



## City Council Report

915 I Street, 1<sup>st</sup> Floor

Sacramento, CA 95814

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**File #:** 2016-01063

**Consent Item 09**

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**Title: Real Property Agreements: 1030 15<sup>th</sup> Street, Suite 300 (M17100100) [Published for 10-Day Review 09/22/2016]**

**Recommendation:** Pass a Resolution authorizing the City Manager or the City Manager's designee to: 1) release \$3.0 million of the \$8.5 million commitment of fund balance in the General Fund (Fund 1001) for the Community Center Theater Renovation project (Project) and increase the expenditure budget in the Project by \$3.0 million for the acquisition of 1030 15<sup>th</sup> Street, Suite 300; 2) execute a Purchase and Sale Agreement, and any related documents, with Lenahan, Lee, Slater, and Pearse LLP for the acquisition of 1030 15<sup>th</sup> Street, Suite 300 in the amount of \$2.89 million; and 3) execute a Lease Agreement, and any related documents, with Lenahan, Lee, Slater, and Pearse LLP for the lease of 1030 15<sup>th</sup> Street, Suite 300.

**Location:** 1030 15<sup>th</sup> Street, Suite 300, District 4

**Contact:** Jon Blank, Facilities Manager, (916) 808-7914, Department of Public Works; Jody Ulich, Director, (916) 808-5105, Convention & Cultural Services Department

**Presenter:** None

**Department:** Public Works / Convention & Cultural Services

**Attachments:**

- 1-Description/Analysis
- 2-Resolution
- 3-Exhibit A - Purchase and Sale Agreement
- 4-Exhibit B - Lease Agreement

## Description/Analysis

**Issue Detail:** The City owns and occupies the first and second floor condominium units located at 1030 15<sup>th</sup> Street (the Panattoni Building). The remaining third floor condominium unit has been listed for sale by Lenahan, Lee, Slater, and Pearse LLP (LLSP), who currently own and occupy the 12,000 square foot space. Following purchase of the property by City, LLSP desires to lease back the property on a month to month basis to provide time for LLSP to relocate to a new office location. The building is located within the Sacramento Convention Center complex.

**Policy Considerations:** The recommendations in this report are in accordance with 1) the provisions of City Code Section 3.04.020 regarding income or expenditures of one hundred thousand dollars or more; 2) City Code Section 3.68.130 regarding the short-term lease of real property acquired by the City for future public works projects; and 3) Sacramento City Council Rules of Procedure, Chapter 7, Section E.2.d, which requires additional posting time for labor agreements and agreements greater than \$1 million.

**Economic Impacts:** None

**Environmental Considerations:** The acquisition, and lease back to the seller, of 1030 15<sup>th</sup> Street, Suite 300 are exempt from environmental review under Section 15301 of the California Environmental Quality Act as they involve no expansion of an existing use. If the expansion of the Convention Center moves forward, the project will be subject to future environmental review.

**Sustainability:** Not applicable

**Commission/Committee Action:** None

**Rationale for Recommendation:** Executing the recommended Purchase and Sale Agreement will give the City ownership of the entire building at 1030 15<sup>th</sup> Street, thereby providing opportunities to use the building for the City's current or future needs.

The listed sale price is \$3.3 million. City staff in Real Estate Services and the City's consultant, Ken Turton Commercial Real Estate, independently reviewed comparable sales data and related supportive information, and value the property at \$2.7 million. The property valuation combined with \$20,000 per month in lease revenue for at least 10 months and an assemblage premium supports the recommended \$2.89 million purchase price. After an extensive offer/counter offer period, the proposed terms and purchase price were detailed in the form of a non-binding letter of intent, which was used as a basis for the key terms of the proposed Purchase and Sale Agreement.

**Financial Considerations:** On May 7, 2013, City Council passed Resolution No. 2013-0144) committing \$8.5 million in General Funds (Fund 1001), available from the closure of assessment districts, to finance the Project. Releasing \$3.0 million of the \$8.5 million committed funds to the Project will provide sufficient funding to purchase the property, and cover related expenses. The revenues generated from the Lease Agreement will be credited to the Project.

**Local Business Enterprise (LBE):** Not applicable

## **RESOLUTION NO. 2016-xxxxx**

Adopted by the Sacramento City Council

October 4, 2016

### **APPROVING TRANSFER OF FUNDS, PURCHASE AND SALE AGREEMENT, AND LEASE AGREEMENT**

#### **BACKGROUND**

- A. The City owns and occupies the first and second floor condominium units located at 1030 15th Street. The remaining third floor condominium unit has been listed for sale by Lenahan, Lee, Slater, and Pearse LLP (LLSP), who currently own and occupy the 12,000 square foot space. Following purchase of the property by City, LLSP desires to lease back the property on a month to month to provide time for LLSP to relocate to a new office location. The building is located within the Sacramento Convention Center complex.
- B. On May 7, 2013, the City Council passed Resolution No. 2013-0144 committing \$8.5 million in General Funds (Fund 1001), available from the closure of assessment districts, to finance the Community Center Theater Renovation project (M17100100). Releasing \$3.0 million of the \$8.5 million commitment to the Community Center Theater Renovation project (Project) will provide sufficient funding to purchase the property, and cover related expenses.

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

- Section 1. The City Manager or the City Manager's designee is authorized to release \$3.0 million of the \$8.5 million commitment of fund balance in the General Fund (Fund 1001) for the Project and increase the expenditure budget in the Project by \$3.0 million for the acquisition of 1030 15th Street, Suite 300.
- Section 2. The City Manager or the City Manager's designee is authorized to execute a Purchase and Sale Agreement, and any related documents, with Lenahan, Lee, Slater, and Pearse LLP for the acquisition of 1030 15<sup>th</sup> Street, Suite 300 in the amount of \$2.89 million.
- Section 3. The City Manager or the City Manager's designee is authorized to execute a Lease Agreement, and any related documents, with Lenahan, Lee, Slater, and Pearse LLP, for the lease of 1030 15<sup>th</sup> Street, Suite 300.

#### **Table of Contents:**

Exhibit A - Purchase and Sale Agreement  
Exhibit B - Lease Agreement



Requires Council Approval:  No  YES

Council Date: October 4, 2016

General Information

Type: Purchase and Sale Agreement & Lease Back  Attachment: None Number: N/A  
Original Document Number: N/A  
Original Contract Amount: None

\$ Not to Exceed: \$3,370,000  
\$2.89M PURCHASE \$0.48M Lease Back

Other Party: Lenahan, Lee, Slater and Pearse Deed:  None  Included  Separate

Project Name: 1030 15<sup>th</sup> Street, Suite 300 Purchase and Lease back No. Certified Copies of Agreement: 0

Project Number: 2568117

Bid Transaction #: N/A E/SBE-DBE-M/WBE: N/A

Department Information

Department: Public Works Division: Facilities & Real Property  
Project Mgr: Bill Sinclair Supervisor: Richard Sanders  
Contract Services: N/A Date: 9/15/16 Division Mgr: Jon Blank  
Phone Number: 808-1905 Org Number: 15004551

Comment: CAO: Please contact Bill Sinclair at x1905 once the agreements have been processed. Arrangements will be made for pick-up. Thank you.

