hypothecation	Applicable
"G"	Guaranty of Lease	Applicable
"H"	List of Former County Officials	Applicable
"I"	Prevailing Wage Requirements	Applicable
"J"	County Consent to Sublease	Applicable

COUNTY OF SAN BERNARDINO LEASE AGREEMENT

Basic Lease Terms - Reference Pages

The Reference Pages are incorporated into and made a part of the Lease. In the event of any conflict between any terms on the Reference Pages and the terms in the Lease, the terms in the Lease shall control. This Lease includes the foregoing Exhibits all of which are made a part of this Lease.

IN WITNESS THEREOF, the parties executed this Lease.

COUNTY: County of San Bernardino

TENANT:

By: _____

By: _____

Curt Hagman, Chair

Board of Supervisors

Dated: _____

Title:

Dated: _____

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

Lynna Monell

Clerk of the Board of Supervisors

of the County of San Bernardino

By: _____

Deputy

COUNTY OF SAN BERNARDINO LEASE AGREEMENT

Basic Lease Terms - Reference Pages

APPROVED AS TO LEGAL FORM

MICHELLE D. BLAKEMORE, County Counsel

San Bernardino County, California

By: _____

Agnes Cheng, Deputy County Counsel

Dated: _____

COUNTY OF SAN BERNARDINO

LEASE AGREEMENT

By this Lease, COUNTY OF SAN BERNARDINO (hereinafter "COUNTY"), as lessor, leases to TENANT, identified in the Reference Pages, as lessee, and TENANT leases from COUNTY the Premises set forth in the Reference Pages located at the southeast corner of Remington Avenue and Flight Avenue in the City of Chino, with an address of 8711 Remington Avenue, Chino, CA, as set forth in the Reference Pages. The Reference Pages, including all terms defined thereon, are incorporated into and made a part of this Lease.

1. **PREMISES.** COUNTY, in consideration of covenants and conditions herein set forth, hereby leases to TENANT and TENANT leases from COUNTY the Premises. The Premises are more particularly described in the legal description and depicted in the plat each set forth on Exhibit "A". The Premises are leased to TENANT in its AS-IS condition, except that COUNTY shall remove all trash, debris, and COUNTY's personal property located thereon, and is subject to all easements, reservations, restrictions, rights, and rights-of-way.

2. **USE.** TENANT shall use and occupy the Premises only for the Use set forth on the Reference Pages, and for no other purpose. TENANT shall not use or permit the use of the Premises in a manner that is unlawful or immoral, creates waste or a nuisance, or causes damage to the Premises or neighboring properties. TENANT shall not sell or permit the sale of any alcoholic beverages from the Premises without the prior written consent of COUNTY. TENANT shall not store any of TENANT's personal property outside the buildings on the Premises without the prior written consent of COUNTY. If COUNTY authorizes TENANT to store property outside, said property will be stored in a neat and orderly manner. Unattractive and/or unsightly outside storage shall not be permitted in public view under any circumstances. TENANT shall comply with all laws, ordinances and regulations applicable to the use of the Premises, including the requirements of the Federal Aviation Administration, as may be amended. TENANT shall promptly comply with all governmental orders and directions for the correction, prevention and abatement of any violations in or upon, or in connection with Premises, at TENANT's sole expense. Upon use of Premises by TENANT the same shall conclusively be deemed to be fit and proper for the purposes for which TENANT shall use the Premises.

3. **TERM.**

A. **Term.** The obligations of the Parties pursuant to this Lease shall commence on the Lease Commencement Date and shall expire on the expiration or earlier termination of the Lease Term as set forth in the Reference Pages.

4. **RENT.**

A. **Monthly Rent.** Effective as of the Rent Commencement Date, TENANT shall commence payment of the Monthly Rent for the Premises in the amounts set forth in Exhibit "B" Rent Schedule, which shall be paid, in advance, without deduction, setoff, prior notice, or demand, on the first day of each month. The Monthly Rent shall be adjusted in accordance with Exhibit "B".

B. **Late Payment Fees and Interest.** TENANT acknowledges that TENANT's late payment of Monthly Rent or other amounts due under this Lease to COUNTY will cause COUNTY to incur costs not contemplated by this Lease and that the exact amounts of such costs are extremely difficult and impracticable to fix. Such costs include, without limitation, administrative, processing, accounting and interest charges. Therefore, if any installment of Monthly Rent, or other amounts due under this Lease are not received by COUNTY by the third day after the due date, TENANT shall pay to COUNTY a late payment charge equal to ten percent (10%) of the amount delinquent for each month or portion thereof that the payment remains delinquent commencing from the date the payment was due until such time as the overdue payment is made. The parties agree that this late charge represents a fair and reasonable estimate of the costs that COUNTY will incur by reason of TENANT's late payment. Acceptance of any late charge shall not constitute a waiver of TENANT's default with respect to the overdue amount, or prevent COUNTY from exercising any of the other rights and remedies available to COUNTY pursuant to this Lease or under any applicable law. **All late payments shall be made with certified funds and shall be credited in the following order: 1) to late payment charges, then 2) to the balance of the accrued Monthly Rent or other amounts due under this Lease. If a late payment charge becomes payable for any three (3) or more installments of Monthly Rent within any twelve (12) month period, the Monthly Rent will automatically become payable quarterly in advance.**

C. **Place and Method of Payment.** All checks shall be made payable to: County of San Bernardino and shall be submitted to: County of San Bernardino, Real Estate Services Department, 385 N. Arrowhead Avenue, Third Floor, San Bernardino, CA 92415-0831. The Monthly Rent and all other monetary obligations of TENANT pursuant to this Lease shall be paid in lawful money of the United States. **The COUNTY reserves the right to demand at any time that payment of Monthly Rent, the Security Deposit, and all other monetary obligations of TENANT hereunder be made with certified funds.**

D. **Amounts Owed Deemed Rent.** All monetary obligations of TENANT under the Lease, including but not limited to the Monthly Rent and any other amounts due under the Lease shall be deemed additional rent hereunder and shall collectively be deemed rent ("Rent").

5. SECURITY DEPOSIT.

A. On or before the Lease Commencement Date of this Lease, TENANT shall pay to COUNTY a deposit in the amount set forth on the Reference Pages as TENANT's Security Deposit, which shall be not be required to be held by COUNTY in an interest bearing account. The Security Deposit shall secure TENANT's faithful performance of TENANT's obligations under this Lease. The COUNTY's Director of the Real Estate Services Department may, in his sole discretion, determine the form of the Security Deposit, provided that the amount of the Security Deposit shall be as stated in the Reference Pages.

B. If TENANT fails to pay the Monthly Rent or any other amounts which TENANT is obligated to pay pursuant to this Lease or defaults on the performance of any of the terms, provisions, covenants and conditions contained in this Lease, COUNTY may withdraw the Security Deposit from the deposit account and use, apply, or retain the whole or any part of the Security Deposit for the payment of any amount in default or for any other amounts which the COUNTY may spend or be required to spend by reason of TENANT's default. The Security Deposit or any balance of the Security Deposit remaining shall be returned to TENANT at the termination or expiration of the Term. COUNTY may require, at any time, that the Security Deposit be increased in proportion to the amount of any increase in the Monthly Rent and TENANT shall provide such increase deposit within ten (10) days of TENANT's receipt of written notice from the COUNTY. In the event COUNTY uses part or all of the Security Deposit as provided herein, TENANT shall replenish the amount used by COUNTY within ten (10) days of TENANT's receipt of written notice from COUNTY.

6. **INSURANCE.**

A. **Basic Insurance Requirements.** Without in any way affecting TENANT's obligation to defend and indemnify COUNTY as herein provided, and in addition thereto, TENANT shall secure and maintain the following types of insurance, with the following minimum limits throughout the Term of this Lease:

i. Workers' Compensation/Employers Liability. A program of Workers' Compensation insurance or a state-approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits covering all persons including volunteers providing services on behalf of TENANT and all risks to such persons under this Lease.

If TENANT has no employees, it may certify or warrant to COUNTY that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Workers' Compensation coverage will be waived by COUNTY'S Director of Risk Management.

If, TENANT is a non-profit corporation, organized under California or Federal law, volunteers for TENANT are required to be covered by Workers' Compensation insurance.

ii. Commercial/General Liability Insurance. TENANT shall carry General Liability Insurance covering all operations performed by or on behalf of TENANT providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000), per occurrence. The policy coverage shall include:

- 1 Premises operations and mobile equipment.
2. Products and completed operations.
3. Broad form property damage (including completed operations).
4. Explosion, collapse and underground hazards.
5. Personal injury
- 6 Contractual liability.
- 7 \$2,000,000 general aggregate limit.

iii Commercial Property Insurance providing all risk coverage for the Premises building, fixtures, equipment and all property constituting a part of the Premises. Coverage shall be sufficient to insure One Hundred percent (100%) of the replacement cost.

i. Automobile Liability Insurance. Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than one million dollars (\$1,000,000) for bodily injury and property damage, per occurrence.

If TENANT is transporting one or more non-employee passengers in the TENANT's use of the Premises or TENANT's performance of its obligations under this Lease, the automobile liability policy shall have a

combined single limit of two million dollars (\$2,000,000) for bodily injury and property damage per occurrence.

If TENANT owns no autos, a non-owned auto endorsement to the general liability policy described above is acceptable.

ii. **Environmental Liability Insurance.** Environmental liability insurance with a combined single limit of not less than Five Million and 00/100 Dollars (\$5,000,000.00) per occurrence..

vi **Rental Value.** Insurance against the loss of the full rental and other charges and fees payable by TENANT for one year. Said policy shall be in the name of the COUNTY, with loss payable to COUNTY.

vii **Umbrella Liability Insurance.** An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury and shall include a “dropdown” provision providing primary coverage for any liability not covered by the primary policy. The coverage shall also apply to automobile liability.

viii. If TENANT performs any construction on the Premises, TENANT shall also procure and maintain coverages as follows:

(1) For construction contracts for projects over One Million Dollars (\$1,000,000) and less than Three Million Dollars (\$3,000,000) require limits of not less than Three Million Dollars each in General Liability and Auto Liability coverages.

(2) For construction contracts for projects over Three Million Dollars (\$3,000,000) and less than Five Million Dollars (\$5,000,000) require limits of not less than Five Million Dollars (\$5,000,000) each in General Liability and Auto Liability coverages.

(3) For construction contracts for projects over Five Million Dollars (\$5,000,000) and less than Ten Million Dollars (\$10,000,000) require limits of not less than Ten Million Dollars (\$10,000,000) each in General Liability and Auto Liability coverages.

(4) **Subcontractor Insurance Requirements.** TENANT agrees to require all parties or subcontractors, including architects or others it hires or contracts with related to the performance of this Lease to provide insurance covering the contracted operation in accordance with the insurance requirements of this Lease (including waiver of subrogation rights) and naming the COUNTY as an additional insured. TENANT agrees to monitor and review all such coverage and assumes all responsibility ensuring that such coverage is provided as required here.

(5) **Course of Construction/Installation (Builder's Risk)** property insurance providing all risk, including theft coverage for all property and materials to be used on the improvement project. The insurance policy shall not have any coinsurance penalty.

B. **Required Policy Provisions.** Each of the insurance policies which TENANT is required to procure and maintain as part of this Lease shall include the following provisions:

i. Additional Insured. All policies, except for the Workers' Compensation, shall contain endorsements naming COUNTY and their officers, employees, agents and volunteers as additional insureds with respect to liabilities arising out of the TENANT's use of the Premises and TENANT's performance of its obligations under this Lease. The additional insured endorsements shall not limit the scope of coverage for COUNTY to vicarious liability but shall allow coverage for COUNTY to the full extent provided by the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85.

ii Waiver of Subrogation Rights. TENANT shall require the carriers of required coverages to waive all rights of subrogation against COUNTY, their officers, employees, agents, volunteers, contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit TENANT and TENANT'S employees or agents from waiving the right of subrogation prior to a loss or claim. TENANT hereby waives all rights of subrogation against COUNTY.

iii. Policies Primary and Non-Contributory. All policies required herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by COUNTY.

iv. Severability of Interests. TENANT agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross liability exclusions that preclude coverage for suits between TENANT and COUNTY or between COUNTY and any other insured or additional insured under the policy.

v. Proof of Coverage. TENANT shall furnish Certificates of Insurance to the San Bernardino Real Estate Services Department (RESA) administering the Lease evidencing the insurance coverage, including endorsements, as required, prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to RESA, and TENANT shall maintain such insurance from the Commencement Date until this Lease is terminated. Within fifteen (15) days of the Commencement Date, TENANT shall furnish a copy of the Declaration page for all applicable policies and will provide complete certified copies of the policies and endorsements immediately upon request.

vi. Acceptability of Insurance Carrier. Unless otherwise approved by COUNTY Department of Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum "Best" Insurance Guide rating of "A- VII".

vii. Deductibles: Any and all deductibles or self-insured retentions in excess of \$10,000.00 shall be declared to and approved by County's Risk Management.

viii Insurance Review. Insurance requirements are subject to periodic review by COUNTY. COUNTY'S Director of Risk Management or designee is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever COUNTY'S Department of Risk Management determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interests of COUNTY. In addition, COUNTY'S Director of Risk Management

or designee is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against COUNTY, inflation, or any other item reasonably related to COUNTY'S risk.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this Lease. TENANT agrees to execute any such amendment within thirty (30) days of receipt.

Any failure, actual or alleged, on the part of RESD or COUNTY to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of RESD or COUNTY.

ix. Failure to Procure Insurance. All insurance required must be maintained in force at all times by TENANT. Failure to maintain said insurance, due to expiration, cancellation, or other reasons shall be cause for COUNTY to give notice to immediately suspend TENANT'S use of the Premises. Failure to reinstate said insurance within the (10) days of notice to do so shall be cause for termination and for forfeiture of this Lease, and/or COUNTY, at its discretion, may procure or renew such insurance and pay any and all premiums in connection therewith, and all monies so paid by COUNTY shall be repaid by TENANT to COUNTY upon demand but only for the pro rata period of non-compliance.

x. COUNTY shall have no liability for any premiums charged for such coverage(s). The inclusion of COUNTY as additional named insured is not intended to and shall not make a partner or joint venturer with TENANT in TENANT'S use.

xi. TENANT agrees to require all parties or subcontractors, or others it hires or contracts with related to the use of the Premises and the performance of TENANT's obligations hereunder to provide insurance covering the contracted operation with the basic requirements in this Paragraph 6 (including waiver of subrogation rights) and naming COUNTY as an additional insured. TENANT agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided as required herein.

7. **INDEMNIFICATION.** TENANT agrees to indemnify, defend (with counsel reasonably approved by COUNTY) and hold harmless the COUNTY and its authorized officers, employees, agents and volunteers, from any and all claims, actions, losses, damages, and/or liability arising out of this Lease or occurring on, in, under or about the Premises from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by the COUNTY on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of indemnitees. The TENANT's indemnification obligation applies to the COUNTY's "active" as well as "passive" negligence but does not apply to the COUNTY's "sole negligence" or "willful misconduct" within the meaning of Civil Code Section 2782.

8. **EXEMPTION OF COUNTY FROM LIABILITY.** COUNTY shall not be liable for any injury or damage to the person or property of TENANT, TENANT's employees, contractors, invitees, customers, or any other person on, in, under or about the Premises, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, or from the breakage, leakage, obstruction or other defects in pipes, fire sprinklers, wires, appliances, plumbing systems, fixtures, air conditioning systems or lighting fixtures, or from any other cause, whether said injury or damage results from conditions

arising on or from the Premises or from other sources or places. Notwithstanding anything to the contrary in this Lease or COUNTY's negligence or breach of this Lease, COUNTY shall not be liable for any injury to TENANT's business or any loss of income or profit therefrom, or for any special, incidental, consequential, or punitive damages allegedly sustained by TENANT.

9. **TAXES, ASSESSMENTS AND LICENSES.** TENANT shall pay before delinquency any and all real and personal property taxes, assessments, fees, or charges, including but not limited to possessory interest taxes, which may be levied or assessed upon any personal property, improvements or fixtures installed or belonging to TENANT and located in or on the Premises. TENANT recognizes and understands that this Lease may create a possessory interest subject to property taxation and that the TENANT is obligated to pay and discharge such taxes. TENANT shall also pay all license or permit fees necessary or required by law for the conduct of TENANT's business or operation. TENANT shall be responsible, at its sole cost, for platting the Premises.

10. **IMPROVEMENTS.**

A. TENANT may construct buildings or other improvements on the Premises ("Improvements"), provided that said Improvements shall be approved in writing by COUNTY prior to the commencement of any work and provided further that all Improvements are completed in: (i) accordance with the plans and specifications (as defined on Exhibit "D") approved by COUNTY, (ii) a good and workmanlike manner, (iii) conformity with all county, city, state and federal regulations, any and all applicable permits and jurisdictional planning documents. TENANT shall provide COUNTY with not less than ten (10) day's notice prior to the commencement of any work in, on, or under the Premises for the approved Improvements so that COUNTY, at COUNTY'S option, may post a Notice of Non Responsibility as provided by law. All work shall be completed by duly licensed and insured contractors, which contractors shall be acceptable to COUNTY. COUNTY makes no representation with respect to the applicability of public bidding procedures or requirements for the payment of prevailing wages hereunder. In the event TENANT contracts for the construction of any Improvements or portion thereof, TENANT shall comply with the applicable provision of the California Public Contract Code 22000 through 22045 regarding bidding procedure and Labor Code Section 1720.2 and 1170 et seq. regarding general prevailing wages, including the provisions set forth in Exhibit "I", Prevailing Wage Requirements. TENANT shall indemnify, defend (with counsel reasonably approved by COUNTY) and hold harmless COUNTY and its officers, employees, agents, and volunteers from any claims, actions, losses, damages, and/or liability arising out of the obligations set forth herein. TENANT's indemnity obligation shall survive the TENANT's tenancy and shall not be limited by the existence or availability of insurance. All approvals required by COUNTY in this paragraph, including all sub-paragraphs, shall be granted or denied in COUNTY's sole discretion.

