

Meeting Date: 4/17/2014

Report Type: Staff/Discussion

Report ID: 2014-00255

Title: Approve Ground Lease with North Sacramento CJD, LLC for Chrysler, Jeep, Dodge, KIA Project

Location: District 2

Recommendation: Pass a Resolution 1) authorizing the City Manager to execute a 25-year ground lease agreement with North Sacramento CJD, LLC for development of a Chrysler, Jeep, Dodge, KIA dealership; and 2) finding that entering into the lease without bidding is in the City's best interest because special circumstances make the use of bidding inappropriate.

Contact: Sabrina Tefft, Project Manager, (916)808-3789, Jim Rinehart, Director, (916)808-5054, Economic Development Department

Presenter: Jim Rinehart, Economic Development Director, (916) 808-5054, Economic Development Department

Department: Economic Development Dept

Division: Citywide Development

Dept ID: 18001031

Attachments:

1-Description/Analysis

2-Resolution

3-Ground Lease - North Sacramento CJD LLC

City Attorney Review

Approved as to Form

Joseph Cerullo

4/9/2014 6:16:25 PM

Approvals/Acknowledgements

Department Director or Designee: Jim Rinehart - 3/28/2014 9:10:06 AM

Description/Analysis

Issue Detail: The City of Sacramento owns an approximately 2.787-acre site to the immediate east of the automobile dealership—Sacramento Chrysler Dodge Jeep RAM (the “**Chrysler Dealership**”)—located at Fulton Avenue and Business 80. Until 2004, the site was part of a 21-acre parcel that the City had leased to the Sacramento Trapshooting Club. After the club’s lease expired, the City remediated the entire 21-acre parcel to facilitate commercial development. In June 2007, the City leased the site to Raptan Investment Group, LLC. In October 2010, Raptan relinquished its lease on the southern portion of the 21-acre parcel, including the 2.787 acre site. In May 2011, the City sold the western 5.119 acres of the southern portion to Chrysler Group Realty Company, LLC, which subsequently developed the Chrysler Dealership. On June 7, 2012, the City agreed to negotiate exclusively (for up to 180 days) with Sacramento K, LLC for the lease of the 2.787-acre site. The negotiations resulted in the proposed ground lease between the City and North Sacramento CJD, LLC, a sister organization of Sacramento K, LLC.

Policy Considerations: The proposed lease is consistent with the City’s adopted 2013 Strategic Economic Development Plan and the goal of the City Council to expand economic development throughout the city. Staff believes that awarding the proposed lease without bidding is in the City’s best interest because the following special circumstances render bidding inappropriate: the proposed lessee, North Sacramento CJD, LLC, is an affiliate of the Chrysler Dealership located immediately adjacent to the 2.787-acre site.

Economic Impacts: Conducting automobile-sales operations on this site will directly result in an additional five to ten new jobs and will indirectly result in another two to four new jobs.

Environmental Considerations: On June 16, 2007, the City Council certified an Environmental Impact Report for the Fulton Avenue Development Project, which envisioned an auto dealership on the Property. Authorizing the proposed lease will not, by itself, cause a significant change in the environment.

Sustainability: Operating an automobile dealership (with ancillary activities) on this environmentally rehabilitated site helps meet the sustainability goal of reusing underutilized properties.

Commission/Committee Action: Not applicable.

Rationale for Recommendation: The proposed 25-year lease (with two 10-year extension options) at \$7,300 per month rent (with periodic CPI adjustments) will commence upon execution. North Sacramento CJD, LLC will conduct business related to the operation and construction of an automobile dealership, as well as related ancillary business such as repairing, storing, maintaining, and painting automobiles.

Approval of the lease allows North Sacramento CJD, LLC to expand its operations, and that will potentially increase the amount of sales tax generated by as much as \$145,000 per year—a valuable addition to the City’s economy.

Financial Considerations: Once the ground lease is executed, the 2.787-acre site will generate rental revenues of \$87,600 per year (with periodic CPI adjustments) for 25 years with the possibility of two 10-year extensions.

The rental revenues will be applied toward debt service on the 2006 Series B Capital Improvement Revenue Bonds. First year's sales-tax revenue is projected at an additional \$145,000 per year (less one-time CBRE broker commission of \$58,401.75) to be placed into the General Fund.

Local Business Enterprise (LBE): Not applicable.

RESOLUTION NO.

Adopted by the Sacramento City Council

APPROVAL OF GROUND LEASE BETWEEN THE CITY AND NORTH SACRAMENTO CJD, LLC

BACKGROUND:

- A. The City of Sacramento owns the property at 3701 Fulton Avenue, comprising 21+/- acres of Del Paso Regional Park (the “**Site**”).
- B. The City had leased the Site to the Sacramento Trapshooting Club since approximately 1915. The lease expired on September 30, 2004, but the Trapshooting Club continued to operate on the Site under a month-to-month agreement until the lease was terminated on June 30, 2006.
- C. In June 2007, the City Council approved a ground lease of the Site with Rapton Investment Group, LLC (“**Rapton**”). That lease was consistent with the City Council’s direction in 2002 that staff examine potential alternatives for the “highest and best” uses for the Site.
- D. In October 2010, Rapton relinquished its leasehold on the southern half of the Site.
- E. In February 2011, the City approved the sale of the southwest portion of the Site, approximately 5.119 acres, to Chrysler Group Realty Company, LLC, which subsequently developed the southwest portion as an automobile dealership, Sacramento Chrysler Dodge Jeep RAM (the “**Chrysler Dealership**”).
- F. In December 2013, the City approved the sale to Rapton of the northern half of the Site, comprising approximately 9.15 acres.
- G. An affiliate of the Chrysler Dealership, North Sacramento CJD, LLC, desires to lease from the City the southeast portion of the Site, comprising the approximately 2.787 acres immediately adjacent to the eastern side of the Chrysler Dealership.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

- Section 1. The facts set forth in the Background are correct.
- Section 2. The City Council hereby finds that it is in the City’s best interest to enter without bidding into the attached Ground Lease between the City and North Sacramento CJD, LLC because special circumstances make the use bidding inappropriate.
- Section 3. The City Council hereby approves the attached Ground Lease and authorizes the City Manager or his designee to sign the Ground Lease on the City’s behalf.

Section 4. If needed, the City Manager is authorized to make minor, non-substantive changes to the attached Ground Lease with the concurrence of the City Attorney.

Ground Lease

City of Sacramento and North Sacramento CJD, LLC



Assessor's Parcel Number 254-0310-004

Fulton Avenue at Business 80

Sacramento, California

(±2.787 acres)

April 17, 2014

Ground Lease
City of Sacramento and North Sacramento CJD, LLC

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EXHIBITS TO GROUND LEASE

- Exhibit A Description of the Property
- Exhibit B Description of the 21-acre Parcel Leased to Sacramento Trapshooting Club
- Exhibit C Form of Non-disturbance Agreement

GROUND LEASE

This Ground Lease, dated April __, 2014, for reference, is between the CITY OF SACRAMENTO, a California municipal corporation ("**Landlord**"); and NORTH SACRAMENTO CJD, LLC, a California limited-liability company ("**Tenant**").

Background

Landlord owns in fee the real property described in Exhibit A, comprising approximately 2.787 acres (the "**Property**"). Until 2004, the Property was part of a 21-acre parcel, depicted in Exhibit B, that Landlord leased to the Sacramento Trapshooting Club, which for nearly 80 years used the parcel as a shooting range. After the club's lease expired, Landlord remediated the 21-acre parcel (to remove lead, arsenic, and polynuclear aromatic hydrocarbons) in accordance with California law and subject to supervision by the County of Sacramento Environmental Management Department. The approved remediation actions—set out in a Final Response Plan dated February 21, 2007, and a Final Implementation Plan dated March 14, 2007 (collectively, the "**Remediation Plan**")—required Landlord to excavate the contaminated soil from the 21-Acre Parcel; to consolidate the excavated soil on the eastern side of the 21-Acre Parcel; and to cap the consolidated soil with a fabric membrane, twenty inches of clean soil, four inches of aggregate base, and four inches of asphalt concrete (the "**Impermeable Cap**").

When the remediation actions described above were completed in accordance with the Remediation Plan, the City and the County of Sacramento Environmental Management Department entered into two agreements: a *Maintenance Agreement* for the Impermeable Cap (City Agreement No. 2008-1001), which was recorded with the Sacramento County Clerk/Recorder in Book 20081218, Page 0870, of Official Records; and a *Covenant to Restrict Use of Property – Environmental Restriction* (City Agreement No. 2008-1002), which was recorded with the Sacramento County Clerk/Recorder in Book 20081218, Page 0871, of Official Records (collectively, the "**Remediation Agreements**").

Concurrently with the remediation actions described above, Landlord developed the 21-acre parcel for commercial use, taking the following steps: Landlord (1) certified an environmental-impact report that studied the effects of remediating and developing the 21-Acre Parcel; (2) reconfigured the 21-Acre Parcel into two legal parcels as depicted in Exhibit B, with one parcel north of the centerline of Rapton Lane and one south of the centerline; (3) changed the zoning designation of the 21-Acre Parcel to C-4 (Heavy Commercial Zone); and (4) approved a planned-unit development that allows the sale of new and used automobiles on the 21-Acre Parcel.

In June 2007, under City Agreement No. 2007-0555 (dated June 5, 2007), Landlord leased the entire 21-acre parcel to Rapton Investment Group, LLC ("**Rapton**"), which developed the northern half as a Honda Dealership. In October 2010, Rapton relinquished its lease on the southern half of the 21-acre parcel, which includes the Property. In May 2011, under City Agreement No. 2011-0249 (dated February 22, 2011), Landlord sold the western 5.119 acres of the southern half to Chrysler

Group Realty Company LLC (“Chrysler”), and Chrysler subsequently constructed an automobile dealership on the 5.119 acres.

Tenant desires to lease the Property, which is adjacent to the eastern side of Chrysler’s 5.119 acres, for the purposes of conducting operations related to automobile sales, including construction and operation of an automobile dealership and related ancillary uses such as retail selling of merchandise related to automobiles and storing, maintaining, repairing, and painting automobiles. The Sacramento City Council, in turn, desires to lease the Property to Tenant for those purposes.

With these background facts in mind, the parties hereby agree as follows:

1. **Definitions.** This section defines the terms “Effective Date,” “Premises,” “Improvements,” “include,” “Motor Vehicles,” “Sole Discretion,” and “Sole Judgment.” Other terms are defined in the provisions where they first appear.
 - (a) **“Effective Date”** means the date as of which both Landlord and Tenant have signed this lease, as indicated by the dates in the signature blocks below.
 - (b) **“Premises”** means all of the following: the Property, all rights and easements appurtenant to the Property, and the portion of the Impermeable Cap that is on the Property. Unless expressly provided otherwise, “Premises” does not mean Improvements (see Section 1(c)), regardless of whether the Improvements are considered affixed to, and part of, the Property. The Premises are burdened by the following easements:
 - (1) A non-exclusive easement granted to Rapton by the document recorded with the Sacramento County Clerk/Recorder on January 3, 2014, in Book 20140103, Page 189, of Official Records. This easement is for purposes of ingress and egress, excluding the parking of vehicles, between Fulton Avenue and the 0.14-acre triangular parcel at the southeast corner of the Property, and for purposes of constructing, installing, using, repairing, replacing, rehabilitating, and maintaining underground private utilities that serve the 0.14-acre parcel (e.g., electrical lines and telecommunication lines, including fiber-optic cable and related facilities). It runs along the eastern border of the Property, where it is 20 feet wide, and along the northern border of the Property, where it is coextensive with the south half of Rapton Lane.
 - (2) An easement granted to Chrysler by the document recorded with the Sacramento County Clerk/Recorder on May 27, 2011, in Book 20110527, Page 1380, of Official Records. This easement is for the use, repair, rehabilitation, and maintenance of the private roadway known as Rapton Lane, together with associated uses (excluding parking).

- (3) An easement granted to Raption by the document recorded with the Sacramento County Clerk/Recorder on January 3, 2014, in Book 20140103, Page 189, of Official Records. This easement is coextensive with the south half of Raption Lane and is for the purposes of constructing, installing, using, repairing, replacing, rehabilitating, and maintaining the private roadway known as Raption Lane and related appurtenances, but excluding the parking of vehicles, together with associated private uses (e.g., constructing, installing, using, repairing, replacing, rehabilitating, and maintaining underground pipelines, conduits, and related facilities and equipment needed to provide private utility services such as water, sewer, storm-drainage, electricity, gas, and telecommunications).
- (4) All other easements of record.
- (c) **"Improvements"** means all buildings, landscaping, lighting, related structures, and other appropriate features that Tenant or an assignee or subtenant of Tenant constructs or causes to be constructed on the Premises in accordance with Section 6 for the purpose of conducting operations related to a Motor Vehicles dealership. "Improvements" does not mean furniture, fixtures, equipment, or other personal property of Tenant or any assignee or subtenant of Tenant. The dealership may include a vehicle-repair-and-maintenance facility, a car wash, a body-repair shop, and as many as two above-ground fuel-storage tanks (or, alternatively, a single fueling station with two above-ground fuel-storage tanks). In addition, the dealership may include any other lawful use that is reasonably related to the permitted uses of the Premises set forth in Section 4 and any other uses that Landlord approves in writing; Landlord shall not withhold, condition, or delay its approval unreasonably.
- (d) The verb **"include"** and its variants are terms of enlargement rather than of limitation. For example, "includes" means "includes but not limited to," and "including" means "including but not limited to."
- (e) **"Motor Vehicles"** means one or more of the following: cars, vans, mini-vans, sport-utility vehicles, and pickup trucks.
- (f) **"Sole Discretion"** and **"Sole Judgment"** mean that the party exercising discretion or judgment may do so based solely on its own assessment of its own interests and without considering how its decision affects the other party.

2. Lease of Premises and Term of Lease

- (a) **Lease of Premises.** Landlord hereby leases the Premises to Tenant, and Tenant hereby leases the Premises from Landlord, subject to existing easements and on the terms and conditions set forth in this lease.