Review and Signature Routing

Department	Signature or Initial	Date
Project Mgr:	<i>WBS</i>	9/19/16
Supervisor:	<i>RS</i>	9/19/16
Division Manager:	<i>Jon Blank</i>	9/19/16
City Attorney	Signature or Initial	Date
City Attorney:	<i>MLH</i>	9/19/16
Attention:	Maila Hansen	

Send Interoffice Mail  Notify for Pick Up

Pre-Authorization Signature or Initial Date  
Way, Jerry *WJ* 9-19-16  
Department Director:

Process Signature or Initial Date  
City Clerk assign #

Authorization Signature or Initial Date  
City Mgr: Yes  No

**For City Clerk Processing**

Finalized:  
Initial: \_\_\_\_\_  
Date: \_\_\_\_\_

Imaged:  
Initial: \_\_\_\_\_  
Date: \_\_\_\_\_

Received: \_\_\_\_\_  
(City Clerk Starts Here)

**SIGN HERE**

This coversheet is to remain with the original signed Contract.

## Responsibility

**General Information:** May be completed by Project Manager or Contract Services.

**Department Information:** May be completed by Project Manager or Contract Services.

**Review and Signature Routing:**

**Department (not all roles required-dependent on Department Policy)**

Project Manager: Verification of Technical Specs.

Accounting: Verification of Funding Sources. (this may be NA for some departments)

Contract Services: BOT Number, Insurance, Bonds, Solicitation (BID, RFP, RFQ, RFI, Quote, Sole Source, or Emergency), Contractor Signatures, E/SBE, DBE or M/WBE Project Participation.

**City Attorney**

Approval of Contract Form and Bonds (if applicable)

Verification that Insurance Documents are Included (if required for contract approval)

**Authorization**

Department Director: Review All Contracts; Signing Authority <\$100,000

City Manager: Signing Authority delegated for < \$100,000

Signing Authority delegated to Assistant City Manager for = or > \$100,000  
**AFTER** Council Authorization

### Types of Contracts

Type	City Code	Type	City Code
Commodity	<b>3.56</b>	Reimbursement/Credit	
Development	<b>18.16</b>	Settlement	
Grant		Supplies	<b>3.56</b>
Hold Harmless			
Individual Participation			
Master Services			
Memorandum			
Non-Professional Services	<b>3.56</b>		
Owner Participation		<b>Received City Clerk (2<sup>nd</sup> Receipt)</b>	
Professional Services	<b>3.64</b>		
Public Project	<b>3.60</b>		
Real Property Lease City Owned	<b>3.68</b>		
Real Property Sale City Owned	<b>3.88</b>		
Real Property Non-City Owned (NCO)			

**PURCHASE AND SALE AGREEMENT  
AND JOINT ESCROW INSTRUCTIONS**

This Purchase and Sale Agreement and Joint Escrow Instructions ("Agreement") is made and entered into as of the Effective Date by and between Buyer and Seller, who are also referred to individually as "Party" and collectively as "Parties."

**Background**

- A. Seller is the current owner of the third floor condominium located at 1030 15<sup>th</sup> Street, Suite 300, Sacramento, California 95814. The building located at 1030 15<sup>th</sup> Street is known as the "Panattoni Building" and is a 29,590 square foot office condominium building built in 1984, which includes an enclosed ground floor 16-space parking garage.
- B. Seller desires to sell its third floor condominium in anticipation of relocating Seller's law practice to another location.
- C. Buyer currently owns the first and second floor office condominiums in the Panattoni Building, totaling approximately 17,716 square feet, and Buyer desires to own the entire building to give Buyer flexibility for potential future expansion of the neighboring Sacramento Convention Center, which is also owned by Buyer.
- D. Seller and Buyer have been in negotiations regarding the sale of the third floor condominium and desire to move forward with the purchase and sale of the condominium according to the terms and conditions of this Agreement.

*In consideration of the information contained in the Background and the mutual covenants, commitments, and promises contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which has been acknowledged and verified, Buyer and Seller agree as follows:*

1. **Defined Terms.** The terms listed below shall have the following meanings throughout this Agreement:

<b>Effective Date:</b>	The date this Agreement is executed by Buyer after approval by the City Council of the City of Sacramento.
<b>Seller:</b>	Lenahan, Lee, Slater, & Pearse LLP, and or assignee.

<b>Seller's Address:</b>  WMAJERNIK	1030 15th Street Suite 300 Sacramento, CA 95814 (916) 443-1030 Wmsmajernik@lenahanlaw.net
<b>Seller's Counsel:</b>  WMAJERNIK	Lenahan, Lee, Slater, & Pearse LLP 1030 15th Street, Suite 300 Sacramento, CA 95814 (916) 443-1030 Wmsmajernik@lenahanlaw.net
<b>Buyer:</b>	City of Sacramento
<b>Buyer's Address:</b>	City of Sacramento New City Hall Facilities and Real Property Management Division, 2nd Floor 915 I Street Sacramento, CA 95814 916 808-1905 bsinclair@cityofsacramento.org
<b>Buyer's Counsel:</b>	Office of the City Attorney 915 I Street, 4th Floor Sacramento, CA 95814 (916) 808-5346 mhansen@cityofsacramento.org
<b>Property:</b>	That certain real property located at 1030 15th Street, Suite 300 in the City of Sacramento, County of Sacramento, State of California, consisting of approximately 12,000 square feet of land area identified as APN No. 006-0115-016-0004, as specifically described in <u>Exhibit 1</u> (the "Legal Description"). The Property includes, without limitation, all mineral and water rights and all of the existing easements, rights-of-way and other appurtenances used or connected with the use or enjoyment of the Property.
<b>Lease Agreement:</b>	Seller will lease the Property from Buyer according to a separate lease agreement ("Lease Agreement") executed between the Parties.

<b>Purchase Price:</b>	The total Purchase Price for the Property is \$2,890,000.
<b>Escrow Holder:</b>	Fidelity National Title 1375 Exposition Boulevard, Suite 240 Sacramento, CA 95815 Escrow Officer: Paul Avila (916) 646-6057
<b>Escrow Instructions:</b>	The instructions issued by Seller and Buyer to Escrow Holder are in <u>Exhibit 3</u> , in addition to the terms and conditions set forth in this Agreement for Escrow No. 01000383-010-PA-CDT
<b>Closing Date:</b>	No later than November 21, 2016 in accordance with <u>Section 8</u> of this Agreement.
<b>Title Company:</b>	Fidelity National Title 1375 Exposition Boulevard, Suite 240 Sacramento, CA 95815 Escrow Officer: Paul Avila (916) 646-6057
<b>Preliminary Title Report:</b>	The report dated July 19, 2016 issued by the Title Company describing the title to the Property and any encumbrances.

2. **Exhibits.** The following Exhibits are defined in this Agreement and are attached and incorporated into this Agreement by this reference:

<b><u>Exhibit 1</u></b>	Legal Description
<b><u>Exhibit 2</u></b>	Escrow Instructions
<b><u>Exhibit 3</u></b>	Grant Deed

3. **Purchase and Sale.** Subject to the discretion afforded to each Party and compliance with all of the terms, covenants, and conditions in this Agreement, Buyer agrees to purchase the Property from Seller, and Seller agrees to sell the Property to Buyer at the Purchase Price. The Property shall be conveyed to Buyer from Seller by means of a Grant Deed in the form attached as Exhibit 3.
4. **Purchase Price.** The Purchase Price shall be Two Million Eight Hundred Ninety Thousand Dollars (\$2,890,000), which Buyer shall pay to Escrow Holder prior to the Closing Date in accordance with the provisions in Section 11. Within thirty (30) days of the Effective Date of this Agreement, Buyer shall deposit the sum of Forty Thousand Dollars (\$40,000) ("Deposit"), in the form of wired funds paid to Escrow Holder to be deposited into the Escrow account established pursuant to this Agreement as an advance against payment

of the Purchase Price for Property. The Deposit shall become non-refundable on the date Buyer waives the Buyer's Contingencies specified in Section 9 or October 14, 2016, whichever occurs first; provided the Deposit shall be refunded to Buyer in full if Seller defaults in its performance under this Agreement. If Buyer does not waive the Buyer's Contingencies specified in Section 9 and terminates this Agreement prior to October 14, 2016, the Deposit shall be refunded to Buyer in full.

