

COUNTY OF ALAMEDA
CHERRYLAND COMMUNITY CENTER FACILITIES LEASE

THIS FACILITIES LEASE (“Lease”) is made as of _____ 201_ by and between the COUNTY OF ALAMEDA, a political subdivision of the State of California (“County”) and the HAYWARD AREA RECREATION AND PARK DISTRICT, a California special district (“HARD” and, together with County, each, a “Party” and together, the “Parties”), who agree as follows:

RECITALS

WHEREAS, HARD and County are public agencies that both possess the authority to own and operate community recreation facilities for the enhancement of the public welfare of the community; and

WHEREAS, HARD and County mutually desire to construct and operate a community recreation center to, among other things, provide a gathering place and community focal point for residents of Cherryland that provides classes, events, and places for learning (“Cherryland Community Center” as further defined below); and

WHEREAS, each of County owns real property in the unincorporated area of Cherryland useful for construction and operation of the proposed Cherryland Community Center _____ (“the Property”) and

WHEREAS, HARD also owns the nearby Meek Estate Parking Lot that the Parties agree shall be used, in part, to provide parking to the proposed Cherryland Community Center; and

WHEREAS, , on or about _____, 2019, the Parties entered into an Amended and Restated Memorandum of Understanding (“ARMOU”) that provides the overall structure to their deal to lease, finance, construct, operate and maintain the Cherryland Community Center and the construction of the Meek Estate Parking Lot improvements, that includes as an exhibit the form of this Facilities Lease; and

WHEREAS, on or about _____, 202_, County completed construction of the Cherryland Community Center, and in accordance with the provisions of the MOU sent HARD a notice of completion; and

WHEREAS, the MOU requires HARD to execute this Facilities Lease within 30 days of its receipt of the notice of completion from County, by which County will lease back to HARD of the Property and the Cherryland Community Center constructed thereon and related improvements (collectively “the Premises”), as described on the Premises Site Map, which is attached hereto as Exhibit A and incorporated herein by reference, for the operation of the Cherryland Community Center by HARD for benefit of the community, and for the maintenance and repair of the Premises; and

WHEREAS, County desires to lease the Premises for such a purpose.

NOW, THEREFORE, it is agreed that in consideration of the terms, conditions, and covenants specified in this Facilities Lease Agreement, County does lease to HARD, and HARD accepts from County, the facilities and related improvements as shown on the Premises Site Map.

PART ONE

Fundamental Lease Provisions

The fundamental provisions of this Lease are:

1. Lease Execution Date: _____ (approval by County Board of Supervisors and HARD Board of Directors and full execution hereof)
2. Premises: : The Property, including the Cherryland Community Center consisting of the structures, landscaping, parking areas, appurtenant structures and related improvements constructed on the Property, along with the other grounds on the Property (Assessor's Parcel Numbers (APNs) 413-0035-10 and 413-0035-14-3) as are shown on the Premises Site Map..
3. HARD's Percentage: 100%, which is the ratio that the rentable square footage of the Premises bears to the rentable square footage of the Property.
4. Term:
 - a. Duration of Term: Fifty (50) years ("Term").
 - b. Commencement Date of the Term: _____, 201_.
 - c. Expiration Date of the Term: _____, 201_.
 - d. Option to Extend: One option to extend for an additional 25 years.
5. Rent: One dollar (\$1.00) per year, payable in advance. Additional consideration is provided in the form of:
 - a. HARD's agreement to operate the Cherryland Community Center at its own cost for benefit of the community; and
 - b. Providing space at no cost for use by the Alameda County Library for library programs, materials and coordinated activities with HARD, as is provided in Part Two and in the Operating Agreement, which is attached hereto as Exhibit B and incorporated herein by reference.
 - c. HARD's agreement to maintain and repair the Cherryland Community Center; and
 - d. HARD's agreement to provide the nearby Meek Estate Parking Lot as parking, in part, for the Cherryland Community Center.
6. Permitted Use: Community recreation center.
7. Addresses for Notices and Payment of Rent:

To County:
Real Property Manager
General Services Agency
1401 Lakeside Drive, 6th Floor
Oakland, CA 94612

To HARD:
General Manager
1099 E Street
Hayward, California 945

8. Exhibits and Other Attachments: The following exhibits are attached to this Lease and made a part of it for all purposes.

Exhibit “A” – Premises Site Map
Exhibit “B” – Operating Agreement
Exhibit “C” – Work Letter for Construction
Exhibit “D” – HARD Insurance Requirement
Exhibit “E” – County Insurance Requirements

9. Parking: Two on-site parking spaces shall be available to HARD, of which specific numbers of parking stalls shall be reserved for use by HARD staff, and two spaces shall be available to the Alameda County Library, of which specific numbers of parking stalls shall be reserved for use by Alameda County Library staff, and the remainder made available for use by the public when patronizing the Cherryland Community Center, as is provided in the Operating Agreement. HARD further agrees to make available the Meek Estate Parking Lot for use by patrons of the Cherryland Community Center in accordance with the parking operation provisions balancing use with patrons of the Meek Estate as is provided in the Operating Agreement.
10. Signage: County has installed signage as part of construction of the Cherryland Community Center. HARD may change or modify the signage with the prior written consent of County with such consent not unreasonable withheld, delayed or conditioned .
11. Security Deposit: None required

Each reference in this Lease to any provision in the Fundamental Lease Provisions shall be construed to incorporate all of the terms provided under such Fundamental Lease Provisions. In the event of any conflict between a provision in the Fundamental Lease Provisions and a provision in the balance of the Lease, the Fundamental Lease Provisions shall control.

PART TWO
Basic Lease Provisions

1. PREMISES.

- A. County leases to HARD, and HARD leases from County the Premises.
- B. During the Term hereof, HARD, without additional charge unless otherwise expressly provided herein, is entitled to all of the rights and appurtenances set forth in this Lease, including, but not limited to the rights of ingress and egress to and from the Premises for HARD and HARD's officers, contractors, agents, employees, invitees, and the general public using the Cherryland Community Center.
- C. HARD shall procure and maintain, at its sole cost and expense, any and all permits required by applicable law for HARD's use and operation of the Premises. HARD shall use the Premises solely for the Permitted Use specified in the Fundamental Lease Provisions and shall not use or permit the Premises to be used for any other purpose without County's prior written approval. HARD shall observe and comply with reasonable rules and regulations for the Premises as provided in the Operating Agreement, as may be modified from time to time.
- D. HARD has been afforded significant opportunity to be a part of, or receive information about, the construction of the Cherryland Community Center, and, except as otherwise provided herein, accepts the Premises in its "AS-IS" condition without any agreements, representations, understandings or obligations on the part of County to perform any alteration, repairs or improvements thereto.

2. TERM/RENEWAL TERM.

- A. Term: The terms and conditions of this Lease shall be effective as of the Lease Execution Date. The Term of this Lease shall be for the period stated in the Fundamental Lease Provisions commencing on the Commencement Date and expiring on the Expiration Date, unless the Term is sooner terminated or extended as provided in this Lease. The Lease Execution Date shall be the latest of the dates when the Alameda County Board of Supervisors and HARD's Board of Directors approve this Lease and it is executed by the designated representatives of the Parties and such date shall be inserted in the first paragraph above.
- B. Renewal Term: The Term may be extended by 25 years upon HARD's notice in writing to County of its intention to exercise the option for the same no later than 6 months prior to the 50th anniversary of the Commencement Date of the Ground Lease, excepting that the parties may waive the 6 month deadline described herein by mutual

written agreement without amending the Lease, conditioned on County's extension of the term of the Ground Lease for a period of 25 years.