(b) **Term of Lease**

- (1) *Initial Term.* The initial term of this lease begins on the Effective Date and ends 25 years after the Effective Date (the “**Initial Term**”).
 - (2) *First Extended Term.* Upon expiration of the Initial Term, Tenant will have the right to extend this lease for an additional 10 years (the “**First Extended Term**”). The First Extended Term will be upon the same terms and conditions that applied during the Initial Term, except as otherwise provided. To exercise this right, Tenant must give Landlord a written notice of extension no later than 180 days before the Initial Term expires.
 - (3) *Second Extended Term.* Upon expiration of the First Extended Term, Tenant will have the right to extend this lease for an additional 10 years (the “**Second Extended Term**”). The Second Extended Term will be upon the same terms and conditions that applied during the Initial Term, except as otherwise provided. To exercise this right, Tenant must give Landlord a written notice of extension no later than 180 days before the First Extended Term expires.
 - (4) *Landlord Notice to Tenant.* If Tenant fails to give the required written notice of extension for either the First Extended Term or the Second Extended Term within the time allowed, then Landlord shall give Tenant a written notice of the failure to give the notice of extension, and Tenant will then have 30 additional days after receiving the notice within which to give the applicable notice of extension to Landlord. If Tenant fails to give a written extension notice to Landlord within the additional 30 days, then Tenant will be considered to have elected not to extend the term of this lease, and thereafter Tenant will have no right to extend the term.
- (c) **Expiration of Lease; Holding Over.** This lease expires automatically at the end of the Initial Term unless extended in accordance with Section 2(b)(2). If this lease is extended under Section 2(b)(2), then it expires automatically at the end of the First Extended Term unless extended in accordance with Section 2(b)(3). If this lease is extended under Section 2(b)(3), then it expires automatically at the end of the Second Extended Term. Any holding over after expiration will not constitute a renewal of this lease but will be on a month-to-month tenancy on the same terms and conditions that applied at expiration.
- (d) **Status of Title.** Title to the leasehold estate created by this lease is subject to all exceptions, easements, rights, rights of way, and other matters of record existing as of the Effective Date. In addition, title to the leasehold estate is subject to, and subordinate to, all easements, rights of entry, rights-of-way, and other rights and

interests that may subsequently be required by governmental agencies other than Landlord as a condition for approving construction of the Improvements.

3. Rent.

- (a) **Amount of Monthly Rent.** As rental for use and occupancy of the Premises, Tenant shall pay Landlord monthly rental in accordance with the following; beginning on the Effective Date ("**Monthly Rent**"):
- (1) *Years 1 through 10.* For the first 10 years of the Initial Term, Monthly Rent will be \$7,300.
 - (2) *Years 11 through 15.* For years 11 through 15 of the Initial Term, Monthly Rent will be an amount equal to \$7,300 adjusted at the end of year 10 using the CPI for All Urban Consumers, San Francisco-Oakland-San Jose, All Items (not seasonally adjusted; 1982-84 = 100 reference base) (the "**CPI**"), except as follows: if the CPI results in an amount less than \$7,300, then Monthly Rent remains at \$7,300 for years 11 through 15; and if the CPI results in an amount greater than \$8,030, then Monthly Rent for years 11 through 15 will be \$8,030. To calculate the adjustment required by this Section 3(a)(2), multiply \$7,300 by a fraction with a numerator equal to the CPI for February 2024 and a denominator equal to the CPI for February 2014.
 - (3) *Years 16 through 20.* For years 16 through 20 of the Initial Term, Monthly Rent will be an amount equal to \$7,300 adjusted at the end of year 15 using the CPI, except as follows: if the CPI results in an amount less than \$8,030, then Monthly Rent will be \$8,030 for years 16 through 20; and if the CPI results in an amount greater than \$8,833, then the Monthly Rent for years 16 through 20 will be \$8,833. To calculate the adjustment required by this Section 3(a)(3), multiply \$7,300 by a fraction with a numerator equal to the CPI for February 2029 and a denominator equal to the CPI for February 2014.
 - (4) *Years 21 through 25.* For years 21 through 25 of the Initial Term, Monthly Rent will be an amount equal to \$7,300 adjusted at the end of year 20 using the CPI, except as follows: if the CPI results in an amount less than \$8,833, then Monthly Rent will be \$8,833 for years 21 through 25; and if the CPI results in an amount greater than \$9,716, then the Monthly Rent for years 21 through 25 will be \$9,716. To calculate the adjustment required by this Section 3(a)(4), multiply \$7,300 by a fraction with a numerator equal to the CPI for February 2034 and a denominator equal to the CPI for February 2014.
 - (5) *First Extended Term.* For the First Extended Term, Monthly Rent will be an amount equal to \$7,300 adjusted at the end of year 25 using the CPI, except as follows: if the CPI results in an amount less than \$9,716, then Monthly Rent

will be \$9,716 for the First Extended Term; and if the CPI results in an amount greater than \$11,659, then Monthly Rent for the First Extended Term will be \$11,659. To calculate the adjustment required by this Section 3(a)(5), multiply \$7,300 by a fraction with a numerator equal to the CPI for February 2039 and a denominator equal to the CPI for February 2014.

- (6) *Second Extended Term.* For the Second Extended Term, Monthly Rent will be an amount equal to \$7,300 adjusted at the end of year 35 using the CPI, except as follows: if the CPI results in an amount less than \$11,659, then Monthly Rent will be \$11,659 for the Second Extended Term; and if the CPI results in an amount greater than \$13,991, then Monthly Rent for the Second Extended Term will be \$13,991. To calculate the adjustment required by this Section 3(a)(6), multiply \$7,300 by a fraction with a numerator equal to the CPI for February 2049 and a denominator equal to the CPI for February 2014.
- (b) **Due Date for Monthly Rent.** Monthly Rent is due and payable on the first day of each calendar month at the address set forth for Landlord in Section 15(b).
- (c) **Proration of Monthly Rent.** If the Effective Date is a day other than the first day of a calendar month, then the first month's payment of Monthly Rent will be prorated. If the Initial Term ends on a day other than the last day of a calendar month, then the last month's payment of Monthly Rent will be prorated.

4. Use of Premises

- (a) **Permitted Uses.** Tenant may use the Premises solely for the purposes of constructing, maintaining, repairing, replacing, and operating the Improvements. As used in this Section 4(a), the phrase "operating the Improvements" includes the selling, leasing, servicing, storing, and repairing (including painting) of Motor Vehicles; it also includes, as an ancillary business in conjunction with the primary business of selling, leasing, servicing, storing, and repairing Motor Vehicles, the selling, leasing, servicing, storing, and repairing of vehicles and equipment such as motorcycles, all-terrain vehicles, snowmobiles, and personal watercraft. Any violation of this Section 4(a) that continues beyond all applicable notice-and-cure periods will constitute a breach of this lease.
- (b) **Compliance with Laws.**
- (1) In using and occupying the Premises, Tenant shall comply, at no cost to Landlord, with all valid and applicable statutes, ordinances, regulations, rules, and orders that concern the Premises or the Improvements and are enacted, promulgated, or issued by any federal, state, or local governmental entity with jurisdiction over the Premises or the Improvements, whether those statutes, ordinances, regulations, rules, and orders are in force when the

Initial Term begins or are later enacted, promulgated, or issued, except as otherwise provided in Section 9. Without limiting the generality of the previous sentence, Tenant shall construct, maintain, repair, replace, and operate the Improvements in substantial compliance with—

- (A) all provisions of the Americans with Disabilities Act of 1990 and any similar law that are in effect on or after the date the Initial Term begins;
 - (B) the requirements of any board of fire underwriters or similar body that are in effect on or after the date the Initial Term begins; and
 - (C) any certificate of occupancy or other official direction issued by a governmental agency with jurisdiction over the Premises (including Landlord acting in a governmental capacity).
- (2) At its Sole Discretion and at no cost to Landlord, Tenant may institute appropriate legal proceedings to contest, in good faith, the validity or applicability of any statute, ordinance, regulation, rule, or order that concerns the Premises or the Improvements. Tenant may do this in its own name or, if appropriate or required, in the names of both Tenant and Landlord. Tenant shall protect the Premises, the Improvements, and Landlord from Tenant's failure to comply with the contested statute, ordinance, regulation, rule, or order during the contest.
- (3) Tenant shall indemnify, defend (with attorneys reasonably acceptable to Landlord), protect, and hold Landlord and Landlord's elected officials, appointed officials, officers, employees, agents, and property (including the Premises) harmless from and against all liabilities, claims, demands, damages, fines, penalties, judgments, settlements, and costs (including reasonable attorneys' fees and litigation costs through final resolution on appeal, whether for the Landlord's outside counsel or the Sacramento City Attorney) that arise from Tenant's failure to perform as this Section 4(b) requires.
- (4) If any license, permit, or other governmental authorization is required for the lawful use or occupancy of all or any portion of the Premises, then Tenant shall obtain and maintain it while this lease is in effect.
- (5) Either of the following will be conclusive between Landlord and Tenant and will constitute grounds for Landlord's termination of this lease under Section 13(b)(1) if not corrected within a reasonable time: the final judgment of any court with jurisdiction that Tenant has violated such a statute, ordinance, regulation, rule, or order; or Tenant's admission, in a proceeding brought against Tenant by any governmental entity, that Tenant has violated such a statute, ordinance, regulation, rule, or order.

- (c) **Prohibited Uses.** Tenant shall not use or permit the Premises to be used in any way that violates this lease or any valid and applicable statute, ordinance, regulation, rule, or order of any federal, state, or local governmental entity. Tenant shall not maintain or commit, or permit the maintenance or commission of, any public or private nuisance as defined by any law applicable to the Premises on or after the Effective Date. Tenant shall not install and maintain a below-ground fuel-storage tank on the Premises. Tenant shall not undertake or permit any activity that damages the Impermeable Cap on the Premises or violates the Remediation Agreements.

- (d) **Signage; Landlord's Approval Required.** Tenant shall not install or maintain on the Premises or on the Improvements any billboards or advertising signs, except as follows:
 - (1) Tenant may install and maintain those billboards and advertising signs that Landlord approves in writing while acting in its governmental capacity in accordance with its zoning or sign ordinances.
 - (2) Tenant may construct, maintain, repair, and operate one freeway pole sign displaying the name and logo of the dealership operating at the Premises, subject only to obtaining all necessary permits from the appropriate governmental entities (including Landlord acting in a governmental capacity).

- (e) **Reserved Access Rights.** Landlord reserves to itself and to its lessees and successors in interest the right to enter the Premises for the following purposes: to use (excluding parking), repair, rehabilitate, and maintain the portion of the private roadway known as Raption Lane that is on the Property; to access the digital-billboard site located adjacent to the southwest corner of the Property; and to repair, replace, rehabilitate, and maintain any private utilities that serve the digital-billboard site and are located on or under the Property. In addition, the City reserves to itself and its successors in interest the right to enter the Premises for the following purposes: to comply with the Remediation Agreements; to repair, replace, rehabilitate, and maintain the Impermeable Cap; and to repair, replace, rehabilitate, and maintain any City utilities that are located on or under the Property.

5. Taxes and Utilities

- (a) **Tenant to Pay Taxes.** Subject to Section 5(b), at all times while this lease is in effect, Tenant shall pay, without abatement, deduction, or offset, all personal-property taxes, possessory-interest taxes, general and special assessments, special taxes, and other charges of any description (including any increase caused by a change in the tax rate or a change in assessed valuation) that any governmental entity levies or

assesses on or against the Premises, the Improvements, Tenant's personal property located on the Premises or the Improvements, or the leasehold estate created by this lease. Without limiting the generality of the previous sentence, Tenant's duty to pay taxes under this Section 5(a) includes the payment of any possessory-interest tax levied or assessed by any governmental entity on or against Tenant's possessory interest under this lease or in the Premises or the Improvements.

- (b) **Proration of First- and Last-Year Taxes.** During the tax years in which the Initial Term begins and ends, all taxes, assessments, and other charges described in Section 5(a) will be prorated between Landlord and Tenant as of 12:01 a.m. on the date the Initial Term begins and as of 12:01 a.m. on the date this lease expires or terminates, on the basis of a tax year that begins on July 1 and ends on June 30. Landlord shall pay the taxes, assessments, and other charges for the year in which this lease begins, and, on receiving Landlord's written request, Tenant shall promptly reimburse Landlord for Tenant's share of those taxes, assessments, and other charges. Tenant shall pay the taxes, assessments, and other charges for the year in which this lease ends, and, on receiving Tenant's written request, Landlord shall promptly reimburse Tenant for Landlord's share of those taxes, assessments, and other charges even though Landlord may be a governmental entity on the date this lease ends or otherwise may be exempt from taxes, assessments, and other charges.
- (c) **Separate Assessment of Premises.** If the Premises are assessed and taxed as part of other property Landlord owns before the Effective Date, then Landlord shall try in good faith to have the taxing authorities tax and assess the Premises, while this lease is in effect, as a separate parcel distinct from the Landlord's other property. If, for the year in which this lease begins, the Premises are assessed and taxed as part of other property Landlord owns, then the share of the taxes, assessments, and other charges that Tenant must pay under Section 5(a) will be calculated as follows: (1) divide the acreage of the Property by the acreage of Landlord's total taxed property; (2) multiply the resulting quotient by the sum of the taxes, assessments, and other charges on Landlord's total taxed property, excluding taxes, assessments, and other charges attributable to the Improvements, Tenant's personal property located on the Premises or the Improvements, or the leasehold estate created by this lease; and (3) add to the resulting product the taxes, assessments, and other charges attributable to the Improvements, Tenant's personal property located on the Premises or the Improvements, or the leasehold estate created by this lease.
- (d) **Payment before Delinquency.** Tenant shall pay all taxes and assessments, installments of taxes and assessments, and other charges that Tenant is obligated to pay by this Section 5 before each tax, assessment, installment, or charge becomes delinquent. On Landlord's written request, Tenant shall provide Landlord with proof from the County of Sacramento that confirms, to Landlord's reasonable

satisfaction, the payment of the taxes, assessments, installments, and other charges.

- (e) **Taxes Payable in Installments.** If a special tax or assessment that is levied or assessed on the Premises may be either paid in full before a delinquency date while this lease is in effect or paid in installments, then Tenant may opt to pay the tax or assessment in installments. Tenant may exercise this option even if the installments will extend beyond this lease, will result in the Premises being encumbered with bonds, or will cause interest to accrue on the tax or assessment. If Tenant exercises this option, then Tenant will be obligated to pay only the installments that become due while this lease is in effect. At Tenant's written request, Landlord shall execute or join Tenant in executing any instruments required for the special tax or assessment to be paid in installments.
- (f) **Contest of Tax.** Tenant may contest, oppose, or object to the amount or validity of any tax, assessment, or other charge levied or assessed on the Premises; and Landlord shall reasonably cooperate with Tenant in the contest, opposition, or objection, at no out-of-pocket expense to itself. Tenant must file the contest, opposition, or objection before the tax, assessment, or other charge at which it is directed becomes delinquent; and Tenant must give Landlord written notice of the contest, opposition, or objection at least 15 days before the date the tax, assessment, or other charge becomes delinquent. Tenant shall pay all expenses of any contest or legal proceeding Tenant institutes. Landlord will not be liable for such expenses, and Tenant shall indemnify, defend (with attorneys reasonably acceptable to Landlord), protect, and hold Landlord and Landlord's property (including the Premises) harmless from such expenses. Tenant shall not continue or maintain such a contest, opposition, or objection after the date the tax, assessment, or other charge at which it is directed becomes delinquent unless Tenant has done one of the following:
- (1) Paid the tax, assessment, or other charge under protest before it becomes delinquent.
 - (2) Obtained and maintained a stay of all proceedings for enforcement and collection of the tax, assessment, or other charge by posting a bond or other security required by law for such a stay.
 - (3) Delivered to Landlord a surety bond issued by a corporation authorized to transact surety business in California. The bond must be in a reasonable amount specified by Landlord and be conditioned on Tenant's payment of the tax, assessment, or charge, together with any fines, interest, penalties, costs, and expenses that may have accrued or been imposed, within 30 days after a final determination of Tenant's contest, opposition, or objection.