5. As-Is Purchase.

- A. Within 5 days from the Effective Date of this Agreement, Seller will disclose to Buyer any known problems to the best of Seller's immediate knowledge, including disclosure of any reports in Seller's possession regarding the condition of the Property with regard to the release by Seller of any Hazardous Substances on or about the Property.
- B. As of Closing, Buyer will have fully examined and inspected the Property, together with such other documents and materials with respect to the Property which Buyer deemed necessary or appropriate in connection with its investigation and examination of the Property. As of Closing, Buyer will have accepted the physical condition, value, presence or absence of Hazardous Substances, use, leasing, operation, tax status, income and expenses of the Property, with the exception of Buyer's Contingencies per Section 9. The Property will be purchased by Buyer "AS IS" and "WHERE IS" and with all faults.
- C. For the purposes of this Agreement, the term "Hazardous Substances" means any chemical substance, material, controlled substance, object, condition, waste, living organism, or combination thereof which is or may be hazardous to human health or safety or to the environment due to its ignitability, corrosivity, reactivity, explosivity, toxicity, carcinogenicity, mutagenicity, phytotoxicity, reproductive toxicity, infectiousness, radioactivity, or other harmful or potentially harmful properties or effects, including, without limitation, petroleum and petroleum products, asbestos, radon, and polychlorinated biphenyls (PCBs), which are now or may become in the future listed, defined or regulated in any manner by any Environmental Law or regulation.
- D. For the purposes of this Agreement, the term "Environmental Law(s)" means any and all federal, state and local environmental, health, or safety related laws, regulations, ordinances, codes, decrees, directives, standards, rules, guidelines, permits, and decisions of federal and state courts as currently existing and as may be amended, enacted, issued or adopted in the future, which due to the presence or potential presence of Hazardous Substances are or become applicable to the Property or persons or entities who own, occupy, use, visit, or work on or in the Property. Environmental Laws include, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") as set forth in 42 USCA 9601 *et seq.*, the California Hazardous Waste

Control Laws as set forth in California Health and Safety Code Sections 21500 *et seq.*, and the California Porter Cologne Act as set forth in California Water Code Section 13000 *et seq.*

- E. Except as expressly set forth in this Agreement, Seller makes no warranty, express or implied, including, without limitation, any warranty of the habitability, merchantability, or fitness of the Property for a particular purpose.

6. **Indemnity.**

- A. Buyer shall indemnify, defend (with the city attorney's office or with counsel acceptable to Seller), and hold Seller, and Seller's officers, employees and agents, harmless from and against any and all liabilities, penalties, losses, damages, costs, expenses (including reasonable attorneys' fees), causes of action, claims, or judgments arising by reason of any death, bodily injury, personal injury, property damage, violation of any law or regulation, damage to the environment, including ambient air, soil, soil vapor, groundwater, or surface water, and resulting from or in any way connected with:

- (1) Any acts or omissions related to the performance of this Agreement by Buyer, its officers, employees, agents, engineers, contractors or subcontractors, or any other person or entity employed by or acting on its behalf.
- (2) Any breach of this Agreement by Buyer, its officers, or employees.
- (3) The use, storage, treatment, transportation, release, or disposal of hazardous waste, on or about any portion of the Property by Buyer, which occurs at any time before the Closing Date.

- B. Seller shall indemnify, defend (with counsel acceptable to Buyer), and hold Buyer, and Buyer's officers, employees and agents, harmless from and against any and all liabilities, penalties, losses, damages, costs, expenses (including reasonable attorneys' fees), causes of action, claims, or judgments arising by reason of any death, bodily injury, personal injury, property damage, violation of any law or regulation, damage to the environment, including ambient air, soil, soil vapor, groundwater, or surface water, and resulting from or in any way connected with:

- (1) Any acts or omissions related to the performance of this Agreement by Seller, its officers, employees, agents, engineers, contractors or subcontractors, or any other person or entity employed by or acting on its behalf, including failure of Seller to notify Buyer of material facts regarding the Property that are known to Seller or intentional misrepresentation of such material facts.

- (2) Any breach of this Agreement by Seller, its officers, or employees.
  - (3) The use, storage, treatment, transportation, release, or disposal of hazardous waste, on or about any portion of the Property by Seller, which has occurred or will occur at any time before the Closing Date.
- C. The provisions of this Section 6 shall survive the Closing and the recording of the Grant Deed conveying the Property from Seller to Buyer.
7. **Commitments After Effective Date.** From the Effective Date until the Closing, Seller shall not take or authorize any action with regard to the Property, except in accordance with the Lease Agreement executed between Seller and Buyer, including making any commitments or representations to any third party, including governmental authorities and lenders, or adjoining or surrounding property owners.
8. **Escrow and Closing.** The Escrow process for the purchase and sale of the Property between Buyer and Seller shall be as follows:
- A. **Opening of Escrow.** The escrow ("Escrow") shall be deemed opened ("Opening of Escrow") on the date that Escrow Holder receives a copy of this Agreement fully executed by Buyer and Seller. Escrow Holder shall promptly notify Buyer and Seller in writing of the date of the Opening of Escrow. Buyer and Seller shall execute the "Escrow Instructions" specified as Exhibit 2 and deliver them to Escrow Holder. Buyer and Seller agree to execute, deliver and abide by any reasonable or customary supplemental escrow instructions or other instruments reasonably required by Escrow Holder to consummate the transaction; provided, however, no such instructions or instruments shall conflict with, amend or supersede any portion of this Agreement. If there is any conflict or inconsistency between the terms of Escrow Holder's instructions or instruments and the terms of this Agreement and the Escrow Instructions, then the terms of this Agreement and the Escrow Instructions shall control.
  - B. **The Closing.** On the Closing Date, all matters to be performed under this Agreement incident to the sale of the Property and the payment of the Purchase Price (collectively, "Closing") shall be performed at the offices of Escrow Holder, or other mutually acceptable location agreed to in writing by Buyer and Seller. Notwithstanding anything in this Section 8 to the contrary, the Parties agree to use commercially reasonable efforts to pre-close the transaction (i.e., deliver signed documents into Escrow) on the business day immediately preceding the then-scheduled date of Closing. For purposes of this Agreement, the actual Closing Date shall be the date that the Grant Deed in the form attached as Exhibit 3 is recorded pursuant to applicable law in Sacramento County, California. Unless changed in writing by the Parties, the Closing shall occur on the Closing Date, subject to Buyer's and Seller's respective rights to terminate this

Agreement, that are expressly set forth this Agreement and/or the Escrow Instructions. In no event shall the Closing extend past November 21, 2016.

- C. **Lease of the Property.** As of the Closing Date, Buyer shall obtain rights to the full possession of the Property, but will lease the Property back to Seller according to the terms and conditions of a separately executed Lease Agreement between Buyer and Seller.

9. **Buyer's Contingencies.** Buyer's obligation to consummate the purchase of the Property is subject to the satisfaction or waiver, on or before the Closing Date, of the following conditions precedent (collectively, "Buyer's Contingencies"), which are for Buyer's benefit only. If this Agreement is not terminated before the Closing Date, then Buyer shall be deemed to have waived all of Buyer's Contingencies, this Agreement shall remain in full force and effect, and the Closing shall occur subject to the terms and conditions of this Agreement and the Escrow Instructions.