B. **Utilities and Utility Installations.**

i. **Utility Plans.** Upon TENANT's request, the COUNTY will provide TENANT or TENANT's architect with a plan, if COUNTY is then in possession of such a plan, showing the approximate location of known utility lines on the Premises ("Utility Plans"). TENANT understands that Utility Plans show only the approximate location of the utility lines at or near the Premises and that the Utility Plans are furnished to TENANT without any warranty or representation as to completeness or accuracy. COUNTY's delivery of the Utility Plans to TENANT shall not relieve TENANT of TENANT's affirmative obligation to locate all utilities and TENANT agrees that TENANT shall be responsible for determining the actual location of all utility lines.

ii. **Utility Installations.** After obtaining COUNTY's consent and approval, TENANT may extend any utility lines serving the Premises to the COUNTY approved points on the

Premises. TENANT may also install such distribution panels and equipment, meters and other facilities and equipment as may be reasonably required to connect to the utilities serving the Premises (“Utility Installations”). TENANT agrees that all Utility Installations shall be constructed in accordance with provisions of this paragraph and that TENANT shall pay all costs associated with such Utility Installations, including but not limited to the extension and connection of said utilities. As additional consideration for this Lease, TENANT agrees that all extended Utility Installations shall, at COUNTY’s option, become the COUNTY’s property upon completion of the extension work or at the end of the Term of the Lease. TENANT shall execute any documentation necessary to transfer the Utility Installations to the COUNTY. COUNTY shall not be required to reimburse TENANT for the cost of any of the foregoing work.

C. **Plans and Specifications.** Prior to the commencement of any construction at the Premises, TENANT shall provide COUNTY with a complete set of Working Plans and Specifications in compliance with Exhibit “D”, for the proposed Improvements to the Premises and a proposed schedule for the construction of said improvements. COUNTY’s review of TENANT’s plans and specifications, as well as COUNTY’s consent to the construction of the proposed Improvements, shall not constitute a representation of the adequacy of the plans or specifications or expose COUNTY to any liability. The Working Plans, Specifications and Construction Schedule prepared by TENANT and approved by COUNTY shall be attached to this Lease as Exhibit “E”, Working Plans, Specifications, and Construction Schedule. TENANT shall construct on the Premises, only those improvements shown on the Construction Plans. Said Construction Plans shall be the master plan for development of the Premises. All improvements and facilities depicted on the Construction Plans shall be constructed and completed within the time set forth on the construction schedule approved by COUNTY. Upon the completion of the construction of the improvements, TENANT, at its sole cost, shall prepare as-built plans for the Improvements and shall give three (3) copies of each as-built plan to COUNTY.

D. **Performance and Payment Bonds.** As a condition of COUNTY’s consent to TENANT’s proposed construction of any Improvements at the Premises, TENANT shall furnish a performance bond and a labor and material (payment) bond (if applicable to TENANT’s requested improvements) to COUNTY prior to the commencement of any construction. The bonds shall be issued by a surety qualified to do business in the State of California and shall be in an amount equal to one hundred percent (100%) of the estimated cost of construction. The bonds shall also name COUNTY as obligee and shall provide that in the event TENANT does not complete the proposed construction in accordance with the Construction Plans and/or Construction Schedule, the surety shall complete the construction or at COUNTY’s option and upon COUNTY’s demand shall return the Premises to grade. The COUNTY’s Director of the Real Estate Services Department is authorized, but not required, to accept substitute security under such terms and conditions as the Director determines, in lieu of the above performance, and labor and material bonds described in this paragraph.

E. **Cost of Construction.** All costs of construction shall be the sole responsibility of TENANT and shall be paid by TENANT when due. The TENANT shall conduct any construction program in such a manner so that no mechanic's liens or materialmen's liens shall be asserted, or purportedly asserted, against the Premises or any improvements thereon. If any such lien shall be asserted, TENANT shall indemnify, defend (with counsel reasonably approved by COUNTY) and hold harmless COUNTY and the Premises in accordance with Paragraph 7, INDEMNIFICATION, of this Lease. If such liens are asserted, TENANT shall promptly remove said liens within thirty (30) days after their occurrence and if requested by COUNTY, in COUNTY’s sole discretion, TENANT shall post a surety bond to release the Premises from any mechanic’s liens recorded against the Premises. Said bond shall be issued by a surety qualified to do business in California and shall be in an amount prescribed by law.

F. **Construction Financing.** As part of the construction of the Improvements at the Premises, TENANT may encumber its leasehold interest in the Premises to a Lender furnishing construction financing to TENANT (or permanent financing to reimburse TENANT for the costs of construction), provided that COUNTY has consented to such encumbrance by executing a Consent of Hypothecation (the "County Consent"). The County Consent shall be in the form attached hereto as Exhibit "F", Consent to Hypothecation. The term "Approved Encumbrance" shall mean an encumbrance approved by the COUNTY by way of a County Consent. The term "LENDER" shall mean the owner and holder of an Approved Encumbrance.

i. Upon default by TENANT under any of the terms of an Approved Encumbrance, the LENDER may exercise any rights provided in such Approved Encumbrance, provided that before any sale of TENANT's leasehold interest, whether under power of sale or foreclosure, the LENDER shall give to COUNTY notice of the same character and duration as is required to be given to TENANT by the terms of the encumbrance or the laws of the State of California.

ii. If any default shall continue after the giving of such notice, COUNTY, prior to sale of the leasehold interest, shall have the right to correct such default and/or initiate an action under Paragraph 18, DEFAULT, to terminate this Lease.

iii. If a sale or foreclosure under an Approved Encumbrance occurs or if the LENDER acquires the leasehold interest by assignment in lieu of foreclosure, said permitted purchaser or assignee, as a successor in interest to TENANT, will be bound by all the terms of this Lease and will assume all the obligations of TENANT hereunder. Any acquisition of the leasehold interest by a party other than LENDER (whether by purchase at judicial foreclosure proceedings, trustee's sale, or upon assignment from LENDER) shall be subject to COUNTY's written approval in accordance with Paragraph 12 of the Lease, including but not limited to the proposed transferee's overall financial strength shall be equal to or greater than TENANT's financial position as of the Lease Commencement Date and the experience and expertise of the proposed transferee to operate and conduct those activities set forth in the use section of the Reference Pages shall be equal to or greater than the TENANT.

G. **Ownership of Improvements and Alterations.** All Improvements and alterations constructed by TENANT on, in, under, or about the Premises shall be the property of and owned by TENANT during the Term of this Lease, but shall be considered to be improvements to real property and shall become the property of COUNTY at the termination of this Lease, the expiration of the current term of the lease, or as otherwise provided herein. COUNTY may require the TENANT to remove, at any time and at TENANT's sole cost, all or any part of any alterations or improvements made without COUNTY's consent.

H. **Additional Requirements.**

i. **Tenant shall perform all of the following at its sole expense. Tenant shall apply for and obtain all applicable local, county, state, federal permits and authorizations for any Improvements. TENANT shall obtain and complete all necessary approvals for any Improvements, including but not limited to, approval from the City of Chino and any other applicable agency or authority; approvals for all necessary environmental documents; all insurances required under this Lease; and shall construct each item of improvement referred to in Exhibits "D" and "E". TENANT shall obtain all necessary approvals, including, but not limited to, completion of applicable environmental review processes, including but not limited to compliance with the**

California Environmental Quality Act, building permits and insurance before undertaking construction activity related to that improvement and any breach of this requirement shall be material, giving COUNTY the right at any time during the term of this Lease to immediately terminate the Lease upon notice, to the extent the TENANT does not demonstrate to COUNTY's satisfaction that TENANT is using commercially reasonable efforts to cure such default within one hundred twenty (120) days of COUNTY's notice.

ii. All construction will meet the building code requirements of the City of Chino and any other governmental jurisdiction having authority over the Improvements. All construction will be carried out and completed in strict compliance with the plans and specifications approved in writing by COUNTY. TENANT is solely liable for the development and operation of the Improvements. TENANT is solely responsible for filing plans with the applicable Building and Safety Department and any other applicable governmental entity, seeking approval, paying such fees and securing appropriate inspection(s). All stockpiling of excavated material, construction screening and the storage of materials, tools or equipment shall be to the satisfaction of the County's Director of the Real Estate Services Department or his designee

iii. TENANT agrees that the COUNTY may have on the Premises at any time during the construction period a representative, at no cost to TENANT, who will have the right to access the Premises and the construction work. TENANT understands that this representative's presence on the Premises in no way constitutes approval of the Improvements being constructed. TENANT must, at the commencement of the construction work, notify the COUNTY in writing of the identity, place of business, and telephone number of TENANT's on-the-job construction representative. Said construction representative will be TENANT's prime consultant for the representatives of the COUNTY. TENANT shall, prior to the commencement of construction of the Improvements at the Premises, install adequate signage on the Premises identifying TENANT as the operator of the construction site and the Improvements to manage site operations and traffic flow, which sign shall also provide a TENANT contact (with phone number) to call in case of emergency. The foregoing signage must be approved by COUNTY prior to installation

iv. TENANT and COUNTY agree that the Improvements to be initially constructed following the execution of this Lease are projected to be constructed, completed and certified for occupancy by the City of Chino and any other governmental jurisdiction having authority over the Improvements, and that the initial Improvements must be able to be completed in accordance with the specifications agreed in writing by the parties and the applicable regulations and the use set forth on the Reference Pages on the Premises to be open for business to the public no later than _____ months from Lease Commencement Date. In order to meet the projected open date, the parties have agreed upon the following "Initial Improvement Completion Timeline" setting forth the essential elements of

entitlements, and construction through project completion and issuance of Certificate of Occupancy. The Initial Improvement Completion Timeline is as follows:

a. TENANT shall have up to ____ days from the Lease Commencement Date to submit proposed improvement plans to COUNTY for review and/or approval.

b. COUNTY shall have up to ____ days from receipt of Tenant's proposed plans to complete review and provide approval or disapproval or submit any modifications to TENANT.

c. If necessary, TENANT shall have up to ____ days from receipt of County's request for modifications to review COUNTY's modifications and re-submit to COUNTY.

d. If necessary, COUNTY shall have up to ____ days from receipt of Tenant's re-submission to complete review of TENANT's re-submittal and provide approval or disapproval to TENANT.

e. If approved by County, TENANT shall have up to ____ days from receipt of COUNTY 's approval to submit the approved plans and specifications for review and approval by relevant governmental authority to obtain a building permit.

f. TENANT shall have up to ____ days to respond to and receive approval (building permit) for construction from approving authority.

g. TENANT shall have up to ____ days from issuance of permit to commence construction.

h. TENANT shall have up to an additional ____ days to complete construction or a maximum of ____ months from Lease Commencement Date.

v. TENANT agrees that its failure to meet any of the dates set forth in the above Initial Improvement Completion Timeline will mean that the Improvement will not be completed and open for business to the public within ____ months from Lease Commencement Date. TENANT acknowledges that late completion of the Initial Improvements will cause COUNTY to incur costs not contemplated by this lease agreement, the exact amount of such costs being extremely difficult and impracticable to fix. Therefore, if TENANT does not complete the Initial Improvements and the Premises are not open for business to the public for the use

set forth in the Reference Pages within _____ months from the Lease Commencement Date, TENANT agrees to liquidated damages of _____ (\$_____) for each day's delay from the date that is _____ months from the Lease Commencement Date to the date the Initial Improvements are completed and the Premises are open for business to the public for the use set forth in the Reference Pages. The parties agree that this charge represents a fair and reasonable estimate of the costs that COUNTY will incur by reason of late completion of the Initial Improvements and late opening of the business at the Premises to the public. Acceptance of any charge shall not constitute a waiver of TENANT's default or prevent COUNTY from exercising any of the other rights and remedies available to COUNTY. Notwithstanding the foregoing, **the COUNTY may at any time elect to terminate this lease if the Initial Improvements are not completed** and the Premises are not occupied and open for business to the public **within _____ months from Lease Commencement Date. Any such election to terminate by the COUNTY must be in writing and giving to the TENANT within ten (10) County working days of the missed date within the Initial Improvement Completion Timeline, and before the TENANT completes the element and notifies the COUNTY of such completion.**

vi. TENANT shall provide the COUNTY a written progress report of the construction of the Initial Improvements within ten (10) days of written request by COUNTY. The report shall contain up-to-date information of construction progress and notification of any permit approval. TENANT shall within five (5) business days notify COUNTY of the completion of every element in the Initial Improvement Completion Timeline.

vii. Notwithstanding subparagraphs "iv" and "v" above, in the event TENANT, after exercising all due diligence, is unable to meet any of the dates in the above mentioned Initial Improvement Completion Timeline due to reasons which TENANT proves are outside the control of TENANT, such reasons include but are not limited to acts of God, unreasonable acts of governmental agencies causing unavoidable delays (the normal and reasonable times for review, action and reasonable anticipated delays by governmental agencies are already included in the timing of the Initial Improvement Completion Timeline Dates), strikes, or labor troubles, then TENANT shall immediately provide written notice to COUNTY of such expected delay along with supporting documentation for said delay and an updated construction schedule, and if the delay is verified by the COUNTY, the applicable date(s) in the Initial Improvement Completion Timeline shall be extended for a period equivalent to the period of such delays.

viii. Covenant of Non-Interference. TENANT shall be responsible for inspecting the Premises and finding adequate space within the Premises for the Improvements without moving, relocating, interfering with, or negatively impacting any improvements, utilities, facilities, or

equipment of COUNTY at the Premises . In the event that TENANT's Improvements interfere with or negatively impact such improvements, utilities, facilities, or equipment of COUNTY at the Premises, TENANT shall be required, at its own expense, to retain qualified consultants and/or contractors, subject to County approval, to correct the problem.

11. MAINTENANCE OF PREMISES.

A. **Tenant's Obligation.** TENANT shall, at TENANT's sole cost and expense and at all times, keep the Premises and every part thereof in good order, condition and repair (whether or not such portion of the Premises requiring repair, or the means of repairing the same, are reasonably or readily accessible to TENANT, and whether or not the need for such repairs occurs as a result of TENANT's use, any prior use, the elements or the age of the Premises). Without limiting the generality of the foregoing, TENANT shall maintain all buildings, structures, and grounds of the Premises, including all equipment or facilities serving the Premises, including but not limited to restrooms, plumbing, heating, air conditioning, ventilating, electrical, lighting, utility systems and facilities, floors, walls, office space, interior and exterior improvements, boilers, fired or unfired pressure vessels, fire sprinkler or suppression systems, fire extinguishers, fire hose connections, doors, windows, roofs, foundations, parking, landscaping, pest control, and janitorial services . TENANT's obligations shall include restorations, replacements or renewals when necessary to keep the Premises and all improvements thereon in good order, condition and state of repair. TENANT, in keeping the Premises in good order, condition and repair, shall exercise and perform good maintenance practices. If the sewer lines and water lines serving the Premises and maintained by TENANT are causing problems with the main lines, COUNTY reserves the right to assume the maintenance of said lines and invoice TENANT for the cost of such maintenance. TENANT agrees to reimburse COUNTY for all costs incurred by COUNTY in connection with the maintenance of TENANT's sewer and/or water lines within ten (10) days of COUNTY's demand. Should TENANT fail to perform any of TENANT's maintenance obligations, COUNTY may enter onto the Premises, after ten (10) days' prior written notice to TENANT (except in the case of an emergency, in which case no notice shall be required), and perform such obligations on TENANT's behalf. If COUNTY performs any of TENANT's maintenance obligations, such maintenance shall be at TENANT's sole cost and expense and TENANT shall reimburse COUNTY for all costs incurred by COUNTY within ten (10) days of COUNTY's demand. TENANT acknowledges that the Premises are located near an airport and that the control of potential damage to aircraft utilizing said airport ("Foreign Object Damage") is of utmost importance. TENANT, in performing TENANT's maintenance obligations, shall maintain the Premises and implement such maintenance procedures as are required to eliminate the risk of Foreign Object Damage.

B. **Surrender and Restoration of the Premises.** TENANT shall surrender the Premises at the end of the last day of the Term or any earlier termination date, clean and free of debris and in as good a condition as existed on the Commencement Date, ordinary wear and tear excepted. TENANT shall further surrender all Improvements on the Premises at the end of the last day of the Term or any earlier termination date, clean and free of debris and in good operating order, condition and state of repair, ordinary wear and tear excepted. Ordinary wear and tear shall not include any damage or deterioration that could have been prevented by good maintenance practice or by TENANT performing all of its obligations under this Lease. TENANT's obligation shall include the repair of any damage occasioned by the installation, maintenance or removal of TENANT's trade fixtures, furnishings, equipment, as well as the removal of any storage tanks installed by or for TENANT, and the removal, replacement, or remediation of any soil, material or ground water contaminated by TENANT, all as may then be required by any applicable law, ordinance or regulation and/or good practice.

C. **Utilities.** TENANT understands and agrees that provision of all utilities, including but not limited to, electrical, water, gas, telephone, refuse collection, sewage disposal, etc., shall

be the sole responsibility of the TENANT, and payable directly to the utility or service provider. TENANT shall coordinate all utility connections with COUNTY, and TENANT shall assume all costs involved with said connections, all costs for services thereafter and maintenance within the Premises. TENANT shall, at its sole cost, install separate utility meters for the Premises.