- (g) **Tax Returns and Statements.** Tenant shall prepare and file any statement, return, report, or other instrument required or permitted by law in connection with the determination, equalization, reduction, or payment of any ad valorem real-estate taxes, special assessments, or other similar charges that are or may be levied or assessed on the Premises, the Improvements, Tenant's personal property located on or in the Premises or the Improvements, or the leasehold estate created by this lease.
- (h) **Tax Hold-Harmless Clause.** Tenant shall indemnify, defend (with attorneys reasonably acceptable to Landlord), protect, and hold harmless Landlord and Landlord's property (including the Premises) from and against—
- (1) all liabilities, claims, demands, damages, fines, penalties, judgments, settlements, and costs that arise from any taxes, assessments, or other charges this Section 5 requires Tenant to pay;
 - (2) all interest, penalties, and other sums imposed on the taxes, assessments, or charges this Section 5 requires Tenant to pay; and
 - (3) any sales or other proceedings to enforce collection of the taxes, assessments, or other charges this Section 5 requires Tenant to pay.
- (i) **Utilities.** While this lease is in effect, Tenant shall pay (or cause to be paid) all charges and expenses for, and shall hold Landlord and Landlord's property (including the Premises) free and harmless from liability for, all charges and expenses related to—
- (1) water, sewerage, gas, electricity, telephone, cable television, and other public utilities furnished to the Premises; and
 - (2) the removal of garbage and rubbish from the Premises.
- (j) **Maintenance of Rapton Lane.** Tenant shall assume and discharge Landlord's obligations for the cost of maintaining Rapton Lane and the cost of electricity for the street lights on Rapton Lane, as set forth in Section 2.7 of the *Private Road Maintenance Agreement* between Landlord, Rapton, and Chrysler, but only to the extent those obligations are attributable to the Premises and not to other property owned by Landlord. Section 2.7 of the *Private Road Maintenance Agreement* provides as follows (in Section 2.7, "City" refers to Landlord, "City Site" refers to the Property, and "CGRC" refers to Chrysler):

If the City later uses or further develops the City Site [i.e., the Property], or any portion of it, in a way that increases the use of Rapton Lane, as reasonably determined by Rapton, then the City shall commence paying

to Rapton an amount equal to fifty percent (50%) of the Reimbursement Amount pursuant to the terms of Section 2.3 herein [which fixes the "Reimbursement Amount" at \$300 a month, subject to annual increases using the Consumer Price Index for All Items (base years 1982-1984 = 100) for the San Francisco-Oakland-San Jose CSMA]. Simultaneously therewith, CGRC's portion of the Reimbursement Amount shall decrease by an amount equal to fifty percent (50%). However, should Rapton reasonably determine that the Reimbursement Amount needs to be increased due to higher intensity usage from the City Site, then Rapton shall have the right to reasonably increase the City's portion of the Reimbursement Amount to an amount which is necessary to cover the increased usage. Rapton shall provide the City a thirty (30) days written notice of such increase of the City's portion of the Reimbursement Amount. If the City sells or leases the City Site, or any portion of it, then the foregoing in all respects shall apply to the purchaser or lessee and the City shall require the purchaser or lessee to pay the City's required share of the Reimbursement Amount.

Simultaneously with the commencement of the City paying a portion of the Reimbursement Amount, the City shall also pay to Rapton an amount equal to thirty percent (30%) of the electrical bills for the Meter [i.e., the electrical meter for the street lights on Rapton Lane] pursuant to the terms of Section 2.5 herein, and CGRC's share of the electrical bills for the Meter shall decrease to an amount equal to thirty percent (30%). However, should CGRC install a sub-meter for the CGRC Lights, then the City shall pay to the following: (i) Rapton an amount equal to one-sixth (1/6) for the electrical bills for the Rapton Sign and the Rapton Lights; and (ii) CGRC, at CGRC's address or at such other place as CGRC may from time to time designate in writing, an amount equal to one-sixth (1/6) for the electrical bill for the CGRC Lights. Such amount shall be paid within ten (10) days of the City's receipt of a copy of the electrical bill for the CGRC Lights. If the City sells or leases the City Site, or any portion of it, then the City shall require the purchaser or lessee to pay the City's share of the electrical bills for the Meter or CGRC Lights.

- (k) **Payment by Landlord.** If, within the time specified in this Section 5, Tenant fails to pay any tax, assessment, or other charge this Section 5 requires Tenant to pay, then Landlord may pay, discharge, or adjust that tax, assessment, or other charge for Tenant's benefit after giving Tenant at least 15 days' written notice. (If this Section 5 does not specify the time within which Tenant must pay a charge, then Tenant shall pay that charge before it becomes delinquent.) Tenant shall reimburse Landlord promptly, on receipt of Landlord's written demand, for the full amount

Landlord incurs to pay, discharge, or adjust the tax, assessment, or other charge, together with interest at the then-maximum legal rate from the date Landlord pays, discharges, or adjusts the tax, assessment, or charge to the date of Tenant's reimbursement. Tenant's failure after the expiration of any applicable notice-and-cure periods to reimburse Landlord when required by this Section 5(k) will constitute a breach of this lease.

6. **Tenant Improvements.** Tenant is entitled to construct the Improvements (or cause them to be constructed) in accordance with this Section 6 and consistent with the permitted uses of the Premises set forth in Section 4(a), all at no cost to Landlord. Without cost to itself, Landlord shall cooperate with Tenant in any efforts to secure building permits and other permits and authorizations needed for any construction or alterations of the Improvements. Landlord's cooperation does not indicate consent to the filing of mechanic's liens, notices of intention to file a mechanic's liens, or any claims relating to mechanic's liens; nor does Landlord's obligation to cooperate apply when Landlord is acting in a governmental capacity.

(a) **Compliance with Approved Plans.** All Improvements must be constructed in accordance with one of the following, and at locations approved by Landlord: the improvement plans and changes to improvement plans that Landlord reviews and approves under Sections 6(a)(1) and 6(a)(2); or the plans and specifications that Landlord approves under Section 6(a)(3).

(1) *Improvement Plans.* Before Tenant begins construction of the Improvements for a dealership, Tenant shall submit to the Landlord, for Landlord's review and approval, two identical sets of detailed improvement plans.

(A) Within 30 days after Landlord receives the improvement plans, Landlord shall either approve the plans by endorsing Landlord's approval on them and returning one set of the plans to Tenant; or notify Tenant in writing of Landlord's objections to the plans, specifying in detail each objection.

(B) If Landlord does not respond in accordance with Section 6(a)(1)(A) within 30 days after receiving the plans, then the plans will be considered approved. If Landlord timely responds with objections to the plans, then Tenant may deliver corrective amendments to Landlord within 20 days after Tenant receives Landlord's written notice of objections. Within 20 days after receiving the corrective amendments, Landlord shall give Tenant written notice of Landlord's approval or rejection of the amended plans. If Landlord does not give Tenant written notice of approval or rejection within 20 days after receiving the corrective amendments, then the amended plans will be considered approved.

- (2) *Changes to Improvement Plans.* Tenant must obtain Landlord's approval, in writing, of any substantial change in the improvement plans Landlord approves under Section 6(a)(1). For purposes of this Section 6(a)(2), "substantial change" means a change that in Landlord's reasonable judgment materially changes the size, appearance, or layout of the Improvements. If Landlord does not give Tenant written notice of objection to a proposed change within 30 days after Tenant serves Landlord with a written statement of the proposed change, then the change will be considered approved. Landlord need not approve changes in work or materials that are not substantial changes, but Tenant shall provide Landlord with a copy of the changed improvement plans.
- (3) *Improvements not Included in the Improvement Plans.* Any component of the Improvements that costs more than \$250,000 to construct and is not included in the improvement plans or is not consistent with this lease (each, a "**Component**") may be constructed on the Property only if Landlord has approved, in writing, the plans and specifications for the Component (which must include the proposed location). Tenant shall not split or separate a Component into smaller units for the purpose of evading this restriction. Landlord may disapprove the plans and specifications of any Component that is not consistent with this lease. Landlord has 10 days to approve any plans and specifications for a Component that Tenant submits under this Section 6(a)(3). If Landlord disapproves any plans and specifications, then Landlord shall give Tenant a written notice of disapproval that states the reasons for disapproval and the changes necessary to obtain approval. Landlord's failure to give notice of approval or disapproval within 10 days after Tenant submits plans and specifications to Landlord will be considered to be an approval for purposes of this lease. Tenant acknowledges that Landlord's initial approval of plans and specifications is at all times subordinate to approvals by the City of Sacramento Planning and Design Commission and that the approvals by the Planning and Design Commission will control over Landlord's conflicting approvals or disapprovals.
- (4) *Disclosure of Improvement Plans.* Tenant may designate portions of the improvement plans that it believes qualify as confidential financial records and proprietary information exempt from disclosure under the California Public Records Act ("**Proprietary Information**"). Landlord shall take all reasonable and lawful measures to keep Proprietary Information confidential in accordance with the following:
- (A) If Landlord receives a request for disclosure of Proprietary Information under the California Public Records Act or is served with a legal or administrative demand for disclosure of Proprietary Information (e.g.,

by subpoena, civil investigative demand, or court-ordered or court-sanctioned discovery), then Landlord shall notify Tenant as soon as practicable before disclosure is required so that Tenant may seek an appropriate protective order or may consent in writing to disclosure. Absent a protective order or written consent to disclosure, received before the time disclosure is required, Landlord may disclose Proprietary Information as required by law.

- (B) Landlord is not obligated to defend against any litigation brought to compel disclosure of Proprietary Information, but Tenant may defend against the litigation as the real party in interest, subject to the following: Tenant shall indemnify and hold Landlord and Landlord's property (including the Premises) harmless against all damages and costs awarded against Landlord in the litigation, including reasonable attorney's fees and litigation costs through final resolution on appeal.
- (b) **Utilities.** Tenant shall install (or cause to be installed) in, on, and within the Premises all facilities necessary to supply water, sewerage, gas, electricity, telephone, cable television, and other utility services required for Tenant's maintenance and operation of the Improvements while this lease is in effect, all at no cost to Landlord.
- (c) **Drainage.** All surface water from the Premises must be discharged into the existing underground storm-water-drainage system.
- (d) **All Work on Written Contract.** All work required to construct the Improvements must be performed only by competent contractors licensed under California law and must be performed under written contracts with those contractors. As used in this Section 6(d), "work" means not only the actual construction of the Improvements but also any site-preparation, landscaping, and utility installation.
- (e) **Compliance with Law and Standards.** The Improvements must be constructed, and all work on the Premises must be performed, without damage to the Impermeable Cap or violation of the Remediation Agreements and in accordance with all valid and applicable statutes, ordinances, regulations, rules, and orders of all federal, state, or local governmental entities with jurisdiction over the Premises. All work performed on the Premises under this lease must be done in a good workmanlike manner and only with new materials of good quality and high standard.
- (f) **Mechanics' Liens.** While this lease is in effect, Tenant shall keep the Premises and the Improvements free and clear of all liens and claims of liens for labor, services, materials, supplies, or equipment performed on or furnished to the Premises. If Tenant does not pay and discharge such liens and claims of liens or cause the Premises and the Improvements to be released from such liens or claims of liens

within 30 days after Landlord serves Tenant with a written request to do so, then Landlord may pay, adjust, compromise, and discharge any such lien or claim of lien on any terms Landlord considers appropriate in Landlord's Sole Judgment. On or before the first day of the next calendar month following any such payment by Landlord, Tenant shall reimburse Landlord for the full amount Landlord incurred to pay, adjust, compromise, and discharge the lien or claim of lien, including any attorneys' fees or other costs expended by Landlord (together with interest at the then-maximum legal rate from the date of payment by Landlord to the date of Tenant's reimbursement). Nothing in this lease gives Landlord's consent or request (whether express, implied, or otherwise) to any contractor, subcontractor, laborer, or materialman for the performance of any labor or the furnishing of any materials for any specific improvement, alteration, or repair of the Premises or the Improvements. Landlord is entitled at all reasonable times to post and keep posted on the Premises any notices of non-responsibility Landlord believes necessary to protect Landlord and the Premises and the Improvements from liens imposed by any contractor, subcontractor, laborer, or materialman.

- (g) **Use Permits and Design-Review.** Tenant is responsible for obtaining all building permits and all design-review approvals (if any) required for the Improvements it constructs on the Premises. Tenant shall indemnify, defend (with attorneys reasonably acceptable to Landlord); protect, and hold Landlord and Landlord's property (including the Premises) harmless from and against all costs related to such building permits and design-review approvals.
- (h) **Ownership of the Improvements.** While this lease is in effect, Tenant will own title to all Improvements Tenant constructs on the Premises.
 - (1) When this lease expires or terminates—
 - (A) the Improvements will automatically become Landlord's property without any act of Tenant or any third party, and without compensation to Tenant;
 - (B) Tenant shall surrender the Improvements to Landlord free of all liens and encumbrances other than those, if any, permitted under this lease or otherwise created or consented to by Landlord; and
 - (C) Landlord may require Tenant to remove some or all surface Improvements, underground Improvements, utilities, and foundations from the Property, at no cost to Landlord, by giving Tenant written notice. Notice under this Section 6(h)(1)(C) must specify the surface Improvements, underground Improvements, utilities, and foundations to be removed and must be given before this lease expires or terminates.

- (2) If Landlord requests, Tenant shall execute, acknowledge, and deliver to Landlord any instrument Landlord considers necessary to perfect Landlord's right, title, and interest to the Improvements and the Premises. Tenant shall not remove any of the Improvements from the Property or waste, destroy, or modify any of the Improvements, except as permitted or required by this lease, subject to the following: Tenant is entitled (but not obligated) to remove any personal property and trade fixtures installed at the Premises or in the Improvements at any time without first obtaining Landlord's consent, so long as Tenant repairs any damage caused to the Premises or the Improvements by the removal.

7. Encumbrance of Leasehold Estate.

- (a) **Tenant's Right to Encumber.** While this lease is in effect, and without Landlord's consent, Tenant may encumber any part of its interests under this lease, for any purpose, by granting a deed of trust, mortgage, or other security instrument (a "**Leasehold Encumbrance**"). A Leasehold Encumbrance may not constitute a lien or encumbrance on Landlord's fee interest in the Premises. Except as otherwise provided in this lease, each Leasehold Encumbrance will be subject to all covenants, conditions, and restrictions set forth in this lease and to all of Landlord's rights, title, and interest. Tenant shall give Landlord prior written notice of any Leasehold Encumbrance affecting its interests under this lease, together with a copy of the deed of trust, mortgage, or other security interest evidencing the Leasehold Encumbrance.
- (b) **Notice to Lenders.** If a lender who holds a Leasehold Encumbrance ("**Lender**") provides Landlord with written notice of the its name and address, then Landlord shall provide the Lender with a copy of each notice or written communication Landlord gives to Tenant in connection with this lease, including any notice of breach, notice regarding any matter on which Landlord may claim a breach, or notice of termination; and such a notice or written communication will be effective only if the notice is also provided to the Lender. Landlord shall satisfy its obligation under this Section 7(b) by placing the copy of the notice or communication in an envelope addressed to the Lender (at the last mailing address the Lender provided to Landlord in writing) and by depositing the envelope with the United States Postal Service or a nationally recognized delivery service (e.g., FedEx, UPS), with postage prepaid, for delivery overnight.
- (c) **No Modification Without Lender's Consent.** So long as any Leasehold Encumbrance is in effect, Tenant and Landlord shall not modify or cancel this lease without the Lender's written consent. This Section 7(c) does not apply to early termination under Section 11(b)(2) if the Lender actually receives the required 60-day notice or to early termination under Section 13.