- A. **Title Review.** Seller has caused the Title Company to deliver to Buyer the Preliminary Title Report prior to execution of this Agreement. As part of the Escrow Instruction, the exceptions which Buyer will permit to remain on title (the "Permitted Exceptions") shall be identified by Buyer prior to the expiration of Buyer's Due Diligence Period described in Section 9(B) below. The Permitted Exceptions shall include lien (or liens) to secure payment of real estate taxes or assessments and all other state, county and local taxes, charges, and bonds (general, special or otherwise), imposed or assessed, which are not yet due or payable, and any recorded easement interests held by other entities. Buyer shall be satisfied with title to the Property, subject only to the Permitted Exceptions, as reflected in the Preliminary Title Report, by the Closing Date.
- B. **Buyer's Due Diligence.** Buyer has or will investigate the suitability of the Property for Buyer's intended uses by October 14, 2016 ("Buyer's Due Diligence Period"). Buyer's investigations may include without limitation, (i) physical inspection upon reasonable advance notice to Seller, (ii) CLTA commitment to insure the purchase of title to the Property for the full amount of the Purchase Price, and (iii) compliance with code and environmental regulations, including but not limited to zoning, land use, Americans with Disabilities Act, California Title 24, and all other governmental regulations, laws, permits, and approvals applicable to the Property.
- C. **Representations and Warranties.** All representations and warranties of Seller contained in this Agreement shall be materially true and correct as of the Effective Date and as of the Closing Date.
- D. **No Default.** Seller is not in default in the performance of any material covenant or agreement to be performed by Seller under this Agreement.

- E. **Title Insurance.** The conveyance by the Seller of good and marketable fee title to the Property, as evidenced by a standard form California Land Title Association ("CLTA") title insurance policy to be issued by the Title Company in the amount of the Purchase Price and containing endorsements reasonably required by Buyer ("Buyer's Title Policy"), insuring fee simple title, which is free and clear of all liens and encumbrances subject only to the Permitted Exceptions set forth in the Escrow Instructions.
10. **Seller's Contingencies.** Seller's obligation to sell the Property to Buyer is subject to the satisfaction or waiver, on or before the Closing Date, of the following conditions precedent ("Seller's Contingencies"), which are for Seller's benefit only. If this Agreement is not terminated before the Closing Date, then Seller shall be deemed to have waived all of Seller's Contingencies, this Agreement shall remain in full force and effect, and the Closing shall occur subject to the terms and conditions of this Agreement and the Escrow Instructions.
- A. **Representations and Warranties.** All representations and warranties of Buyer contained in this Agreement shall be materially true and correct as of the Effective Date and as of the Closing Date.
- B. **No Default.** Buyer is not in default in the performance of any material covenant or agreement to be performed by Buyer under this Agreement.
11. **Buyer's Deliveries to Escrow.** At least one (1) business day before the Closing Date, Buyer shall deposit or cause to be deposited with Escrow Holder the following items, duly executed and, where appropriate, acknowledged ("Buyer's Delivered Items"):
- A. **Funds.** The Purchase Price as defined in Section 4 of this Agreement, minus the Deposit, if any, in the form of wired funds, plus Buyer's Costs, Buyer's share of prorations set forth on the Proration and Expense Schedule, and Buyer's share of the General Expenses, all as defined in Section 14.
- B. **Authority.** Such proof of Buyer's authority and authorization to enter into this Agreement, on the part of each individual or entity comprising Buyer, and to consummate the transaction contemplated in this Agreement as may be reasonably requested by Seller or Title Company.
- C. **Further Documents or Items.** Any other documents or items reasonably required to close the transaction contemplated by this Agreement.
- D. **Failure to Deliver.** If Buyer is in default of its obligation to deliver any of the Buyer's Delivered Items and Buyer's counterparts to the jointly delivered items into Escrow timely in accordance with the terms of this Agreement, then Seller shall be entitled to pursue any and all rights available to Seller under this Agreement as set forth in Section 19 of this Agreement.

12. **Seller's Deliveries to Escrow.** At least one (1) business day before the Closing Date, Seller shall deposit or cause to be deposited with Escrow Holder the following items, duly executed and, where appropriate, acknowledged ("Seller's Delivered Items"):
- A. **Grant Deed.** The Grant Deed in the form attached as Exhibit 3. The title transferred thereunder shall be subject to all real property taxes and assessments and all other state, county and local taxes, charges, and bonds (general, special or otherwise), imposed or assessed, which are not yet due and payable as of the Closing Date, matters ascertainable by a reasonable inspection and survey of the Property, and the Permitted Exceptions as described in the Escrow Instructions.
  - B. **Title Affidavit.** A customary "seller's affidavit" as may reasonably be required by Title Company in connection with issuance of Buyer's Title Policy with elimination of certain pre-printed exceptions.
  - C. **Further Documents or Items.** Any other documents or items as may be reasonably requested by Buyer or Title Company to close the transactions contemplated by this Agreement.
  - D. **Failure to Deliver.** If Seller is in default of its obligation to deliver any of the Seller's Delivered Items and Seller's counterparts to the jointly delivered items into Escrow timely in accordance with the terms of this Agreement, then Buyer shall be entitled to pursue any and all rights available to Buyer under this Agreement as set forth in Section 19.
13. **Joint Deposits Into Escrow.** On or before one (1) business day before the Closing Date, Seller and Buyer shall execute, acknowledge where required, complete required insertions, and jointly deposit into Escrow two (2) original counterparts of the Closing Statement in a form reasonably acceptable to Buyer and Seller showing the allocation of Buyer's Costs, Seller's Costs, Escrow Expenses, Prorations, and General Expenses, all as defined in Section 14, and disbursements to be made by Escrow Holder.
14. **Costs and Expenses.** Should Buyer terminate this Agreement or the Closing fails to occur due to Buyer's default, Buyer will be responsible for any and all Escrow Expenses incurred by Escrow Holder. If Seller is unable to perform because of a Seller default, then Seller shall be responsible for any and all Escrow Expenses incurred by Escrow Holder. If there is a Closing and the Property is transferred from Seller to Buyer, then the costs and expenses of this transaction shall be allocated between Seller and Buyer as follows:
- A. **Seller's Costs.** Seller shall bear the following costs and expenses at Closing: (i) one-half (½) of the Escrow Expenses; (ii) Seller's share of Prorations and General Expenses; (iii) the cost of recording all releases and other documents to remove all monetary liens, if any, that are recorded against the Property and the cost of recording all other documents that Seller desires to record; (iv) all of the

document recording fees for the Grant Deed; and (v) ½ of the City transfer tax and all of the County transfer tax, if required (collectively, "Seller's Costs").