3. **TENANT IMPROVEMENTS.** County has constructed at its expense the Cherryland Community Center and shall not be required to provide any further improvements thereto. HARD is under no obligation to construct any improvements on the Premises, but may construct or place alterations to the Premises as set forth in Section 10 hereinbelow.
4. **RENT.** HARD shall pay to County the Rent as described in the Fundamental Lease Provisions. HARD shall pay to County additional Rent as set forth herein.
5. **OPERATING EXPENSES.** Except as otherwise provided in this Lease, all costs, expenses and obligations of every kind or nature whatsoever relating to the Premises which may arise or become due during the Term of this Lease including, without limitation, all costs and expenses of operations, maintenance and repairs, insurance and taxes, if any, shall be paid by HARD. HARD shall not be responsible for any costs, expenses or obligations relating to the Premises which arise or become due prior to the Term which shall be paid by County.
6. **SERVICES, UTILITIES, MAINTENANCE AND REPAIRS.**
 - A. **Utilities and Services.**
 - i. County shall construct or cause the installation of all necessary utility service infrastructure, equipment and meters for electricity, water, gas, telephone and data services (collectively, "Utility Infrastructure"), as is described in detail in the Work Letter for Construction, attached hereto as Exhibit C and incorporated herein by reference. County's obligation with respect to Utility Infrastructure does not extend beyond the requirements of the Work Letter for Construction. County does not warrant the availability of any or all Utility Services (electricity, water, gas, telephone and data services) at the Premises for any day beyond the Commencement Date, except that County shall be responsible for correction of all construction and design defects as concerns the Utility Infrastructure, as is provided in subpart D(vi) below.
 - ii. HARD shall be responsible, at its sole cost, for establishing Utility Services with the respective Utility Services providers, and for all costs associated with those services, including but not limited to rate payments, maintenance, repairs and upgrades, unless otherwise agreed to between HARD and the Utility Service providers. County shall have no responsibility for costs associated with Utility Services after the Commencement Date.
 - iii. In no event shall County be liable for any interruption or failure in the supply of any such utility or other services to HARD, except for an interruption in Utility Services

- caused by the gross negligence or willful misconduct of County or County's agents, employees, contractors or invitees, or caused by construction or design defects, that interferes with HARD's operations within the Premises.
- iv. In no event shall any Rent owed County under this Lease be abated by reason of the failure to furnish, delay in furnishing, unavailability or diminution in quality or quantity of any such Utility Services or other services or interference with HARD's business operations as a result of any such occurrence; nor shall any such occurrence constitute an actual or constructive eviction of HARD or a breach of an implied warranty by County, except as to interruptions or failures in the supply of Utility Services caused by construction or design defects for which County fails to repair under Section 6(D)(vi), below.
- B. **Security.** HARD shall be responsible for the provision of reasonable security of the Premises.
- C. **Warranties:** County shall transfer or assign to HARD all warranties for fixtures and personal property upon conclusion of the two-year period described in subsection D(vi) of this Section, or as soon thereafter as is reasonably possible. Where a warranty cannot be transferred or assigned, the County shall cooperate with HARD to facilitate making warranty claims.
- D. **Maintenance/Janitorial Services.** HARD shall have the following obligations with respect to maintenance and janitorial services, except that HARD may satisfy these obligations under any contractor or manufacturer's warranty, where applicable:
- i. **HVAC.** HARD shall repair and maintain all heating and air conditioning systems and equipment ("HVAC") within the Premises, or which serve the Premises exclusively, including, without limitation, any rooftop package HVAC units, distribution lines and internal venting systems. This shall include entering into a contract with a reputable and qualified maintenance contractor to regularly schedule preventive maintenance/services if HARD does not directly employ staff trained and certified to perform these services. HARD shall operate, maintain and repair the HVAC in accordance with the requirements of the Operating Agreement.
- ii. **Janitorial.** All cleaning and janitorial services sufficient to maintain the Premises' interior in a clean, well-maintained condition, including regular removal of trash and debris, shall be performed at HARD's sole cost and expense.
- iii. **Landscaping and Contiguous Grounds.** HARD shall maintain the landscaping and grounds at its sole cost and expense in accordance with the provisions of the Operating Agreement.
- iv. **Maintenance.** HARD shall, at its sole cost and expense, maintain the Premises, including building and safety systems and all equipment, fixtures and appurtenances furnished by County under this Lease, in good repair and in conformance with the Operating Agreement, all regulations including but not limited to the California Code of Regulations, Title 8 (Division of Industrial Relations), and consistent with any applicable industry building standards so as to minimize breakdowns caused by deferred or inadequate maintenance.

- v. **ADA Compliant.** HARD shall maintain the Premises at all times in conformity with the Americans with Disabilities Act (ADA) – Building Access, and all later enacted amendments thereof, and shall be responsible for all repairs, alterations and/or maintenance of the Premises under said laws, except as to those repairs, alterations and/or maintenance necessitated by construction or design defects or errors.
- vi. **County Repair Obligations.**
 - a. County shall be responsible for the repair or replacement at its cost of any part of the Premises or Premises System, as defined below, that is not fully functional or operable due to a design or construction defect or error or that was installed improperly. HARD shall notify County in writing of any such problem with the Premises or Premises System and County shall promptly inspect the specified part of the Premises or Premises System. Unless County can demonstrate to HARD's satisfaction that the problem was not caused by a design or construction defect or error or improper installation, County shall commence repair or replacement of the Premises or Premises System within thirty (30) days of written notice from HARD. If the design or construction defect or error renders all or a portion of the Premises unuseable or inoperable, then HARD's obligations under this Lease and the Operating Agreement shall be excused until the repair or replacement is completed. Should County fail to repair or replace the Premises or Premises System, then HARD may either perform the repair or replacement and invoice County for such cost, or, if a significant portion of the Premises is unuseable for a period in excess of sixty (60) days, then HARD may terminate this Lease Pursuant to Section 26, below. County's repair obligation is limited to correction of construction and design defects or errors for a period two years commencing with the Lease Execution Date for patent and latent defects provided, however, to the extent such maintenance, repairs or replacements are required as a result of any act, neglect, fault or omission of HARD or any of HARD's Parties, HARD shall pay to County, as Additional Rent, the reasonable costs of such maintenance, repairs and replacements. In such case, County shall provide HARD with sufficient documentation of the reasonable costs of such maintenance, repairs and replacements.
 - b. To the extent necessary to ensure timely claims for construction and design defects can be made, the County shall pursue any potentially meritorious construction or design defect claim presented to it by HARD following the two-year period described in subsection (a) above. HARD shall cooperate fully with the County in prosecuting such claims to completion. To the extent the County recovers damages from such an action, it shall remit the amount of its recovery less its costs of suit and attorney fees (including where the