- (d) **Right of Lender to Realize on Security.** A Lender with a Leasehold Encumbrance is entitled while this lease is in effect and during the existence of the Leasehold Encumbrance to do the following:
- (1) Perform any act required of Tenant under this lease, and the Lender's performance will prevent a forfeiture of Tenant's rights under this lease.
 - (2) Realize on the security afforded by the leasehold estate by foreclosure proceedings, by accepting an assignment in lieu of foreclosure, or by any other remedy afforded in law or in equity or by the security instrument evidencing the Leasehold Encumbrance (the "**Security Instrument**").
 - (A) A Lender who realizes on the security afforded by the leasehold estate may—
 - (i) transfer, convey, or assign Tenant's title to the leasehold estate to any purchaser at any foreclosure sale (whether the foreclosure sale is conducted under court order or under a power of sale contained in the Security Instrument) or to an assignee under an assignment in lieu of foreclosure; and
 - (ii) acquire and succeed to Tenant's interest under this lease by virtue of any foreclosure sale (whether the sale is conducted under a court order or under a power of sale contained in the Security Instrument) or by virtue of an assignment in lieu of foreclosure.
 - (B) A Lender or any person or entity acquiring the leasehold estate will be obligated to perform Tenant's obligations under this lease only during the time the Lender, entity, or person owns the leasehold estate or possesses the Premises.
- (e) **Right of Lender to Cure Breaches.** So long as a Leasehold Encumbrance is in effect, Landlord shall not terminate this lease because of Tenant's breach unless Landlord first gives the Lender written notice of the breach and affords the Lender an opportunity, after service of the notice, to do one of the following:
- (1) For a breach that can be cured by paying money to Landlord or some other person: cure the breach within 30 days after Tenant's opportunity to cure has expired.
 - (2) For a breach that must be cured by something other than the payment of money: cure the breach within 45 days after Tenant's opportunity to cure has expired.

- (3) For a breach that must be cured by something other than the payment of money, if the cure cannot be performed within 45 days after Tenant's opportunity to cure has expired: cure the breach in any reasonable time that may be required, but only if the Lender commences work on the cure within 45 days after Tenant's opportunity to cure has expired and diligently prosecutes the work to completion.
- (f) **Foreclosure in Lieu of Curing Breach.** Notwithstanding any other provision of this lease, the Lender under a Leasehold Encumbrance may forestall termination of this lease for Tenant's breach by commencing proceedings to foreclose the Leasehold Encumbrance. The proceedings may be for foreclosure by court order or for foreclosure under a power of sale contained in the Security Instrument. But the proceedings will not forestall Landlord's termination of this lease for the Tenant's breach unless—
- (1) they are commenced within 60 days after service on the Lender of notice under Section 7(e);
 - (2) they are diligently pursued to completion in the manner required by law; and
 - (3) the Lender keeps and performs all of the terms, covenants, and conditions of this lease that require Tenant to pay or expend money until the proceedings are complete or are discharged by redemption, satisfaction, payment, or conveyance of the leasehold estate to the Lender.
- (g) **Assignment without Consent on Foreclosure.** Transfer of the Tenant's leasehold estate to any of the following does not require Landlord's prior consent:
- (1) A purchaser at a foreclosure sale of the Leasehold Encumbrance, whether the sale is conducted under a court order or under a power of sale in the Security Instrument. The Lender under the Leasehold Encumbrance must give Landlord written notice of the purchase, including the name and address of the purchaser and the effective date of the purchase.
 - (2) An assignee of the leasehold estate under an assignment in lieu of foreclosure. The Lender under the Leasehold Encumbrance must give Landlord written notice of the assignment, including the name and address of the assignee and the effective date of the assignment.
 - (3) A purchaser at a foreclosure sale of the Leasehold Encumbrance (or an assignee of the purchaser) or the assignee of Tenant's leasehold estate by an assignment in lieu of foreclosure. The purchaser or assignee must deliver to Landlord its written agreement to be bound by all provisions of this lease.

- (h) **New Lease to Lender.** Notwithstanding any other provision of this lease, if Landlord terminates this lease because of Tenant's breach, then Landlord shall enter into a new lease of the Premises with the Lender under a Leasehold Encumbrance if all of the following conditions are satisfied:
- (1) Within 60 days after Landlord serves the Lender with notice under Section 7(e), the Lender has served Landlord with a written request for the new lease.
 - (2) The term of the new lease ends on the same date this lease would have expired had this lease not been terminated.
 - (3) The new lease provides for payment of rent at the same rate that would have been payable under this lease had it not been terminated; in addition, the new lease contains the same terms, covenants, conditions, and provisions that are in this lease (except those that have already been fulfilled or no longer apply).
 - (4) On Landlord's execution of the new lease, the Lender pays all sums that would have been due at the time under this lease but for its termination; in addition, the Lender remedies (or agrees in writing to remedy) all of Tenant's other breaches of this lease to the extent they can be remedied.
 - (5) On Landlord's execution of the new lease, the Lender pays all reasonable costs and expenses (including reasonable attorneys' fees and litigation costs through final resolution on appeal, whether for the Landlord's outside counsel or the Sacramento City Attorney), that Landlord incurred in terminating this lease, recovering possession of the Premises from Tenant or Tenant's representative, and preparing the new lease.
 - (6) If Tenant has sublet the Premises and the sublease is still in effect, then the new lease will be subject to the sublease if the subtenant has agreed in writing to attorn to Lender or to Lender's assignee.
 - (7) The Lender may assign the new lease without Landlord's prior consent. But an assignee of the Lender may assign the new lease only with Landlord's prior written consent, which Landlord shall not withhold, delay, or condition unreasonably.
- (i) **No Merger.** So long as any Leasehold Encumbrance exists, the leasehold estate created by this lease and Landlord's fee estate in the Premises will not merge merely because both estates are acquired or become vested in the same person or entity, unless the Lender consents in writing.

- (j) **Lender as Assignee of Lease.** A Lender will not be liable to Landlord as an assignee of this lease unless the Lender acquires all of Tenant's rights under this lease through foreclosure, an assignment in lieu of foreclosure, or some other action or remedy provided by law or by the Security Instrument.
- (k) **Lender Includes Subsequent Security Holders.** Except for purposes of Section 7(h), the term "Lender" means not only the institutional lender that lent Tenant money and is named as beneficiary, mortgagee, secured party, or security holder in the Security Instrument but also all subsequent purchasers or assignees of the leasehold estate.
- (l) **Two or More Lenders.** If two or more Lenders each exercise their rights under this lease and a conflict arises that renders compliance with all Lender requests impossible, then the Lender whose Leasehold Encumbrance would have senior priority in a foreclosure will prevail.

8. Repairs and Restoration.

- (a) **Maintenance by Tenant.** While this lease is in effect—
 - (1) Landlord is not obligated to make any changes, alterations, additions, improvements, or repairs in, on, or about the Premises and the Improvements except as provided in Section 9(b); and
 - (2) at no cost to Landlord, Tenant shall (A) keep and maintain the Premises, the Improvements, and all appurtenant facilities in first-class condition, good order and repair, and safe-and-clean condition; and (B) keep and maintain the whole of the Premises, the Improvements, all appurtenances, and all landscaping in clean, sanitary, safe, orderly, litter-free condition.
- (b) **Tenant's Duty to Restore Premises.**
 - (1) Except as provided by Section 8(b)(2) and Section 8(c), this lease will continue in full effect even if the Improvements are damaged or destroyed in whole or part by any cause covered by the property-and-casualty insurance Tenant is required to carry under this lease. Tenant shall repair and restore, at no cost to Landlord, any Improvements so damaged or destroyed. Any repairs or restoration by Tenant must comply with original plans for the Improvements, as described in Section 6, except as Tenant may modify the plans to comply with the terms of any sublease of the Premises, or as Tenant may modify the plans with Landlord's written approval, which Landlord shall not withhold, delay, or condition unreasonably. Tenant shall begin the work of repair and restoration within 180 days after the damage or destruction occurs and shall complete the work with due diligence within 12 months after the work

begins. In all other respects, Tenant shall perform the work of repair and restoration in accordance with the requirements for original construction work set forth in Section 6. Tenant shall use any insurance proceeds it receives or is entitled to receive because of the damage or destruction to repair and restore the Premises, except as follows: if a Lender requires Tenant to use the proceeds to pay off any leasehold mortgage or deed of trust on the Premises, and if all of the proceeds are so used, then Tenant will not be obligated to repair and restore the Improvements.

- (2) Notwithstanding anything to the contrary in Section 8(b)(1), Tenant is not required to repair or restore the Improvements if—
 - (A) the damage or destruction does not arise from an insured cause; or
 - (B) Tenant reasonably determines that more than 50% of the Improvements is damaged or destroyed, and the damage or destruction occurs during the last five years of the Initial Term (if Tenant opts not to extend this lease under Section 2(b)(2)), or during the last five years of the First Extended Term (if Tenant opts to extend this lease under Section 2(b)(2)), or during the last five years of the Second Extended Term (if Tenant opts to extend this lease under Section 2(b)(3)).
 - (3) Tenant shall notify Landlord in writing of its election not to repair or restore the Improvements. If Tenant elects not to repair or restore the Improvements, then Tenant shall satisfy all Leasehold Encumbrances and assign to Landlord all remaining insurance proceeds Tenant received for the damage or destruction of the Improvements (less any insurance proceeds attributable to Tenant's trade fixtures and personal property), and this lease will terminate when all Leasehold Encumbrances are satisfied and all proceeds assigned.
- (c) **Option to Terminate Lease for Destruction.** Notwithstanding Section 8(b), Tenant is entitled to terminate this lease by giving Landlord 30 days' prior written notice of termination if all Leasehold Encumbrances are satisfied and removed, and either—
- (1) the Improvements are damaged or destroyed by a casualty for which Tenant is not required under this lease to carry insurance, and the damage or destruction occurs during the last two years of the Initial Term (if Tenant opts not to extend this lease under Section 2(b)(2)), or during the last two years of the First Extended Term (if Tenant opts to extend this lease under Section 2(b)(2)), or during the last two years of the Second Extended Term (if Tenant opts to extend this lease under Section 2(b)(3)); or

- (2) Tenant reasonably determines that the cost to repair or restore the damaged or destroyed Improvements exceeds 50% of the fair-market value of the Improvements immediately before the damage or destruction.
- (d) **Application of Insurance Proceeds.** All insurance proceeds that become payable while this lease is in effect because of damage to, or destruction of, any of the Improvements will be paid to Tenant in trust and applied by Tenant to the cost of repairing and restoring the damaged or destroyed Improvements as required by Section 8(b). If, however, Tenant terminates this lease under Section 8(b) or Section 8(c), then all insurance proceeds for the Improvements, but not for Tenant's trade fixtures and personal property, will be used to satisfy any outstanding Leasehold Encumbrances with the remainder of the proceeds being turned over to Landlord, and Landlord may decide in its Sole Discretion whether to apply the proceeds to the repair and restoration of the Premises and the Improvements or to retain the proceeds for other uses.

9. Hazardous Substances.

- (a) **Definitions.** The following definitions apply in this lease:
 - (1) **"Hazardous Substance"** means (A) any substance defined as a "hazardous substance," "hazardous material," "hazardous waste," "toxic substance," "toxic waste," "solid waste," "pollutant," or "contaminant" under Environmental Laws (defined in Section 9(a)(2)); (B) any substance listed as hazardous materials or hazardous substances by the U.S. Department of Transportation at 49 C.F.R. § 172.101, by the U.S. Environmental Protection Agency at 40 C.F.R. Part 302, or by any successor agencies; (C) any other substance, material, or waste that is or becomes regulated or classified as hazardous or toxic under Environmental Laws (defined in Section 9(a)(2)); (D) any material, waste, or substance that is a petroleum or refined petroleum product, asbestos or asbestos-containing material, polychlorinated biphenyl, a hazardous substance under 33 U.S.C. § 1321, a toxic pollutant under 33 U.S.C. § 1317, a flammable explosive, a radioactive material, or a lead-based paint; (E) any substance listed by the State of California under subdivision (a) of Health and Safety Code Section 25249.8, as amended, as a chemical known by the state to cause cancer or reproductive toxicity; (F) any material that, because of its characteristics or interaction with one or more other substances, chemical compounds, or mixtures, threatens to damage health, safety, or the environment or is required by any law or public agency to be remediated, including remediation that the law or public agency requires for the Premises to be put to any of the uses specified in Section 4(a); (G) any material that, if present, would require remediation under the guidelines set forth in California's Leaking Underground Fuel Tank Guidance Manual, whether or not the presence of the material resulted from a leaking

underground fuel tank; (H) any pesticide regulated under the federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. §136 et seq.); (I) any material regulated under the federal Occupational Safety and Health Act (29 U.S.C. § 651 et seq.) or the California Occupational Safety and Health Act of 1973 (Lab. Code, § 6300 et seq.); (J) any material regulated under the federal Clean Air Act (42 U.S.C. 7401 et seq.) or under division 26 of California's Health and Safety Code; (K) any material that qualifies as an "extremely hazardous waste," "hazardous waste," or "restricted hazardous waste" under Sections 25115, 25117, and 25122.7, respectively, of California's Health and Safety Code; (L) any material or substance that qualifies as a "hazardous substance" under Section 25281, 25316, 25501, 25501.1, or 39655 of the California Health and Safety Code; (M) any material that qualifies as "medical waste" or as a "toxic air contaminant" under California Health and Safety Code Sections 39655 and 117690, respectively; and (N) any material listed or defined as a "hazardous waste," "extremely hazardous waste," or an "acutely hazardous waste" under Chapter 11 in Division 4.5 of Title 22 of the California Code of Regulations.