- B. **Buyer's Costs.** Buyer shall bear the following costs and expenses at Closing: (i) an CLTA standard coverage owner's title policy and any endorsements being paid by Buyer; (ii) one-half (½) of Escrow Expenses; and (iii) Buyer's share of General Expenses and Prorations (collectively, "Buyer's Costs").
- C. **Escrow and General Expenses.** Buyer and Seller shall each pay ½ of Escrow Holder's customary and reasonable charges to buyers and sellers for the preliminary title report, escrow services, document drafting, recording and miscellaneous charges (the "Escrow Expenses"). If, through no fault of either Buyer or Seller, Escrow fails to close, Buyer and Seller shall share equally all of the Escrow Expenses; however, if the Closing fails to close as the result of the default of either Party, then such defaulting party shall bear all of the Escrow Expenses. All other usual and customary costs and expenses for the Closing which are not listed in this Agreement shall be allocated between Buyer and Seller in accordance with the customary practice in Sacramento County, California (the "General Expenses.") Each Party shall bear the costs of its own attorneys and consultants in connection with the negotiation and preparation of this Agreement and the consummation of the transactions contemplated in this Agreement.
- D. **Proration of Income and Expenses.** Income (if any) and any expenses associated with maintenance and operation of the Property (the "Prorations") will be allocated between Seller and Buyer as of 11:59 p.m. on the day immediately preceding the Closing Date. Not less than three (3) business days before the Closing Date, Escrow Holder shall deliver to Buyer and Seller a tentative schedule of the Prorations (the "Proration and Expense Schedule") for Buyer's and Seller's respective approval. If any Prorations require final adjustment after Closing, then the Parties shall make the appropriate adjustments promptly when accurate information becomes available and either Party shall be entitled to an adjustment to correct the same. To the extent the amount exceeds \$250, any corrected or adjusted Proration shall be paid promptly in cash to the Party entitled to such payment.
- E. **Property Taxes.** All general and special real and personal property and ad valorem taxes, assessments and all other state, county and local taxes, charges, and bonds (general, special or otherwise), imposed or assessed, if any, whether payable in installments or not, including, without limitation, all supplemental taxes attributable to the period prior to the Closing for the calendar year in which the Closing occurs, shall be prorated to the Closing Date, based on the latest available tax rate and assessed valuation.

- F. **Utility Charges and Service Contracts.** Seller shall be responsible for the payment of all utility and service bills relating to the period up to the Closing, and shall be responsible for utility and service bills following Closing according to the terms of the Lease Agreement between Seller and Buyer.
15. **Closing Procedure.** When the Title Company is ready to issue the Buyer's Title Policy and all required documents and funds have been deposited with Escrow Holder, Escrow Holder shall close Escrow as of the specified Closing Date, or at a sooner date with approval of both Parties, in the manner and order provided below:
- A. **Date; Counterparts.** Escrow Holder shall date all instruments as of the date of the Closing (if not dated), and combine all counterparts of instruments delivered to Escrow Holder in counterparts.
- B. **Document Recordation.** Escrow Holder shall record the Grant Deed in the Official Records of the Sacramento County Recorder's Office (the "Official Records").
- C. **Notification; Disburse Funds.** Escrow Holder shall provide telephonic or e-mail notice to Buyer and Seller (and their respective counsel) that the Closing has occurred, deliver the final Closing Statement in accordance with Section 16 to each Party by e-mail, and disburse funds. In disbursing funds, Escrow Holder shall debit or credit (as provided herein) all Buyer's Costs, Seller's Costs, prorate all matters based on the approved Proration and Expense Schedule, the Deposit and the balance of the Purchase Price for the Property to Seller; and disburse the remaining funds, if any, to Buyer.
- D. **Title Policy.** Escrow Holder shall cause its Title Company to issue the Buyer's Title Policy to Buyer in accordance with the Escrow Instructions.
- E. **Informational Reports.** Escrow Holder shall file any information reports required by Internal Revenue Code Section 6045(e), as amended.
16. **Post-Closing Instructions.** The Parties acknowledge that the original Grant Deed will be returned by the County Recorder's Office to the Grantee. Promptly after the Closing, Escrow Holder shall deliver the following instruments:
- A. **To Seller.**
- (1) One (1) conformed copy of the recorded Grant Deed; and
- (2) One (1) copy of the final Closing Statement.
- B. **To Buyer.**
- (1) One (1) conformed copy of the Grant Deed; and

(2) One (1) copy of the final Closing Statement.

C. **To Counsel.** Copies of all documents delivered to Buyer and Seller following the Closing.

**17. Seller's Representations and Warranties.** In consideration of Buyer entering into this Agreement and as an inducement to Buyer to purchase the Property, Seller makes the following representations and warranties as of the Effective Date and as of the Closing, each of which is material and is being relied upon by Buyer, and the truth and accuracy of which shall constitute a condition precedent to Buyer's obligations under this Agreement:

A. **Power.** Seller has the legal power, right and authority to enter into this Agreement and the instruments referenced in this Agreement, and to consummate the transactions contemplated in this Agreement.

B. **Requisite Action.** All requisite action, including, without limitation, all pertinent review and approval by any other person or entity affiliated with Seller, has been taken by Seller in connection with entering into this Agreement as of the Effective Date and the instruments referenced in this Agreement, and to consummate the transactions contemplated in this Agreement. No additional consent of any individual, officer, director, shareholder, partner, member, manager, trustee, trustor, beneficiary, creditor, investor, judicial or administrative body, governmental authority or other party is required for Seller to execute this Agreement and the instruments referenced in this Agreement, and to consummate the transactions contemplated in this Agreement.

C. **Individual Authority.** The individual(s) executing this Agreement and the instruments referenced in this Agreement on behalf of Seller have the legal power, right, and actual authority to bind Seller to the terms and conditions of this Agreement and the instruments referenced in this Agreement.

D. **No Conflict.** Neither the execution and delivery of this Agreement, the documents or instruments referenced in this Agreement, nor incurring the obligations, consummation of the transactions, and compliance with the terms of this Agreement conflict with or will result in the material breach of any terms, conditions or provisions of, or constitute a default under, any bond, note or other evidence of indebtedness or any contract, indenture, mortgage, deed of trust, loan, lease or other agreement or instrument to which Seller is a party or that affects the Property.

E. **Specifically Designated National and Blocked Persons.** Seller (i) is not listed in the Annex to, or otherwise subject to the provisions of United States Presidential Executive Order 13224 issued on September 24, 2001 ("Executive Order"); (ii) does not have its name on the U.S. Department of the Treasury, Office of Foreign Assets Control's ("OFAC") most current list of "Specifically Designated National

and Blocked Persons"; and (iii) is not otherwise affiliated with an entity or person listed above. This provision shall survive Closing.

- F. **Hazardous Substances.** Seller has not received any notice from the United States Environmental Protection Agency, the State of California Department of Toxic Substances Control, or the Sacramento County Environmental Management Agency, or any other federal, state, county or municipal entity or agency that regulates Hazardous Substances or public health risks or other environmental matters, or any private party or person claiming any violation of, or requiring compliance with, any Environmental Laws or demanding payment or contribution for any Hazardous Substances in, on, under, upon or affecting the Property.
- G. **Third Party Payments.** To Seller's actual knowledge, all bills and claims for labor performed or materials furnished to or for the benefit of the Property for all periods of time prior to the Closing have been paid in full and there are no mechanics' or materialmen's liens (whether or not perfected) on or affecting the Property.
- H. **Liens.** There is no lien or debt of any kind encumbering the Property that would need to be assumed by Buyer.
- I. **Leases and Defaults.** The Property is not subject to any lease or other occupancy agreement, except the lease agreement between Seller and Buyer. Seller is not in default under any contracts, agreements, easements or any other documents or instruments relating to or affecting this Agreement or the Property.
- J. **Lawsuits.** To the best of Seller's knowledge, as of the Effective Date, there is no pending or threatened suit, claim, action or arbitration, or legal, administrative, or other proceeding or governmental investigation, formal or informal, including but not limited to personal injury, eminent domain, condemnation, or any judgment, or moratorium which affects the Property.

18. **Buyer's Representations and Warranties.** In consideration of Seller entering into this Agreement and as an inducement to Seller to sell the Property, Buyer makes the following representations and warranties as of the Effective Date and at and as of the Closing. Each of the following Buyer representations and warranties each of which is material and is being relied upon by Seller, and the truth and accuracy of which shall constitute a condition precedent to Seller's obligations hereunder.