- action is prosecuted by the County Counsel), if any, to HARD provided that HARD shall be limited to expending such funds to make repairs related to the construction or design defects or errors identified in the claim or complaint, or to provide reimbursement for such repairs. The provisions of this section do not amount to a warranty by the County beyond the two-year period described in subsection (a) above.
- c. Except as otherwise expressly provided in this Lease, County shall have no obligation to alter, remodel, improve, repair, renovate, redecorate or paint all or any part of the Premises after the Commencement Date. Except as otherwise provided herein, HARD waives the right to make repairs at County's expense under any applicable Laws (including, without limitation, the provisions of California Civil Code Sections 1941 and 1942 and any successor statutes or laws of a similar nature).
- vii. **General Obligations.** HARD shall, at its sole cost and expense, observe and comply with all Federal, State and local laws and all requirements of any board of fire underwriters or similar body relating to the Premises now or hereafter in force relating to or affecting the condition, use, operation, maintenance, or alteration of the Premises (whether, except as otherwise provided herein, structural or nonstructural, including unforeseen and/or extraordinary alterations and/or improvements to the Premises and regardless of the period of time remaining in the Term). HARD shall not cause, maintain or permit any nuisance in, on or about the Premises.
- viii. **Capital Replacements.** Except as otherwise provided herein, HARD shall bear any and all costs if any mechanical, electrical, plumbing, HVAC and other equipment, facilities and systems located within or serving the Premises (collectively, the "Premises Systems") or any major component of a Premises Systems needs to be replaced, regardless of fault or whether HARD has performed all required routine maintenance of such Premises Systems in accordance with this Lease. HARD shall replace Premises Systems in a timely manner to avoid interruption of public use of the community center and of collateral impact on the integrity of the Premises. HARD shall maintain an inventory of all Premises Systems that tracks each item's remaining useful life, and such other information. HARD shall provide a copy of the inventory to the County annually on the anniversary of the Commencement Date. Upon its receipt of the inventory, the County may elect to have a meeting with HARD to discuss the Premises Systems. HARD shall budget adequate resources to replace Premises Systems in accordance with the useful life of each of the Premises Systems as provided in the inventory. The County may review HARD's budget for capital replacement once annually.
7. **PARKING.** HARD shall be provided on-site parking for its staff, the allocation of which is set forth in the Fundamental Lease Provisions and the Operating Agreement.

8. **COUNTY'S RESERVED RIGHTS.** County reserves the right to do any of the following: (a) make any changes, additions, improvements, maintenance, repairs or replacements in or to the Premises, and the fixtures and equipment thereof, upon prior written agreement with HARD, and (b) make emergency repairs to protect the health and safety of the public, and to protect the County's investment in the Premises where it has notified HARD of the necessity of doing the same, and HARD has failed to make such repairs within 30 days, or other period of time as is dictated by the circumstances and such other period of time is so indicated in the notice herein described, in which event HARD shall pay to County, as Additional Rent, the reasonable and documented costs of such repairs. If County is required to do any work within the Premises as a result of County's exercise of its rights under this Section, County shall provide HARD with reasonable advance written notice of the work schedule to the extent that the Premises are affected, and County shall endeavor to minimize, as reasonably practicable, the interference with HARD's operation of the community center as a result of any such work.
9. **PERFORMANCE REQUIREMENT.** HARD shall operate the Cherryland Community Center as a community recreation center for benefit of the Cherryland community and the general public in accordance with the broad terms of the Environmental Impact Report for the project, and the provisions of this Lease, the ARMOU and the Operating Agreement.
10. **ALTERATIONS.**
 - A. **Alterations.** HARD may not make any alterations, additions or improvements ("Alterations") to the Premises without the prior written consent of County. County may request of HARD such plans, drawing, proposals and other documents as is reasonably required for its consideration of a request for consent to make Alterations, which consent cannot be unreasonably delayed, conditioned or withheld. All work related to Alterations shall be done at the sole cost, charge, and expense of HARD, and comply with all applicable codes and regulations. County may, in its sole discretion, require that Alterations remain the property of HARD and that they be removed from the Premises by HARD upon the expiration of Term or the sooner termination of this Lease; provided that, County notifies HARD in writing when approving an Alteration that it must be removed upon the expiration of the Term or the sooner termination of this Lease. In the alternative, County may require that any Alterations remain and be surrendered with the Premises at the end of the Term. County may also require that any such Alterations be fully insured.
 - B. **Performance of Work.**

- i. In the event HARD makes any Alterations it shall obtain any and all permits, authorizations, and certificates from all governmental agencies, including, without limitation, such zoning variances or changes as may be required with respect to such Alterations.
 - ii. HARD's right to make Alterations is subject to the following: (a) the work shall be performed by a licensed contractor who is experienced in such work; (b) HARD shall insert in its contract with its licensed contractor a provision requiring the contractor to provide the County with as broad an indemnity as is contained in this Lease, or as broad an indemnity as is required by HARD, whichever provides greater protection; and (c) name the County as additional insured on any insurance required by HARD of the contractor for performance of the Alteration work.
- C. **Costs.** HARD shall pay to County, as Additional Rent, the reasonable costs of County hiring outside agents, engineers and other consultants for review of all plans, specifications and working drawings for the Alterations, within ten (10) business days after HARD's receipt of invoices either from County or such consultants.
- D. **Emergency Access:** Notwithstanding the foregoing provisions of this Section 10, HARD may not make Alterations or operate the Cherryland Community Center in a manner that would defeat, obstruct or remove the emergency vehicle access features described in the Work Letter for Construction, unless a modification thereof is approved in writing by the Alameda County Fire Department.

11. **ASSIGNMENT, SUBLETTING AND USE BY COUNTY.**

- A. **Consent.** HARD shall not assign this Lease, or any interest therein, and shall not sublet the Premises, or any part thereof, or any right or privilege appurtenant thereto, or suffer any other person to occupy or use the Premises or any portion thereof ("Transfer") without the prior written consent of County. Consent to one Transfer or use by any other person shall not be deemed to be consent to any subsequent Transfer or use by another person. Any such Transfer without such consent shall be void, and shall, at the option of County, terminate this Lease.
- B. **Reasonable Disapproval.** County shall not unreasonably deny, delay or condition HARD's request to Transfer this Lease. Without limiting in any way County's right to withhold its consent on any reasonable grounds, it is agreed that County will not be acting unreasonably in refusing to consent to a Transfer if, in County's reasonable determination: (a) the proposed Transfer would result in more than two subleases of portions of the Premises being in effect at any one time during the Term; (b) the proposed assignee or subtenant does not have the financial capability to fulfill the obligations under this Lease; (c) there is less than one year remaining on the Term; or (d) the proposed Transfer involves a change of use of the Premises. County will review and respond to any requests for Transfer within sixty (60) days.
- C. **Space for County Library.** HARD shall provide 1742 square feet of space in the Cherryland Community Center for use by the Alameda County Library for programs,

storage of materials and events, as is specified in the Final Plans attached as Exhibit A to the Work Letter for Construction, or as may otherwise be agreed to by the Parties in writing as approved by the Director of the County's General Services Agency and HARD's General Manager. It is the intent of the Parties to coordinate the library programs, activities and events of the Alameda County Library with the community center programs, activities and events of HARD to the mutual enhancement of each of the Alameda County Library and HARD, all for benefit of the Cherryland community and the general public. The Parties shall work toward the harmonious integration of the Alameda County Library's use into HARD's operation of the Cherryland Community Center, but the Alameda County Library's use of a portion of the space in the Cherryland Community Center is not a sublet by HARD, and HARD shall exercise no authority over the operations of the Alameda County Library. The Alameda County Library's use of space within the Cherryland Community Center shall be dictated by the terms of the Operating Agreement.

