

# 34827

## MANAGEMENT AGREEMENT

(4321 Atlantic Avenue)

1. Parties. The parties to this Management Agreement ("Agreement") are the City of Long Beach ("City"), and Bixby Knolls Business Improvement Association ("BKBI"). This Agreement is entered into as of February 15, 2017 pursuant to a minute order adopted by the City Council of the City of Long Beach at its meeting held on February 14, 2017. This Agreement supersedes in their entirety any existing agreements between City and BKBI relating to the Property (as defined below).
2. Management. BKBI agrees to manage and maintain certain City-owned real property located at 4321 Atlantic Avenue more particularly described in Exhibit "A" which is attached and by this reference made a part of this Agreement (the "Real Property"), which includes an approximate 24,390 square-foot building (the "Building", and together with the Real Property, the "Property"). The Property shall be used for (i) general office purposes, (ii) special community meetings, and (iii) arts, theater, dance, recreation and other cultural special community events. BKBI shall have the right to license to, and/or authorize the use of the Property by, third-parties (including City) provided that such use otherwise complies with this Agreement. BKBI agrees to comply with all statutes, ordinances, rules, orders, regulations of federal, state, county and city governments regulating the management of the Property by BKBI. BKBI will not use or permit the use of the Property in any manner that will create or tend to create a nuisance. The restrictions in this paragraph will apply to all agents, employees and licensees of BKBI.
3. Non-Property Interest. The parties understand and acknowledge that this Agreement is primarily a contract for services and this Agreement does not grant BKBI a recognizable property interest in or to the Property. BKBI shall have exclusive use of approximately 500 square feet of the Building for general office uses and the conduct of its management operations under this Agreement. BKBI's rights to the remaining portion of the Building shall be non-exclusive.
4. Term/Termination. The term of this Agreement shall be month-to-month. This Agreement may be terminated by either party at any time upon the delivery of thirty (30) days advance written notice.
5. Maintenance of Property. BKBI shall be obligated, at its own cost and expense, to provide day-to-day maintenance to the Property in a manner suitable for its intended use. BKBI shall not be required to make major repairs or capital improvements.
6. Waiver of Claims. Neither the City of Long Beach, nor any of its officers, agents and employees (collectively "City"), will be liable and BKBI waives all claims for damage to persons or property sustained by BKBI or any occupant of the

Property resulting from the Property or any part of it, becoming out of repair, resulting from any accident in or about the Property or resulting directly or indirectly from any act or neglect of BKBIA, occupant or of any other person including BKBIA's agents and employees. All property belonging to BKBIA or any occupant of the Property will be there at the risk of BKBIA or such other person only and City will not be liable for damages or theft or misappropriation. BKBIA further expressly waives any rights to relocation benefits or other compensation pursuant to the California Relocation Act or applicable laws governing eminent domain.

7. Insurance.

A. As a condition precedent to the effectiveness of this Agreement, BKBIA shall procure and maintain, at BKBIA's expense for the duration of this Agreement, from insurance companies that are admitted to write insurance in California and have ratings of or equivalent to A:V by A.M. Best Company or from authorized non-admitted insurance companies subject to Section 1763 of the California Insurance Code and that have ratings of or equivalent to A:VIII by A.M. Best Company, the following insurance:

- (a) Commercial general liability insurance (equivalent in scope to ISO form CG 00 01 11 85 or CG 00 01 10 93) in an amount not less than \$1,000,000 per each occurrence and \$2,000,000 general aggregate. This coverage shall include but not be limited to broad form contractual liability, cross liability, independent contractors liability, and products and completed operations liability. City, its boards and commissions, and their officials, employees and agents shall be named as additional insureds by endorsement (on City's endorsement form or on an endorsement equivalent in scope to ISO form CG 20 10 11 85 or CG 20 26 11 85 or both CG 20 10 07 04 and CG 20 37 07 04 or both CG 20 33 07 04 and CG 20 37 07 04), and this insurance shall contain no special limitations on the scope of protection given to City, its boards and commissions, and their officials, employees and agents. This policy shall be endorsed to state that the insurer waives its right of subrogation against City, its boards and commissions, and their officials, employees and agents.
- (b) Workers' Compensation insurance as required by the California Labor Code and employer's liability insurance in an amount not less than \$1,000,000. This policy shall be endorsed to state that the insurer waives its right of subrogation against City, its boards and commissions, and their officials, employees and agents.
- (c) Professional liability or errors and omissions insurance in an amount not less than \$1,000,000 per claim.