12. ASSIGNMENT AND SUBLETTING.

A. **County's Consent Required.** TENANT shall not voluntarily or by operation of law, assign TENANT's interest in this Lease, in the Premises or in any options contained in this Lease, nor sublease, all or any part of the Premises, nor allow any other person or entity (except TENANT's authorized representatives) to occupy or use all or any part of the Premises, without first obtaining COUNTY's written consent, substantially in the form of Exhibit "K" attached hereto and incorporated herein by reference, and TENANT's payment of the Minimum Assignment/Subletting Fee. Except as provided in Paragraph 10, IMPROVEMENTS, TENANT shall not encumber TENANT's interest in this Lease or the Premises. Any assignment, sublease or encumbrance without COUNTY's consent shall be voidable and, at COUNTY's election, shall constitute a default under this Lease. COUNTY's consent to any assignment, sublease or encumbrance shall not constitute a waiver of COUNTY's right to require consent to any subsequent assignment or sublease. For the purposes of this paragraph, the following events shall be deemed to be an assignment requiring COUNTY's prior written consent:

i. If TENANT is a partnership, a withdrawal or change, voluntary, involuntary, or by operation of law, of any partner, or the dissolution of the partnership, will be deemed a voluntary assignment.

ii. If TENANT consists of more than one person, a purported assignment, voluntary, involuntary, or by operation of law, from one person to any other will be deemed a voluntary assignment.

iii. If TENANT is a corporation, any dissolution, merger, consolidation, or other reorganization of TENANT, or the sale or other transfer of a controlling percentage of the capital stock of TENANT, or the sale of more than fifty percent (50%) of the value of the assets of TENANT, will be deemed a voluntary assignment. The phrase "controlling percentage" means the ownership of and the right to vote stock possessing more than fifty percent (50%) of the total combined voting power of all classes of TENANT's capital stock issued, outstanding, and entitled to vote for the election of directors. This paragraph will not apply to corporations the stock of which is traded through an exchange or over the counter.

iv. If TENANT is a limited liability company, any change in membership or designation of the primary contact person shall be deemed a voluntary assignment.

v. The transfer, on a cumulative basis, of twenty-five percent (25%) or more of the voting control of TENANT shall constitute an assignment requiring COUNTY's consent; and (2) the involvement of TENANT or TENANT's assets in any transaction, or series of transactions (whether by way of merger, sale, acquisition, financing, transfer, or otherwise) which results or which will result in a reduction of a TENANT's Net Worth, (as hereinafter defined), by an amount equal to or greater than twenty-five percent (25%) of TENANT's Net Worth as of the Lease Commencement Date, or as of the date of the most recent assignment to which COUNTY has consented, or which exists immediately prior to said transaction or transactions, shall be considered an assignment of this Lease by TENANT and requiring COUNTY's consent. For the purposes of this Lease, the term "Net Worth" shall be the Net Worth of TENANT established under generally accepted accounting principles consistently applied.

B. **Terms and Conditions Applicable To Assignment and Subletting.** The following provisions shall apply to any sublease or assignment pursuant to this Lease:

i. Irrespective of COUNTY's consent, any assignment or sublease shall not: (i) be effective without the express written assumption by such assignee or sublessee of all of TENANT's obligations under this Lease; (ii) release TENANT of any of its obligations hereunder; (iii) alter the primary liability of TENANT for the payment of the Monthly Rent, and other amounts due COUNTY pursuant to this Lease or for the performance of any of TENANT's other obligations under this Lease; nor (iv) alter, discharge or release the liability of any Guarantor on this Lease.

ii. Each request for consent to an assignment or sublease shall be in writing, and shall be accompanied by the following: (i) an assignment or sublease agreement in a form acceptable to the COUNTY, (ii) a certification by TENANT of all rents or consideration to be paid to TENANT by the assignee or sublessee, (iii) a current credit report of the assignee or sublessee, including credits reports for each of its principals, (iv) the three most recent years of financial statements of the proposed assignee or sublessee, whose financial strength shall be equal to or greater than that of TENANT, and (v) information related to the responsibility and appropriateness, expertise, and expertise of the proposed assignee or sublessee to operate and conduct those activities set forth in the use section of the Reference Pages, which shall be equal to or greater than that of TENANT. TENANT agrees to pay the Minimum Assignment/Subletting Fee as stated in the Reference Pages, which shall be submitted along with TENANT's written request for COUNTY's consent, and all other costs incurred by COUNTY in reviewing TENANT's request and to provide COUNTY with such other and/or additional information and/or documentation as COUNTY may reasonably require in connection with TENANT's request.

iii. As a further condition to COUNTY giving its consent to any assignment or sublease, COUNTY shall receive one hundred percent (100%) of all rent or consideration received by TENANT from its assignees or subtenants in excess of the Monthly Rent payable by TENANT to COUNTY under this Lease shall be paid to COUNTY, and if the TENANT sublets only a portion of the Premises, that the foregoing adjustment shall be applicable only to the portion of the Premises utilized by subtenant. TENANT shall pay said amount to COUNTY in accordance with Section 4, RENT, hereof.

iv. COUNTY may require TENANT to increase the amount of the Security Deposit set forth on the Reference Pages as part of COUNTY's consent to any assignment or subletting. TENANT agrees to execute an amendment confirming the adjustment to the Monthly Rent or increase of the Security Deposit as part of COUNTY's consent to any assignment or sublease.

v. Without limiting the other instances in which it may be reasonable for COUNTY to withhold its consent to an assignment or sublease request, it shall be deemed reasonable for COUNTY to withhold its consent if any one or more of the following conditions exist: (i) TENANT is in default of the Lease at the time consent is requested; (ii) the net worth of the proposed assignee or sublessee at the time consent is requested is not at least as great as the net worth of the TENANT as existed at the initial Commencement Date of the Lease; (iii) the creditworthiness of the proposed assignee or sublessee at the time consent is requested is not at least as good as the creditworthiness of the TENANT as existed at the initial Commencement Date of the Lease; (iv) the proposed assignee or sublessee does not have the financial strength, stability, nor ability to perform all obligations of TENANT under this Lease; (v) the years and type of business experience of the proposed transferee at the time consent is requested is not as great as years and type of business experience as the TENANT as of the date consent is requested; (vi) the proposed assignee or sublessee is in default of any lease, license, permit, use or other agreement between said proposed assignee or sublessee and County at the time consent is requested or has a history of defaults or violations at the Airport at the time consent is requested; (vii) the proposed assignee or sublessee is not in County's reasonable opinion of reputable or good character or consistent with County's desired tenant

mix for the Airport; (viii) the proposed transferee's use is not permitted by this Lease; (ix) the proposed use will increase the density of occupancy of the Premises or increase the amount of pedestrian and vehicular traffic at the Premises or the Airport; (x) the proposed use will not require tenant improvements incompatible with then-existing Building systems and components; (xi) the proposed use will result in significant increase in the use of the parking areas by the assignee or sublessee's employees or visitors, and/or significantly increase the demand upon utilities and services to be provided by County under the Lease; (xii) the proposed use will increase the likelihood of damage or destruction to the Premises; and (xiii) in the event of a sublease, the portion of the Premises to be subleased results in an irregular shape or does not have adequate means of ingress and egress or will result in more than one sublease in effect at the Premises. The burden of demonstrating to the County's satisfaction that any one or more of the foregoing conditions do not exist shall be on TENANT.

C. **Assignment of Rents.** TENANT irrevocably assigns to COUNTY, as security for TENANT's obligations under this Lease, all rent due TENANT from any subletting of all or a part of the Premises pursuant to this Lease, and COUNTY, as assignee and as attorney-in-fact for TENANT, may collect such rent and apply it toward TENANT's obligations under this Lease, except that until the occurrence of a Default by TENANT, TENANT shall have the right to collect such rent.

13. COUNTY'S ENTRY ON PREMISES.

A. COUNTY and its authorized representatives shall have the right to enter the Premises at all reasonable times for any of the following purposes:

- i. To inspect the Premises;
- ii. To determine whether the Premises are in good condition and whether TENANT is complying with its obligations under this Lease;
- iii. To do any necessary maintenance or perform any auditing, testing or sampling and to make any restoration to the Premises that COUNTY has the right to perform;
- iv. To serve, post, or keep posted any notices required or allowed under the provisions of this Lease;
- v. To post "for sale" signs at any time during the Term and to post "for rent" or "for lease" signs during the last twelve (12) months of the Term or during any period while TENANT is in default;
- vi. To show the Premises to brokers, agents, prospective buyers, or other persons interested in the purchase of the Premises at any time during the Term; and
- vii. To show the Premises to brokers, agents, prospective tenants and other persons interested in leasing the Premises during the last twelve (12) months of the Term.

B. COUNTY shall not be liable in any manner for any inconvenience, disturbance, loss of business, nuisance, or other damage arising out of COUNTY's entry on the Premises as provided in this paragraph, except for property damage to the extent resulting from the negligent acts or omissions of COUNTY or its authorized representatives. TENANT shall not be entitled to an abatement or reduction of rent if COUNTY exercises any rights reserved in this paragraph. COUNTY shall conduct COUNTY's activities on the Premises pursuant to this paragraph in a manner that will cause minimal inconvenience, annoyance, or disturbance to TENANT.

C. **DAMAGE OR DESTRUCTION OF PREMISES.** In the event any of the buildings, structures or improvements erected on the Premises are damaged or destroyed during the term of this Lease, TENANT shall repair and restore such buildings, structures or improvements to the original condition prior to said damage or destruction. TENANT shall commence the repair and restoration of the Premises within forty-five (45) days of the event causing such damage or destruction and shall diligently prosecute such work until completion. All proceeds of any property insurance maintained by TENANT pursuant to this Lease shall be used to repair and restore the Premises, and for no other purpose, without COUNTY's express written consent. TENANT shall comply with all the procedures set forth in Paragraph 10, IMPROVEMENTS as part of TENANT's repair and restoration work. If TENANT fails to commence the repair or restoration work in a timely manner, or fails to diligently prosecute such work, or fails to comply with the requirements of Paragraph 10, IMPROVEMENTS, COUNTY shall have the right to terminate this Lease under Paragraph 18, DEFAULT. As used in this paragraph, the phrase "commence the repair" shall mean either the unconditional authorization for the preparation of the required plans, or the beginning of the actual work on the Premises, whichever occurs first.

14. **CONDUCT OF EMPLOYEES.** TENANT shall be responsible for the conduct of its employees, volunteers, agents, members, invitees, guests, patrons and spectators on the Premises. In addition, TENANT agrees to abide by, and ensures that all such persons abide by the rules and regulations of the COUNTY while on the Premises.

15. **ERECTION OF SIGNS.** TENANT may erect signs on the Premises or the structures on the Premises, but erection or application of said signs shall be allowed only with the prior written permission of the COUNTY. All signs shall be approved by COUNTY, in its sole discretion, and if approved, shall be erected in conformity with the County and City codes, ordinances, and policies with regard to signage.

16. **SPECIAL USE COVENANTS AND RESTRICTIONS.**

A. **Right of Flight.** COUNTY, its successors and assigns, hereby reserves for the use and benefit of the public a right of flight for the passage of aircraft in the airspace above the surface of the Premises, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft. TENANT agrees not to make any claim or institute legal action against COUNTY under any theory of recovery for any interference with TENANT's use and enjoyment of the Premises which may result from the operation of aircraft to or from the Airport.

B. **Noninterference With Aircraft.** TENANT, by accepting this Lease expressly agrees for itself, its successors and assigns, that it will not make use of the Premises in any manner which might interfere with the landing and/or taking off of aircraft from the airport located near the Premises, or any part therein or otherwise constitute a hazard to navigation in the use of said airport by aircraft. In the event the aforesaid covenant is breached, the COUNTY reserves the right to enter upon the Premises and cause the abatement of such interference at the sole cost and expense of the TENANT.

C. **Federal Aviation Administration Requirements.** TENANT agrees to conform to all applicable federal, state and county rules and regulations and to further conform to any and all requirements or regulations of the Federal Aviation Administration as may be applicable to the TENANT and the TENANT's use of the Premises.

D. **Hazardous Substances.**

i. **Definitions.** The following terms shall have the meanings set forth in this paragraph:

a. **Applicable Requirements** shall mean all laws, rules, regulations, ordinances, directives, covenants, easements and restrictions of record, permits, the requirements of any applicable fire insurance underwriter or rating bureau, and the recommendations of COUNTY's engineers and/or consultants, relating in any manner to the Premises now in effect or which may hereafter come into effect.

b. **Hazardous Substance** shall mean any product, substance, chemical, material or waste whose presence, nature, quantity and/or intensity of existence, use, manufacture, disposal, transportation, spill, release or effect, either by itself or in combination with other materials expected to be on the Premises, is either: (i) potentially injurious to the public health, safety or welfare, or the environment, the Premises; or (ii) regulated or monitored by any governmental authority; or (iii) a basis for potential liability of COUNTY to any governmental agency or third party under any Applicable requirements or common law theory. Hazardous Substance shall include, but not be limited to fuel, hydrocarbons, petroleum products, gasoline, crude oil or any products or by-products thereof.

c. **Reportable Use** shall mean: (i) the installation or use of any above or below ground storage tank; (ii) the generation, possession, storage, use, transportation, or disposal of a Hazardous Substance that requires a permit from, or with respect to which a report, notice, registration or business plan is required to be filed with, any governmental authority; and (iii) the presence in, on, under or about the Premises of a Hazardous Substance with respect to which any Applicable Requirements require that a notice be given to persons entering or occupying the Premises or neighboring properties.

ii. **Tenant's Covenants.** TENANT, at its sole cost, shall comply with any and all the Applicable Requirements with respect to Hazardous Substances, including but not limited to the following:

a. California Health & Safety Code, Division 20, Chapters 6.5, Hazardous Waste Control (inclusive); 6.7, Underground Storage of Hazardous Substances (inclusive); and 6.95, Hazardous Materials Release Response Plans and Inventory (inclusive);

b. California Code of Regulations Title 22, Division 4.5; Title 23, Division 3, Chapter 16, Underground Storage Tank Regulations; and

c. Title 2, Division 3, entitled "Fire Protection and Explosives and Hazardous Materials", and Title 3, Division 3, Chapter 8, entitled "Waste Management" of the San Bernardino County Code.

TENANT shall not engage in any activity in, on, under or about the Premises which constitutes a Reportable Use of Hazardous Substances without the express prior written consent of COUNTY, in its sole discretion, and compliance in a timely manner (at TENANT's sole cost and expense) with all Applicable Requirements. Notwithstanding the foregoing, TENANT may, without COUNTY's prior consent, but upon notice to COUNTY and in compliance with all Applicable Requirements, use any ordinary and customary materials reasonably required to be used by TENANT in the normal course of the Use set forth on the Reference Pages, so long as such use is not a Reportable Use and does not expose the Premises or neighboring properties to any meaningful risk of contamination or damage or expose COUNTY to any liability therefore. COUNTY may (but without any obligation to do so) condition its consent to any Reportable Use of any Hazardous Substance by TENANT upon TENANT's giving COUNTY such additional assurances as COUNTY, in the reasonable discretion of the COUNTY's Director of Risk Management, deems necessary to protect itself, the public, the Premises, and the environment against damage, contamination or injury and/or liability therefore, including, but not limited to, the installation (and, at COUNTY's option, and TENANT's sole cost and expense) of reasonably necessary protective

modifications to the Premises and/or the deposit of an additional Security Deposit under Paragraph 5 hereof. TENANT shall not cause or permit any Hazardous Substance to be spilled or released in, on, under or about the Premises (including, without limitation, through the plumbing or sanitary sewer system).

iii. **Duty to Inform COUNTY.** If TENANT knows, or has reasonable cause to believe, that a Hazardous Substance has come to be located in, on, under or about the Premises, other than as previously consented to by COUNTY, TENANT shall immediately give COUNTY notice thereof, together with a copy of any statement, report, notice, registration, application, permit, business plan, license, claim, action, or proceeding given to, or received from, any governmental authority or private party concerning the presence, spill, release, discharge of, or exposure to, such Hazardous Substance including, but not limited to, all such documents as may be involved in any Reportable Use involving the Premises to be followed up in writing within two (2) days. TENANT will provide to COUNTY, prior to the termination of this Lease agreement, a soil test and a fuel tank test that will indicate if any leakage has occurred from any tank located on or under the Premises and used by TENANT. If any leakage is found, TENANT shall repair the tanks and remove any contaminated soil at TENANT's sole cost and expense.

iv. **Indemnification.** TENANT shall indemnify, protect, defend (with counsel reasonably approved by COUNTY) and hold COUNTY, its officers, agents, employees, and volunteers and the Premises, harmless from and against any and all damages, liabilities, judgments, costs, claims, liens, expenses, penalties and loss of permits (including COUNTY's attorneys' and consultants' fees) arising out of or involving any Hazardous Substance generated, possessed, stored, used, transported, or disposed in, on, upon, or at the Premises by or for TENANT or by anyone under TENANT's control. TENANT's obligations under this paragraph shall include, but not be limited to, the effects of any contamination or injury to person, property or the environment created or suffered by TENANT, and the cost of investigation (including consultants' and attorneys' fees and testing), removal, remediation, restoration and/or abatement thereof, or of any contamination therein involved, and shall survive the expiration or earlier termination of this Lease. No termination, cancellation or release agreement entered into by COUNTY and TENANT shall release TENANT from its obligations under this Lease with respect to Hazardous Substances, unless specifically so agreed by COUNTY in writing at the time of such agreement.

v. **COUNTY's Right to Perform Tests.** At any time prior to the expiration of the Lease Term, COUNTY shall have the right to enter upon the Premises in order to conduct tests of water and soil. TENANT shall have not right to conduct any tests of water or soil at the Premises without the prior written consent of COUNTY, at its sole discretion.

E. **Continuous Use.** The TENANT covenants and agrees that TENANT shall operate and conduct in compliance with minimum standards that may be promulgated by COUNTY within the Premises, those activities set forth in the use section of the Reference Pages, continuously and uninterruptedly, during normal business hours to be agreed by the parties,.

F. **Licenses and Certifications.** TENANT agrees that before commencing any use of or business operations at the Premises, TENANT will acquire, provide and maintain those notices, certifications, licenses, approvals and permits required by any federal, state or local jurisdiction or authority for carrying out the purpose of this Lease. Failure to comply with this provision will constitute a default and right to terminate by COUNTY under Paragraph 18, DEFAULT of this Lease.

G. **Auctions.** TENANT shall not conduct, nor permit to be conducted, either voluntarily or involuntary, any auction on the Premises without COUNTY's prior written consent.

Notwithstanding Paragraph 22 with regard to reasonableness, COUNTY shall not be obligated to exercise any standard of reasonableness in determining whether to consent to any requested auction.

H. **Reservation of Right to Use Roof Areas.** COUNTY reserves all right to use the roof of any building or improvement situated on the Premises for the installation of signs, antennae and/or other communications equipment, provided that COUNTY's use of the roof does not unreasonably interfere with TENANT's use of the Premises. COUNTY shall be entitled to all revenues received as the result of result of such signs, antennae and/or communications equipment.