- D. **Other County Uses.** The County may use the Cherryland Community Center subject to the terms and conditions of the Operating Agreement and such other terms of use promulgated by HARD regarding the use of the community center not inconsistent with the Operating Agreement. County shall pay the cost of its use of the Cherryland Community Center, and shall limit said use, as is provided in the Operating Agreement.

12. **SURRENDER AND HOLDING OVER.**

- A. **Surrender of Premises.** Upon the expiration of the Term or the sooner termination of this Lease, and unless HARD holdover pursuant to Section 12(B), below, or the Parties otherwise agree to extend the Term or enter into a new lease of the Premises, HARD shall surrender all keys for and possession of the Premises to County broom clean and in good condition and repair, reasonable wear and tear excepted. HARD shall surrender the Premises with all of the following removed and all damage caused by such removal repaired: (1) all personal property of HARD, its employees, agents, volunteers and the public, and (2) Alterations identified by County for removal. If HARD fails to remove within sixty (60) days following the expiration of the Term or the sooner termination of this Lease all identified items, County may, (without liability to HARD for loss thereof), at HARD's sole cost and in addition to County's other rights and remedies under this Lease, at law or in equity: (a) remove and store such items in accordance with applicable law; and/or (b) upon an additional thirty (30) days' prior written notice to HARD and if HARD does not remove such items during such 30 day-period, sell all or any such items at private or public sale for such price as County may obtain as permitted under applicable law. County shall apply the proceeds of any such sale to any amounts due to County under this Lease from HARD (including County's attorneys' fees and other reasonable costs incurred in the removal, storage and/or sale of such items), with any remaining funds paid to HARD.

- B. **Hold Over.** Should HARD holdover on the Premises after the Term expires or the Lease has sooner terminated, such holdover shall be deemed merely a tenancy from month-to-month. HARD shall in addition have the right to holdover for the period of time the parties are meeting and conferring and/or mediating in accordance with the termination provisions of the ARMOU. Any holdover Rent shall be paid on a prorated per month basis without reduction for partial months during the holdover. Acceptance by County of Rent after such expiration or earlier termination shall not constitute consent to a holdover hereunder or result in an extension of this Lease. This Section shall not be construed to create any express or implied right to holdover beyond the expiration of the Term or any extension thereof or termination of the Lease. If HARD holds over after the expiration of the Term or the earlier termination of this Lease without the express written consent of County, then, in addition to all other remedies available to County, HARD shall be liable, and shall pay to County within ten (10) days after demand, for all reasonable losses incurred by County as a result of such holdover as documented by County, and shall indemnify, defend and hold County and the County Parties harmless from and against all liabilities, damages, losses, claims, suits, costs and expenses (including reasonable attorneys' fees and costs) arising from or relating to any such holdover tenancy, including without limitation, any claim for damages made by a succeeding tenant. HARD's indemnification obligation hereunder shall survive the expiration of the Term or earlier termination of this Lease. The foregoing provisions of this Section are in addition to, and do not affect, County's rights hereunder or otherwise at law or in equity.
13. **ENTRY.** County, or its duly authorized representatives or agents, may enter upon the Premises upon two (2) days written notice during the Term hereof for the purpose of determining whether HARD is complying with the terms and conditions herein, or for any other purpose incidental to the rights of the County. In case of emergency County or its agents may enter premises without prior written notice, but shall attempt to provide HARD with as much prior notice of such entry as possible.
14. **INDEMNITY.**
- A. **HARD's Indemnification.** HARD shall indemnify, defend, protect and hold County and County's officials, officers, employees, agents, contractors, successors and assigns (collectively, "County Parties") harmless from and against, any and all claims, damages, judgments, suits, causes of action, losses, liabilities and expenses, including, without limitation, attorneys' fees and court costs (collectively, "Indemnified Claims"), arising or resulting from (i) any act or omission of HARD, its agents, officers, director, employees, contractors or invitees (collectively, "HARD's Parties") in the use, operation, maintenance and repair of the Premises, including negligence and omissions; except to the extent caused by County's design or construction defects and errors discovered during the period two

years from the Lease Execution Date or the gross negligence or willful misconduct of County or County's agents, contractors or employees; and/or (ii) any default by HARD as to any obligations on HARD's part to be performed under the terms of this Lease or the terms of any contract or agreement to which HARD is a party or by which it is bound, affecting this Lease or the Premises. The foregoing indemnification shall include, but not be limited to, any injury to, or death of, any person, or any loss of, or damage to, any personal property on the Premises, or connected with the use, operation, maintenance and repair thereof, whether or not County or any County Parties has or should have knowledge or notice of the defect or conditions causing or contributing to such injury, death, loss or damage. In case any action or proceeding is brought against County or any County Parties by reason of any such Indemnified Claims, HARD, upon notice from County, shall defend the same at HARD's expense by counsel approved in writing by County, which approval shall not be unreasonably withheld, delayed or conditioned. County shall cooperate with HARD in the defense of such Indemnified Claims and may participate in such defense and HARD shall not agree to any settlement without the written consent of County.

- B. **Third-Party Indemnification.** When HARD or HARD's Parties obtain indemnity protection from others concerning claims arising out of or pertaining to the Cherryland Community Center, they shall require any such party providing any indemnity to indemnify the County on terms equal to those provided to HARD or HARD's Parties. HARD's or HARD's Parties' failure to obtain indemnity for the County as required by this Section 14(B) shall be deemed a waiver of any defense HARD might have to accepting tender from the County of any claim the County receives from any party.
- C. **County's Indemnification.** County hereby agrees to defend, indemnify, protect and hold harmless HARD and the HARD Parties from and against any and all damages, losses, causes of action, liability and expense (including reasonable attorney's fees and costs) to the extent such arise out of the negligent acts or omissions or willful misconduct of the County and the County Parties occurring in connection with the operations of the Alameda County Library as provided in this Lease, the County's and County's Parties' use of the community center as provided in Section 11(C) and (D), above and by the Operating Agreement and the County's duties and obligations under this Lease, including, but not limited to, County's obligation to repair/replace parts of the Premises or Premises Systems due to design or construction defects and errors or improper installation. In case any action or proceeding is brought against HARD or any HARD Parties by reason of any such Indemnified Claims, County, upon notice from HARD, shall defend the same at County's expense by counsel approved in writing by HARD, which approval shall not be unreasonably withheld, delayed or conditioned. HARD shall cooperate with County in the defense of such Indemnified Claims and may participate in such defense and County shall not agree to any settlement without the written consent of HARD. County shall require its contractors performing work at the Premises other than work pursuant to the Work Letter

for Construction to be subject to equal defense and indemnity provisions as are provided for in this subsection for benefit of HARD.

- D. **Survival.** The indemnification obligations under this Section and elsewhere in this Lease shall survive the expiration of the Term or earlier termination of this Lease. The covenants, agreements and indemnification in this Section are not intended to and shall not relieve any insurance carrier of its obligations under policies required to be carried by the Parties pursuant to the provisions of this Lease.