- (2) **"Environmental Laws"** means any statute, ordinance, regulation, rule, order, decree, or other law or requirement that is enacted, promulgated, or issued by any federal, state, or local government entity (whether before, on, or after the Effective Date) and regulates, relates to, or imposes liability or standards of conduct concerning any Hazardous Substance (defined in Section 9(a)(1)); regulates land use or regulates or protects the environment, including but not limited to air, soil, soil vapor, groundwater, surface water, flora, or fauna; or pertains to occupational health or industrial hygiene or to occupational or environmental conditions on, under, or about the Premises. Without limiting the generality of the foregoing, "Environmental Laws" includes the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) (42 U.S.C. § 9601 et seq.); the Resource Conservation and Recovery Act of 1976 (RCRA) (42 U.S.C. § 6901 et seq.); the Clean Water Act, also known as the Federal Water Pollution Control Act (FWPCA) (33 U.S.C. § 1251 et seq.); the Toxic Substances Control Act (TSCA) (15 U.S.C. § 2601 et seq.); the Hazardous Materials Transportation Act (HMTA) (49 U.S.C. § 5101 et seq.); the Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. § 136 et seq.); the Superfund Amendments and Reauthorization Act of 1986 (SARA) (42 U.S.C. § 9601 et seq. [Pub. L. 99-499, 100 Stat. 1613]); the Clean Air Act (42 U.S.C. § 7401 et seq.); the Safe Drinking Water Act (42 U.S.C. § 300f et seq.); the Solid Waste Disposal Act (42 U.S.C. § 6901 et seq.); the Emergency Planning and Community Right to Know Act (42 U.S.C. § 11001 et seq.); the Occupational Safety and Health Act of 1970 (OSHA) (29 U.S.C. § 651 et seq.); the California Underground Storage of Hazardous Substance Act (Health & Saf. Code, § 25280 et seq.); the California Hazardous Waste Control Act (Health & Saf. Code, § 25100 et seq.); the California Safe Drinking Water and

Toxic Enforcement Act of 1986 (Health & Saf. Code, § 24249.5 et seq.); and the Porter-Cologne Water Quality Act (Water Code, § 13000 et seq.), together with any amendments of these statutes and any regulations promulgated under these statutes (whether enacted or promulgated before, on, or after the Effective Date).

(b) Landlord Warranty and Indemnity.

- (1) Landlord represents and warrants that, when it delivers possession of the Premises to Tenant in accordance with this lease, there will be no Hazardous Substances on the Premises except those that have been remediated and for which Landlord has obtained, from the applicable government regulatory agencies, either no-further-action clearance letters or written approvals to reuse the Premises for the purposes set forth in this lease. If, on or after the Effective Date, pre-existing Hazardous Substances that have not been remediated and are not covered by such clearance letters or reuse approvals are discovered on the Premises, then, at no cost to Tenant, Landlord shall promptly take all actions concerning those Hazardous Substances that are required by Environmental Laws, except as provided in Section 9(b)(3).
- (2) Landlord shall indemnify, defend (with attorneys reasonably acceptable to Tenant), protect, and hold Tenant and Tenant's members, directors, officers, shareholders, partners, employees, agents, contractors, assignees, subtenants, Lenders, and invitees harmless from and against all liabilities, claims, demands, damages, fines, penalties, judgments, settlements, and costs (including reasonable attorneys' fees and litigation costs through final resolution on appeal) that arise from Hazardous Substances existing on the Premises on or before the date Landlord delivers possession of the Premises to Tenant, or from Landlord's possession, use, generation, transportation, release, threatened release, handling, remediation, storage, or disposal of Hazardous Substances on or about the Premises, except as provided in Section 9(b)(3).
- (3) Landlord is not obligated under this Section 9(b)(1) or 9(b)(2) for matters resulting from—
 - (A) Tenant's intentional disturbance, spread, or exposure of pre-existing Hazardous Substances;
 - (B) the negligence or willful misconduct of Tenant or Tenant's members, directors, officers, shareholders, partners, employees, agents, contractors, assignees, subtenants, Lenders, or invitees with regard to pre-existing Hazardous Substances; or

- (C) damage to the Impermeable Cap or violation of the Remediation Agreements by Tenant or Tenant's members, directors, officers, shareholders, partners, employees, agents, contractors, assignees, subtenants, Lenders, or invitees.
- (4) Landlord's obligations under Sections 9(b)(1) and 9(b)(2) include all liabilities, claims, demands, damages, fines, penalties, judgments, settlements, and costs related to—
 - (A) any required or necessary remediation, repair, cleanup, or detoxification of the Premises or the Improvements and the preparation of closure plans and other required plans, whether the actions and plans are required or necessary before or after expiration or termination of this lease; and
 - (B) any death, bodily injury, personal injury, property damage or destruction (including injury to the environment), and economic injury that arises from the possession, use, generation, handling, transportation, release, threatened release, remediation, storage, or disposal of Hazardous Substances on, at, or from the Premises by Landlord.
 - (5) Landlord's obligations under this Section 9(b) will survive the expiration or termination of this lease.
- (c) **Tenant's Compliance with Environmental Laws.**
- (1) In using the Premises, Tenant shall comply with all Environmental Laws pertaining to the Premises and the Improvements. Without limiting the generality of the previous sentence, Tenant shall require that its members, directors, officers, shareholders, partners, employees, agents, contractors, assignees, subtenants, Lenders, and invitees possess, use, generate, handle, transport, remediate, store, and dispose of Hazardous Substances in, on, or about the Premises or the Improvements in strict compliance with all applicable Environmental Laws.
 - (2) Notwithstanding Section 9(c)(1), Tenant is not obligated to comply with Environmental Laws that pertain to the remediation, removal, release, threatened release, treatment, transportation, storage, or disposal (including encapsulation) of Hazardous Substances that existed in, on, or about the Premises on or before the date Landlord delivers possession of the Premises to Tenant, except as follows: Tenant shall comply with Environmental Laws, at no cost to Landlord, if Tenant's intentional, negligent, or willful misconduct

causes or exacerbates a release or threatened release of those Hazardous Substances.

- (3) Tenant shall not do or permit anything on the Premises, and shall require that its members, directors, officers, shareholders, partners, employees, agents, contractors, assignees, subtenants, Lenders, and invitees not do or permit anything on the Premises, that damages the Impermeable Cap or violates the Remediation Agreements.
- (d) **Tenant's Indemnity.** As used in this Section 9(d), "Landlord" means Landlord; Landlord's elected officials, appointed officials, officers, employees, agents, and property; and any successor to, or assignee of, Landlord's interest in this lease or in the title to the Premises, and the successor's or assignee's members, directors, officers, shareholders, partners, employees, agents, and property. This Section 9(d) is to be interpreted and applied broadly in favor of Landlord, and it will survive the expiration or termination of this lease. Landlord does not waive, and will not be deemed to waive, any rights it may have against Tenant under this Section 9(d) because of any insurance coverage Landlord or Tenant may have.
- (1) Tenant shall indemnify, defend (with attorneys reasonably acceptable to Landlord), protect, and hold harmless Landlord and Landlord's property (including the Premises) from and against any and all liabilities, claims, demands, damages, fines, penalties, judgments, settlements, and costs (including reasonable attorney's fees and litigation costs through final resolution on appeal, whether for the Landlord's outside counsel or the Sacramento City Attorney) that arise directly or indirectly from the possession, use, generation, handling, transportation, remediation, storage, release, threatened release, or disposal of Hazardous Substances on or about the Premises by any person or entity on the Premises while this lease is in effect (other than Landlord's employees or agents), except as follows: Tenant is not obligated to provide this indemnity for any Hazardous Substances that existed in, on, or about the Premises on or before the date Landlord delivers possession of the Premises to Tenant unless Tenant's intentional, negligent, or willful misconduct causes or exacerbates a release of those Hazardous Substances.
 - (2) Tenant's obligation under this Section 9(d) includes all liabilities, claims, demands, damages, fines, penalties, judgments, settlements, and costs related to—
 - (A) any required or necessary remediation, repair, cleanup, or detoxification of the Premises or the Improvements and the preparation of closure plans and other required plans, whether the actions and

plans are required or necessary before or after expiration or termination of this lease;

- (B) any death, bodily injury, personal injury, property damage or destruction (including injury to the environment), and economic injury that arises from the possession, use, generation, handling, transportation, remediation, storage, release, threatened release, or disposal of Hazardous Substances on, at, or from the Premises by Tenant or by any person or entity who occupies or operates the Premises or the Improvements on Tenant's behalf or as Tenant's subtenant; and
 - (C) any damage to the Impermeable Cap or violation of the Remediation Agreements by or Tenant's members, directors, officers, shareholders, partners, employees, agents, contractors, subtenants, Lenders, or invitees.
- (3) Tenant's obligation under this Section 9(d) will survive the expiration or termination of this lease.
- (e) **Remediation by Tenant.** If Tenant or Tenant's members, directors, officers, shareholders, partners, employees, agents, contractors, subtenants, Lenders, or invitees cause the presence of Hazardous Substances on the Premises or the release of Hazardous Substances on or from the Premises, and if that presence or release results in the contamination or deterioration of the Premises, or of any water or soil on or beneath the Premises, or of any property in the vicinity of the Premises, or of the atmosphere, then Tenant shall promptly take all action necessary to investigate and remedy that contamination or deterioration in compliance with Environmental Laws, at no cost to Landlord. In addition, if Tenant or Tenant's members, directors, officers, shareholders, partners, employees, agents, contractors, subtenants, Lenders, or invitees damage the portion of the Impermeable Cap on the Property, then Tenant shall promptly take all action necessary to repair the Impermeable Cap and to remedy any contamination caused by the damage, all in compliance with Environmental Laws and at no cost to Landlord.
- (f) **Restrictions on Use of Hazardous Substances.**
- (1) Except as provided otherwise in Sections 9(e), 9(f)(2)(A), and 9(f)(2)(B), Tenant and Tenant's members, directors, officers, shareholders, partners, employees, agents, contractors, subtenants, Lenders, and invitees shall not possess, use, generate, handle, transport, remediate, store, release, threaten to release, or dispose of any Hazardous Substances on, under, or about the Premises.

- (2) Tenant and Tenant's members, directors, officers, shareholders, partners, employees, agents, contractors, subtenants, Lenders, and invitees may use—
 - (A) quantities of common chemicals needed to conduct business on the Premises consistent with this lease, including adhesives, lubricants, motor-vehicle fuels, paints, solvents, used motor oil and oil filters, brake fluid, and cleaning fluids; and
 - (B) other Hazardous Substances that are necessary to conduct business on the Premises consistent with this lease and for which Landlord has given written consent before the Hazardous Substances are brought on the Premises.
- (3) Within 10 days after receiving a written request from Landlord, Tenant shall disclose in writing all Hazardous Substances being used on the Premises, the nature of the use, and the manner of storage and disposal.
- (g) **Notification Obligations.** Landlord and Tenant shall promptly notify each other in writing of all oral or written communications from a governmental entity that relate to the Premises or the Improvements and concern Hazardous Substances or the violation of Environmental Laws.

10. Indemnity and Insurance

(a) Indemnity

- (1) *Definitions.* For purposes of this Section 10(a)—
 - (A) **"Person"** is to be interpreted broadly and includes (i) Tenant's members, directors, officers, shareholders, partners, employees, agents, contractors, assignees, subtenants, Lenders, and invitees and (ii) Landlord's elected officials, appointed officials, officers, employees, contractors, and agents; and
 - (B) **"Occurrence"** means the death of, or injury to, any Person; and damage to, or destruction of, any real or personal property or the environment, broadly interpreted.
- (2) *Tenant's Indemnity Agreement.* Tenant shall indemnify, defend (with attorneys reasonably acceptable to Landlord), protect, and hold Landlord and Landlord's elected officials, appointed officials, officers, employees, contractors, agents, and property (including the Premises) harmless from and against all liabilities, claims, demands, damages, fines, penalties, judgments, settlements, and costs (including reasonable attorneys' fees and litigation

costs through final resolution on appeal, whether for the Landlord's outside counsel or the Sacramento City Attorney) that arise directly or indirectly from Tenant's possession and use of the Premises or from Tenant's construction or use of the Improvements, except to the extent caused by the negligence or willful misconduct of Landlord or Landlord's elected officials, appointed officials, officers, employees, contractors, or agents. Tenant's obligation under this Section 10(a) includes liabilities, claims, demands, damages, fines, penalties, judgments, settlements, and costs arising from any of the following:

- (A) Any Occurrence on the Premises.
 - (B) Any Occurrence that is in any way connected with the Premises or the Improvements or with any personal property on the Premises.
 - (C) Any Occurrence caused or allegedly caused by either (i) a condition of the Premises or the Improvements that is created by Tenant or by any Person on the Premises with Tenant's permission or (ii) some act or omission on the Premises by Tenant or by any Person on the Premises with Tenant's permission.
 - (D) Any Occurrence caused by, or related in any way to, work performed on the Premises or materials furnished to the Premises at the request of Tenant or any person or entity acting for Tenant or with Tenant's permission.
 - (E) Tenant's failure to perform any provision of this lease, to comply with any requirement of law applicable to Tenant, or to fulfill any requirement imposed by any governmental entity on Tenant or Tenant's use of the Premises or on Tenant's construction or use of the Improvements.
- (3) *Landlord's Indemnity Agreement.* Landlord shall indemnify, defend (with attorneys reasonably acceptable to Tenant), protect, and hold Tenant and Tenant's members, directors, officers, shareholders, partners, employees, agents, contractors, assignees, subtenants, Lenders, invitees, and property harmless from and against all liabilities, claims, demands, damages, fines, penalties, judgments, settlements, and costs (including reasonable attorneys' fees and litigation costs through final resolution on appeal) to the extent caused by the negligence or willful misconduct of Landlord or Landlord's elected officials, appointed officials, officers, employees, contractors, or agents.
- (b) **Liability Insurance.** While this lease is in effect, Tenant shall procure and maintain, at no cost to Landlord, a broad-form comprehensive-coverage policy of public-

- liability insurance that insures Tenant and Landlord against loss or liability caused by, or connected with, Tenant's possession and use of the Premises under this lease and Tenant's construction and use of the Improvements. The policy must include an endorsement naming Landlord and all Lenders as additional insureds, and it must be in amounts not less than the following:
- (1) \$2,000,000 for injury to, or death of, one person and, subject to that limitation, of not less than \$2,000,000 for injury to, or death of, two or more persons as a result of any one accident or incident.
 - (2) \$2,000,000 for damage to, or destruction of, any property.
- (c) **Garage Liability Insurance.** While this lease is in effect, and if Tenant has sublet the Premises in accordance with Section 12, Tenant shall require that the subtenant procure and maintain, at no cost to Landlord, a garage-liability insurance policy that insures the subtenant, Tenant, and Landlord against loss or liability caused by, or connected with, the subtenant's possession and use of the Premises under this lease and the sublease. The policy must include an endorsement naming Landlord, Tenant, and all Lenders as additional insureds, and it must be in amounts not less than the following:
- (1) \$1,000,000 for injury to, or death of, one person and, subject to that limitation, of not less than \$1,000,000 for injury to, or death of, two or more persons as a result of any one accident or incident.
 - (2) \$1,000,000 for damage to, or destruction of, any property.
- (d) **Pollution Insurance.** While this lease is in effect, Tenant shall procure and maintain, at no cost to Landlord, a pollution-insurance policy that insures Tenant and Landlord against loss or liability caused by, or connected with, Tenant's possession and use of the Premises under this lease, in an amount not less than \$1,000,000. The policy must include an endorsement naming Landlord as an additional insured. Tenant may comply with this Section 10(d) by requiring a subtenant to procure and maintain the required insurance policy, at no cost to Landlord, with the policy including an endorsement naming Landlord, Tenant, and all Lenders as additional insureds.
- (e) **Fire-and-Casualty Insurance.** While this lease is in effect, Tenant shall procure and maintain, at no cost to Landlord, a fire-insurance policy insuring the Improvements for their full replacement value against damage or destruction by fire and the perils commonly covered under the standard extended-coverage endorsement to fire-insurance policies issued on real property in Sacramento County. The policy required by this Section 10(e) must insure the Improvements against loss or destruction by windstorm, cyclone, tornado, hail, explosion, riot, riot attending a

strike, civil commotion, terrorism, malicious mischief, vandalism, aircraft, fire, smoke damage, and sprinkler leakage, even if these perils are not commonly covered under the standard extended-coverage endorsement. During construction of the Improvements, the policy must also include coverage for course of construction, vandalism, and malicious mischief and insure the Improvements and all materials delivered to the construction site for their full insurable value. In addition, so long as any Leasehold Encumbrance exists, the policy must include a standard lender endorsement.