I. **Rules and Regulations.** TENANT agrees to abide by, keep and observe all minimum standards, reasonable rules and regulations for the Premises which COUNTY may make from time to time for the management, safety, care, cleanliness of the grounds, parking areas, and the preservation of good order.

17. **CONDEMNATION.** If the Premises or any part thereof are taken under the power of eminent domain, this Lease shall terminate as to the part so taken as of the date the condemning authority takes possession thereof. In such event, the rent shall be reduced in the proportion that the floor area (or other surface area), taken bears to the total floor area (or other surface area), prior to the taking. If more than twenty percent (20%) of the floor area of the buildings or the Premises or more than fifty percent (50%) of the surface area leased to TENANT but not occupied by any building, is taken by condemnation, TENANT may, at TENANT's option, terminate this Lease. If TENANT elects to exercise its option to terminate this Lease pursuant to this paragraph, TENANT shall give written notice of termination to COUNTY within thirty (30) days after the condemning authority takes such possession and this Lease shall terminate sixty (60) days thereafter. If TENANT does not exercise TENANT's right to terminate this Lease, then the rent payable shall be reduced as set forth above and this Lease shall remain in full force and effect. Any compensation awarded as damages for the taking of the Premises or COUNTY owned improvements, together with any severance damage, shall be the sole property of the COUNTY, except that any compensation awarded for TENANT's improvements, trade fixtures, equipment and moving costs shall be paid to TENANT if any.

18. **DEFAULT.**

A. **Definitions.** A "Default" by TENANT shall refer to any failure by TENANT to observe, comply with or perform any of the terms, covenants, conditions or rules applicable to TENANT under this Lease. The term "Breach" shall refer to the occurrence of any one or more of the following Defaults, and, where a grace period for cure after notice is specified herein, the failure of TENANT to cure such Default prior to the expiration of the applicable grace period:

i. TENANT's unexcused failure to conduct TENANT's business at the Premises in accordance with the terms of this Lease including but not limited to the failure to comply with the limitations of use of the Premises.

ii. Vacating the Premises without the evident intention to reoccupy same, an abandonment of the Premises, or notice of intent to abandon Premises expressed in written notice or failing to continuously and uninterruptedly operate those activities set forth in the use section of the Reference Pages.

iii. TENANT's failure to make any payment of Monthly Rent, or any other monetary payment required to be made by TENANT hereunder as and when due, the failure of TENANT to provide COUNTY with reasonable evidence of insurance or surety bond required under this Lease, or TENANT's failure to fulfill any obligation under this Lease which endangers or threatens life or property,

where such failure continues for a period of three (3) days, or such reasonable time as agreed by COUNTY, following written notice thereof by or on behalf of COUNTY to TENANT. In the event COUNTY serves TENANT with a Notice to Pay Rent or Quit pursuant to the California Unlawful Detainer statutes, such Notice to Pay Rent or Quit shall also constitute the notice required by this subsection.

iv. The failure by TENANT to provide COUNTY with reasonable written evidence (in duly executed original form, if applicable) (in compliance with minimum standards that may be promulgated by COUNTY) of (a) compliance with Applicable Requirements per Paragraph 16.D., (b) the inspection, maintenance and service contracts required under Paragraph 11.A., (c) the rescission of an unauthorized assignment or subletting per Paragraph 12, (d) the guaranty of the performance of TENANT'S obligations under this Lease if required by the Reference Pages, or (e) any other documentation or information which COUNTY may reasonably require of TENANT under the terms of this Lease, where any such failure continues for a period of ten (10) days following written notice by or on behalf of COUNTY to TENANT.

v. A Default by TENANT as to the terms, covenants, conditions or provisions of this Lease, or of the rules adopted under Paragraph 16.C. hereof that are to be observed, complied with or performed by TENANT in compliance with minimum standards that may be promulgated by COUNTY, other than those described in subparagraphs 18.A.(i) through (iv) inclusive, where such Default continues for a period of thirty (30) days or more after written notice thereof by or on behalf of COUNTY to TENANT; provided, however, that if the nature of TENANT'S Default is such that more than thirty (30) days are reasonably required for its cure, then it shall not be deemed to be a Breach of this Lease by TENANT if TENANT provides written notice along with documentation of the need for an extended cure period to COUNTY and, if verified by the COUNTY, commences such cure within said thirty (30) day period and thereafter continuously and diligently prosecutes such cure to completion, provided that in no event shall such cure period be longer than ninety (90) days following the occurrence of the default.

vi. A Default by TENANT as to the terms of any Approved Encumbrance, where such Default continues for a period of thirty (30) days after written notice thereof by or on behalf of COUNTY;

vii. The occurrence of any of the following events: (a) the making by TENANT of an assignment for the benefit of creditors; (b) TENANT'S becoming a "debtor" as defined in 11 U.S. Code Section 101 or any successor statute thereto (unless, in the case of a petition filed against TENANT, the same is dismissed within sixty (60) days); (c) the appointment of a trustee or receiver to take possession of substantially all of TENANT'S assets located at the Premises or of TENANT'S interest in this Lease, where possession is not restored to TENANT within thirty (30) days; or (d) the attachment, execution or other judicial seizure 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.

viii. The discovery by COUNTY that any financial statement of TENANT or of any Guarantor, given to COUNTY by TENANT or any GUARANTOR, was materially false; or TENANT'S default pursuant to Paragraph 32.B.

ix. If the performance of TENANT'S obligations under this Lease is guaranteed: (a) the death of a Guarantor, (b) the termination of a Guarantor's liability with respect to this Lease other than in accordance with the terms of such guaranty, (c) a Guarantor's becoming insolvent or the subject of a bankruptcy filing, or (d) a Guarantor's refusal to honor the guaranty, and TENANT'S failure, within sixty (60) days following written notice by or on behalf of COUNTY to TENANT of any such event, to provide COUNTY with written alternative assurances of security, which, when coupled with

the then existing resources of TENANT, equals or exceeds the combined financial resources of TENANT and the Guarantors that existed at the time of execution of this Lease.

B. Remedies.

i. Other than as provided in Paragraph 18.A., if TENANT fails to perform any affirmative duty or obligation of TENANT under this Lease, within ten (10) days after written notice to TENANT (or in case of an emergency, without notice), COUNTY may at its option (but without obligation to do so), perform such duty or obligation on TENANT's behalf, including, but not limited to, the obtaining of reasonably required, insurance policies, or governmental licenses, permits or approvals. The costs and expenses of any such performance by COUNTY shall be due and payable by TENANT to COUNTY within ten (10) days of COUNTY's demand.

ii. In the event of a Breach of this Lease by TENANT (as defined in Paragraph 18.A.), with or without further notice or demand, and without limiting COUNTY in the exercise of any right or remedy which COUNTY may have by reason of such Breach, COUNTY may:

a. Terminate TENANT's right to possession of the Premises by any lawful means, in which case this Lease and the term hereof shall terminate and TENANT shall immediately surrender possession of the Premises to COUNTY. In such event COUNTY shall be entitled to recover from TENANT: (i) the worth at the time of the award of the unpaid rent which had been earned at the time of termination; (ii) the worth at the time of award of the amount by which the unpaid rent, which would have been earned after termination until the time of award, exceeds the amount of such rental loss that the TENANT proves could have been reasonably avoided; (iii) the worth at the time of award of the amount by which the unpaid rent, for the balance of the Term after the time of award, exceeds the amount of such rental loss that the TENANT proves could be reasonably avoided; and (iv) any other amount necessary to compensate COUNTY for all the detriment proximately caused by the 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 renovation and alteration of the Premises, reasonable attorneys' fees, and that portion of any leasing commission paid by COUNTY in connection with this Lease and applicable to the unexpired term of this Lease. The worth at the time of award of the amount referred to in provision (iii) of the immediately preceding sentence shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco or the Federal Reserve Bank District in which the Premises are located at the time of award plus one percent (1%). COUNTY's attempt to mitigate damages caused by TENANT's Default or Breach of this Lease shall not waive COUNTY's right to recover damages under this Paragraph 18.B. If termination of this Lease is obtained through the provisional remedy of unlawful detainer, COUNTY shall have the right to recover in such proceeding the unpaid rent and damages as are recoverable therein, or COUNTY may reserve the right to recover all or any part thereof in a separate suit for such rent and/or damages.

b. Continue the Lease and TENANT'S right to possession in effect under California Civil Code Section 1951.4 after TENANT'S Breach and recover the rent as it becomes due, provided TENANT has the right to sublet or assign, subject only to reasonable limitations. COUNTY and TENANT agree that the limitations on assignment and subletting in this Lease are reasonable. COUNTY's maintenance of the Premises or efforts to relet the Premises, or the appointment of a receiver to protect the COUNTY's interest under this Lease, shall not constitute a termination of the TENANT'S right to possession.

c. Pursue any other remedy now or hereafter available to COUNTY under the laws or judicial decisions of the State of California.

iii. If, at any time TENANT is in default of any monetary obligation as defined in Paragraph 4.D. as Rent or any other provision for forty-five (45) days, or if TENANT defaults on any provision(s) three (3) times within any twelve (12) consecutive months, COUNTY may terminate this Lease on ten (10) days notice.

C. **Survival of Indemnity Provisions.** The expiration or termination of this Lease and/or the termination of TENANT's right to possession shall not relieve TENANT from liability under any indemnity provisions of this Lease as to matters occurring or accruing during the Term or by reason of TENANT's occupancy of the Premises.

D. **Tenant's Personal Property.** TENANT covenants and agrees that immediately upon termination of this Lease, TENANT shall remove and properly dispose of all of TENANT's personal property, machinery or fixtures from the Premises. If TENANT fails to remove any such personal property, COUNTY may remove such personal property and place the same in storage at the expense of TENANT and without liability to COUNTY for losses. TENANT agrees to pay COUNTY for all expenses incurred by COUNTY in connection with the removal, and storage charges of TENANT's personal property, including attorney's fees and court costs. Alternatively, COUNTY may at its option and on not less than ten (10) days written notice to TENANT sell all or any part of said personal property at public or private sale for such prices as COUNTY may obtain. COUNTY shall apply the proceeds of any such sale to the amounts due from TENANT under this Lease and to any expense incidental to such sale. Any surplus arising from such sale shall be refunded to TENANT.

E. **No Waiver by County.** COUNTY's receipt of any rent or of any other amounts of money paid by TENANT after the termination and forfeiture of this Lease, or after the giving by COUNTY of any notice to effect such termination, shall not waive the Default, reinstate, continue or extend the Term of this Lease, or destroy or impair the efficacy of COUNTY's notice of termination, unless otherwise agreed in writing by COUNTY. COUNTY's acceptance of the keys to the Premises or any other act of the COUNTY or its agents or employees during the Term of this Lease shall not be deemed to be an acceptance or a surrender of the Premises, unless otherwise agreed in writing by COUNTY.

F. **Recapture of Inducement.** COUNTY's agreement for free or abated rent or other charges applicable to the Premises, or for the giving or paying by COUNTY to or for TENANT of any cash or other bonus, inducement or consideration for TENANT's entering into this Lease, all of which concessions are hereinafter referred to as "Inducement Provisions" shall be deemed conditioned upon TENANT's full and faithful performance of all of the terms, covenants and conditions of this Lease. Upon the occurrence of a Breach (as defined in paragraph above) of this Lease by TENANT, any such Inducement Provisions shall automatically be deemed deleted from this Lease and of no further force or effect, and any rent, other charge, bonus, inducement or consideration therefore abated, given or paid by COUNTY under such an Inducement Provision shall be immediately due and payable by TENANT to COUNTY, and recoverable by COUNTY, as additional rent due under this Lease. The acceptance by COUNTY of rent or the cure of the Breach which initiated the operation of this paragraph shall not be deemed a waiver by COUNTY of the provisions of this paragraph, unless specifically agreed in writing by COUNTY.

G. **No Relief from Forfeiture After Default.** TENANT waives all rights of redemption or relief from forfeiture under California Code of Civil Procedure §§1174 and 1179, and any other present or future law, in the event TENANT is evicted or COUNTY otherwise lawfully takes possession of the Premises by reason of any default or breach of this Lease by TENANT.

19. **HOLDING OVER.** If the TENANT continues in possession or occupancy of the Premises after the expiration of the Term or after any termination of this Lease prior to the expiration of the Term,

and if said possession or occupancy is with the express written consent of the COUNTY, then TENANT shall be deemed to be holding the Premises on a month-to-month tenancy subject to all the provisions of this Lease except the Monthly Rent, provided that either party may terminate the Lease at any time during the holdover period by providing not less than thirty (30) days prior written notice to the other party. The Monthly Rent payable during such permitted period of holding over shall initially be one hundred fifty percent (150%) of the Monthly Rent that was payable in the month immediately preceding the commencement of the period of holding over.

20. **TIME OF ESSENCE.** Except as otherwise specifically provided in the Lease, time is of the essence for each provision of this Lease which specifies a time within which performance is to occur. In the absence of any specified time for performance, performance may be made within a reasonable time.

21. **PROVISIONS ARE COVENANTS AND CONDITIONS.** All provisions, whether covenants or conditions, on the part of either party, shall be deemed to be both covenants and conditions.

22. **CONSENT.** Except as otherwise specifically provided in the Lease, whenever consent or approval of either party is required, that party shall not unreasonably withhold such consent or approval.

23. **EXHIBITS.** All exhibits referred to in this Lease or attached to this Lease are incorporated herein by reference.

24. **LAW.** This Lease shall be construed and interpreted in accordance with the laws of the State of California.

25. **ATTORNEYS' FEES AND COSTS.** If any legal action is instituted to enforce or declare any party's rights hereunder, each party, including the prevailing party, must bear its own costs and attorneys' fees. This paragraph shall not apply to those costs and attorneys' fees directly arising from any third party legal action against the COUNTY, including such costs and attorneys' fees payable under Paragraph 7, INDEMNIFICATION, Paragraph 10, IMPROVEMENTS, Paragraph 16D, Hazardous Substances, and Paragraph 36, PUBLIC RECORDS DISCLOSURE.

26. **VENUE.** The parties acknowledge and agree that this Lease was entered into and intended to be performed in San Bernardino County, California. The parties agree that the venue for any action or claim brought by any party to this Lease will be the Superior Court of California, County of San Bernardino. Each party hereby waives any law, statute (including but not limited to California Code of Civil Procedure Section 394) or rule of court that would allow it to request or demand a change of venue. If any action or claim concerning this Lease is brought by any third party, the parties hereto agree to use their best efforts to obtain a change of venue to the Superior Court of California, County of San Bernardino.

27. **COMPLIANCE WITH LAW.** TENANT and its officers, employees, agents, contractor, agents, invitees, and assigns shall be bound by and comply with all applicable federal, state and local laws, statutes, ordinances, administrative orders, rules or regulations relating to its duties, obligations, rights and performance under the terms of this Lease.

28. **CAPTIONS, TABLE OF CONTENTS AND COVER PAGE.** The paragraph captions, table of contents and the cover page of this Lease shall have no effect on its interpretation.

29. **NOTICES.** Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other party, including but not limited to, notices required under the California unlawful detainer statutes, or any other person, shall be in writing and either served personally, sent by United States mail, postage prepaid, first-class mail, certified or registered, return receipt

requested, or by overnight courier to the other party at the address listed in the Reference Pages. Any such notice, demand, request, consent, approval or communication that either party desires or is required to give to the other party shall be addressed to the other party at the address set forth in Reference Pages. Either party may change its address by notifying the other party of the change of address. Notices shall be deemed delivered and effective upon the earlier of (i) actual receipt if personally delivered on a business day; otherwise on the next business day, or (ii) the date of delivery or refusal of the addressee to accept delivery if delivered on a business day, otherwise on the next business day, if such notice is sent by or United States mail, postage prepaid, certified or registered, return receipt requested, or overnight courier.

30. **OPTION TO EXTEND TERM.** In the event the Reference Pages provide that TENANT is given one or more options to extend the Lease Term (“Lease Term Extension Option”), the following provisions shall apply:

A. **Tenant’s Option Notice.** TENANT shall notify COUNTY of TENANT’s intention to exercise TENANT’s Lease Term Extension Option by giving written notice of the exercise of each said option (“Lease Term Extension Notice”) to COUNTY, which notice must be received by COUNTY at least six (6) months but not more than twelve (12) months prior to the expiration of the then current Lease Term.

B. **Options Personal to Original TENANT.** Each Lease Term Extension Option granted to TENANT in this Lease is personal to the original TENANT and cannot be voluntarily or involuntarily assigned or exercised by any person or entity other than said original TENANT, while the original TENANT is in full and actual possession of the Premises, unless prior written consent is granted by the COUNTY.

C. **Effect of Default on Extension Options.** If TENANT is in Default at any time during the Term of this Lease or any extended Lease Term, TENANT shall have no right to exercise any Lease Term Extension Option and the Lease Term Extension Notice, if given by TENANT, shall be totally ineffective. If TENANT is in Default at any time on or prior to the date the extended Lease Term is to commence, the extended Lease Term shall not commence and this Lease shall automatically expire at the end of the then current Lease Term.

D. **Multiple Options.** In the event that TENANT is granted multiple Lease Term Extension Options to extend the Term of this Lease, each Lease Term Extension Option shall only be exercised individually and sequentially and a later Extension Option cannot be exercised unless the prior Lease Term Extension Option has been validly exercised. Any lapse in the sequential exercise of the Lease Term Extension Options shall void any and all remaining Lease Term Extension Options.

E. **Monthly Rent.** If TENANT exercises a Lease Term Extension Option, the Term of the Lease shall be extended on the same terms and conditions as this Lease, except that the Monthly Rent for the initial year of each extended term shall be adjusted pursuant to the premises reappraisal process set forth in Exhibit “C” .

31. **RECORDATION OF LEASE.** TENANT shall not record this Lease, or a short form memorandum of this Lease without the prior written consent of COUNTY. If COUNTY consents to the recordation of a short form memorandum of this Lease, TENANT shall pay all charges incident to such recording and upon termination or expiration of this Lease, TENANT shall, within ten (10) days of such termination or expiration, execute and record a quitclaim deed (or any other document required by County) as to its leasehold interest.