15. **INSURANCE.**

A. **HARD's Insurance.**

During the Term, HARD shall maintain insurance for the operations and maintenance of the Premises, as provided in the HARD Insurance Requirements, which is attached hereto as Exhibit D and incorporated herein by reference. HARD may meet its insurance requirements through a program of self-insurance or membership in a joint powers authority.

- B. **Third-Party Insurance:** Whenever HARD requires any party to carry insurance for use of or work on or at the Cherryland Community Center, HARD shall require that party to name the County as additional insured.

- C. **County's Insurance.** During the Term, County shall maintain insurance for the operations of the Alameda County Library, as provided in the County Insurance Requirements, which is attached hereto as Exhibit E and incorporated herein by reference. County may meet its insurance requirements through a program of self-insurance.

D. Property Insurance

HARD shall insure the Premises to full replacement value, which insurance shall be provided by the County with the premium therefore paid by HARD in accordance with the provisions of the Operating Agreement. Coverage will include all risks of direct physical loss or damage to the insured property, including earthquake and flood. Enforcement of any insurance premium not timely paid to the County by HARD may be charged as additional Rent. In addition, HARD shall insure all personal property, including personal property initially provided by the County, replacement personal property provided by HARD, and personal property initially supplied by HARD to full replacement value, which insurance shall likewise be provided by the County with the premium to be paid for by HARD. Coverage will include all risks of direct physical loss or damage to the insured property, including earthquake and flood.

All insurance provided by the County under this Section shall be paid by HARD as a single premium.

HARD shall be responsible for the applicable deductible(s) for losses per occurrence under the Property coverage. HARD shall be required to pay the deductible, and to make all repairs and replacements valued at less than the amount of the deductible.

HARD shall cooperate with the County in the procurement of the insurance required under this Section and will comply in all respects with all requirements of the Property Insurance coverage. County shall provide HARD with copies of all insurance policies and certificates.

16. **FIRE AND CAUSALTY DAMAGE.**

- A. In the event of any damage or destruction of all or any of the Premises, HARD shall immediately notify County thereof.
- B. If the Premises is damaged by fire or other casualty to an extent not exceeding fifty percent (50%) of the full replacement cost thereof, then County will promptly commence and proceed diligently with the work of repair, reconstruction and restoration of the damaged portion of the Premises to its condition prior to fire or other casualty, and this Lease shall continue in full force and effect, except the Parties will need to assess whether the Cherryland Community Center may be operated safely for members of the public. If not, then HARD's obligations to operate community center for members of the public shall be excused during the work of repair, reconstruction and restoration. If, however, damage by fire or other casualty to the Premises to an extent not exceeding fifty percent (50%) occurs in during the last six (6) months of the Term and County's contractor estimates in writing delivered to the parties that the repair, reconstruction or restoration of such damage cannot be completed within the earlier of (a) the expiration of the Term, or (b) sixty (60) days after the date of such casualty, then the County may exercise repair, reconstruction or restoration at its option.
- C. If, however, the Premises is damaged to an extent exceeding fifty percent (50%) of the full replacement cost thereof, then the Parties shall immediately meet and confer to decide whether to: (a) repair, reconstruct and restore as stated in Section 16(A)(ii) above the portion of the Premises damaged by such Casualty in which case this Lease shall continue in full force and effect; or (b) terminate this Lease.

17. **HAZARDOUS MATERIALS.**

- A. **Definitions.** As used in this Lease, the term "Environment Law(s)" means any past, present or future Federal, state or local Law relating to (a) the environment, human health or safety, including, without limitation, emissions, discharges, releases or threatened releases of Hazardous Materials (as defined below) into the environment (including, without limitation, air, surface water, groundwater or land), or (b) the manufacture, generation, refining, processing, distribution, use, sale, treatment, receipt, storage,

disposal, transport, arranging for transport, or handling of Hazardous Materials. As used in this Lease, the term "Hazardous Materials" means and includes any hazardous or toxic materials, substances or wastes as now or hereafter designated or regulated under any Environmental Laws including, without limitation, asbestos, petroleum, petroleum hydrocarbons and petroleum based products, urea formaldehyde foam insulation, polychlorinated biphenyls ("PCBs"), and freon and other chlorofluorocarbons.

- B. **Prohibition.** Except for ordinary and general office supplies, such as copier toner, liquid paper, glue, ink and common household cleaning materials, and motor vehicle fuel stored in fuel tanks of motor vehicles used on site in compliance with all Environmental Laws (some or all of which may constitute Hazardous Materials), HARD agrees not to cause or permit any Hazardous Materials to be brought upon, stored, used, handled, generated, released or disposed of on, in, under or about the Premises by HARD, its officers, employees, agents, assignees, licensees, contractor or invitees (collectively, "HARD's Parties"), without the prior written consent of County, which consent County may withhold in its sole and absolute discretion.
- C. **Use.** HARD represents and warrants to County that HARD does not use, generate, release, dispose of, store or maintain on the Premises, any Hazardous Materials except for normal office and janitorial materials. Upon the expiration of the Term or earlier termination of this Lease, HARD agrees to promptly remove from the Premises, at its sole cost and expense, any and all Hazardous Materials, including any equipment or systems containing Hazardous Materials which are installed, brought upon, stored, used, generated or released upon, in, under or about the Premises or any portion thereof by HARD or HARD's Parties. To the fullest extent permitted by law, HARD agrees promptly to indemnify, defend and hold harmless County and County's Board of Supervisors, officials, officers, directors, managers, employees, agents, contractors, successors and assigns (collectively, "County Parties") from and against any and all claims, damages, judgments, suits, causes of action, losses, liabilities, penalties, fines, expenses and costs (including, without limitation, clean-up, removal, remediation and restoration costs, sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees and court costs) which arise or result from the presence of Hazardous Materials on, in, under or about the Premises and which are caused or permitted by HARD or any of HARD's Parties, but excepting the presence of Hazardous Materials existing on the Property prior to the commencement of the Term. The provisions of this Article will survive the expiration of the Term or earlier termination of this Lease.
- D. **Notification of Mold and Water.** HARD shall give County written notice of any evidence of Mold, water leaks or water infiltration in the Premises promptly upon discovery of same. At its expense, HARD shall investigate, clean up and remediate any Mold in the Premises. Investigation, clean up and remediation may be performed only after HARD has County's written approval of a plan for such remediation. All clean up and remediation shall be done in compliance with all applicable laws and to the

reasonable satisfaction of County. As used in this Lease, "Mold" means mold, fungi, spores, microbial matter, mycotoxins and microbiological organic compounds.