- (f) **Landlord's Approval of Policies; Certificates and Copies.** Each insurance policy required under this Section 10 must be issued by an insurance company authorized to transact insurance business in California and will be subject to Landlord's approval, which Landlord shall not withhold, delay, or condition unreasonably. Tenant shall deliver to Landlord one or more certificates of insurance confirming that all policies are in effect, with each certificate executed by the insurance company or companies or by their authorized agents. Tenant shall deliver the certificate or certificates within 10 days after the Effective Date and within 10 days after any policy is replaced, rewritten, or renewed. Upon Landlord's written request, Tenant shall promptly provide Landlord with accurate and complete copies of each policy, including all endorsements.
- (g) **Notice of Cancellation of Insurance.** Each insurance policy required under this Section 10 must include an endorsement stating that the policy cannot be cancelled or materially altered for any reason unless the insurer gives at least 30-days' prior written notice of the cancellation or material alteration to Landlord and all Lenders in the manner required by Section 15(b) for service of notices.

11. Condemnation.

- (a) **Total Condemnation.** If, while this lease is in effect, any public or quasi-public entity uses the power of eminent domain to take fee title to all of the Premises, or to take fee title to all of the Improvements, or to take the Tenant's entire leasehold estate (a "**Total Taking**"), then this lease will terminate at 12:01 a.m. on the earlier of the day legal title is vested in the entity exercising the power of eminent domain or the day the entity exercising the power of eminent domain takes actual physical possession. Thereafter, both Landlord and Tenant will be released from all obligations under this lease except those specified by Section 11(c) or by the indemnity obligations specified to survive termination or expiration of this lease.
- (b) **Partial Taking; Replacement Improvements.**
 - (1) If, while this lease is in effect, any public or quasi-public entity uses the power of eminent domain to take fee title to less than all of the Premises, or to take fee title to less than all of the Improvements, or to take less than all of the

Tenant's leasehold estate (a "**Partial Taking**"), then all compensation and damages payable for the Partial Taking and attributable to the Improvements will be made available to Tenant as reasonably needed to do the following:

- (A) Repair all or any portion of the Improvements not taken.
 - (B) Replace the Improvements taken on the portion of the Premises not taken (the "**Replacement Improvements**"), if replacement is permitted by then-existing law. Plans and specifications for the Replacement Improvements must be compatible in architecture and construction quality with the Improvements not taken and must be approved in writing by Landlord before construction begins.
- (2) Notwithstanding Section 11(b)(1), Tenant may elect to terminate this lease for a Partial Taking if Tenant reasonably determines that the portion of the Premises or the Improvements taken is so substantial that even with the Replacement Improvements Tenant's use of the Premises for the uses described in Section 4(a) will be materially impaired. To terminate this lease under this Section 11(b)(2), Tenant must serve Landlord and Lender with written notice of termination in accordance with Sections 7(b) and 15(b) within 60 days after Tenant receives, from Landlord or the entity exercising the power of eminent domain, a written notice describing the extent and scope of the taking. The termination will be effective on the earlier of the termination date specified in Tenant's notice to Landlord and Lender or the date the entity exercising the power of eminent domain takes physical possession of the portion of the Premises or the Improvements taken by eminent domain, subject to the following: if Tenant specifies a termination date that precedes the date the entity exercising the power of eminent domain will take physical possession, then the termination date must be at least 60 days after the date Tenant serves Landlord and Lender with the notice of termination.
- (3) When the termination under Section 11(b)(2) becomes effective—
- (A) a subtenancy created by Tenant in or on the Premises will also terminate, and Tenant shall deliver the Premises and the remaining Improvements to Landlord free and clear of the subtenancy, except as follows: in its Sole Discretion, Landlord may notify the subtenant in writing that the subtenant may attorn to Landlord and continue its occupancy of the Premises as a tenant of Landlord;
 - (B) Tenant shall deliver the Premises and remaining Improvements free and clear of all liens and encumbrances not created by Landlord; and

- (C) both Landlord and Tenant will be released from all obligations under this lease except those specified in Section 11(c) and the indemnity obligations specified to survive termination or expiration of this lease.
- (c) **Condemnation Award.** Compensation awarded because of a taking by eminent domain will be allocated between Landlord and Tenant as follows:
- (1) Compensation for any land that is part of the Premises will be paid to Landlord and be Landlord's sole property, free and clear of any claim of Tenant or any person claiming rights to the Premises through or under Tenant. Tenant is entitled to just compensation for the value of its leasehold estate.
 - (2) When only a portion of the Premises is taken by eminent domain and Tenant is not entitled to or does not terminate this lease, compensation for any of the Improvements constructed or located on the portion of the Premises taken will be applied in accordance with Section 11(b)(1) toward the Replacement Improvements.
 - (3) When this lease is terminated under Section 11(a) or 11(b)(2), any compensation awarded for any of the Improvements located on the portion of the Premises taken will be allocated between Tenant and Landlord as follows:
 - (A) Tenant will receive, as its sole property, the percentage of the compensation awarded for the Improvements that equals the percentage of the term of this lease then in effect that has not expired when the termination becomes effective.
 - (B) Landlord will receive, as its sole property, the percentage of the compensation awarded for the Improvements that equals the percentage of the term of this lease then in effect that has expired when the termination becomes effective.
 - (C) Illustration of Sections 11(b)(3)(A) and 11(b)(3)(B): If the termination becomes effective at the end of the fourth year of the First Extended Term, then Tenant would receive 60% of the compensation awarded for the Improvements, and Landlord would receive 40% of the compensation awarded for the Improvements.
 - (D) For purposes of this Section 11(c)(3), a termination becomes effective at 12:01 a.m. on the earlier of—

- (i) the date that title to the portion of the Premises on which the Improvements are located is taken by the entity exercising the power of eminent domain; or
 - (ii) the date that physical possession of the portion of the Premises on which the Improvements are located is taken by the entity exercising the power of eminent domain.
- (4) Any damages awarded for relocation expenses, loss of business, or loss of goodwill will belong exclusively to Tenant.
- (d) **Partial Termination and Reduction of Monthly Rent for Partial Taking.** If, while this lease is in effect, a Partial Taking occurs and Tenant does not or cannot terminate this lease under Section 11(b)(2), then this lease will terminate as to the portion of the Premises taken (a “**Partial Termination**”) at 12:01 a.m. on the earlier of the date that title to the portion of the Premises on which the Improvements are located is taken by the entity exercising the power of eminent domain or the date that physical possession of the portion of the Premises on which the Improvements are located is taken by the entity exercising the power of eminent domain. Upon a Partial Termination, the Monthly Rent payable under this lease will be reduced in the same proportion that the value of the portion of the Premises taken by eminent domain bears to the full value of the Premises immediately before the Partial Termination. As to the portion of the Premises still subject to this lease after the Partial Termination, Tenant shall construct Replacement Improvements in accordance with Section 11(b)(1) and to do all other acts, at no cost to Landlord, that are required to make the remaining portion of the Premises fit for the uses described in Section 4(a).
- (e) **Voluntary Conveyance in Lieu of Eminent Domain.** Landlord’s voluntary conveyance of title to a public or quasi-public entity of all or a portion of the Premises under threat by that entity to take it by eminent domain will be considered a taking of title to all or a portion of the Premises under the power of eminent domain for purposes of this Section 11.

12. Assignment and Subletting.

- (a) **No Assignment Without Landlord’s Consent.**
 - (1) Tenant may assign this lease only with Landlord’s prior written consent, which Landlord shall not withhold, delay, or condition unreasonably, but only if the assignee assumes all of Tenant’s obligations under this lease. An assignment made contrary to this Section 12(a) is void unless otherwise permitted by this Section 12.

- (2) An assignee must be a person or entity who, in Landlord's reasonable judgment, has the experience and wherewithal needed to successfully manage the Premises consistently with the purposes of this lease and perform all of Tenant's obligations under this lease. To assist Landlord in determining whether to consent to an assignment, Tenant shall provide Landlord with the proposed assignee's complete, detailed financial statements (audited by a certified public accountant reasonably satisfactory to Landlord, if the proposed assignee has the statements audited in its normal course of business), together with complete, detailed information about—
 - (A) the proposed assignee's business experience;
 - (B) the proposed assignee's intended use of the Premises and the Improvements;
 - (C) the proposed assignee's sources of funds for repaying any indebtedness of Tenant that the proposed assignee will assume, take subject to, or agree to pay, and all other claims on those funds; and
 - (D) any other information that Landlord may reasonably require to determine whether the proposed assignee is qualified.
- (3) Landlord's consent to one assignment will not be considered consent to any subsequent assignment.

(b) **Leasehold Encumbrances and Subsequent Transfers.** Notwithstanding Section 12(a), Landlord's consent is not required for the following:

- (1) Tenant's assignment to a Lender under a Leasehold Encumbrance (as defined in Section 7(a)) of all or a portion of Tenant's interest under this lease and all Tenant's leasehold estate.
- (2) A transfer, conveyance, or assignment resulting from a foreclosure or from a Lender's acceptance of a deed in lieu of foreclosure.
- (3) Any transfer, conveyance, or assignment by a Lender following its acquisition of this lease and Tenant's leasehold estate as a result of foreclosure or acceptance of a deed in lieu of foreclosure.
- (4) A transfer, conveyance, or assignment to a person or entity that is owned or controlled by Tenant or is under common control with Tenant or its parent entity.

- (c) **Subleases.** Tenant may sublet the Premises to a subtenant that Landlord has determined, in Landlord's Sole Judgment, to have the experience and wherewithal needed to successfully operate Motor Vehicles dealership on the Premises, and Tenant must obligate the subtenant to have a Motor Vehicles dealership in operation on the Premises within six months after the date of the sublease.
- (1) *Landlord's Approval of Subtenants.* Tenant shall not enter into a sublease of the Premises until Landlord notifies Tenant in writing of Landlord's determination that the proposed subtenant has the experience and wherewithal needed to successfully operate a Motor Vehicles dealership on the Premises. To assist Landlord in making this determination, Tenant shall provide Landlord with the following:
- (A) Complete, detailed information about the proposed subtenant's business experience.
 - (B) The proposed subtenant's complete, detailed financial statements for the most recent business year (audited by a certified public accountant reasonably satisfactory to Landlord, if the proposed subtenant has the statements audited in its normal course of business).
 - (C) The proposed subtenant's intended use of the Premises and the associated Improvements.
 - (D) Pro forma financial statements for the first 12 months of the proposed subtenant's operations on the Premises, showing the projected sales of new and used Motor Vehicles (number of units plus dollar amounts).
 - (E) Any other information that Landlord may require to determine whether the proposed subtenant is qualified. A proposed subtenant will be considered approved unless Landlord disapproves the proposed subtenant in writing within 30 days after Landlord receives all of the information described in this Section 12(c)(1).
- (2) *Sublease Provisions.* A sublease must be expressly subject to all terms and conditions of this lease, which will be superior to those set forth in the sublease; must require the subtenant to attorn to Landlord if Tenant breaches or Landlord terminates this lease; and must have a term that does not extend beyond the term of this lease then in effect (i.e., the Initial Term, the First Extended Term, or the Second Extended Term). In addition, a sublease must authorize Tenant to terminate the sublease if, after the subtenant begins operating a Motor Vehicles dealership on the Premises, the subtenant discontinues operations for more than 30 consecutive days for reasons other than a Force Majeure Event (see Section 15(c)).

- (3) *Invalid Subleases.* A sublease made contrary to this Section 12(c) is void.
- (d) **Certified Copies of Assignments and Subleases.** Tenant shall provide Landlord with a copy of any executed assignment and each executed sublease as soon after execution as is reasonably practicable, and Tenant shall certify in writing that each copy so provided is complete and accurate.
- (e) **Non-disturbance of Subtenants.** If Landlord terminates this lease solely because of Tenant's breach or default, then Landlord shall not terminate a sublease that is in effect on the termination date or disturb the possession or leasehold rights of the subtenant. To that end, Landlord shall enter into a non-disturbance agreement with the subtenant, using the form attached as Exhibit C, within 10 days after receiving Tenant's written request for such an agreement. Landlord is not bound by any sublease or amendment to a sublease unless Landlord has consented to it; Landlord shall not withhold, delay, or condition its consent unreasonably.

13. Breach and Remedies

(a) Breach by Tenant

- (1) *Violations of Lease.* If Tenant violates any covenant, condition, or agreement of this lease, and if Landlord serves Tenant with written notice of breach, then the following will apply:
- (A) *Non-monetary violations.* For non-monetary violations, Tenant will be in breach of this lease if Tenant has not cured the violation within 60 days after service of the notice or, for a violation that cannot be cured within 60 days, has not begun work on a cure within 60 days after service of the notice and diligently pursued the cure to completion.
- (B) *Monetary violations.* For monetary violations, Tenant will be in breach of this lease if Tenant has not cured the violation within 30 days after service of the notice.
- (2) *Other Violations.* In addition to Tenant's failure to cure a violation of any covenant, condition, or agreement within the time permitted by Section 13(a)(1), the following also constitute a breach by Tenant:
- (A) The appointment of a receiver to take possession of the Premises or the Improvements, or of Tenant's interest under this lease, or of Tenant's operations on the Premises, for any reason, including an assignment for benefit of creditors or voluntary or involuntary bankruptcy proceedings, if not released within 60 days.

- (B) An assignment by Tenant for the benefit of creditors, or the voluntary filing by Tenant or the involuntary filing against Tenant of a petition or other court action or suit under any law for the purpose of
 - (i) adjudicating Tenant a bankrupt; (ii) extending time for payment; (iii) satisfaction of Tenant's liabilities; or (iv) reorganization, dissolution, or arrangement because of bankruptcy or insolvency, or to prevent bankruptcy or insolvency. In the case of an involuntary proceeding, if all consequent orders, adjudications, custodies, and supervisions are dismissed, vacated, or otherwise permanently stayed or terminated within 60 days after the filing or other initial event, then Tenant will not be in breach of this lease.
- (C) The subjection of any right or interest of Tenant under this lease to attachment, execution, or other levy, or to seizure under legal process, when the claim against Tenant is not released within 60 days.
- (D) Tenant's abandonment of, or vacation from, the Premises (failure to occupy and operate the Premises for 60 consecutive days will be considered an abandonment and vacation of the Premises and of the personal property remaining on the Premises). This Section 13(a)(2)(D) does not apply to Tenant's vacating the Premises because the Improvements are damaged or destroyed, nor does it apply to any subsequent, reasonable period of repair or reconstruction.
- (E) Except for assignments permitted under Section 12, assignment of this lease by Tenant, either voluntarily or by operation of law, and whether by judgment, execution, death, or any other means.
- (F) Use of the Premises for any purpose other than as authorized in this lease.