32. **GUARANTOR.**

A. **Form of Guaranty.** If the Reference Pages provide that TENANT's obligations pursuant to this Lease are to be guaranteed by one or more Guarantors, then each Guarantor shall execute the form of the guaranty attached hereto as Exhibit "G" "Guaranty of Lease" and each such Guarantor shall have the same obligations as TENANT under this Lease.

B. **Additional Obligations of Guarantor.** It shall constitute a Default of the TENANT under this Lease if any of TENANT's Guarantors fails or refuses, upon reasonable request by COUNTY to give: (i) evidence of the due execution of the guaranty required by this Lease, including the authority of the Guarantor (and of the party signing on Guarantor's behalf) to obligate such Guarantor on said guaranty, and resolution of its board of directors authorizing the making of such guaranty, together with a certificate of incumbency showing the signatures of the persons authorized to sign on its behalf, (ii) current financial statements of Guarantor as may from time to time be requested by COUNTY, or (iii) written confirmation that the Guaranty is still in effect.

33. **SEVERANCE.** If any provision of this Lease is determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision of this Lease and all such other provisions shall remain in full force and effect. It is the intention of the parties hereto that if any provision of this Lease is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid.

34. **SURVIVAL.** The obligations of the parties, which by their nature continue beyond the term of this Lease, will survive the termination of this Lease.

35. **REPRESENTATIONS AND AUTHORITY.** If TENANT is a corporation, each of the persons executing this Lease on behalf of TENANT represents or warrants that TENANT has been and is qualified to do business in the State of California, that the corporation has full right and authority to enter into this Lease, and that all persons signing on behalf of the corporation were authorized to do so by the appropriate corporate actions. If TENANT is a partnership, limited liability company, trust or other legal entity, each of the persons executing this Lease on behalf of TENANT represents or warrants that TENANT has complied with all applicable laws, rules and governmental regulations relative to its right to do business in the State of California and that all persons signing on behalf of such entity were authorized to do so by any and all appropriate actions. TENANT agrees to furnish upon COUNTY's request a corporate resolution, or other appropriate documentation evidencing the authorization of TENANT to enter into this Lease.

36. **PUBLIC RECORDS DISCLOSURE.** All information received by the COUNTY from TENANT or from any source concerning this Lease, including the Lease itself, may be treated by the COUNTY as public information subject to disclosure under the provisions of the California Public Records Act, Government Code Sections 6250 *et seq.* (the "Public Records Act"). TENANT acknowledges and understands that although all materials received by the COUNTY in connection with this Lease are intended for the exclusive use of the COUNTY, they are potentially subject to disclosure under the provisions of the Public Records Act. In the event a request for disclosure of any part or all of any information which TENANT has reasonably requested COUNTY to hold in confidence is made to the COUNTY, the COUNTY shall endeavor to notify the TENANT of the request and shall thereafter disclose the requested information unless the TENANT, within five (5) days of receiving notice of the disclosure request, requests nondisclosure, provides COUNTY a legally sound basis for the nondisclosure, and agrees to indemnify, defend (with counsel reasonably approved by COUNTY), and hold the COUNTY harmless in any/all actions brought to require disclosure. TENANT waives any and all claims for damages, lost profits, or

other injuries of any and all kinds in the event COUNTY fails to notify TENANT of any such disclosure request and/or releases any information concerning the contract received from the TENANT or any other source.

37. **INTERPRETATIONS.** As this Lease was jointly prepared by both parties, the language in all parts of this Lease shall be construed, in all cases, according to its fair meaning, and not for or against either party hereto.

38. **ENTIRE AGREEMENT.** This agreement, including recitals, constitutes a single, integrated contract, expressing the entire agreement and understanding of the parties concerning the subject matter of this agreement, and this agreement supersedes and replaces all prior understandings, negotiations, proposed agreements and agreements, whether oral or written, express or implied.

39. **AMENDMENT.** No waiver, modification or amendment of any term condition or provision of this Lease shall be valid or shall have any force or effect unless made in writing and signed by all of the parties hereto. This provision shall not apply to amendment of such Lease pursuant to Paragraph 6.

40. **NO RELIANCE.** COUNTY makes no warranties or representations of any kind concerning the condition of the Premises or the fitness of the Premises for the use intended by TENANT, and hereby disclaims any knowledge with respect thereto, it being expressly understood by the parties that TENANT has inspected the Premises, knows its condition, finds it fit for TENANT's intended use, accepts the Premises AS-IS, except that COUNTY shall remove all trash, debris, and COUNTY's personal property located thereon, and has ascertained that it can be used for the limited purposes specified in the Use section on the Reference Pages. In entering into this agreement, each of the parties acknowledges, represents and warrants that it has not relied upon any promise, statement or representation, express or implied, of any other party or such other party's agents, employees, or attorneys, not contained in this agreement.

41. **FORMER COUNTY OFFICIALS.** TENANT agrees to provide information on former COUNTY administrative officials (as defined below) who are employed by or represent TENANT. The information provided includes a list of former COUNTY administrative officials who terminated COUNTY employment within the last five years and who are now officers, principals, partners, associates or members of TENANT. The information also includes the employment with and/or representative capacity and the date those individuals began employment with or representation of TENANT. For purposes of this provision, "COUNTY administrative official" is defined as a member of the Board of Supervisors or such officer's staff, COUNTY Administrative Officer or member of such officer's staff, COUNTY department or group head, assistant department or group head, or any employee in the Exempt Group, Management Unit or Safety Management Unit. (See Exhibit "H", List of Former County Officials.)

42. **MATERIAL MISREPRESENTATION.** If during the course of the administration of this Lease, the COUNTY determines that the TENANT has made a material misstatement or misrepresentation or that materially inaccurate information has been provided to the COUNTY, this Lease may be immediately terminated by COUNTY. If this Lease is terminated according to this provision, the COUNTY is entitled to pursue any available remedies at law or in equity.

43. **BROKER'S COMMISSIONS:** Each Party represents and warrants to the other that no real estate broker, agent, commissioned salesperson or other person has represented said Party in the negotiations of this Lease, other than as set forth in the Reference Pages. Each party agrees to indemnify and hold the other harmless from and against any claim, loss, liability or expense, including reasonable attorneys' fees, incurred by the other party as a result of a breach of its respective representations herein.

COUNTY shall be responsible for the payment of any commissions due to the Brokers set forth on the Reference Pages pursuant to a separate agreement.

44. **EASEMENTS:** COUNTY reserves to itself, the right, from time to time, to grant such easements, rights and dedications on the Premises that County, in its sole discretion, deems necessary or desirable, and to cause the recordation of parcel maps and restrictions, so long as such easements, rights, dedications, maps and restrictions do not materially interfere with the permitted use of the Premises by TENANT. TENANT shall sign any of the aforementioned documents upon request of COUNTY and failure to do so shall constitute a material breach of this Lease.

45. **INDEPENDENT CONTRACTOR.** It is agreed that TENANT shall act and be an independent contractor and not an agent nor employee of COUNTY.

46. **JOINT AND SEVERAL LIABILITY:** In the event one or more individuals and/or entities are named as TENANT under this Lease, all obligations of each such individual and/or entity so named are joint and several and may not be waived or apportioned except by written consent of COUNTY. COUNTY may recover monies due or remedies available from any one or all individuals and/or entities named as TENANT under this Lease at COUNTY's sole discretion.

47. **NON-DISCRIMINATION.** TENANT covenants it shall not discriminate based upon race, color, creed, religion, sex, marital status, age, handicap, national origin or ancestry in any activity pursuant to this Lease

48. **SIGNATURES.** All parties to this Lease represent that the signators executing this document are fully authorized to enter into this agreement.

IN WITNESS THEREOF, the parties executed this agreement.

COUNTY: County of San Bernardino

TENANT:

By: _____

By: _____

Curt Hagman, Chairman

Board of Supervisors

Dated: _____

Title: _____

Dated: _____

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

Lynna Monell
Clerk of the Board of Supervisors
of the County of San Bernardino

By: _____

Deputy

APPROVED AS TO LEGAL FORM

MICHELLE D. BLAKEMORE, County Counsel
San Bernardino County, California

By: _____

Agnes Cheng, Deputy County Counsel

Dated: _____

EXHIBIT "A"

PREMISES

Legal Description and Plat

[To Be Attached]

EXHIBIT "B"

RENT SCHEDULE

Commencing as of the Rent Commencement Date and continuing annually thereafter, TENANT shall pay the following monthly rent for the Premises:

Year 1 - Year 5 \$_____ per month

Year 6 – Year 10 \$_____ per month

Year 11 – Year 15 \$_____ per month

Year 16 – Year 20 \$_____ per month

Year 21 – Year 25 \$_____ per month

Year 26 – Year 30 \$_____ per month

Year 31 – Year 35 \$_____ per month

Year 36 – Year 40 \$_____ per month

Year 41 – Year 45 \$_____ per month

Year 46 – Year 50 \$_____ per month

Year 51 – Year 55 \$_____ per month

Year 56 – Year 60 \$_____ per month

EXHIBIT "C"

PREMISES REAPPRAISAL PROCEDURE

Premises Reappraisal Adjustment. The Monthly Rent set forth in Paragraph 4 shall be reestablished on the exercise of any option to extend the term of this Lease to be effective with the commencement date of such option period, hereafter referred to as the Premises Reappraisal Date, to the Fair Market Rental of the Premises. The term "Fair Market Rental" shall mean the most probable monthly lease rate, in terms of money, which the Premises, including only those improvements thereon owned by COUNTY, would bring if exposed for lease in the open market, with a reasonable time allowed to find a tenant, leasing with full knowledge of the highest and best use for the Premises and after consideration of the current requirements of COUNTY and the Regional Parks Department. Fair Market Rental shall be reestablished in accordance with terms, conditions and procedure set forth in this paragraph.

1. **Appraisal Procedure.** If COUNTY elects to utilize a regional parks-wide appraisal, the appraisal may, but need not be, divided into various geographical, use or other zones and into various categories of improved and unimproved types of properties. Unless otherwise agreed by the parties, the appraisal shall be made by a senior designated member of a nationally recognized professional appraisal association that examines its designated members. The association shall be a member of the Appraisal Foundation and subscribe to the Uniform Standards of Professional Appraisal Practice. The appraiser may also be an employee of the appraising party provided that the appraiser meets the above criteria. In accomplishing the appraisal and determining Fair Market Rental for the Premises, the appraiser shall:

- a. Use a valuation date ("Valuation Date") six (6) months prior to the Property Re-appraisal Date;
- b. Apply appropriate approaches to valuation which shall include at a minimum, Cost Analysis and Market Comparison.
- c. Determine the Fair Market Rental as of the Valuation Date.

The return on investment rate used to establish the Fair Market Rental rate, shall be the greater of ten percent (10%) or the discount rate plus four percent (4%) as announced by the Federal Reserve Bank of San Francisco to be in effect on the Valuation Date.

2. **County Notification.** Prior to the Premises Reappraisal Date, COUNTY shall notify TENANT of the new Monthly Rent to be effective on the Premises Reappraisal Date. The new Monthly Rent shall be based upon the Fair Market Rental determined in accordance with the Appraisal Procedure set forth above, provided, however, that the new Monthly Rent shall not be less than the Monthly Rent payable immediately prior to the Premises Reappraisal Date. TENANT shall pay the new Monthly Rent commencing on the Premises Reappraisal Date, unless and until changed by an amendment to this Lease or the Arbitrator's Decision (as defined and provided below). TENANT's failure to timely pay the Monthly Rent shall waive TENANT's rights to object to the new Monthly Rent and elect arbitration. Further, TENANT's failure to provide any of the notices or information set forth below in a timely manner shall waive TENANT's rights under 3. TENANT'S Right to Object and Appraise the Premises. All time limits concerning TENANT's obligations pursuant to this paragraph shall be strictly construed.

3. **Tenant's Right to Object and Appraise the Premises.**

a. **Notice of Objection.** In the event TENANT does not agree with the new Monthly Rent established in accordance with the appraisal procedure set forth above, then TENANT shall notify COUNTY of TENANT's disagreement within thirty (30) calendar days of TENANT's receipt of COUNTY's notice to TENANT setting the new Monthly Rent. Concurrently with TENANT's notice of objection to COUNTY, TENANT shall provide COUNTY with TENANT's proposal with respect to the new Monthly Rent for the Premises. Upon COUNTY's receipt of TENANT's notice and proposal for the new Monthly Rent, COUNTY and TENANT shall meet and attempt to agree on the Monthly Rent. TENANT's failure to timely notify COUNTY of TENANT's disagreement with the new Monthly Rent or failure to provide COUNTY with an alternative proposal for the Monthly Rent, shall waive TENANT's rights to appraise the Premises and elect binding arbitration.

b. **Tenant's Appraisal.** If within thirty (30) days of COUNTY's receipt of TENANT's notification and proposal with respect to Monthly Rent, COUNTY and TENANT have not reached an agreement for the new Monthly Rent, then TENANT shall have the right, at TENANT's sole cost, to conduct its own appraisal of the Premises to determine the Fair Market Rental ("Tenant's Appraisal"). TENANT shall complete its appraisal and deliver a complete copy of the appraisal to COUNTY, within one hundred and twenty (120) calendar days after TENANT's receipt of COUNTY's notice to TENANT reestablishing the Monthly Rent. Failure of TENANT to timely complete and deliver its appraisal to COUNTY shall waive TENANT's rights to appraise the Premises and elect binding arbitration. Within ten (10) days of COUNTY's receipt of a complete copy of TENANT's appraisal, COUNTY shall deliver a complete copy of its appraisal to TENANT, if COUNTY has not already done so. COUNTY may, but COUNTY shall not be obligated to, provide TENANT with a copy of or access to its appraisal, prior to COUNTY's receipt of a complete copy of the TENANT's Appraisal. Within the thirty (30) days following COUNTY's receipt of TENANT's Appraisal, COUNTY and TENANT shall meet and attempt agree on the Fair Market Rental and the Monthly Rent.

4. **Tenant's Right to Elect Arbitration.** If within thirty (30) days of COUNTY's receipt of a complete copy of TENANT's appraisal, TENANT and COUNTY have not reached agreement with respect to Monthly Rent, TENANT shall (after the thirty (30) days have passed) have the right to elect binding arbitration on the issue of Fair Market Rental by giving COUNTY notice of its election to arbitrate within sixty (60) days following COUNTY's receipt of a complete copy of TENANT's appraisal. Failure of TENANT to timely so notify COUNTY of TENANT's election to arbitrate shall waive TENANT's right to arbitration. The arbitration shall be conducted in accordance with the following procedures:

a. **Selection of Arbitrator.** Within thirty (30) days of COUNTY's receipt of TENANT's notice of election of arbitration, the appraiser who prepared COUNTY's appraisal and the appraiser who prepared TENANT's appraisal shall select an arbitrator to arbitrate the issue of Fair Market Rental. The arbitrator shall be an appraiser familiar with properties in San Bernardino County and specifically regional parks properties, and who meets the qualifications prescribed herein. Further, the arbitrator must: (i) not be currently employed by either party; (ii) be willing to perform the binding arbitration as set forth herein; and (iii) charge fees which are reasonable and customary for appraisers in San Bernardino County. As soon as the arbitrator is selected, the appraisers shall provide COUNTY and TENANT with the name, address, and estimated fee to be charged by the arbitrator, in writing. If the two appraisers are unable to agree on the selection of an arbitrator, the arbitrator shall be selected by the president of the Appraisal Foundation.

b. **Submissions to the Arbitrator.**

(1) TENANT shall, within ten (10) days of its receipt of the notice of appointment of the arbitrator, pay the arbitrator's estimated fee and deliver to the arbitrator an exact duplicate of the complete appraisal the TENANT previously supplied to COUNTY. TENANT shall also,

within five (5) days of complying with the above, notify COUNTY of its compliance. Failure of TENANT to timely pay the arbitrator's estimated charge, provide its appraisal to the arbitrator, and notify COUNTY of the same, shall constitute a waiver of TENANT's right to proceed with arbitration.

(2) COUNTY shall, within thirty (30) days of its receipt of TENANT's notice that the arbitrator's estimated fee has been paid and TENANT's appraisal has been delivered to the arbitrator, deliver to the arbitrator an exact duplicate of the complete appraisal the COUNTY previously supplied to TENANT. Failure of COUNTY to timely provide its appraisal to the arbitrator shall constitute a waiver of COUNTY's right to have the arbitrator consider its appraisal and the arbitrator shall select the TENANT's appraisal.

(3) The parties shall not add to, delete or in any way amend their own appraisal after they have given each other complete copies thereof. Further, neither party shall make any comment on, rebut, or supply any information or other evidence about the other party's appraisal to the arbitrator.

c. **Arbitration Procedure.** The arbitrator shall review both appraisals and select the one which in the arbitrator's professional opinion should be used to set the Fair Market Rental. In making the selection, the arbitrator shall act within the powers and limitations set forth below:

(1) The arbitrator may, but is not required to, make an on-site inspection of the Premises and its environs, subject to subparagraph (ii) below;

(2) The arbitrator shall not have the power to question either party, their employees, or any third persons concerning the Premises, nor to receive and/or demand any information or other evidence from either party, their employees or any third persons beyond the respective appraisals and a copy of this Lease, except as required to ascertain the location of the Premises if an on-site inspection is made under subparagraph (i) above;

(3) The arbitrator shall not make an appraisal of the Premises;

(4) The arbitrator shall select one of the parties' appraisals and may not make any other decision, recommendation or modifications;

(5) The arbitrator shall notify both parties of his selection within thirty (30) days of receiving both appraisals (the "Arbitrator's Decision"). The Arbitrator's Decision shall be in writing and shall state only that both appraisals were reviewed, an on-site inspection was or was not made, and which appraisal should be used to set the Fair Market Rental. The arbitrator shall not give any reason(s) for the Arbitrator's Decision.

d. **Adjustments based on Arbitrator's Decision.**

(1) In the event the COUNTY's appraisal is selected, the TENANT shall continue to pay the Monthly Rent established by the property appraisal performed by COUNTY unless the Arbitrator's Decision was made before the Premises Reappraisal Date, in which case TENANT shall commence to pay the new Monthly Rent on the Premises Reappraisal Date. COUNTY and TENANT shall not be reimbursed for any costs associated with establishing the Monthly Rent and TENANT shall pay all of the arbitrator's fees and costs.