- E. **HARD's Obligations.** HARD shall cooperate fully at all times with County and abide by all reasonable regulations and requirements for the proper functioning and protection of the Premise's services and systems as provided in the Operating Agreement.
- F. **Environmental Questionnaire; Disclosure.** HARD shall disclose annually to County in writing the names and amounts of all Hazardous Materials, or any combination thereof (if any), that were stored, generated, used or disposed of on, under or about the Premises for the twelve (12) month period prior to such date. In addition to the foregoing, HARD shall promptly notify County of, and shall promptly provide County with true, correct, complete and legible copies of all of the following environmental items relating to the Premises (if applicable): reports filed pursuant to any self-reporting requirements; reports filed pursuant to any Environmental Laws or this Lease; all permit applications, profits, monitoring reports, workplace exposure and community exposure warnings or notices, and all other reports, disclosures, plans or documents (even those that may be characterized as confidential) relating to water discharges, air pollution, waste generation or disposal, underground storage tanks or Hazardous Materials; all orders, reports, notices, listings and correspondence (even those that may be considered confidential) of or concerning the release, investigation, compliance, clean up, remedial and corrective actions, and abatement of Hazardous Materials whether or not required by Environmental Laws; and all complaints, pleadings and other legal documents filed against HARD related to HARD 's use, handling, storage or disposal of Hazardous Materials on the Premises.
- G. **Inspection; Compliance.** County and County Parties shall have the right, but not the obligation, to inspect, investigate, sample and/or monitor the Premises, including any air, soil, water, groundwater or other sampling, and any other testing, digging, drilling or analyses, at any time upon forty-eight (48) prior written notice to determine whether HARD is complying with the terms of this Section 17. HARD shall provide County with access to all relevant facilities, records and personnel, but such access shall not interfere with HARD's operation obligations hereunder. If HARD is not in compliance with any of the provisions of this Section 17 or in the event of a release of any Hazardous Materials on, under, from or about the Premises, County and County Parties shall have the right, but not the obligation, without limitation on any of County's other rights and remedies under this Lease, to immediately enter upon the Premises with as much prior notice as reasonably possible under the circumstances to perform HARD's obligations under this Section 17 at HARD's expense, including without limitation the taking of emergency or long term remedial action. County and County Parties shall endeavor to minimize interference with HARD's operations but shall not be liable for any such interference and HARD's inability to perform its duties and obligations herein occasioned by such interference shall not on its own be deemed to be a default hereunder. In addition,

County shall have the right, but not the obligation, to join and participate in any legal proceedings or actions initiated in connection with any claims or causes of action arising out of the alleged storage, generation, use or disposal by HARD or HARD's Parties of Hazardous Materials on, under, from or about the Premises.

- H. **HARD Obligations.** If the presence of any Hazardous Materials on, under or about the Premises caused or permitted by HARD or HARD's Parties but excepting Hazardous Materials on the HARD Property between the commencement of the term of the Ground Lease and the commencement of the Term of this Facilities Lease results in (i) injury to any person, (ii) injury to or contamination of the Premises, or (iii) injury to or contamination of any real or personal property wherever situated, HARD, at its sole cost and expense, shall promptly take all actions necessary to return the Premises to the condition existing prior to the presence of such Hazardous Materials on the Premises and to remedy or repair any such injury or contamination. Without limiting any other rights or remedies of County under this Lease, HARD shall pay the cost of any cleanup work performed on, under or about the Premises as required by this Lease or any Environmental Laws in connection with the removal, disposal, neutralization or other treatment of such Hazardous Materials caused or permitted by HARD or HARD's Parties. If County has reason to believe that HARD or HARD's Parties may have caused or permitted the release of any Hazardous Materials on, under, from or about the Premises, then County may require HARD, at HARD's sole cost and expense, to conduct reasonable monitoring activities on or about the Premises satisfactory to County, in its sole and absolute judgment, concerning such release of Hazardous Materials on, under, from or about the Premises. Notwithstanding anything to the contrary contained in the foregoing, HARD shall not, without County's prior written consent, take any remedial action in response to the presence of any Hazardous Materials on, under or about the Premises, or enter into any settlement agreement, consent decree or other compromise with any governmental agency with respect to any Hazardous Materials claims; provided, however, County's prior written consent shall not be necessary in the event that the presence of Hazardous Materials on, under or about the Premises (i) poses an immediate threat to the health, safety or welfare of any individual, or (ii) is of such a nature that an immediate remedial response is necessary and it is not possible to obtain County's consent before taking such action. HARD's failure to timely comply with this Subsection or any other Subsection of this Section shall constitute an event of default under this Lease.
- I. **HARD's Responsibility at Conclusion of Lease.** Promptly upon the expiration of the Term or sooner termination of this Lease, HARD shall confirm in writing to County that (i) HARD has made a diligent effort to determine whether any Hazardous Materials are on, under or about the Premises, as a result of any acts or omissions of HARD or HARD's Parties, and (ii) to HARD's knowledge, no such Hazardous Materials exist on, under or about the Premises, other than as specifically identified to County by HARD in writing.

The disclosure required by this Subsection shall not relieve HARD of any greater disclosure requirements that may exist under law. If HARD discloses the existence of Hazardous Materials on, under or about the Premises or if County at any time discovers that HARD or HARD's Parties caused or permitted the release of any Hazardous Materials on, under, from or about the Premises, but not including Hazardous Materials placed on, under or about the Premises by County or County Parties, HARD shall, at County's request, immediately prepare and submit to County within sixty (60) days after such request a comprehensive plan, subject to County's approval, specifying the actions to be taken by HARD to clean up the Hazardous Materials and return the Premises to the condition existing prior to the introduction of such Hazardous Materials. Upon County's approval of such cleanup plan, HARD shall, at HARD's sole cost and expense, without limitation on any rights and remedies of County under this Lease or at law or in equity, immediately implement such plan and proceed to cleanup such Hazardous Materials in accordance with all Environmental Laws and as required by such plan and this Lease.

18. **CONDEMNATION.**

- A. **Substantial or Partial Taking.** Subject to the provisions hereinbelow, either party may terminate this Lease if any material part of the Premises is taken or condemned for any public or quasi-public use under law, by eminent domain or private purchase in lieu thereof (a "Taking"). The terminating party shall provide written notice of termination to the other party within thirty (30) days after it first receives notice of the Taking. The termination shall be effective as of the effective date of any order granting possession to, or vesting legal title in, the condemning authority. If this Lease is not terminated, the Parties shall meet and confer regarding all terms and conditions of this Lease and agree to such changes and modification thereto to account for any reduction in the square footage of the Premises, and make appropriate amendments to the Operating Agreement. All compensation awarded for a Taking of the Property or the Premises shall be provided to County. HARD may file a separate claim for HARD's furniture, fixtures, equipment and other personal property, loss of goodwill and HARD's reasonable relocation expenses.
- B. **Temporary Taking.** In the event of a Taking of the Premises or any part thereof for temporary use, (a) this Lease shall be and remain unaffected thereby and Rent shall not abate, and (b) HARD shall be entitled to receive for itself such portion or portions of any award made for such use with respect to the period of the Taking which is within the Term, provided that if such taking shall remain in force at the expiration of the Term or sooner termination of this Lease, HARD shall perform its obligations with respect to surrender of the Premises and shall pay to County the portion of any award which is attributable to any period of time beyond the termination date. For purpose of this Section a temporary taking shall be defined as a taking for a period of two hundred seventy (270) days or less.