(b) **Termination and Unlawful Detainer.** If Tenant breaches this lease in accordance with Section 13(a) and the breach continues beyond all applicable notice-and-cure periods, then, except as provided in Section 13(c), Landlord has the following remedies in addition to all other rights and remedies provided by law or equity. Landlord may resort to these remedies cumulatively or in the alternative, at Landlord's Sole Discretion:

- (1) Landlord may terminate this lease by serving Tenant and its then-current subtenant, if any, with a written termination notice. If a termination notice is served, then all of Tenant's rights in the Premises and the Improvements will terminate immediately. Promptly after the termination notice is served, Tenant shall surrender and vacate the Premises and the Improvements in

“broom clean” condition; Landlord may re-enter and take possession of the Premises and the Improvements; and except as otherwise provided in Section 12(e), Landlord may eject all persons and entities in possession or occupancy, or eject some and not others, or eject none. Termination under this Section 13(b)(1) will not relieve Tenant from the obligation to pay any sum due to Landlord or from any claim for damages previously accrued or then accruing against Tenant. Nor will termination relieve Tenant from indemnity obligations specified to survive termination of this lease.

- (2) Landlord may re-enter the Premises and, without terminating this lease, re-let the Premises and the Improvements, in whole or part, for the account and in the name of Tenant or otherwise; and eject all persons, or eject some and not others, or eject none, except as otherwise provided in Section 12(e). Landlord shall apply all rents from re-letting in accordance with Section 13(b)(6). Any re-letting may be for the remainder of the term then in effect or for a shorter period. Landlord shall execute any leases made under this provision in Landlord’s name, and Landlord will be entitled to all rents from the use, operation, or occupancy of the Premises or the Improvements, or of both. Tenant nevertheless shall pay to Landlord, on the due dates specified in this lease, the equivalent of all sums required of Tenant under this lease plus reasonable Landlord’s expenses, less the proceeds of any re-letting or attornment. No act by Landlord or on Landlord’s behalf under this Section 13(b)(2) will constitute a termination of this lease unless Landlord serves Tenant with a termination notice.
- (3) Landlord may store Tenant’s personal property and trade fixtures remaining on the Premises for Tenant’s account and at Tenant’s cost in accordance with California law. The election of one remedy for any one item will not foreclose the subsequent election of any other remedy for another item or for the same item.
- (4) Landlord will be entitled to each installment of rent or to any combination of installments for any period before termination, plus interest at 10% per annum from each installment’s due date. The proceeds of re-letting or attorned sub-rents will be applied as follows when received: to Landlord to the extent that the proceeds for the period covered do not exceed the amount due from, and charged to, Tenant for the same period; and the balance to Tenant.
- (5) Landlord will be entitled to damages in the following sums. For purposes of Sections 13(b)(5)(A) and 13(b)(5)(B), the “worth at the time of award” will be calculated by adding 3% to the discount rate of the Federal Reserve Bank of San Francisco at the time of the award. For purposes of Section 13(b)(5)(C), the “worth, at the time of award” will be calculated by adding 2% to the

discount rate of the Federal Reserve Bank of San Francisco at the time of the award.

- (A) The worth at the time of award of the unpaid rent that had been earned at the time of termination of this lease.
 - (B) The worth at the time of award of the amount by which the unpaid rent that would have been earned after termination of this lease until the time of award, less the proceeds of all re-lettings and attornments, plus interest at the annual rate of 10%.
 - (C) The worth at the time of award of the amount by which the unpaid rent for the balance of the term then in effect after the time of award exceeds the amount of future rental loss that Tenant proves could be reasonably avoided.
 - (D) Any other amount necessary to compensate Landlord for all detriment proximately caused by Tenant's failure to perform Tenant's obligations under this lease.
- (6) Tenant hereby assigns to Landlord all sub-rents and other sums falling due from subtenants, licensees, and concessionaires during any period in which Landlord has the right under this lease, exercised or not, to re-enter the Premises for Tenant's breach, and Tenant will not have any right to these sums during that period. This assignment is subject and subordinate to all assignments of the same sub-rents and other sums made, before the breach in question, to a Lender holding a Leasehold Encumbrance. Landlord may re-enter the Premises and the Improvements with or without process of law, and without terminating this lease, and collect these sums or bring an action for the recovery of the sums from such obligors, or both. Landlord will receive and collect all sub-rents and proceeds from re-letting, applying them as follows: first, to the payment of reasonable expenses (including attorney's fees or brokers' commissions, or both) paid or incurred by Landlord or on Landlord's behalf in recovering possession, placing the Premises and the Improvements in good condition, and preparing or altering the Premises or the Improvements for re-letting; second, to the reasonable expense of securing new tenants; third, to the fulfillment of Tenant's covenants to the end of the term then in effect; and fourth, to Landlord's uses and purposes. Tenant nevertheless shall pay to Landlord, on the due dates specified in this lease, the equivalent of all sums required of Tenant under this lease plus Landlord's expenses, less the proceeds of the sums assigned and actually collected under this Section 13(b)(6). Landlord may collect either the assigned sums or Tenant's balances, or both, or any installment or installments of them, either before or after expiration of the term then in

effect. But the limitations period will not begin to run on Tenant's payments until the due date of the final installment to which Landlord is entitled, nor will it begin to run on the payments of the assigned sums until the due date of the final installment due from the respective obligors.

- (c) **Election to Continue Lease in Effect.** If Tenant breaches this lease while a valid sublease is in effect and the breach continues beyond all applicable notice-and-cure periods, then Landlord may not terminate this lease under Section 13(b) unless Landlord first notifies the subtenant in accordance with Section 13(c)(1) and the time for the subtenant to respond to the notice has passed.
- (1) *Landlord's Notice.* Landlord's notice must state that Tenant has breached this lease; describe the breach and the required cure; state the time within which the cure must be completed; and explain that Landlord intends to terminate the lease unless the subtenant notifies Landlord, within 30 days after receiving Landlord's notice, that the subtenant elects to cure the breach and take an assignment of this lease as to the area covered by the subtenant's sublease.
 - (2) *Subtenant's Response.* The subtenant must respond to Landlord's notice within 30 days after receiving Landlord's notice, and the response must affirm that the subtenant will cure the breach as required, within the time specified in Landlord's notice (or within a time acceptable to both Landlord and the subtenant); and affirm that the subtenant desires to take an assignment of this lease as to the area covered by the subtenant's sublease.
 - (3) *Assignment.* When Landlord notifies Tenant that a subtenant has elected to cure the breach and take an assignment, Tenant shall assign this lease to the subtenant.
 - (4) *Subtenant's Failure to Cure.* A subtenant's failure to cure the breach as required, within the time specified in Landlord's notice under Section 13(c)(1) (or within a time acceptable to both Landlord and the subtenant) will constitute a breach under Section 13(a) that entitles Landlord to terminate this lease, in accordance Section 13(b).
- (d) **Continuation of Lease in Effect.** If Tenant breaches this lease and abandons the Premises while this lease is in effect, and if Section 13(c) has not been invoked, then Landlord may continue this Lease in effect by not terminating Tenant's right to possession of the Premises. In that event, Landlord will be entitled to enforce all of its rights and remedies under this lease, including the right to recover Monthly Rent as it becomes due. This Section 13(d) is to be applied in accordance with Civil Code Section 1951.4, which provides that a landlord may continue a lease in effect after a

tenant's breach and abandonment and recover rent as it becomes due if tenant has a right to sublet or assign, subject only to reasonable limitations.

- (e) **Cumulative Remedies.** The remedies given to Landlord in this Section 13 are not exclusive. They are cumulative with, and in addition to, all remedies provided elsewhere in this lease or allowed by law on or after the Effective Date.
 - (f) **Waiver of Breach.** A party's failure to insist on strict performance of this lease or to exercise any right or remedy upon the other party's breach of this lease will not constitute a waiver of the performance, right, or remedy. A party's waiver of the other party's breach of any term or provision in this lease will not constitute a continuing waiver or a waiver of any subsequent breach of the same or any other term or provision. A waiver is binding only if set forth in writing and signed by the waiving party.
 - (g) **Surrender of Premises.** On expiration or earlier termination of this lease, Tenant shall surrender the Premises and the Improvements to Landlord in as good, safe, and broom-clean condition as practicable, excepting reasonable wear and tear and damage by forces beyond Tenant's reasonable control. At Landlord's written request, Tenant shall execute and provide to Landlord quitclaim deeds or other reasonable documents in recordable form acceptable to Landlord that reflect the expiration or termination of Tenant's right, title, and interest in this lease, the Premises, and the Improvements.
- 14. Landlord's Right to Enter and Inspect.** Tenant shall permit Landlord and Landlord's elected officials, officers, employees, agents, representatives, or consultants to enter upon the Premises during Tenant's normal business hours while this lease is in effect to inspect the Premises and the Improvements for the purpose of determining Tenant's compliance with this lease. As a condition precedent to exercising this right to enter and inspect, Landlord must notify Tenant, either orally or in writing, a reasonable time beforehand.
- 15. Miscellaneous**
- (a) **Relationship of the Parties.** This lease does not create any relationship or association between Landlord and Tenant other than that of landlord and tenant. For example, and without limiting the previous sentence, this lease does not create between Landlord and Tenant the relationship of principal and agent, nor does it create a partnership or joint venture.
 - (b) **Notices.** Any notice given under this lease must be in writing and will be effective only when sent in the manner provided by this Section 15(b) to the persons identified below:

If notice is to Landlord:

City of Sacramento
Economic Development Department
915 I Street, Third Floor
Mail Station 18000
Sacramento, California 95814
Attention: Jim Rinehart, Director

with a copy to—

City of Sacramento
Facilities and Real Property Management
5730 24th Street, Bldg. 4
Sacramento, CA 95822
Attention: Asset Management

If notice is to Tenant:

North Sacramento CJD, LLC
516 Gibson Drive, Suite 290
Roseville, California 95678
Attention: CFO

with a copy to—

Kay & Merkle, LLP
100 The Embarcadero, Penthouse
San Francisco, CA 94105
Attention: Bruce Bercovich, Esq.

Notices may be sent by personal delivery, by fax or e-mail, or by mail. Notices sent by personal delivery (including notices sent by overnight courier, e.g., FedEx, UPS) will be effective when delivered to the recipient. Notices sent by fax or e-mail will be effective when the recipient sends a fax or e-mail confirming delivery. Notices sent by mail will be effective on the third business day after deposit in the United States Mail (certified mail and return receipt requested), addressed as set forth below, with postage prepaid. As used in this Section 15(b), "business day" means any day Landlord's main offices located at 915 "I" Street, Sacramento, California, are open to the public. A party may change its address for these purposes by giving written notice of the change to the other party in the manner provided in this Section 15(b).

(c) **Force Majeure.**

- (1) **"Force Majeure Event"** means a cause of delay that is not the fault of the party who is required to perform under this lease and is beyond that party's reasonable control, including but not limited to the elements (including but not limited to floods, earthquakes, windstorms, and unusually severe weather), fire, energy shortages or rationing, riot, acts of terrorism, war or war-defense conditions, the acts of any public enemy, the actions or inactions of any governmental entity (excluding Landlord) or the entity's agents, litigation (including but not limited to litigation under CEQA), labor shortages (including but not limited to shortages caused by strikes or walkouts), and materials shortages.
- (2) Except as otherwise expressly provided in this lease, if the performance of any act required by this lease to be performed by either Landlord or Tenant is prevented or delayed because of a Force Majeure Event (defined in Section 15(c)(1)), then the time for performance will be extended for a period

equivalent to the period of delay, and performance of the act during the period of delay will be excused.

- (3) This Section 15(c) does not excuse Tenant from the obligation to pay rent promptly or the obligation of either party to perform an act when performance is rendered difficult or impossible solely because of that party's financial condition.
- (d) **Time of Essence.** Time is of the essence of this lease.
- (e) **Broker's Commission.** Landlord shall pay all commissions, fees, and costs owed to CB Richard Ellis in connection with this lease, with the total payment not to exceed \$65,000.
- (f) **Binding on Successors and Assigns.** This lease binds and inures to the benefit of the successors and assigns of the parties. This Section 15(f) does not constitute Landlord's consent to any assignment of this lease or any interest in the Lease.
- (g) **Severability.** If a court with jurisdiction holds any nonmaterial provision of this lease to be invalid, void, or unenforceable, then the other provisions will remain in full force.
- (h) **Memorandum of Lease for Recording.** Neither Landlord nor Tenant may record this lease without the other's written consent. Landlord and Tenant shall execute, at the request of either at any time while this lease is in effect, a memorandum or "short form" of this lease for purposes of, and in a form suitable for, recordation. The memorandum or "short form" must describe the parties and the Premises, specify the term of this lease, incorporate this lease by reference, and include any other provisions required by any Lender.
- (i) **Interpretation and Venue.** This lease is to be interpreted and applied in accordance with California law, except that the rule of interpretation in Civil Code Section 1654 will not apply. Exhibits A, B, and C are part of this lease. Any litigation concerning this lease must be brought and prosecuted in the Sacramento County Superior Court.
- (j) **Interest.** Tenant shall pay interest at the annual rate of 10% on any sums Tenant owes Landlord under this lease but fails to pay when due.
- (k) **Authority of Persons Signing Lease.** Each person or entity signing this lease on behalf of Landlord or Tenant warrants and represents that he, she, or it is authorized to execute this lease and to bind Landlord or Tenant, as the case may be, to its provisions.

- (l) **Counterparts.** The parties may execute this lease in counterparts, each of which will be considered an original, but all of which will constitute the same agreement.

- (m) **Estoppel Certificates.** Each party, within 10 business days after receiving a written request from the other party, shall execute and deliver to the requesting party an Estoppel Certificate that does the following: certifies that this lease is unmodified and in full effect (or, if this lease has been modified, that this lease is in full effect as modified); states the amount of rental and dates to which the rental has been paid in advance, if any; states, to the actual knowledge of the party providing the certificate, whether the other party is in breach of the performance of any provision of this lease, specifying each breach; and states such other pertinent information as Landlord, Tenant, a subtenant, or any Lender may request. Prospective purchasers, lenders, and other similar lien holders of the Premises, and any assignee or subtenant of the Premises, may rely on such an Estoppel Certificate.

- (n) **Integration and Modification.** This lease sets forth the parties' entire understanding regarding the matters set forth above and is intended to be their final, complete, and exclusive expression of those matters. It supersedes all prior or contemporaneous agreements, representations, and negotiations—written, oral, express, or implied—and may be modified only by a written agreement signed by both parties.