(2) In the event TENANT's appraisal is selected, the Monthly Rent shall be adjusted in accordance with the TENANT's Appraisal as of the Premises Reappraisal Date, provided however that the Monthly Rent shall not be less than the Monthly Rent for the month immediately preceding

the Premises Reappraisal Date. In the event the Arbitrator's Decision was made after the Premises Reappraisal Date and TENANT paid the Monthly Rent based upon the COUNTY's appraisal as of the Premises Reappraisal Date in accordance with this Lease, any excess rent payments shall be credited to future rents payments due from TENANT until TENANT is repaid in full. Further, the amount TENANT paid the arbitrator for the Arbitrator's estimated charge shall be credited to future rent payments due from TENANT until TENANT is repaid in full. Neither COUNTY or TENANT shall be reimbursed for the cost of their appraisals or other costs associated with establishing the Monthly Rent. COUNTY shall pay any arbitrator's fee if in excess of the estimated charge.

5. It is the intent of the parties that the appraisal and arbitration process set forth above shall be the exclusive remedy available to TENANT to challenge the Monthly Rent established for this Lease and shall be binding on the parties unless vacated as provided for by Code of Civil Procedure Section 1285 et seq. Further, the arbitration process set forth above and arbitration in general is not to be used to resolve any other issue, beyond the determination of fair market rental under this Lease.

6. Should COUNTY fail to do an appraisal to reestablish the Monthly Rent and give TENANT notice of the reestablished Monthly Rent before the Premises Reappraisal Date, COUNTY may thereafter complete an appraisal, which shall use the same Valuation Date, to reestablish the Monthly Rent. In such case, TENANT shall immediately commence to pay the reestablished Monthly Rent on the day TENANT receives notice of the new Monthly Rent, but shall not be liable for any increase in Monthly Rent from the Premises Reappraisal Date until the notice was received. Any such delay in reestablishing the Monthly Rent shall not result in any alteration or delay of the next scheduled Premises Reappraisal Date, nor shall any such delay alter or delay the next scheduled fixed Adjustment Date.

EXHIBIT "D"

DEFINITION OF PLANS

A. Schematic Plans

Schematic Plans shall include a site layout of all land and drainage flow areas showing uses, buildings, landscape development, and other features, schematic floor plans of all structures, simple elevations of buildings, architectural theme, and a detailed description of improvements and methods of operation, and a general outline specification indicating materials and methods of construction, and an estimate of the total cost of improvements planned.

B. Preliminary Plans

Preliminary plans shall consist of the following:

1. A detailed site plan of all land and water areas showing all improvements planned for the site. This plan shall include any easements set forth in the lease, location of all utilities, drainage plan and grade elevations of all structures;
2. Floor plans, elevations, and sections of all structures;
3. Finalized landscape development plans with horticulture palette and irrigation plans;
4. Complete outline specifications to cover all phases of the work;
5. A detailed cost estimate of all improvements;
6. Exterior color scheme; and
7. Colored rendering or model.

C. Working Drawings

These shall consist of the following:

1. Complete architectural, landscape, and engineering working drawings;
2. Complete specifications; and
3. Construction schedule.

EXHIBIT “E”

WORKING PLANS, SPECIFICATIONS, AND CONSTRUCTION SCHEDULE

[TBD]

EXHIBIT "F"

CONSENT TO HYPOTHECATION

The COUNTY OF SAN BERNARDINO, hereinafter referred to as "COUNTY" and _____ hereinafter referred to as "TENANT", entered into a Lease Agreement dated _____, hereinafter after referred to as "Lease", covering certain real property located in the County of San Bernardino, State of California, as more specifically set forth in the Lease, hereinafter referred to as "Premises".

By use of the following documents which are attached hereto and made a part hereof, and hereinafter collectively referred to as "Documents", TENANT proposes to hypothecate its leasehold estate created under said Lease for the purpose of Tenant's construction financing:

These Documents related to the construction financing for leasehold development of [type of improvement] on said Premises.

On this _____ day of _____, _____, COUNTY hereby consents to the execution, delivery, and recordation of the Documents subject to the following terms and conditions:

1. TENANT agrees that it shall require that _____, hereinafter referred to as "LENDER", shall fully reconvey all leasehold interest in said Premises upon repayment of the loan described in the Documents since the sole purpose of the hypothecation of the subject leasehold estate is to secure the loan amount for LENDER.

2. Except as otherwise provided herein, the Documents and any other future additional instruments required to confirm this Consent, which shall be in a form approved by COUNTY, shall be subject to each and every covenant, condition, and restriction set forth in said Lease, and to all rights and interest of the COUNTY therein, none of which are or shall be waived by this Consent.

3. In the event of any conflict between the provisions of said Lease and the provisions of the Documents or this Consent, the provisions of said Lease shall control.

4. Any additions or modifications to the Document shall first be approved in writing by the COUNTY. TENANT warrants that all documents and agreements pertaining to the hypothecation of its leasehold interest for the purposes of its construction financing have been fully disclosed to COUNTY.

5. The proceeds of the loan to TENANT shall be used solely for payment of expenses incident to construction of [type of improvement] on the Premises in accordance with Paragraph 10, IMPROVEMENTS, of the Lease.

6. This Consent applies to the Documents and shall not be construed as an approval or waiver of the requirement to obtain COUNTY'S consent to any subsequent hypothecation.

COUNTY OF SAN BERNARDINO

NAME OF TENANT

By: _____

By: _____

(Authorized signature – sign in blue ink)

Name:

Dated: _____

Title:

Date:

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

LAURA H. WELCH, Clerk of the Board of
Supervisors

By _____

Deputy

Date _____

APPROVED AS TO LEGAL FORM

MICHELLE D. BLAKEMORE, County Counsel
San Bernardino County, California

By: _____
Deputy County Counsel

Dated: _____

EXHIBIT "G"

GUARANTY OF LEASE

This Guaranty of Lease ("Guaranty") dated as of ____ [date] is executed by ____ [guarantor's name, including capacity, if appropriate] ("Guarantor") in favor of Landlord, County of San Bernardino ("Landlord").

Recitals

A. Landlord and ____ [tenant's name, including capacity, if appropriate] ("Tenant") have entered into a lease dated as of ____ [date-identify as Lease referenced date or execution date] ("Lease"), whereby Landlord agreed to lease to Tenant and Tenant agreed to lease from Landlord the premises located at ____ [address of leased premises] more particularly described in Exhibit A to the Lease, to which the Guaranty is attached.

B. As a condition to entering into the Lease, Landlord has required that Guarantor execute and deliver to Landlord this Guaranty.

In consideration of Landlord entering into the Lease of the Premises to Tenant, Guarantor covenants and agrees as follows:

Section 1. Guaranty.

Guarantor absolutely and unconditionally guarantees to Landlord the timely payment of all amounts that Tenant may at any time owe under the Lease, or any extensions, renewals, or modifications of the Lease. Guarantor further guarantees to Landlord the full, faithful, and timely performance by Tenant of the Lease, or any extensions, renewals, or modifications of the Lease. If Tenant shall default at any time in the payment of any rent or any other amounts, costs, or charges, or in the performance of any covenant or obligation under the Lease, then Guarantor, at Guarantor's expense, shall on demand by Landlord fully and promptly pay all rent, amounts, costs, and charges to be paid and perform all other covenants and obligations to be performed by Tenant pursuant to the Lease. In addition, and notwithstanding any contrary language in the Lease, Guarantor shall on demand by Landlord pay to Landlord all amounts due to Landlord, including, without limitation, all interest on past due obligations of Tenant, costs advanced by Landlord, damages, and all expenses (including, without limitation, court costs and reasonable attorney fees) that may arise in consequence of Tenant's default.

Section 2. Waivers.

Guarantor authorizes Landlord, without notice or demand and without affecting Guarantor's liability under this Guaranty, to:

(a) consent to any extensions, accelerations, or other changes in the time for any payment provided for in the Lease, or consent to any other alteration of any covenant, term, or condition of the Lease in any respect, and to consent to any assignment, subletting, or reassignment of the Lease;

(b) take and hold security for any payment provided for in the Lease or for the performance of any covenant, term, or condition of the Lease, or exchange, waive, or release any security; and

(c) apply this security and direct the order or manner of its sale as Landlord may determine. Notwithstanding any termination, renewal, extension or holding over of the Lease, this Guaranty of Lease shall continue until all of the covenants and obligations on the part of Tenant to be performed have been fully and completely performed by Tenant and Guarantor shall not be released of any obligation or liability under this Guaranty so long as there is any claim against Tenant arising out of the Lease that has not been settled or discharged in full.

Section 3. Independent Obligations.

The obligations of Guarantor under this Guaranty are independent of, and may exceed, the obligations of Tenant. A separate action may, at Landlord's option, be brought and prosecuted against Guarantor, whether or not any action is first or subsequently brought against Tenant, or whether or not Tenant is joined in any action, and Guarantor may be joined in any action or proceeding commenced by Landlord against Tenant arising out of, in connection with, or based upon the Lease. Guarantor waives any right to

(a) require Landlord to proceed against Tenant or any other person or entity or pursue any other remedy in Landlord's power;

(b) complain of delay in the enforcement of Landlord's rights under the Lease; and

(c) require Landlord to proceed against or exhaust any security held from Tenant or Guarantor. Guarantor waives any defense arising by reason of any disability or other defense of Tenant or by reason of the cessation from any cause of the liability of Tenant. Guarantor waives all demands upon and notices to Tenant and to Guarantor, including, without limitation, demands for performance, notices of nonperformance, notices of non-payment, and notices of acceptance of this Guaranty of Lease.

Section 4. Definition of Tenant.

For purposes of this Guaranty of Lease and the obligations and liabilities of Guarantor, the term "Tenant" shall be deemed to include any and all concessionaires, licensees, franchisees, department operators, assignees, subtenants, or others directly or indirectly leasing or occupying the Premises leased under the Lease or operating or conducting a business in or from these Premises.

Section 5. No Reporting Duty.

Guarantor assumes full responsibility for keeping fully informed of the financial condition of Tenant and all other circumstances affecting Tenant's ability to perform Tenant's obligations under the Lease, and agrees that Landlord will have no duty to report to Guarantor any information that Landlord receives about Tenant's financial condition or any circumstances bearing on Tenant's ability to perform such obligations.

Section 6. Continuing Guaranty.

This Guaranty shall remain in full force notwithstanding the appointment of a receiver to take possession of all or substantially all of the assets of Tenant, or an assignment by Tenant for the benefit of creditors, or any action taken or suffered by Tenant under an insolvency, bankruptcy, reorganization, moratorium, or other debtor relief act or statute, whether now existing or later amended or enacted, or the disaffirmance of the Lease in any action or otherwise.

Section 7. Joint and Several Obligations.

If this Guaranty of Lease is signed, or if the obligations of Tenant are otherwise guaranteed, by more than one party, their obligations shall be joint and several, and the release or limitation of liability of any one or more of the guarantors shall not release or limit the liability of any other guarantors.

Section 8. Successors and Assigns.

This Guaranty of Lease shall be binding upon Guarantor and Guarantor's heirs, administrators, personal and legal representatives, successors, and assigns, and shall inure to the benefit of Landlord and Landlord's successors and assigns. Landlord may, without notice, assign this Guaranty of Lease, the Lease, or the rents and other amounts payable under the Lease, in whole or in part.

Section 9. Guaranty of Costs and Fees.

In addition to the amounts guaranteed, Guarantor agrees to pay reasonable attorney fees and all other costs and expenses incurred by Landlord in enforcing this Guaranty of Lease or in any action or proceeding arising out of, or relating to, this Guaranty of Lease.

Section 10. Governing Law

This Guaranty of Lease shall be deemed to be made under and shall be governed by California law in all respects, including matters of construction, validity, and performance, and the terms and provisions of this Guaranty may not be waived, altered, modified, or amended except in a writing signed by an authorized officer of Landlord and by Guarantor.

Section 11. Severance.

If any of the provisions of this Guaranty of Lease shall contravene or be held invalid under the laws of any jurisdiction, this Guaranty of Lease shall be construed as if it did not contain those provisions, and the rights and obligations of the parties shall be construed and enforced accordingly.

Section 12. Counterparts.

This Guaranty of Lease may be executed in any number of counterparts, each of which

shall be a valid and binding original, but all of which together shall constitute one and the same instrument.

Guarantor has executed this Guaranty as of the date first written above.

[Guarantor's name, including capacity, if appropriate, and signature]

EXHIBIT "H"

LIST OF FORMER COUNTY OFFICIALS

INSTRUCTIONS: List the full name of the former COUNTY Administrative Official, the title/description of the Official's last position with the COUNTY, the date the Official terminated COUNTY employment, the Official's current employment and/or representative capacity with the TENANT, the date the Official entered TENANT's employment and/or representation.

OFFICIAL'S NAME: REQUIRED INFORMATION

TENANT certifies that the foregoing information is true and accurate.

TENANT:

By:

Title:

Date:

EXHIBIT "I"

PREVAILING WAG REQUIREMENTS

- A. All or a portion of the Tenant Improvements in the Lease requires the payment of prevailing wages and compliance with the following requirements. As used in this exhibit, the term "Contractor" shall include Tenant and Tenant's contractor and/or subcontractors and the term "Tenant Improvements" shall include the improvements made by or on behalf of Tenant pursuant to the Lease.**

1. Determination of Prevailing Rates:

Pursuant to Labor Code sections 1770, et seq., the Tenant will obtain from the Director of the Department of Industrial Relations (DIR) pursuant to the California Labor Code, the general prevailing rates of per diem wages and the prevailing rates for holiday and overtime work in the locality in which the Tenant Improvements is to be performed. Copies of said rates are on file with the Tenant, will be made available for inspection during regular business hours, may be included elsewhere in the specifications for the Tenant Improvements, and are also available online at www.dir.ca.gov. The wage rate for any classification not listed, but which may be required to execute the Tenant Improvements, shall be commensurate and in accord with specified rates for similar or comparable classifications for those performing similar or comparable duties. In accordance with Labor Code section 1773.2, the Contractor shall post, at appropriate and conspicuous locations on the job site, a schedule showing all applicable prevailing wage rates and shall comply with the requirements of Labor Code sections 1773, et seq.

2. Payment of Prevailing Rates

Each worker of the Contractor, or any subcontractor, engaged in the Tenant Improvements, shall be paid not less than the general prevailing wage rate, regardless of any contractual relationship which may be alleged to exist between the Contractor or any subcontractor, and such worker.

3. Prevailing Rate Penalty

The Contractor shall, as a penalty, forfeit two hundred dollars (\$200.00) to the County for each calendar day or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of the DIR for such work or craft in which such worker is employed by the Contractor or by any subcontractor in connection with the Tenant Improvements. Pursuant to California Labor Code section 1775, the difference between such prevailing wage rates and the amount paid to each worker for each calendar day, or portion thereof, for which each worker was paid less than the prevailing wage rate, shall be paid to each worker by the Contractor.

4. Ineligible Contractors:

Pursuant to the provisions of Labor Code section 1777.1, the Labor Commissioner publishes and distributes a list of contractors ineligible to perform work as a contractor or subcontractor on a public works project. This list of debarred contractors is available from the DIR website at <http://www.dir.ca.gov/Public-Works/PublicWorks.html>. Any contract entered into between a contractor and a debarred subcontractor is void as a matter of law. A debarred subcontractor may not receive any public money for performing work as a subcontractor on a public works contract, and any public money that may have been paid to a debarred subcontractor by a contractor on the

project shall be returned to the County. The Contractor shall be responsible for the payment of wages to workers as a debarred subcontractor who has been allowed to work on the Tenant Improvements.

5. Payroll Records:

- a. Pursuant to California Labor Code section 1776, the Contractor and each subcontractor, shall keep accurate certified payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker or other employee employed by them in connection with the Tenant Improvements. The payroll records enumerated herein shall be verified by a written declaration made under penalty of perjury that the information contained in the payroll record is true and correct and that the Contractor or subcontractor has complied with the requirements of the California Labor Code sections 1771, 1811, and 1815 for any Tenant Improvements performed by his or her employees. The payroll records shall be available for inspection at all reasonable hours at the principal office of the Contractor on the following basis:
 - i. A certified copy of an employee's payroll record shall be made available for inspection or furnished to such employee or his/her authorized representative on request;
 - ii. A certified copy of all payroll records shall be made available for inspection or furnished upon request to the County, the Division of Labor Standards Enforcement of the DIR;
 - iii. A certified copy of payroll records shall be made available upon request to the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through either the County or the Division of Labor Standards Enforcement. If the requested payroll records have not been previously provided to the County or the Division of Labor Standards Enforcement, the requesting party shall, prior to being provided the records, reimburse the cost of preparation by the Contractor, subcontractor and the entity through which the request was made; the public shall not be given access to such records at the principal office of the Contractor;
 - iv. The Contractor shall file a certified copy of the payroll records with the entity that requested such records within ten (10) days after receipt of a written request; and
 - v. Copies provided to the public, by the County or the Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address and social security number. The name and address of the Contractor or any subcontractor, performing a part of the Tenant Improvements shall not be marked or obliterated. The Contractor shall inform the County of the location of payroll records, including the street address, city and county and shall, within five (5) working days, provide a notice of a change of location and address.
- b. The Contractor shall have ten (10) days from receipt of the written notice specifying in what respects the Contractor must comply with the above requirements. In the event Contractor does not comply with the requirements of this section within the ten (10) day period, the Contractor shall, as a penalty to the County, forfeit one-hundred dollars (\$100.00) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Labor Standards Enforcement, such

penalty shall be withheld from any portion of the payments then due or to become due to the Contractor.