- (d) Commercial automobile liability insurance (equivalent in scope to ISO form CA 00 01 06 92), covering Auto Symbol 1 (Any Auto) in an amount not less than \$500,000 combined single limit per accident.
- B. Any self-insurance program, self-insured retention, or deductible must be separately approved in writing by City's Risk Manager or designee and shall protect City, its officials, employees and agents in the same manner and to the same extent as they would have been protected had the policy or policies not contained retention or deductible provisions.
- C. Each insurance policy shall be endorsed to state that coverage shall not be reduced, non-renewed or canceled except after thirty (30) days prior written notice to City, shall be primary and not contributing to any other insurance or self-insurance maintained by City, and shall be endorsed to state that coverage maintained by City shall be excess to and shall not contribute to insurance or self-insurance maintained by BKBIA. BKBIA shall notify City in writing within five (5) days after any insurance has been voided by the insurer or cancelled by the insured.
- D. If this coverage is written on a "claims made" basis, it must provide for an extended reporting period of not less than one hundred eighty (180) days, commencing on the date this Agreement expires or is terminated, unless BKBIA guarantees that BKBIA will provide to City evidence of uninterrupted, continuing coverage for a period of not less than three (3) years, commencing on the date this Agreement expires or is terminated.
- E. BKBIA shall deliver to City certificates of insurance and the endorsements for approval as to sufficiency and form. In addition, BKBIA shall, within thirty (30) days prior to expiration of the insurance, furnish to City certificates of insurance and endorsements evidencing renewal of the insurance. City reserves the right to require complete certified copies of all policies of BKBIA, at any time. BKBIA shall make available to City's Risk Manager or designee all books, records and other information relating to this insurance, during normal business hours.
- F. Any modification or waiver of these insurance requirements shall only be made with the approval of City's Risk Manager or designee. Not more frequently than once a year, City's Risk Manager or designee may require that BKBIA change the amount, scope or types of coverages required in this Section if, in his or her sole opinion, the amount, scope or types of coverages are not adequate. The procuring or existence of insurance shall not be construed or deemed as a limitation on liability relating to Consultant's performance or as full performance of or compliance with the indemnification provisions of this Agreement.

8. Property Expenses. BKBIA will pay for all utilities and similar services furnished to the Property, including but not limited to electricity, gas, water and telephone. BKBIA will pay all taxes levied against BKBIA or the Property, if any. BKBIA acknowledges and understands that despite the stated intention of the parties, the County of Los Angeles or other taxing jurisdiction may determine that this Agreement constitutes an interest subject to a possessory interest tax, and in such event BKBIA agrees it shall be solely liable for payment of all such possessory interest taxes.
9. Indemnity by BKBIA. BKBIA agrees that it will defend, protect and save and keep City, its officers, agents and employees forever harmless and indemnified against and from any penalty or damage or charges or other liability, whether occasioned by the actions or omissions of BKBIA or those holding under BKBIA from all claims, loss, cost, damage or expenses, including attorney's fees, arising out of or from any accident or other occurrence on or about the Property or arising out of any failure of BKBIA in any respect to comply with and perform all the requirements and provisions of this Agreement.
10. Events of Default. It is expressly agreed that in the event that BKBIA will fail, neglect or refuse to keep and perform any of the covenants, conditions, stipulations or agreements, covenanted and agreed to be kept and performed by it and if the default should continue for a period of more than ten (10) days after notice is given to BKBIA by City, City shall have the right to cancel or annul this Agreement immediately.
11. Remedies Will Be Cumulative. All rights and remedies of City enumerated in this Agreement will be cumulative and none will exclude any other right or remedy allowed by law. Likewise, the exercise by City of any remedy provided for or allowed by law will not be to the exclusion of any other remedy.
12. Waiver. One or more waivers of any covenant, term or condition of this Agreement by either party will not be construed by the other party as a waiver of subsequent breach of the same covenant, term or condition. The consent or approval of either party to or of any act by the other party of a nature requiring consent or approval will not be deemed to waive or render unnecessary consent to or approval of any subsequent similar act.
13. Anti-Discrimination. BKBIA agrees that this Agreement is made and accepted on and subject to the following conditions: No person shall be subjected to discrimination on the basis of race, religion, national origin, color, age, gender, sexual orientation, AIDS, HIV status, handicap or disability, in the licensing, transferring, use, occupancy, hiring, employment, tenure or employment of the Property. BKBIA agrees that compliance with the Americans with Disabilities Act of 1990 ("ADA") shall be its sole responsibility and shall defend, indemnify and hold harmless City for any liability arising from failure to comply therewith.

14. Notices. Any and all notices to be given under this Agreement or required by law to be served on either of the parties may be given or served by certified mail deposited in the United States mail, postage prepaid, addressed as follows:

To City:                   City of Long Beach  
                                  333 West Ocean Boulevard, 13th Floor  
                                  Long Beach, California 90802  
                                  Attention: City Manager

To BKBIA:                 Bixby Knolls Business Improvement Association  
                                  4321 Atlantic Avenue  
                                  Long Beach, CA 90807  
                                  Attention: Executive Director

Any notices may be personally served on the party to be given notice. Any notice served by means of the United States mail will be effective from the date of mailing.

15. Entire Agreement. It is understood that there are no oral agreements between the parties affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations and understanding, if any, between the parties and none will be used to interpret or construe this Agreement.

IN WITNESS WHEREOF, the parties execute this Agreement as of the date first written above.

Dated: 11/9/, 2017

CITY OF LONG BEACH

By [Signature]

Patrick H. West  
City Manager

EXECUTED PURSUANT  
TO SECTION 301 OF  
THE CITY CHARTER.