- C. **Waiver.** HARD hereby waives any rights it may have pursuant to any applicable laws in regards to this Section 18 against County (including, without limitation, any rights HARD might otherwise have pursuant to Section 1265.130 of the California Code of Civil Procedure) and agrees that the provisions hereof shall govern the Parties' rights in the event of any Taking.
19. **MUTUALITY OF OBLIGATION.** The obligations and covenants of the County, and HARD's obligation to pay rent and other HARD obligations and covenants, arising under or related to this Lease, are interdependent.
20. **TAXES.** The Parties acknowledge that as a public agency, HARD is exempted from property taxation under current California law. If the law changes, or any interpretation of the law by a California Court determines otherwise, HARD shall be responsible for the payment of property taxes, including taxes for possessory interest. HARD is responsible for any and all taxes, fees and service charges other than property taxes, including but not limited to parcel taxes, special taxes, user fees, and other government charges that are an incidence of property ownership. If HARD fails to pay timely any taxes, fees, services charge or similar, and its failure to do so imperils the County's continued ownership of the Premises, the County may at its sole discretion pay any amounts due and owing, and recover the same from HARD. HARD's failure to repay County for any amounts paid out by County under this section within 30 days written notice of the same shall be a default under Section 25 below.
21. **HEADINGS.** The headings used in this Lease are not a part of this Lease and shall have no effect upon the construction or interpretation of any part hereof.
22. **SEVERABILITY.** If any term or provision of the Lease shall, to any extent, be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the Lease shall not be affected thereby, and each term and provision of the Lease shall be valid and be enforceable to the fullest extent permitted by law.
23. **NON-DISCRIMINATION.** HARD agrees that no person in the United States shall on the grounds of race, color, religion, national origin, sex, age, handicapping condition, or sexual preference be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity carried out in whole or in part within the Premises. HARD shall not, on the grounds of race, color, religion, national origin, sex, age, handicapping condition, or sexual preference:
- A. Deny any service or other benefit provided in the Premises.
 - B. Provide a lesser degree of service or other benefit from that provided to others in the Premises.

- C. Restrict in any way the enjoyment of any advantage or privilege enjoyed by others receiving services or benefits within the Premises.
24. **NO WAIVER.** No failure by either party to insist upon the strict performance of any provision of this Lease or to exercise any right or remedy for any breach and no acceptance of full or partial rent or other performance by either party during the continuance of any breach shall constitute a waiver of any such breach of such provision.
25. **DEFAULT.**
- The occurrence of any of the following shall constitute a material breach of this Lease and an event of default:
- A. A failure by HARD or County to observe and perform any of the material provisions, where such failure continues for thirty (30) days after written notice thereof from the other party, excepting any period of time a Force Majeure, as defined and described in Section 29, exists.
- If the nature of the default is such that it may be cured but more than thirty (30) days are reasonably required for its cure, then the defaulting party shall not be deemed to be in default if that party commences such cure within said thirty (30) day period and thereafter diligently prosecute such cure to completion, which completion shall occur not later than sixty (60) days from the date of the default notice, unless otherwise agreed to in writing by the non-defaulting Party.
- B. A general assignment by HARD or any guarantor or surety of HARD's obligations hereunder ("Guarantor") for the benefit of creditors without the written consent of County.
- C. The filing of a voluntary petition in bankruptcy by HARD or the filing by or against HARD of a petition, voluntary or involuntary, for reorganization, or the filing of an involuntary petition by the creditors of HARD, said involuntary petition remaining undischarged for a period of one hundred twenty (120) days.
26. **REMEDIES UPON DEFAULT.**
- A Party's remedies for any default by the other Party include the following:
- A. **Termination.** In the event of any default by a Party under Section 25(A) above which remains uncured, then in addition to any other remedies available to the non-defaulting Party at law or in equity, that Party shall have the immediate option to terminate this Lease and all rights of the defaulting Party hereunder by giving written notice of such intention to terminate. The non-defaulting Party may recover from the defaulting Party any reasonable amount necessary to compensate that Party for all the detriment directly caused by defaulting Party's failure to perform its obligations under this Lease. In the event that County shall elect to so terminate this Lease, then County may recover from HARD the worth at the time of award of any unpaid and additional rent which had been earned at the time of such termination.

- B. **Continuation of Lease; Re-Entry Rights.** In addition to any other remedies available to County for a default by HARD under this Lease, at law or in equity, County shall also have the right to (a) continue this Lease in effect after HARD's default and recover Rent as it becomes due, and (b) with or without terminating this Lease, to re-enter the Premises and remove all persons and property from the Premises; such property may be removed, stored and/or disposed of as permitted by applicable law. No re-entry or taking possession of the Premises by County pursuant to this Section and no acceptance of surrender of the Premises or other action on County's part, shall be construed as an election to terminate this Lease unless a written notice of such intention be given to HARD or unless the termination is decreed by a court of competent jurisdiction. No notice from County or notice given under a forcible entry and detainer statute or similar laws will constitute an election by County to terminate this Lease unless such notice specifically so states. Notwithstanding any reletting without termination by County because of any default, County may at any time after such reletting elect to terminate this Lease for any such default.
- C. **County's Right to Cure.** Except as specifically provided otherwise in this Lease, all covenants and agreements by HARD under this Lease shall be performed by HARD at HARD's sole cost and expense and without any abatement or offset of Rent. In the event of any Default by HARD, County may, without waiving or releasing HARD from any of HARD's obligations, make such payment or perform such other act as required to cure such Default on behalf of HARD. All sums so paid by County and all necessary incidental costs incurred by County in performing such other acts shall be payable by HARD to County within thirty (30) days after demand as Additional Rent.
- D. **Rights and Remedies Cumulative.** All rights, options and remedies of the Parties contained in this Section 26 and elsewhere in this Lease shall be construed and held to be cumulative, and no one exclusive of the other, and each Party shall have the right to pursue any one or all of such remedies or any other remedy or relief which may be provided by law or in equity, whether or not stated in this Lease. Nothing in this Section 26 shall be deemed to limit or otherwise affect the indemnification obligations under any provision of this Lease.
27. **TERMINATION OF MOU.** Upon termination of the ARMOU, the County may by notice in writing within 90 days terminate this Lease, provided, however, that the Parties shall meet and confer prior to termination becoming effective, and the parties may mutually agree to mediate any dispute, in which case termination shall not become effective until the mediation process is complete.
28. **SALE OF BUILDING.**
- A. If the County desires to sell the Cherryland Community Center or the Property, HARD shall have the option to purchase the Cherryland Community Center and/or the Property, as is being offered for sale. If County desires to sell the Cherryland Community Center and/or Property, it must, prior to performing any actions under the State Surplus Land Act, first send written notice to HARD of the same, providing 90 days for HARD to indicate its intention to purchase. HARD shall send its intention in writing in accordance with the notice provisions of Section 33 ("the Purchase Option Notice"). If HARD fails to send its Purchase Option Notice within the 90-day period,

then COUNTY shall have no further responsibility or obligation to HARD in regards to the sale of the Cherryland Community Center or the Property, except as may be required under the State Surplus Lands Act.