6. Limits on Hours of Work:

Pursuant to California Labor Code section 1810, eight (8) hours of labor shall constitute a legal day's work. Pursuant to California Labor Code section 1811, the time of service of any worker employed at any time by the Contractor or by a subcontractor, upon the Tenant Improvements or upon any part of the Tenant Improvements, is limited and restricted to eight (8) hours during any one calendar day and forty (40) hours during any one calendar week, except as provided for under Labor Code section 1815. Notwithstanding the foregoing provisions, work performed by employees of Contractor or any subcontractor, in excess of eight (8) hours per day and forty (40) hours during any one week, shall be permitted upon compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half (1½) times the basic rate of pay.

7. Penalty for Excess Hours:

The Contractor shall pay to the County a penalty of twenty-five dollars (\$25.00) for each worker employed on the Tenant Improvements by the Contractor or any subcontractor, for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any calendar day and forty (40) hours in any one calendar week, in violation of the provisions of the California Labor Code, unless compensation to the worker so employed by the Contractor is not less than one and one-half (1½) times the basic rate of pay for all hours worked in excess of eight (8) hours per day.

8. Senate Bill 854 (Chapter 28, Statutes of 2014) and Senate Bill 96 (Chapter 28, Statutes of 2017) Requirements:

- a. Contractor shall comply with Senate Bill 854 and Senate Bill 96. The requirements include, but are not limited to, the following:
 - i. No contractor or subcontractor may be listed on a bid proposal (submitted on or after March 1, 2015) for a public works project unless registered with the DIR pursuant to Labor Code section 1725.5, with limited exceptions from this requirements for bid purposes only as allowed under Labor Code section 1771.1(a).
 - ii. No contractor or subcontractor may be awarded a contract for public work or perform work on a public works project (awarded on or after April 1, 2015) unless registered with the DIR pursuant to Labor Code section 1725.5.
 - iii. This project is subject to compliance monitoring and enforcement by the DIR.
 - iv. As required by the DIR, Contractor is required to post job site notices, as prescribed by regulation, regarding compliance monitoring and enforcement by the DIR.
 - v. Contractors and all subcontractors must submit certified payroll records online to the Labor Commissioner for all new public works projects issued on or after April 1, 2015, and for all public works projects, new or ongoing, on or after January 1, 2016.
 - 1) The certified payroll must be submitted at least monthly to the Labor Commissioner.

- 2) The County reserves the right to require Contractor and all subcontractors to submit certified payroll records more frequently than monthly to the Labor Commissioner.
 - 3) The certified payroll records must be in a format prescribed by the Labor Commissioner.
- vi. Registration with the DIR and the submission of certified payroll records to the Labor Commissioner are not required if the public works project is \$25,000 or less when the project is for construction, alteration, demolition, installation or repair work, or if the public works project is \$15,000 or less when the project is for maintenance work.
- b. Labor Code section 1725.5 states the following:
“A contractor shall be registered pursuant to this section to be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any public work contract that is subject to the requirements of this chapter. For the purposes of this section, “contractor” includes a subcontractor as defined by Section 1722.1.
- (a) To qualify for registration under this section, a contractor shall do all of the following:
- (1) (A) Register with the Department of Industrial Relations in the manner prescribed by the department and pay an initial nonrefundable application fee of four hundred dollars (\$400) to qualify for registration under this section and an annual renewal fee on or before July 1 of each year thereafter. The annual renewal fee shall be in a uniform amount set by the Director of Industrial Relations, and the initial registration and renewal fees may be adjusted no more than annually by the director to support the costs specified in Section 1771.3.
 - (B) Beginning June 1, 2019, a contractor may register or renew according to this subdivision in annual increments up to three years from the date of registration. Contractors who wish to do so will be required to prepay the applicable nonrefundable application or renewal fees to qualify for the number of years for which they wish to preregister.
- (2) Provide evidence, disclosures, or releases as are necessary to establish all of the following:
- (A) Workers' compensation coverage that meets the requirements of Division 4 (commencing with Section 3200) and includes sufficient coverage for any worker whom the contractor employs to perform work that is subject to prevailing wage requirements other than a contractor who is separately registered under this section. Coverage may be evidenced by a current and valid certificate of workers' compensation insurance or certification of self-insurance required under Section 7125 of the Business and Professions Code.
 - (B) If applicable, the contractor is licensed in accordance with Chapter 9 (commencing with Section 7000) of the Business and Professions Code.

(C) The contractor does not have any delinquent liability to an employee or the state for any assessment of back wages or related damages, interest, fines, or penalties pursuant to any final judgment, order, or determination by a court or any federal, state, or local administrative agency, including a confirmed arbitration award. However, for purposes of this paragraph, the contractor shall not be disqualified for any judgment, order, or determination that is under appeal, provided that the contractor has secured the payment of any amount eventually found due through a bond or other appropriate means.

(D) The contractor is not currently debarred under Section 1777.1 or under any other federal or state law providing for the debarment of contractors from public works.

(E) The contractor has not bid on a public works contract, been listed in a bid proposal, or engaged in the performance of a contract for public works without being lawfully registered in accordance with this section, within the preceding 12 months or since the effective date of the requirements set forth in subdivision (e), whichever is earlier. If a contractor is found to be in violation of the requirements of this paragraph, the period of disqualification shall be waived if both of the following are true:

(i) The contractor has not previously been found to be in violation of the requirements of this paragraph within the preceding 12 months.

(ii) The contractor pays an additional nonrefundable penalty registration fee of two thousand dollars (\$2,000).

(b) Fees received pursuant to this section shall be deposited in the State Public Works Enforcement Fund established by Section 1771.3 and shall be used only for the purposes specified in that section.

(c) A contractor who fails to pay the renewal fee required under paragraph (1) of subdivision (a) on or before the expiration of any prior period of registration shall be prohibited from bidding on or engaging in the performance of any contract for public work until once again registered pursuant to this section. If the failure to pay the renewal fee was inadvertent, the contractor may renew its registration retroactively by paying an additional nonrefundable penalty renewal fee equal to the amount of the renewal fee within 90 days of the due date of the renewal fee.

(d) If, after a body awarding a contract accepts the contractor's bid or awards the contract, the work covered by the bid or contract is determined to be a public work to which Section 1771 applies, either as the result of a determination by the director pursuant to Section 1773.5 or a court decision, the requirements of this section shall not apply, subject to the following requirements:

(1) The body that awarded the contract failed, in the bid specification or in the contract documents, to identify as a public work that portion of the work that the determination or decision subsequently classifies as a public work.

(2) Within 20 days following service of notice on the awarding body of a determination by the Director of Industrial Relations pursuant to Section 1773.5 or a decision by a court that the contract was for public work as defined in this chapter, the contractor and any subcontractors are registered under this section or are replaced by a contractor or subcontractors who are registered under this section.

(3) The requirements of this section shall apply prospectively only to any subsequent bid, bid proposal, contract, or work performed after the awarding body is served with notice of the determination or decision referred to in paragraph (2).

(e) The requirements of this section shall apply to any bid proposal submitted on or after March 1, 2015, to any contract for public work, as defined in this chapter, executed on or after April 1, 2015, and to any work performed under a contract for public work on or after January 1, 2018, regardless of when the contract for public work was executed.

(f) This section does not apply to work performed on a public works project of twenty-five thousand dollars (\$25,000) or less when the project is for construction, alteration, demolition, installation, or repair work or to work performed on a public works project of fifteen thousand dollars (\$15,000) or less when the project is for maintenance work.”

c. Labor Code section 1771.1 states the following:

“(a) A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.

(b) Notice of the requirement described in subdivision (a) shall be included in all bid invitations and public works contracts, and a bid shall not be accepted nor any contract or subcontract entered into without proof of the contractor or subcontractor's current registration to perform public work pursuant to Section 1725.5.

(c) An inadvertent error in listing a subcontractor who is not registered pursuant to Section 1725.5 in a bid proposal shall not be grounds for filing a bid protest or grounds for considering the bid nonresponsive, provided that any of the following apply:

(1) The subcontractor is registered prior to the bid opening.

(2) Within 24 hours after the bid opening, the subcontractor is registered and has paid the penalty registration fee specified in subparagraph (E) of paragraph (2) of subdivision (a) of Section 1725.5.

(3) The subcontractor is replaced by another registered subcontractor pursuant to Section 4107 of the Public Contract Code.

(d) Failure by a subcontractor to be registered to perform public work as required by subdivision (a) shall be grounds under Section 4107 of the Public Contract Code for the contractor, with the consent of the awarding authority, to substitute a subcontractor who is registered to perform public work pursuant to Section 1725.5 in place of the unregistered subcontractor.

(e) The department shall maintain on its Internet Web site a list of contractors who are currently registered to perform public work pursuant to Section 1725.5.

(f) A contract entered into with any contractor or subcontractor in violation of subdivision (a) shall be subject to cancellation, provided that a contract for public work shall not be unlawful, void, or voidable solely due to the failure of the awarding body, contractor, or any subcontractor to comply with the requirements of Section 1725.5 or this section.

(g) If the Labor Commissioner or his or her designee determines that a contractor or subcontractor engaged in the performance of any public work contract without having been registered in accordance with this section, the contractor or subcontractor shall forfeit, as a civil penalty to the state, one hundred dollars (\$100) for each day of work performed in violation of the registration requirement, not to exceed an aggregate penalty of eight thousand dollars (\$8,000) in addition to any penalty registration fee assessed pursuant to clause (ii) of subparagraph (E) of paragraph (2) of subdivision (a) of Section 1725.5.

(h)(1) In addition to, or in lieu of, any other penalty or sanction authorized pursuant to this chapter, a higher tiered public works contractor or subcontractor who is found to have entered into a subcontract with an unregistered lower tier subcontractor to perform any public work in violation of the requirements of Section 1725.5 or this section shall be subject to forfeiture, as a civil penalty to the state, of one hundred dollars (\$100) for each day the unregistered lower tier subcontractor performs work in violation of the registration requirement, not to exceed an aggregate penalty of ten thousand dollars (\$10,000).

(2) The Labor Commissioner shall use the same standards specified in subparagraph (A) of paragraph (2) of subdivision (a) of Section 1775 when determining the severity of the violation and what penalty to assess, and may waive the penalty for a first time violation that was unintentional and did not hinder the Labor Commissioner's ability to monitor and enforce compliance with the requirements of this chapter.

(3) A higher tiered public works contractor or subcontractor shall not be liable for penalties assessed pursuant to paragraph (1) if the lower tier subcontractor's performance is in violation of the requirements of Section 1725.5 due to the revocation of a previously approved registration.

(4) A subcontractor shall not be liable for any penalties assessed against a higher tiered public works contractor or subcontractor pursuant to paragraph (1). A higher tiered public works contractor or subcontractor may not require a lower tiered subcontractor to indemnify or otherwise be liable for any penalties pursuant to paragraph (1).

(i) The Labor Commissioner or his or her designee shall issue a civil wage and penalty assessment, in accordance with the provisions of Section 1741, upon determination of penalties pursuant to subdivision (g) and subparagraph (B) of paragraph (1) of subdivision (h). Review of a civil wage and penalty assessment issued under this subdivision may be requested in accordance with the provisions of Section 1742. The regulations of the Director of Industrial Relations, which govern proceedings for review of civil wage and penalty assessments and the withholding of contract payments under Article 1 (commencing with Section 1720) and Article 2 (commencing with Section 1770), shall apply.

(j)(1) Where a contractor or subcontractor engages in the performance of any public work contract without having been registered in violation of the requirements of Section 1725.5 or this section, the Labor Commissioner shall issue and serve a stop order prohibiting the use of the unregistered contractor or the unregistered subcontractor on all public works until the unregistered contractor or unregistered subcontractor is registered. The stop order shall not apply to work by registered contractors or subcontractors on the public work.

(2) A stop order may be personally served upon the contractor or subcontractor by either of the following methods:

(A) Manual delivery of the order to the contractor or subcontractor personally.

(B) Leaving signed copies of the order with the person who is apparently in charge at the site of the public work and by thereafter mailing copies of the order by first class mail, postage prepaid to the contractor or subcontractor at the address on file with either of the following:

(i) The address of the contractor or subcontractor on file with either the Secretary of State or Contractors' State License Board.

(ii) If the contractor or subcontractor has no address on file with the Secretary of State or the Contractors' State License Board, the address of the site of the public work.

(3) The stop order shall be effective immediately upon service and shall be subject to appeal by the party contracting with the unregistered contractor or subcontractor, by the unregistered contractor or subcontractor, or both. The appeal, hearing, and any further review of the hearing decision shall be governed by the procedures, time limits, and other requirements specified in subdivision (a) of Section 238.1.

(4) Any employee of an unregistered contractor or subcontractor who is affected by a work stoppage ordered by the commissioner pursuant to this subdivision shall be paid at his or her regular hourly prevailing wage rate by that employer for any hours the employee would have worked but for the work stoppage, not to exceed 10 days

(k) Failure of a contractor or subcontractor, owner, director, officer, or managing agent of the contractor or subcontractor to observe a stop order issued and served upon him or her pursuant to subdivision (j) is guilty of a misdemeanor punishable by imprisonment in

county jail not exceeding 60 days or by a fine not exceeding ten thousand dollars (\$10,000), or both.

(l) This section shall apply to any bid proposal submitted on or after March 1, 2015, and any contract for public work entered into on or after April 1, 2015. This section shall also apply to the performance of any public work, as defined in this chapter, on or after January 1, 2018, regardless of when the contract for public work was entered.

(m) Penalties received pursuant to this section shall be deposited in the State Public Works Enforcement Fund established by Section 1771.3 and shall be used only for the purposes specified in that section.

(n) This section shall not apply to work performed on a public works project of twenty-five thousand dollars (\$25,000) or less when the project is for construction, alteration, demolition, installation, or repair work or to work performed on a public works project of fifteen thousand dollars (\$15,000) or less when the project is for maintenance work.”

d. Labor Code section 1771.4 states the following:

“a) All of the following are applicable to all public works projects that are otherwise subject to the requirements of this chapter:

(1) The call for bids and contract documents shall specify that the project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

(2) The awarding body shall post or require the prime contractor to post job site notices, as prescribed by regulation.

(3) Each contractor and subcontractor shall furnish the records specified in Section 1776 directly to the Labor Commissioner, in the following manner:

(A) At least monthly or more frequently if specified in the contract with the awarding body.

(B) In a format prescribed by the Labor Commissioner.

(4) If the contractor or subcontractor is not registered pursuant to Section 1725.5 and is performing work on a project for which registration is not required because of subdivision (f) of Section 1725.5, the unregistered contractor or subcontractor is not required to furnish the records specified in Section 1776 directly to the Labor Commissioner but shall retain the records specified in Section 1776 for at least three years after completion of the work.

(5) The department shall undertake those activities it deems necessary to monitor and enforce compliance with prevailing wage requirements.

(b) The Labor Commissioner may exempt a public works project from compliance with all or part of the requirements of subdivision (a) if either of the following occurs:

(1) The awarding body has enforced an approved labor compliance program, as defined in Section 1771.5, on all public works projects under its authority, except those deemed exempt pursuant to subdivision (a) of Section 1771.5, continuously since December 31, 2011.

(2) The awarding body has entered into a collective bargaining agreement that binds all contractors performing work on the project and that includes a mechanism for resolving disputes about the payment of wages.

(c) The requirements of paragraph (1) of subdivision (a) shall only apply to contracts for public works projects awarded on or after January 1, 2015.

(d) The requirements of paragraph (3) of subdivision (a) shall apply to all contracts for public work, whether new or ongoing, on or after January 1, 2016.”

B. STATE PUBLIC WORKS APPRENTICESHIP REQUIREMENTS

1. State Public Works Apprenticeship Requirements:

- a. The Contractor is responsible for compliance with Labor Code section 1777.5 and the California Code of Regulations, title 8, sections 230 – 230.2 for all apprenticeable occupations (denoted with “#” symbol next to craft name in DIR Prevailing Wage Determination), whether employed by the Contractor, subcontractor, vendor or consultant. Included in these requirements is (1) the Contractor’s requirement to provide notification (i.e. DAS-140) to the appropriate apprenticeship committees; (2) pay training fund contributions for each apprenticeable hour employed on the Contract; and (3) utilize apprentices in a minimum ratio of not less than one apprentice hour for each five journeyman hours by completion of Contract work (unless an exception is granted in accordance with Labor Code section 1777.5) or request for the dispatch of apprentices.
 - b. Any apprentices employed to perform any of the Tenant Improvements shall be paid the standard wage to apprentices under the regulations of the craft or trade for which such apprentice is employed, and such individual shall be employed only for the work of the craft or trade to which such individual is registered. Only apprentices, as defined in California Labor Code section 3077, who are in training under apprenticeship standards and written apprenticeship agreements under California Labor Code sections 3070 et seq. are eligible to be employed for the Tenant Improvements. The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship standards and apprentice agreements under which such apprentice is training.
- 2. Compliance with California Labor Code section 1777.5 requires all public works contractors to:**
- a. Submit Contract Award Information (DAS-140):
 - i. Although there are a few exemptions (identified below), all Contractors, regardless of union affiliation, must submit contract award information when performing on a California public works project.
 - ii. The DAS-140 is a notification “announcement” of the Contractor’s participation on a public works project—*it is not a request for the dispatch of an apprentice.*
 - iii. Contractors shall submit the contract award information (you may use form DAS 140) within 10 days of the execution of the prime contract or subcontract, but in

no event later than the first day in which the Contractor has workers employed on the public work.