- A. **Power.** Buyer has the legal power, right and authority to enter into this Agreement and the instruments referenced in this Agreement, and to consummate the transactions contemplated in this Agreement.
- B. **Requisite Action.** All requisite action has been taken by Buyer in connection with entering into this Agreement and the instruments referenced in this

Agreement, and to consummate the transactions contemplated in this Agreement. No additional consent of any individual, officer, beneficiary, creditor, investor, judicial or administrative body, governmental authority or other party is required for Buyer to execute this Agreement and the instruments referenced in this Agreement, and to consummate the transactions contemplated in this Agreement.

- C. **Individual Authority.** The individuals executing this Agreement and the instruments referenced in this Agreement on behalf of Buyer have the legal power, right and actual authority to bind Buyer to the terms and conditions set forth in this Agreement.
- D. **No Conflict.** Neither the execution and delivery of this Agreement, the documents or instruments referenced in this Agreement, nor incurring the obligations, consummation of the transactions, and compliance with the terms of this Agreement conflict with or will result in the material breach of any terms, conditions or provisions of, or constitute a default under, any bond, note or other evidence of indebtedness or any contract, indenture, mortgage, deed of trust, loan, partnership agreement, lease or other agreement or instrument to which Buyer is a party.
- E. **Specifically Designated National and Blocked Persons.** Buyer has certified to Seller that it is not a "Prohibited Person" under the Patriot Act, Executive Order 13224, or listed on the OFAC, and will indemnify Seller for breach of the certification.

19. **Remedies.** If the sale of the Property is not consummated in accordance with the terms of this Agreement due to the default of either Party, the remedies available are as follows:

- A. **Remedies Upon Seller's Default.** If Seller fails to allow for the Closing as contemplated in this Agreement in a timely manner because of a default by Seller (and Buyer is not also in default), then Buyer may: (i) terminate this Agreement by delivery of written notice to Seller and Escrow Holder, or (ii) purchase the Property (or if necessary, seek specific performance of this Agreement) provided that Seller shall be provided at least ten (10) business days to cure such default.
- B. **Remedies Upon Buyer's Default.** If Buyer fails to allow for the Closing as contemplated in this Agreement in a timely manner because of a default by Buyer, then the Seller may terminate this Agreement by delivery of written notice to Buyer and Escrow Holder, provided that Buyer shall be provided at least ten (10) business days to cure such default.
- C. **Monetary Damages.** In no event will either Party be liable to the other Party for monetary damages due to breach of this Agreement or for the costs of

enforcement of this Agreement, including, without limitation, attorneys' fees and legal costs.

- D. **Deposit.** Notwithstanding any other term, provision or condition in this Agreement, if Buyer fails or refuses to complete the transaction contemplated in this Agreement for any reason or cause other than (i) the default of Seller, (ii) the failure of Seller to Close by the Closing Date, or (iii) Buyer's Contingencies as provided in Section 9; then this Agreement shall be deemed an option agreement and the amount of the Deposit shall be deemed an option fee paid by Escrow Holder to Seller.
  - E. **Buyer's Liability.** Other than loss of the Deposit and payment of the Escrow Expenses, Buyer shall have no further liability to Seller of any kind whatsoever by reason of the termination and/or non-performance of this Agreement by Buyer.
  - F. **Binding on Successors and Assigns.** The provisions in this Section 19 shall inure to and bind successors in interest in Buyer's legal entity, any entity to which Buyer assigns its rights to the Property, and all successors in interests in ownership of the Property. The Buyer's obligations set forth in this Section 19 are covenants that run with the land. The provisions in this Section 19 shall survive Closing.
  - G. **Foreclosure and Bankruptcy.** The provisions set forth in this Section 19 shall not apply if the Property is: (i) sold, transferred, conveyed, or assigned to any purchaser at any foreclosure sale, whether the foreclosure sale is conducted under court order or under a power of sale contained in any loan documents for which the Property is encumbered as security for repayment; (ii) is assigned to Buyer's lender in lieu of foreclosure; (iii) if Buyer files a petition as a debtor in any bankruptcy or other insolvency proceeding; or (iv) if a court has appointed a liquidator or receiver to control substantially all of Buyer's assets which includes the Property. The foregoing provisions include Buyer's successors in interest and shall survive Closing.
20. **Right of Entry.** By its execution of this Agreement, Seller grants a license to Buyer's officers, employees and agents to enter the Property to conduct visual and physical inspections during regular business hours, subject to prior reasonable notice to Seller, Seller's approval of acceptable times, and minimal disruption to Seller's daily activities.
21. **General Provisions.**
- A. **Damage to Property.** If, prior to Closing, all or any portion of the Property to be conveyed is damaged by earthquake, flood, or other natural casualty (collectively "Damage"), Seller shall immediately notify Buyer of such Damage. Buyer shall select within ten (10) days from such notice to either proceed with the Closing and take the Property with such Damage or terminate this Agreement. If Buyer elects to terminate this Agreement, the Deposit shall be returned within ten (10)

days and each Party shall be liable for half of the Escrow Expenses. The risk of loss of the Property from any cause shall be transferred to Buyer upon Closing.

- B. **Condemnation.** If, prior to Closing, (i) all or any portion of the Property is taken or appropriated by a public or quasi-public authority exercising the power of eminent domain, or (ii) there is any taking of land lying in the bed of any street, road, highway or avenue, open or proposed, or any change of grade of such street, road, highway or avenue in front of or adjoining all or any part of the Property; then Buyer shall proceed with the purchase of the Property and receive all of the award or payment made in connection with such taking.
- C. **Notices.** All notices, demands, requests or other communications required or permitted hereunder (collectively, "Notices") shall be in writing or email, shall be addressed to the receiving party, with a copy to such Party's counsel, if any, as provided in the Section 1, the "Defined Terms," and shall be personally delivered, sent by overnight mail (FedEx® or another carrier that provides receipts for all deliveries), or sent by certified mail, postage prepaid, return receipt requested. All Notices shall be effective upon receipt at the appropriate address. Notice of change of address shall be given by written notice in the manner detailed in this Section. Rejection or other refusal to accept or the inability to deliver due to changed address of which no Notice in accordance with this Section was given shall be deemed to constitute receipt of such Notice. The providing of copies of Notices to the Parties' respective counsels is for information only, is not required for valid Notice, and does not alone constitute Notice under this Agreement. Buyer and Seller agree that Notices may be given hereunder by the Parties' respective counsel, and that, if any communication is to be given hereunder by Buyer's or Seller's counsel, such counsel may communicate directly with all principals as required to comply with the provisions of this Section.
- D. **Brokers.** Seller represents and warrants to Buyer that it has hired a broker in connection with this transaction and Seller shall be solely liable to compensate that broker. Buyer represents and warrants to Seller that it has hired a broker in connection with this transaction and Seller shall be solely liable to compensate that broker in the amount of 1.5% of the Purchase Price. Each Party agrees to indemnify, defend and hold harmless the other Party from and against any and all losses, liens, claims, judgments, liabilities, costs, expenses or damages (including, without limitation, reasonable attorneys' fees and court costs) of any kind or character arising out of or resulting from any agreement, arrangement or understanding alleged to have been made by such Party or on its behalf with any broker or finder in connection with the transaction contemplated in this Agreement. The foregoing indemnity shall survive both the Closing or the termination of this Agreement.