- B. If HARD sends its Purchase Option Notice to COUNTY, then the Parties shall enter into exclusive good faith negotiations to determine the purchase price and other terms and conditions of sale, in accordance with the following. The purchase price shall be for the then fair-market value ("Fair Market Value") of the Cherryland Community Center and/or the Property. The determination of Fair Market Value shall be made by an appraiser(s) retained by each Party at its discretion, taking explicitly into consideration the following factors affecting the comparability of transactions: (1) the sale price for comparable transactions executed no more than twelve (12) months prior to the date of the Purchase Option Notice; (2) location of comparable transactions; (3) size of the transacted property; (4) permitted uses of the space; (5) the condition of the transacted property; and (6) any other relevant factor considered in a real estate transaction of this nature.
- i. If County and HARD fail to reach agreement within thirty (30) days following the Purchase Option Notice, then each party shall make a separate determination of the Fair Market Value within fifteen (15) business days, and such determination shall be submitted to an appraiser and arbitration, if necessary, in accordance with Sections 27B (ii) through 27B (viii) below.
 - ii. The County and HARD shall each appoint one California license real estate appraiser who shall have been active over the five (5) year period ending on the date of such appointment in the appraisal of commercial buildings in the Alameda County Metropolitan area. Each such appraiser shall be appointed within (15) business days after the parties fail to reach agreement on the purchase price as specified in Section 27B (i) above.
 - iii. The two (2) appraisers so appointed shall within thirty (30) business days of the date of the appointment of the last appointed appraiser, jointly decide on the Fair Market Value. If the two (2) appraisers are unable to agree within the specified thirty (30) business days of the last appointed appraiser, they shall jointly agree upon and appoint an arbitrator who shall be qualified under the same real estate appraisal criteria set forth above for qualification of the initial two (2) appraisers.
 - iv. The arbitrator shall within sixty (60) calendar days reach a decision as to the amount of the purchase price, provided that such amount shall be no less than the lowest and no greater than the highest of the two appointed appraisers' findings. The arbitrator shall notify HARD and County thereof. The arbitration shall be conducted in a manner and with rules appropriate for this transaction and shall be at the sole discretion of the appointed arbitrator.
 - v. The decision of the arbitrator shall be binding upon HARD and the County, absent fraud or intentional misconduct of the arbitrator.

- vi. If the two (2) appraisers fail to agree upon and appoint an arbitrator, or if both Parties fail to appoint an appraiser, then the appointment of the arbitrator shall be selected by the Presiding Judge of the Alameda County Superior Court, or his or her designee, from an approved list of qualified MAI appraisers or nationally recognized valuation firms, but subject to the instructions set forth in this Section 27B.
 - vii. HARD and County shall each pay for its own appraisals and appraisers. The costs of the arbitration shall be paid by HARD and County equally.
 - viii. If HARD fails to appoint an appraiser within the applicable time frames, then County, upon ten (10) days' notice to HARD, may terminate the sale process set forth in this Section 28 and proceed to sell the Cherryland Community Center or Property to another party. If County fails to appoint an appraiser within the applicable time frames, then HARD may seek the appointment of an appraiser as set forth in (vi), above, and the sale price shall be the average of the value determined by the HARD appraiser and the value determined by the appointed appraiser.
 - ix. The stated due dates and deadlines in this paragraph may be extended by mutual agreement or by decision of the arbitrator. The arbitrator shall consider the Parties' diligence and the necessity of timely completing the arbitration in making such a determination on any requested extension.
29. **FORCE MAJEURE.** Any prevention, delay or stoppage due to acts of God, war, judicial orders, civil commotion, and other causes beyond the reasonable control of either Party of an act one of the Parties is obligated to perform, shall excuse the performance by such Party for a period equal to any such prevention, delay or stoppage and the performance of such act shall be extended for a period equivalent to the period of prevention, delay or stoppage. The Party whose performance is prevented, delayed or stopped by an event for Force Majeure shall provide written notice of such to the other Party and identify therein the event of Force Majeure, the date of commencement of the event and the length of delay in the performance of the act required hereunder. Said Party shall immediately recommence performance of the required act upon the termination of the Force Majeure event.
30. **SURVIVAL.** County's and HARD's obligations of Indemnification and Hazardous Materials, and such other obligations so specified in this Lease, shall survive the expiration of the Term or any sooner termination of this Lease. This paragraph is intended to

supplement and not to limit other provisions of this Lease pertaining to indemnification and Hazardous Materials.

31. **SUCCESSORS BOUND.** All covenants, agreements, terms and conditions contained in this Lease shall bind, and inure to the benefit of, the Parties and their respective heirs, executors, administrators, successors, and assigns.
32. **TIME OF THE ESSENCE.** Time is of the essence of this Lease and applies to all times, restrictions, conditions and limitations contained herein.
33. **ENTIRE AGREEMENT.** This Lease along with any exhibits and attachments hereto constitutes the entire agreement between County and HARD relative to the Premises and this Lease, and the exhibits and attachments may be altered, amended or revoked only by an amendment in writing signed by both County (as approved by the Alameda County Board of Supervisors, if necessary) and HARD (as approved by the Board of Directors, if necessary). County and HARD agree hereby that all prior or contemporaneous written or oral agreements between and among themselves and their agents or representatives relative to the leasing of the Premises are merged in or revoked by this agreement.
34. **NOTICES.**
 - A. **Method of Delivery.** Notice shall be sufficiently given for all purposes as follows:
 1. When personally delivered to the recipient, notice is effective on delivery.
 2. When mailed first-class to the last address of the recipient known to the party giving notice, notice is effective five days after mailing.
 3. When mailed by certified mail with return receipt requested, notice is effective on receipt if delivery is confirmed by a return receipt.
 4. When delivered by *overnight delivery such as Federal Express/United Parcel/DHL WorldWide Express* with charges prepaid or charged to the sender's account, notice is effective on delivery if delivery is confirmed by the delivery service.
 5. When sent by telex or fax to the last telex or fax number of the recipient known to the party giving notice, notice is effective on receipt as long as (a) a duplicate copy of the notice is promptly given by first-class or certified mail or by overnight delivery or (b) the receiving party delivers a written confirmation of receipt. Any notice given by telex or fax shall be considered to have been received on the next business day if it is received after 5 p.m. (recipient's time) or on a nonbusiness day.
 - B. **Refused, Unclaimed, or Undeliverable Notices.** Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified shall be considered to be effective as of the first date that the notice was

refused, unclaimed, or considered undeliverable by the postal authorities, messenger, or overnight delivery service.

- C. **Address.** Notices given pursuant to this Paragraph, shall be addressed to the respective parties, as identified under Notices in the in the Fundamental Lease Provisions.
35. **GOVERNING LAW.** This Lease shall be interpreted and enforced under the laws of the State of California. Any action to interpret or enforce the terms and conditions of this Lease shall be filed in the Superior Court of Alameda County or such other court of competent jurisdiction as agreed to by the Parties. If litigation is commenced between the Parties, then each Party shall bear its own attorney's fees and costs.
36. **STATEMENT OF LEASE.** HARD will, within thirty (30) days following receipt of a joint written request from County and a prospective lender or purchaser of the Premises, execute and deliver to County a letter stating that the same is issued subject to the conditions stated in this clause and, if such is the case, that (1) the Lease is in full force and effect; (2) the date to which the rent and other charges have been paid in advance, if any; and (3) whether any notice of default has been issued.

IN WITNESS WHEREOF, the parties have executed this Lease on the dates appearing below their respective signatures.

HAYWARD AREA RECREATION
AND PARK DISTRICT (HARD)

COUNTY OF ALAMEDA (County)

By: _____

By: _____

Scott Haggerty
President, Board of Supervisors
County of Alameda, State of California

Its: _____

Name: _____

Date _____

Date _____

Approved as to Form
DONNA ZIEGLER
COUNTY COUNSEL

By _____

I hereby certify under penalty of perjury that the President of the Board of Supervisors was duly authorized to execute this document on behalf of the County of Alameda by a majority vote of the Board on (date) _____ and that a copy has been delivered to the President as provided by Government Code Section 25103.

Date _____

By _____

Clerk of the Board
County of Alameda, State of California