- iv. Contractors who are already approved to train apprentices (i.e. check “Box 1” on the DAS-140) shall only be required to submit the form to their approved program.
- v. Contractors who are NOT approved to train apprentices (i.e. those that check either “Box 2” or “Box 3” on the DAS-140) shall submit the DAS-140 TO EACH of the apprenticeship program sponsors in the area of your public works project. For a listing of apprenticeship programs see <http://www.dir.ca.gov/Databases/das/pwaddrstart.asp>.

b. Employ Registered Apprentices

- i. Labor Code section 1777.5 requires that a contractor performing work in an “apprenticeable” craft must employ one (1) hour of apprentice work for every five (5) hours performed by a journeyman. This ratio shall be met prior to the Contractor’s completion of work on the project. “Apprenticeable” crafts are denoted with a pound symbol “#” in front of the craft name on the prevailing wage determination.
- ii. All Contractors who do not fall within an exemption category (see below) must request for dispatch of an apprentice from an apprenticeship program (for each apprenticeable craft or trade) by giving the program actual notice of at least 72 hours (business days only) before the date on which apprentices are required.
- iii. Contractors may use the “DAS-142” form for making a request for the dispatch of an apprentice.
- iv. Contractors who are participating in an approved apprenticeship training program and who did not receive sufficient number of apprentices from their initial request must request dispatch of apprentices from ALL OTHER apprenticeship committees in the project area in order to fulfill this requirement.
- v. Contractor should maintain and submit proof (when requested) of its DAS-142 submittal to the apprenticeship committees (e.g. fax transmittal confirmation). A Contractor has met its requirement to employ apprentices only after it has successfully made a dispatch request to all apprenticeship programs in the project area.
- vi. Only “registered” apprentices may be paid the prevailing apprentice rates and must, at all times work under the supervision of a Journeyman (Cal. Code Regs., tit 8, § 230.1).

c. Make Training Fund Contributions

- i. Contractors performing in apprenticeable crafts on public works projects, must make training fund contributions in the amount established in the prevailing wage rate publication for journeymen and apprentices.
- ii. Contractors may use the “CAC-2” form for submittal of their training fund contributions.
- iii. Contractors who do not submit their training fund contributions to an approved apprenticeship training program must submit their contributions to the California Apprenticeship Council (CAC), PO Box 420603, San Francisco, CA 94142-0603.
- iv. Training fund contributions to the CAC are due and payable on the 15th day of the month for work performed during the preceding month.

- v. The “training” contribution amount identified on the prevailing wage determination shall not be paid to the worker, unless the worker falls within one of the exemption categories listed below.

3. Exemptions to Apprenticeship Requirements:

- a. The following are exempt from having to comply with California apprenticeship requirements. These types of contractors do not need to submit a DAS-140, DAS-142, make training fund contributions, or utilize apprentices:
 - i. When the Contractor holds a sole proprietor license (“Owner-Operator”) and no workers were employed by the Contractor. In other words, the contractor performed the entire work from start to finish and worked alone.
 - ii. Contractors performing in non-apprenticeable crafts. “Apprenticeable” crafts are denoted with a pound symbol “#” in front of the craft name on the prevailing wage determination.
 - iii. When the Contractor has a direct contract with the Public Agency that is under \$30,000.
 - iv. When the project is 100% federally-funded and the funding of the project does not contain any city, county, and/or state monies (unless the project is administered by a state agency in which case the apprenticeship requirements apply).
 - v. When the project is a private project not covered by the definition of public works as found in Labor Code section 1720.

4. Exemption from Apprenticeship Ratios:

- a. The Joint Apprenticeship Committee shall have the discretion to grant a certificate, which shall be subject to the approval of the Administrator of Apprenticeship, exempting the Contractor from the 1-to-5 ratio set forth in this Section when it finds that any one of the following conditions are met:
 - i. Unemployment for the previous three-month period in such area exceeds an average of fifteen percent (15%); or
 - ii. The number of apprentices in training in such area exceeds a ratio of 1-to-5 in relation to journeymen; or
 - iii. The Apprenticeable Craft or Trade is replacing at least one-thirtieth (1/30) of its journeymen annually through apprenticeship training, either on a statewide basis or on a local basis; or
 - iv. If assignment of an apprentice to any work performed under the Contract Documents would create a condition which would jeopardize such apprentice's life or the life, safety or property of fellow employees or the public at large, or if the specific task to which the apprentice is to be assigned is of such a nature that training cannot be provided by a journeyman.
- b. When such exemptions from the 1-to-5 ratio between apprentices and journeymen are granted to an organization which represents contractors in a specific trade on a local or statewide basis, the member contractors will not be required to submit individual applications for approval to local Joint Apprenticeship Committees, provided they are already covered by the local apprenticeship standards.

5. Contractor’s Compliance:

- a. The responsibility of compliance with this Section for all Apprenticeable Trades or Crafts is solely and exclusively that of the Contractor. All decisions of the Joint Apprenticeship Committee(s) under this Section are subject to the provisions of California Labor Code section 3081 and penalties are pursuant to Labor Code section 1777.7 and the determination of the Labor Commissioner.

EXHIBIT “H”

COUNTY CONSENT TO SUBLEASE

This County Consent to Sublease (“Consent”) is made by and between the County of San Bernardino (“County”) and _____ (“Tenant”), and _____ (“Subtenant”) and shall be effective as of the date the last of the parties executes this Consent (“Effective Date”).

RECITALS

A. The County, as landlord, and the Tenant, as tenant, have previously entered into a Lease Agreement, Contract No. _____ (the “Master Lease”) pursuant to which the County leases to the Tenant and the Tenant leases from the County certain real property commonly known as _____, consisting of approximately _____ acres of land (“Premises”), located at Chino Airport in San Bernardino County, California for a term that is currently scheduled to expire on _____.

B. The Tenant now desires to sublease the Premises (“Subleased Premises”) to the Subtenant.

C. The Tenant and the Subtenant desire to enter into a sublease agreement (“Sublease”) attached hereto as Exhibit “A” pursuant to which the Tenant would sublease to the Subtenant and the Subtenant would sublease from the Tenant the Subleased Premises.

D. In accordance with Paragraph 13, Assignment and Subletting of the Master Lease, the Tenant has requested the County’s consent to the Sublease.

AGREEMENT

NOW THEREFORE, in consideration of the payment of One Thousand Five Hundred and 00/100 Dollars (\$1,500.00) by the Tenant, the foregoing recitals, which are incorporated herein by reference, the mutual covenants contained in this Consent, and for other good and valuation consideration, the sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Consent to the Sublease.** The County hereby consents to the Sublease of the Subleased Premises from the Tenant to the Subtenant on the terms and conditions set forth in this Consent.

2. **Conditions to the County’s Consent.** Without in any way limiting the provisions of this Consent, the County’s consent to the Sublease is conditioned upon the compliance of the Tenant and the Subtenant with all of the following:

(a) Consent Review Payment. At the time the Tenant executes this Consent, the Tenant shall pay to the County the sum of One Thousand Five Hundred and 00/100 Dollars (\$1,500.00), as required under the Master Lease.

(b) Representation and Warranties of Tenant. The Tenant hereby represents, warrants, and covenants to the County, which shall remain true and accurate for the duration of this Consent and the Sublease, that: (i) Exhibit A is a true, complete, and accurate copy of the Sublease and that no amendments or modifications of the Sublease shall be made without the prior written consent of the County; (ii) the Tenant has delivered a true, complete, and accurate copy of the Master Lease to the Subtenant; (iii) the Base Rent set forth in the Sublease is the only Rent payable by the Subtenant to the Tenant. For purposes of this Consent, the term "Rent" shall mean and include all consideration paid by or given, directly or indirectly, for the use of the Subleased Premises or any portion thereof. The term "consideration" shall mean and include all money, services, property, and other thing of value, such as payment of costs, cancellation of indebtedness, discounts, rebates, improvement allowances, rent-free periods, leasing inducements, and the like. The County shall have the right to audit and review the Tenant's records related to the Sublease and the Rent paid and payable pursuant thereto at any time and from time to time. In the event that any such audit and review reflects that the County has been paid less the amount required to be paid to the County pursuant to the Master Lease and this Consent, the Tenant shall be responsible for the cost of the County's audit, including, without limitation, time expended by County staff; and (iv) the Tenant acknowledges that the County is not in default under the Master Lease and that the Tenant has no existing claims against the County or right of offset or defense against enforcement by the County of the obligations of Tenant under the Master Lease.

(c) Representation and Warranties of Subtenant. The Tenant hereby represents, warrants, and covenants to the County, which shall remain true and accurate for the duration of this Consent and the Sublease, that: (i) Exhibit A is a true, complete, and accurate copy of the Sublease and that no amendments or modifications of the Sublease shall be made without the prior written consent of the County; (ii) the Subtenant has received a true, complete, and accurate copy of the Master Lease from the Tenant; (iii) the Base Rent set forth in the Sublease is the only Rent payable by the Subtenant to the Tenant. In the event that the Master Lease provides for the payment by Tenant to the County of Commercial Charges and Commission Payments pursuant to Paragraph 4, Rent of the Master Lease, the Subtenant agrees to comply with all of the terms and provision of the Master Lease with respect such payment, including, without limitation, the inclusion of Subtenant's gross revenue in the Subleased Premises in such payments and the maintenance of records with respect to the same; (iv) the financial statements and other information submitted to the County regarding the Subtenant in accordance with Paragraph 13, Assignment and Subletting of the Master Lease are true, complete, and accurate as of the date such statements and information are delivered to the County; and (v) the Subtenant agrees to assume all of the obligations of the Tenant under the Master Lease with respect to the Subleased Premises.

(d) Master Lease Governs. Notwithstanding anything to the contrary in the Sublease or this Consent: (i) the term of the Sublease shall not commence prior to the Effective Date of this Consent; (ii) the term of the Sublease shall not exceed the expiration date or earlier termination of the Master Lease; (iii) the use of the Subleased Premises shall not exceed the use permitted for the Premises pursuant to the Master Lease; (iv) all options in favor of the Tenant in the Master Lease are personal to the Tenant and shall not be exercisable by or transferred (in whole or in part) to the Subtenant; (v) the Sublease shall at all

times be subject and subordinate to the Master Lease and the terms of the Sublease shall not be construed in any way to modify, waive, release, or otherwise affect any of the terms and conditions of the Master Lease or waive any breach of the Master Lease by the Tenant; and (vi) the Master Lease shall govern and the County is not bound by any of the terms of the Sublease nor shall the Subtenant have any rights to enforce the Master Lease against the County.

(e) Adjustment of the Minimum Monthly Rent. The Minimum Monthly Rent (as defined in the Master Lease) payable by Tenant pursuant to the Master Lease shall be increased by an additional amount of _____ Dollars (\$_____) per month, and as of the Effective Date, the Minimum Monthly Rent payable by the Tenant for the Premises shall be the total sum of _____ Dollars (\$_____) per month, which shall be subject to subsequent adjustments pursuant to Paragraph 5, Adjustment to Monthly Minimum Rent of the Master Lease.

(f) Excess Minimum Monthly Rent Payment. The Tenant shall pay to the County _____ percent (_____%) of the Rent (as defined in this Consent) payable by the Subtenant to the Tenant pursuant to the Sublease in excess of the Minimum Monthly Rent payable by the Tenant to the County on account of the Subleased Premises. As of the Effective Date, the Tenant shall pay the amount of _____ Dollars (\$_____) per month for such excess payment, which shall be due and payable to the County at the same time that the Minimum Monthly Rent is payable to the County under the Master Lease. In the event that the Master Lease provides for the payment by Tenant to the County of Commercial Charges and Commission Payments pursuant to Paragraph 4, Rent of the Master Lease, the gross revenue of the Subtenant in the Subleased Premise shall be included in the gross revenues of the Tenant for such purpose, and the Tenant shall specifically require the Subtenant to comply with all of the terms and provision of the Master Lease with respect such payment, including, without limitation, the maintenance of records with respect to the same. The Tenant's failure to pay any sums to the County as and when set forth in this subparagraph shall be an event of default under the Master Lease, entitling the County to all remedies available to a landlord against a defaulting tenant, including, without limitation, those remedies set forth in the Master Lease. Any Rent which is to be passed through to the County by the Tenant pursuant to this subparagraph shall be paid to the County in cash, irrespective of the form in which received by the Tenant from the Subtenant. In the event that any Rent received by the Tenant from the Subtenant is in a form other than cash, the Tenant shall pay to the County in cash the fair market value of such consideration, as determined by the County, whose determination shall be conclusive. The County and the Tenant agree that the payment required by this subparagraph represents payment for the County's property rights in and to the leasehold estate created by the Master Lease and constitutes additional rent due and payable by the Tenant pursuant to the Master Lease.

(g) Security Deposit Increase. The security deposit required of the Tenant under the Master Lease shall be increased by the amount of _____ Dollars (\$_____) and the Tenant shall, along with its execution of this Consent, deposit such additional amount with the County, which shall be held by the County in accordance with Paragraph 5, Security Deposit under the Master Lease.

(h) Assignment of Rents. As required by the Master Lease, the Tenant irrevocably assigns to the County, as security for the Tenant's obligations under the Master Lease, all rent due to the Tenant under the Sublease. The County, as assignee and as attorney-in-fact for the Tenant, may collect such rent and apply it toward the Tenant's obligations under the Master Lease except that, until the occurrence

of a default by the Tenant under the Master Lease or this Consent, the Tenant shall have the right to collect such rent. In the event that Tenant is in default in accordance to the terms and conditions of the Master Lease or this Consent, the Tenant's right to collect such Rent shall automatically terminate, without the requirement of notice to the Tenant or the Subtenant, and the County may, at its option, upon notice to the Subtenant, collect, directly from the Subtenant, all Rent thereafter due and payable under the Sublease. Notwithstanding the foregoing, the County's collection of Rent directly from the Subtenant, regardless of the circumstances or reasons therefore, shall in no manner whatsoever be deemed an attornment by the Subtenant to the County or serve to release the Tenant from any liability under the terms and conditions of the Master Lease in the absence of a specific written agreement signed by the County to such an effect. The County shall not, by reason of this paragraph of the Consent nor by reason of the collection of the Rent from the Subtenant be deemed liable to the Subtenant for any failure of the Tenant to perform and comply with the Tenant's obligations under the Sublease. The Tenant hereby irrevocably authorizes and directs the Subtenant and the Subtenant agrees, upon receipt of any written notice from the County stating that the Tenant is in default in accordance with terms of the Master Lease or this Consent, to pay to the County all Rent payable under the Sublease. The Tenant agrees that: (i) the Subtenant shall have the right to rely upon any such written notice from the County, and (ii) the Subtenant is hereby instructed to pay Rent to the County without any obligation or right to inquire as to whether such default exists and notwithstanding any notice from or claim from the Tenant to the contrary. The acceptance of Rent by the County from the Subtenant shall not be deemed a waiver by the County of any terms and conditions of the Master Lease.

(i) Continuing Liability of Tenant. Notwithstanding anything to the contrary in the Sublease or this Consent: (i) the Tenant shall remain primarily liable for and shall not be discharged nor released from the full and faithful performance of any of the provisions of the Master Lease (whether past, present, or future); and (ii) the County shall be entitled to pursue all remedies available in the event of any default by the Tenant of the Tenant's obligations under the Master Lease without regard to the Subtenant's performance or non-performance of the Subtenant's obligation under the Sublease and any default under the Master Lease (whether by the Tenant or the Subtenant) shall be a default of the Tenant under the Master Lease.

(j) Effect of Consent. This Consent is effective only for this Sublease and any subsequent sublease or assignment of the Premises or the Subleased Premises (in whole or in part) requires the County's separate written consent in accordance with the Master Lease. This Consent is not a consent to any improvements or alterations to or in the Subleased Premises, and prior to the undertaking by the Tenant or the Subtenant of any improvements or alterations to or in the Subleased Premises, the Tenant shall obtain the County's prior written consent in accordance with the Master Lease.

(f) Effect of Tenant Default on Sublease. In the event that that the Tenant is in default in accordance with terms of the Master Lease or this Consent, then the County may, at its option: (i) terminate the Master Lease, in which event, the Sublease shall simultaneously terminate on the date the County exercises said option and the Subtenant shall vacate the Subleased Premises within thirty (30) days thereafter; or (ii) without being obligated to do so, unilaterally require the Subtenant to attorn to the County, in which event, the Subtenant agrees to be bound to the County under the terms and conditions of the Sublease as if the County were the landlord under the Sublease from the time of the County's exercise of said option until the expiration or earlier termination of the Sublease, provided that in no event shall the County be liable to the Subtenant for any prepaid Rent nor any security deposit paid by the Subtenant to

the Tenant nor shall the County be liability for any other defaults of the Tenant (whether accrued or continuing as of the date of attornment) under the Sublease. Such attornment shall be self-operative without the execution of any further instruments except that the Subtenant shall execute such instrument as the County may require. This subparagraph shall not limit the County's remedies against the Tenant pursuant to the Master Lease or this Consent.

3. **Notices.** Any notice, demand, request, consent, approval or communication that the parties desire or are required to give to the other party, including but not limited to, notices required under the California unlawful detainer statutes, or any other person, shall be in writing and either served personally or sent by prepaid, first-class mail. Any such notice, demand, request, consent, approval or communication that any party desires or is required to give to another party shall be addressed to said party. Any party may change its address by notifying the other parties of the change of address. Notices shall be deemed communicated two (2) working days from the time of mailing if mailed as provided in this paragraph to the addresses set forth below:

If to County: County of San Bernardino
Department of Airports
777 East Rialto Avenue
San Bernardino, CA 92415

If to Tenant:

If to Subtenant:

4. **Miscellaneous.** The following provisions shall apply to this Consent: (a) this Consent shall be construed and interpreted in accordance with the laws of the State of California; (b) if any legal action is instituted to enforce or declare any party's rights hereunder, each party, including the prevailing party, must bear its own costs and attorneys' fees, (c) if any provision of this Consent is determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision of this Lease and all such other provisions shall remain in full force and effect; (d) as this Consent was prepared by the parties, the language in all parts of this Consent shall be construed, in all cases, according to its fair meaning, and not for or against any party hereto; (e) this Consent, including the recitals, constitutes a single, integrated agreement, expressing the entire agreement and understanding of the parties concerning the subject matter of this agreement, and this agreement supersedes and replaces all prior understandings, negotiations, proposed agreements, and agreements, whether oral or written, express or implied; (f) no waiver, modification or amendment of any term, condition, or provision of this Consent shall be valid or shall have any force or effect unless made in writing and signed by the parties hereto; and (g) the parties to

this Consent represent that the signators executing this Consent are fully authorized to enter into this Consent.

IN WITNESS THEREOF, the parties executed this Consent.

COUNTY: County of San Bernardino

TENANT:

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

SUBTENANT:

By: _____

Title: _____

Date: _____

APPROVED AS TO LEGAL FORM

MICHELLE D. BLAKEMORE, County Counsel

San Bernardino County, California

By: _____

Agnes Cheng, Deputy County Counsel

Dated: _____