- E. **Assignment.** This Agreement may not be assigned without the other Party's express written consent.
- F. **No Joint Venture.** Nothing in this Agreement shall be construed to create a principal and agent, a partnership, joint venture, or any other association or other relationship between the Parties.
- G. **Survival.** The provisions of this Agreement which expressly survive Closing shall so survive, including, without limitation, the covenants, representations, limitations, hold harmless, indemnification and release obligations made by each Party. No provision of this Agreement shall merge into the Grant Deed.
- H. **Cooperation.** Buyer and Seller agree to execute such instruments and documents and to diligently undertake such actions as may be reasonably required in order to consummate the purchase and sale contemplated in this Agreement and shall use all commercially reasonable efforts to accomplish the Closing in accordance with the provisions of this Agreement.
- I. **Computation of Time Periods.** Time is of the essence of every provision in this Agreement. All references herein to a particular time of day shall be deemed to refer to Sacramento, California time. In the computation of any period of time provided for in this Agreement or by law, the day of the act or event from which said period of time runs shall be excluded, and the last day of such period shall be included, unless it is a Saturday, Sunday, or legal holiday, in which case the period shall be deemed to run until 5:00 p.m. of the next day that is not a Saturday, Sunday, or legal holiday. The term "business day" as used in this Agreement shall mean each day other than a Saturday, Sunday, or legal holiday. Except as otherwise expressly provided in this Agreement, all time periods expiring on a specified date or period herein shall be deemed to expire at 5:00 p.m. on such specified date or period.
- J. **Counterparts; PDF Signatures.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute but one and the same instrument. A pdf signature shall be deemed an original signature.
- K. **Captions.** Any captions to, or headings of, the sections or subsections of this Agreement are solely for the convenience of the Parties, are not a part of this Agreement, and shall not be used for the interpretation or determination of the validity of this Agreement or any provision of this Agreement.
- L. **No Obligations to Third Parties.** Except as otherwise expressly provided in this Agreement, the execution and delivery of this Agreement shall not be deemed to confer any rights upon, nor obligate any of the Parties to this Agreement to, any other person or entity.

- M. **Amendment to this Agreement.** The terms of this Agreement may not be modified or amended except by an instrument in writing executed by each of the Parties.
- N. **Waiver.** The waiver or failure to enforce any provision of this Agreement shall not operate as a waiver of any future breach of any such provision or any other provision of this Agreement, and no waiver will be effective unless it is in writing and signed by the waiving party.
- O. **Time Extension.** No extension of time for performance of any obligation or act shall be deemed an extension of the time for performance of any other obligation or act.
- P. **Partial Invalidity.** If any term or provision of this Agreement, or the application of any term or provision to any person or circumstance, is held to be invalid or unenforceable, or is found to be prohibited by law; the remainder of this Agreement and the application of any term or provision to any person or circumstance (other than those provisions or applications which were held invalid, unenforceable, or prohibited) shall not be affected and each such term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.
- Q. **Applicable Law.** The Agreement was made in and is to be performed entirely within the State of California, and its interpretation, its construction and the remedies for its enforcement or breach are to be applied pursuant to, and in accordance with, the laws of the State of California for contracts made and to be performed therein.
- R. **Attorney Fees.** The Parties shall bear their own costs and attorneys' fees incurred in connection with this Agreement.
- S. **Venue and Alternative Dispute Resolution.** The Parties agree to submit any disputes arising under the Agreement to a court of competent jurisdiction located in Sacramento, California. Nothing in this Agreement shall be construed to prohibit the Parties from engaging in alternative dispute resolution processes prior to initiating legal proceedings, including, without limitation, mediation and arbitration, upon the discretion and mutual consent of the Parties.
- T. **Limitation of Legal Action.** No initiation of legal proceedings shall be filed by a Party unless such action is filed within one hundred and eighty (180) days from the date of discovery by the aggrieved Party of the facts underlying the claim of default, and the date of discovery being that the date that the facts became known or should have become known to the aggrieved Party based on the circumstances of the default.

- U. **Entire Agreement.** This Agreement supersedes any prior agreements, negotiations and communications, oral or written, and contains the entire agreement between, and the final expression of, Buyer and Seller with respect to the subject matter in this Agreement. No subsequent agreement, representation, or promise made by either Party, or by or to an employee, officer, agent or representative of either Party, shall be of any effect unless it is in writing and executed by the Party to be bound by such agreement, representation, or promise.
- V. **Construction.** The Parties hereby acknowledge and agree that: (i) each Party is of equal bargaining strength; (ii) each Party has actively participated in the drafting, preparation and negotiation of this Agreement; (iii) each Party has consulted with such Party's own independent counsel and such other professional advisors as such Party has deemed appropriate, relating to any and all matters contemplated under this Agreement; (iv) each Party and such Party's counsel and advisors have reviewed this Agreement; (v) each Party has agreed to enter into this Agreement following such review and the rendering of such advice; and (vi) any rule of construction to the effect that ambiguities are to be resolved against the drafting parties shall not apply in the interpretation of this Agreement, or any portions of this Agreement, or any amendments to this Agreement.

*[Signature Page Follows]*

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

**BUYER:**

CITY OF SACRAMENTO, a municipal corporation

By: \_\_\_\_\_  
John F. Shirey, City Manager

Approved as to Form:

By: Maile Hansen  
City Attorney

Attest:

By: \_\_\_\_\_  
Assistant City Clerk

**SELLER:**

LENAHAN, LEE, SLATER, & PEARSE LLP

By: WRM

Name: William R MAJERNIK, JR

Title: PARTNER

Seller's Counsel:

By: N/A

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

Title: \_\_\_\_\_

**EXHIBIT 1**

**Legal Description**

The land situated in the County of Sacramento, City of Sacramento, State of California, described as follows:

Parcel Four:

A Condominium Estate Consisting of:

(1) Unit No. 3-A as shown on the "Condominium Plan 1421 K Street" attached to the declaration of restrictions for 15th and K Office Building, an Office Condominium Project, dated February 13, 1984, recorded March 2, 1984, in Book 840302 Page 280, Official Records, as amended by the first amendment thereto recorded March 16, 1984, in Book 840316 Page 2059, Official Records, by the second amendment thereto recorded July 23, 1984, in Book 840723 Page 1033, Official Records, and by the third amendment thereto recorded December 17, 1985, in Book 851217 Page 942, Official Records, and being within Lot A of 1421 "K" Street, a Condominium, according to the Official Plat thereof, filed in the Office of the Recorder of Sacramento County, California, on February 29, 1984, in Book 156 of Maps, Map No. 15; and

(2) An undivided 42.39 percent of the common area as defined in said Declaration as amended.

APN : 006-0115-016-0004

EXHIBIT 2

**ESCROW INSTRUCTIONS**

Date:

**Re: Conveyance of that certain real property located at 1030 15th Street, Suite 300 in the City and County of Sacramento, State of California (the "Property").  
Your Escrow No. 01000383-PA-CDT (the "Escrow").**

Dear \_\_\_\_\_:

This letter constitutes the joint escrow instructions of the City of Sacramento, a municipal corporation ("Buyer") and Lenahan, Lee, Slater, & Pearse LLP, a California limited liability partnership ("Buyer") to Fidelity National Title Company (alternatively referred to herein as "Escrow Holder" or "Title Company"), with respect to the transfer of that certain real property located in the City and County of Sacramento, State of California, as described in Exhibit 1 (the "Property") of the Purchase Agreement (as hereinafter defined), a copy of which is attached.

The Purchase Agreement.

These Escrow Instructions relate to that certain Purchase and Sale Agreement, dated as of October \_\_\_\_\_, 2016 (the "Purchase Agreement"), by and between the Seller and Buyer. Capitalized terms not defined herein shall have the meaning ascribed to them in the Purchase Agreement. The transfer of the Property is to be consummated through the Escrow.