(Signature Page Follows)

City of Sacramento

By: _____
John Shirey, City Manager

Dated: _____, 2014

Recommended for Approval

By: _____
James R. Rinehart, Director
Economic Development Department

Approved as to Form
Sacramento City Attorney

By: _____
Joseph Cerullo Jr.
Senior Deputy City Attorney

Attest:
Sacramento City Clerk

By: _____

North Sacramento CJD, LLC

By:  _____
Pablo Zegarra, Chief Financial Officer

Dated: 03/21, 2014

Approved as to Form
Kay & Merkle, LLP

By:  _____
Bruce Bercovich
Attorneys for North Sacramento CJD, LLC

Ground Lease
City of Sacramento and North Sacramento CJD, LLC

Exhibit A
Description of the Property

Being a portion of Parcel B as shown and so designated on that certain Parcel Map entitled "Haggin Oaks" filed for record in Book 207 of Parcel Maps, at Page 9, Sacramento County Records situate in Sections 26 and 31 of Rancho Del Paso, City of Sacramento, County of Sacramento, State of California, said property being more particularly described as follows:

Beginning at a point on the west line of said Parcel B from which a 3/4 inch iron pipe with cap stamped L.S. 7944 marking the most southerly corner of said Parcel B bears South 13°32'50" East a distance of 67.26 feet; thence from said **POINT OF BEGINNING** coincident with said westerly line of Parcel B, North 13°32'50" West a distance of 214.20 feet to a found 3/4 inch iron pipe with cap stamped L.S. 7944 marking an angle point in said west line of Parcel B; thence coincident with the prolongation of said westerly line of Parcel B, North 13°32'50" West a distance of 47.73 feet to the centerline of Rapton Lane as shown on said Parcel Map; thence coincident with said centerline of Rapton Lane for the following 3 arcs, courses and distances:

1. from a radial line which bears South 16°10'02" East, 181.26 feet along the arc of a non-tangent 1965.00 foot radius curve to the left through a central angle of 05°17'07" to a found 1-1/2 inch long by 1/4 inch diameter mag nail tagged L.S. 7944 marking the point of compound curvature;
2. 88.30 feet along the arc of a tangent 365.00 foot radius curve to the left through a central angle of 13°51'42" to a found 1-1/2 inch long by 1/4 inch diameter mag nail tagged L.S. 7944; and
3. North 54°41'09" East a distance of 72.63 feet to a found 1-1/4 inch iron pipe with cap stamped L.S. 7944 marking the intersection with the east line of said Parcel B;

thence leaving said centerline of Rapton Lane, coincident with the east line of Parcel B, South 35°18'51" East a distance of 238.68 feet to the intersection with the multi-purpose easement line as shown on said Parcel Map; thence leaving said east line of Parcel B, coincident with the multi-purpose easement line, South 11°31'43" West a distance of 143.22 feet to the south line of said Parcel B; thence coincident with said south line of Parcel B, from a radial line which bears South 24°16'32" East, 243.14 feet along the arc of a non-tangent 2750.00 foot radius curve to the right through a central angle of 05°03'56"; thence leaving the south line of Parcel B, North 20°47'02" West a distance of 58.46 feet; thence South 76°27'10" West a distance of 112.91 feet to the Point of Beginning.

Containing 2.787 acres of land, more or less.

See Exhibit "B", plat to accompany description, attached hereto and made a part hereof.

The Basis of Bearings for this description is California State Plane Coordinate System, Zone 2, NAD'83, as measured between GPS Station "G3709", and GPS Station "G3810 as shown and so designated on that certain Record of Survey entitled "Record of Survey GPS Static Survey" filed

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for record in Book 63 of Surveys, at Page 29, Sacramento County Records. Said bearing is North 61°25'55" East. Distances shown are ground based.



Craig E. Spiess P.L.S. 7944
Expires: December 31, 2011

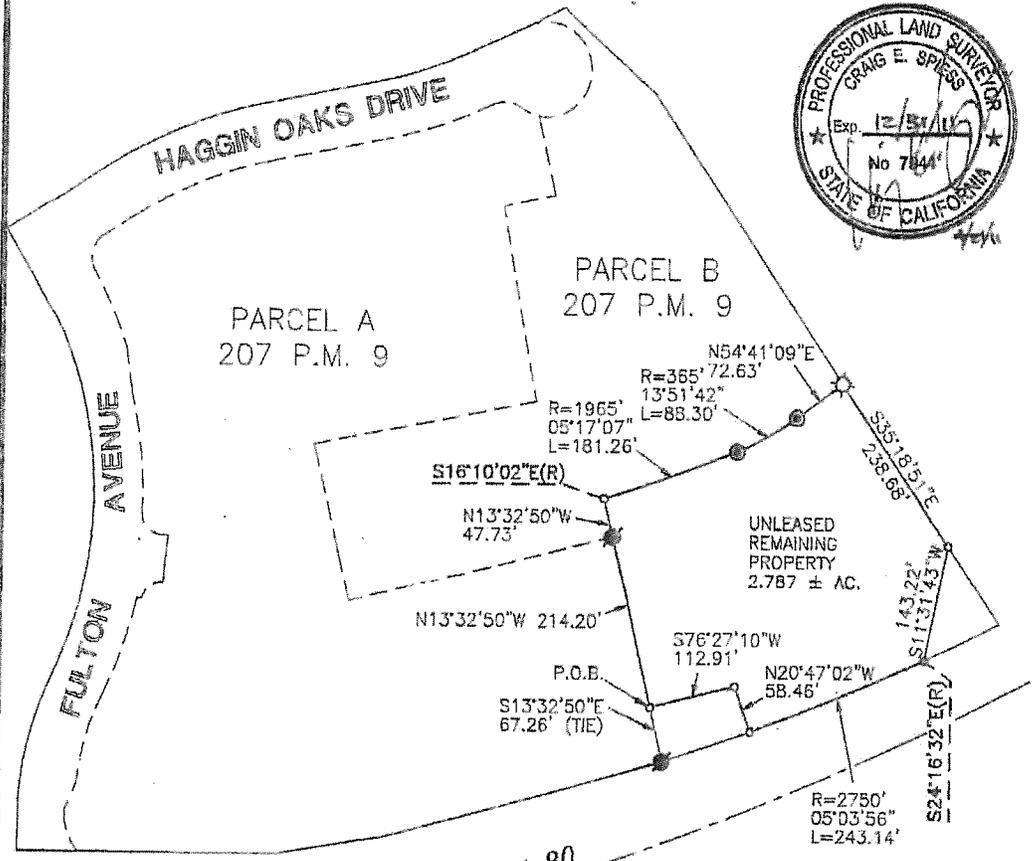
Date: 4/21/11



PREPARED BY WOOD RODGERS, INC.
SACRAMENTO, CALIFORNIA

PLAT TO ACCOMPANY
DESCRIPTION

HAGGIN OAKS
PORTION OF PARCEL B - 207 P.M. 9
CITY OF SACRAMENTO
COUNTY OF SACRAMENTO STATE OF CALIFORNIA



INTERSTATE BUSINESS 80
(CAPITAL CITY FREEWAY)

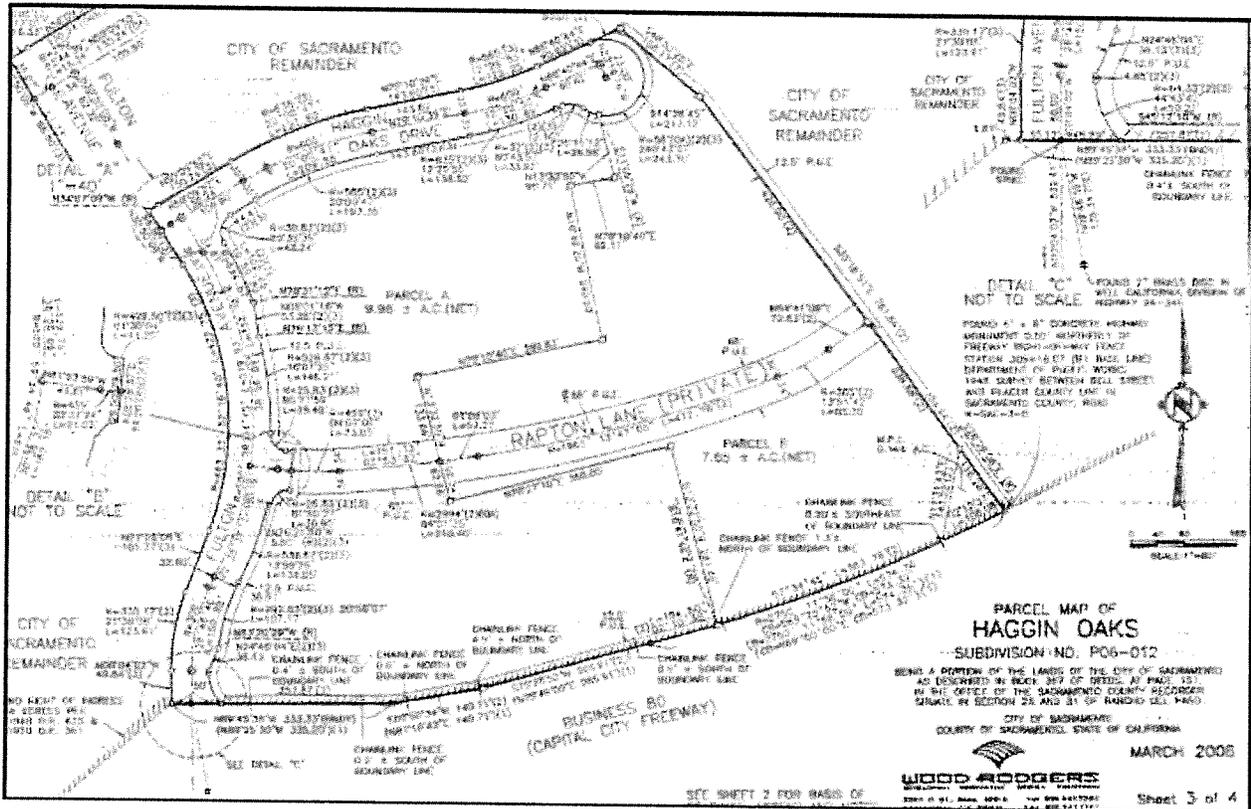


SEE DESCRIPTION FOR
COURSE INFORMATION

NOT TO SCALE

WOOD RODGERS
ENGINEERING - MAPPING - PLANNING - SURVEYING
3301 C St., Bldg. 100-B Tel 916.341.7760
Sacramento, CA 95816 Fax 916.341.7767

Ground Lease
 City of Sacramento and North Sacramento CJD, LLC
Exhibit B
 Description of the 21-acre Parcel
 Leased to Sacramento Trapshooting Club



**Ground Lease
City of Sacramento and North Sacramento CJD, LLC**

**Exhibit C
Form of Non-disturbance Agreement**

**Attached
(Three Pages)**

No fee required, as recording benefits the City of Sacramento, a government entity (Gov. Code, §§ 6103 & 27383).

When recorded, return document to—

Office of the City Clerk
New City Hall
915 "I" Street, Fifth Floor
Sacramento, CA 95814

SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

Non-disturbance Agreement

This Non-disturbance Agreement, dated _____, 20____, is between the CITY OF SACRAMENTO, a California municipal corporation ("**Landlord**"); NORTH SACRAMENTO CJD, LLC, a California limited-liability company ("**Tenant**"); and _____, a _____ ("**Subtenant**").

Background

Landlord owns the fee title of certain real property in the City of Sacramento (the "**Premises**"), and Landlord and Tenant are parties to a Ground Lease dated April __, 2014, under which Landlord leases the Premises to Tenant (the "**Lease**").

Tenant and Subtenant have entered into a written sublease, dated _____, 20____ (the "**Sublease**"), under which Tenant has leased all or a portion of the Premises to Subtenant as described on Exhibit A to this agreement (the "**Subleased Premises**").

With these background facts in mind, the parties agree as follows:

1. In exercising its rights under the Lease (or under any instrument that amends or replaces the Lease) while the Sublease is in effect—
 - (a) Landlord shall not disturb Subtenant in, or deprive Subtenant of, its possession of the Subleased Premises or its right to possess all or part of the Subleased Premises under the Sublease; and
 - (b) Landlord shall not disturb Subtenant in, or deprive Subtenant of, any right or privilege granted to, or inuring to the benefit of, Subtenant under the Sublease.
2. If, while the Sublease is still in effect, the Lease is terminated or expires for any reason, and if the Sublease would continue in effect but for the termination or expiration of the Lease, then the following will apply:

- (a) Landlord shall not make Subtenant a party in any action or proceeding to remove or evict the Tenant and shall not evict or remove Subtenant from the Subleased Premises or disturb or in any way interfere with Subtenant's possession or right of possession while the Sublease is in effect and Subtenant is not in breach or default.
 - (b) The Sublease will continue in full effect as a direct lease from Landlord to Subtenant, effective as of the date the Lease is terminated or expires. Subtenant shall pay Landlord rent equal to the rent Tenant would have paid Landlord for the Subleased Premises were the Lease still in effect; if Tenant prepaid rent under the Lease before the Lease terminated or expired, then Landlord will credit Subtenant for up to 31 days of the prepaid rent.
3. If Landlord and Tenant amend the Lease or replace it with another instrument, then the amendment or replacement instrument will not bind the Subtenant to the extent it—
- (a) conflicts with the Sublease;
 - (b) imposes any obligations on Subtenant that are more onerous than those imposed by the Sublease;
 - (c) deprives Subtenant of any rights under the Sublease; or
 - (d) deprives Subtenant of any rights under the Lease that the Subtenant is privileged to enjoy under the Sublease.
4. Tenant and Subtenant shall not, without Landlord's prior written consent, enter into any agreement modifying the Sublease that would—
- (a) reduce Subtenant's obligations with respect to the payment and amount of rent, taxes, insurance, repairs, or restoration of damage;
 - (b) terminate or shorten the term of the Sublease; or
 - (c) increase Subtenant's privileges or reduce its obligations with respect to condemnation.
5. A modification, amendment, waiver, or release of any provision of this agreement or of any right, obligation, claim, or cause of action arising under this agreement will not be valid or binding for any purpose unless set forth in a writing duly executed by the party against whom it is asserted.
6. This agreement binds and inures to the benefit of the parties and their heirs, legal representatives, successors, assigns.

7. This agreement is to be interpreted and applied in accordance with California law. It sets forth the parties' entire understanding regarding the matters addressed; is intended to be their final, complete, and exclusive expression of those matters; and supersedes all prior or contemporaneous agreements, representations, and negotiations (written, oral, express, or implied). Exhibit A is part of this agreement. Any litigation concerning this agreement must be brought and prosecuted in the Sacramento County Superior Court.
8. The parties may execute this agreement in counterparts, each of which will be considered an original, but all of which will constitute the same agreement.

City of Sacramento

North Sacramento CJD, LLC

By: _____
 [Name]
 [Title]
 Date: _____, 20__

By: _____
 [Name]
 [Title]
 Date: _____, 20__

Approved as to Form
 Sacramento City Attorney

[Name of Subtenant]

By: _____

By: _____
 [Name]
 [Title]
 Date: _____, 20__