CITY Tom Modica  
Assistant City Manager

BIXBY KNOLLS BUSINESS  
IMPROVEMENT ASSOCIATION

Dated: 9/19, 2017

By [Signature]

Dated: 9/19, 2017

By [Signature]

BKZIA

Approved as to form this 21 day of September, 2017.

CHARLES PARKIN, City Attorney  
of the City of Long Beach

By [Signature]  
Deputy City Attorney

**EXHIBIT A**

**LEGAL DESCRIPTION**

**THE LAND REFERRED TO HEREIN IS SITUATED IN THE CITY OF LONG BEACH, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:**

**PARCEL 1:**

**LOTS 9, 10, 11 AND 12 OF TRACT NO. 10579, IN THE CITY OF LONG BEACH, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 161, PAGES 20 AND 21 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.**

**PARCEL 2:**

**THOSE PORTIONS OF LOTS 57 AND 58 OF TRACT NO. 10579, IN THE CITY OF LONG BEACH, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 161, PAGES 20 AND 21 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:**

**BEGINNING AT THE MOST NORTHERLY CORNER OF SAID LOT 58; THENCE SOUTH 61° 21' EAST 9.59 FEET TO THE NORTHEASTERLY CORNER OF SAID LOT 58; THENCE SOUTH ALONG THE EAST LINE OF SAID LOTS 57 AND 58, A DISTANCE OF 155.37 FEET TO THE SOUTHERLY SIDE OF A 6 FOOT CONCRETE BLOCK WALL AS SAME EXISTED ON FEBRUARY 1, 1974; THENCE WEST ALONG THE SOUTHERLY SIDE OF SAID WALL, A DISTANCE OF 56.19 FEET TO THE CORNER THEREOF, BEING THE WESTERLY FACE OF SAID WALL; THENCE ALONG THE WESTERLY FACE OF SAID CONCRETE BLOCK WALL, NORTH 0° 34' 45" EAST 94.79 FEET AND NORTH 25° 46' WEST 29.81 FEET TO THE NORTHWESTERLY LINE OF SAID LOT 58; THENCE ALONG SAID NORTHWESTERLY LINE, NORTH 57° 20' EAST 71.02 FEET TO THE POINT OF BEGINNING.**

**PARCEL 3:**

**A NON-EXCLUSIVE EASEMENT FOR VEHICULAR PARKING AND PEDESTRIAN INGRESS AND EGRESS AND OTHER RELATED USES AND PURPOSES AS MORE PARTICULARLY SET FORTH UNDER PARAGRAPH 3 OF THAT CERTAIN RECIPROCAL EASEMENT AGREEMENT DATED MARCH 31, 1978, EXECUTED BY AARON SCHULTZ & SONS, INC., A CALIFORNIA CORPORATION, AND JOSEPH F. MULACH, JR, A MARRIED MAN, RECORDED IN THE OFFICIAL RECORDS OF LOS ANGELES COUNTY ON MARCH 31, 1978 AS INSTRUMENT NO. 78-341983**

OVER AND UPON THE "PARKING AREAS" OF LOTS 6, 7 AND 8 OF TRACT NO. 10579, IN THE CITY OF LONG BEACH, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 161, PAGES 20 AND 21 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, AS CREATED BY AND AS GRANTED TO AARON SCHULTZ & SONS, INC., A CALIFORNIA CORPORATION, IN SAID RECIPROCAL EASEMENT AGREEMENT, FOR THE TERMS OF YEARS WHICH CEASES AND TERMINATES ON DECEMBER 31, 2077.

**PARCEL 4:**

AN EASEMENT OVER THAT PORTION OF LOT 13 OF TRACT NO. 10579, IN THE CITY OF LONG BEACH, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 161 PAGES 20 AND 21 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID LOT 13; THENCE SOUTHERLY ALONG THE WESTERLY LINE OF SAID LOT 13, 0.37 FEET (37/100THS OF A FOOT); THENCE EASTERLY ALONG THE STUCCO FACE OF THE SOUTHERLY WALL OF THE EXISTING ONE STORY COMMERCIAL BUILDING, 116 FEET TO THE POINT OF INTERSECTION OF THE FACE OF SAID WALL WITH THE NORTHERLY LINE OF LOT 13 (BEING ALSO THE SOUTHERLY LINE OF LOT 12); THENCE WESTERLY ALONG SAID NORTHERLY LINE OF LOT 13 TO THE POINT OF BEGINNING FOR THE MAINTENANCE OF THE SOUTHERLY WALL OF PRESENTLY EXISTING BUILDING CONSTRUCTED PRINCIPALLY UPON LOTS 10, 11 AND 12 OF SAID TRACT NO. 10579, SO LONG AS SAID SOUTHERLY WALL SHALL EXIST, AS GRANTED TO AARON SCHULTZ AND SONS INC., A CALIFORNIA CORPORATION, BY THAT CERTAIN DOCUMENT RECORDED MAY 14, 1962 AS INSTRUMENT NO. 4415, IN BOOK D1613, PAGE 770 OF OFFICIAL RECORDS.

APN: 7139-001-900, 901 & 902 (4321 ATLANTIC AVE/4360 LINDEN AVE)

END OF LEGAL DESCRIPTION