1. The Transaction.

Fee simple, free and clear title to the Property shall be conveyed directly to Buyer from Seller by Grant Deed (the "Grant Deed").

In consideration of the obligations and covenants of Buyer set forth in the Purchase Agreement, Buyer shall pay to Seller at Closing the amount of Two Million Eight Hundred Ninety Thousand Dollars (\$2,890,000) (the "Purchase Price").

Buyer is to deposit into escrow Forty Thousand Dollars (\$40,000) as the "Deposit" within thirty (30) calendar days of execution of the Purchase Agreement. Buyer's Due Diligence Period expires on October 14, 2016, at which time the Deposit is not refundable unless Closing does not occur due to (i) Seller's default, or (ii) Buyer's termination of the Purchase Agreement based on its failure to waive Buyer's Contingencies.

2. Instructions.

- A. Documents to Be Received in Escrow: Prior to and as a condition of Closing, you shall confirm receipt of the following documents, which may be executed in counterparts:
- (1) One (1) original of the Purchase and Sale Agreement;
  - (2) One (1) original Grant Deed in favor of Buyer (executed and acknowledged by Seller);
  - (3) One (1) Form 1099-S, executed by Buyer (the "1099");
  - (4) One (1) Form 593, executed by Seller (the "593"); and
  - (5) Such additional documents as may be required by you to establish to your satisfaction the authority of Buyer, Seller, and any persons signing documents on their behalf to complete this transaction.
- B. Funds to Be Received in Escrow: Prior to and as a condition of Closing, you shall confirm receipt from Buyer of the Deposit and the total amount of the Purchase Price (the "Funds").

3. Conditions to Closing.

Escrow Holder is authorized and instructed to close the Escrow (the "Closing") and complete the transactions described herein when and only when all of the following conditions have been satisfied:

- A. You have received written confirmation from Seller and Buyer that they have reviewed and approved a final Closing Statement prepared by you and approved by Seller and Buyer (the "Final Statement");
- B. Escrow Holder has returned to William Sinclair, on behalf of Buyer, and William Majernik, on behalf of Seller, a copy of this letter duly executed on behalf of Escrow Holder in the space provided below, with an original to follow by mail at the addresses listed in Section 1 of the Purchase Agreement;
- C. Escrow Holder has received all of the above described documents, instruments and Funds, and shall have confirmed that all such documents are fully executed, in recordable form (if such documents are to be recorded) and that all exhibits have been attached thereto, including, without limitation, the legal descriptions;
- D. The Title Company is irrevocably committed and prepared to issue, and immediately upon Closing does issue, to Buyer as the insured, a CLTA Owner's Policy (or in Buyer's discretion an ALTA Owner's Policy), with coverage in the amount of Two Million Eight Hundred Ninety Thousand Dollars(\$2,890,000),

insuring free and clear fee simple title to the Property is vested in Buyer (the "Owner's Policy"); and

- E. Escrow Holder is in a position to comply with all instructions provided in connection with this Escrow and you are ready, willing and able to close the Escrow in accordance with such instructions and you receive oral or written confirmation from William Majernik, on behalf of Seller and William Sinclair, on behalf of Buyer, authorizing you to close this transaction.

4. Close of Escrow.

Escrow Holder is authorized to close the Escrow on the Closing Date (as defined in Section 6 below). On the Closing Date, Escrow Holder is to accomplish the following tasks, in the following order:

- A. Verify that all documents are in recordable form and have all exhibits attached;
- B. Attach the legal description to the documents as applicable;
- C. Compile originals of any document delivered to you in counterparts, and verify that such documents are all fully executed and acknowledged where necessary for recording;
- D. Insert the Closing Date into the various documents that have a blank space for the date;
- E. Record the Grant Deed from Seller to Buyer in the Official Records of Sacramento County;
- F. Wire to the account of Seller pursuant to separate wiring instructions the Purchase Price less recording charges and costs, title exam fees, if any, escrow and other closing charges, costs and prorations, in such amount as provided in the Purchase Agreement and set forth on the Final Statement;
- G. Issue the CLTA Owner's Policy;
- H. Issue the Final Statement, certified by Escrow Holder; and
- I. Within three (3) days of the Closing Date, Escrow Holder is to:
  - (1) Deliver a conformed copy of the recorded Grant Deed, and any other documents where originals are not available to: The City of Sacramento, Facilities/Real Property Management, 915 I Street, 2<sup>nd</sup> Floor, Sacramento CA 95814, on behalf of Seller; and

- (2) Deliver the original of the Grant Deed and Owner's Policy and any other documents where originals are not available to: 915 I Street, 2<sup>nd</sup> Floor, Sacramento CA 95814, attention Real Property Superintendent on behalf of Buyer.

5. Closing Costs.

The Purchase Price, escrow fees, title insurance premiums, transfer taxes, and other closing costs and charges shall be allocated in accordance with the Purchase Agreement and set forth on the Final Statement.

6. Time for Close of Escrow.

Escrow Holder is to close the Escrow on the "Closing Date" which shall be the earliest date on which Escrow Holder is able to comply with all of the conditions and requirements of the escrow instructions for the parties, but in any event on or before November 21, 2016. In the event that the Escrow is not consummated on or before November 21, 2016, you are directed to request further instructions from William Majernik, on behalf of Seller, and William Sinclair or the undersigned, on behalf of Buyer, prior to closing the Escrow or terminating the Escrow.

7. Permitted Title Insurance Exceptions.

Buyer hereby agrees to permit the following exceptions to the CLTA owner's title insurance as listed in the Preliminary Title Report dated July 19, 2016:

Items: 1, 2, 4, 5, 7, 8, 9, 11, 12 and 13.

Please sign and return to the undersigned a copy of this letter of instructions, which signature shall serve to acknowledge your receipt and acceptance of these instructions. These instructions must be fully executed without deviation except to the extent that the instructions are amended by the undersigned. Thank you for your assistance with this matter.

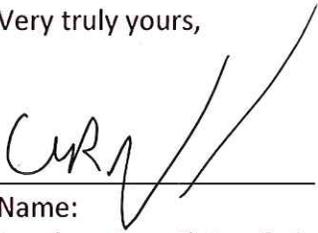
Very truly yours,

---

John F. Shirey, City Manager  
City of Sacramento, a municipal corporation

On behalf of Seller, the undersigned hereby joins in the foregoing escrow instructions.

Very truly yours,



Handwritten signature in black ink, appearing to be 'CLR', written over a horizontal line.

Name:

Lenahan, Lee, Slater, & Pearse LLP

Attachment: Purchase and Sale Agreement and Joint Escrow Instructions

**ACCEPTANCE BY ESCROW HOLDER**

On behalf of Fidelity National Title Company, Escrow Holder hereby acknowledges that it has received a fully executed copy of the foregoing Joint Escrow Instructions and the Purchase and Sale Agreement by and between the City of Sacramento, as Buyer, and Lenahan, Lee, Slater, & Pearse LLP, as Seller, and agrees to act as Escrow Holder thereunder and to be bound by and strictly perform the terms thereof as such terms apply to Escrow Holder. Escrow Holder shall execute two (2) originals of this Acceptance by Escrow Holder and deliver one (1) original to Seller and Buyer promptly following the opening of Escrow.

Dated: \_\_\_\_\_, 2016

Fidelity National Title Company,

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

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

Title: \_\_\_\_\_

**EXHIBIT 3**

**GRANT DEED FORM**

**RECORDING REQUESTED BY  
AND FOR THE BENEFIT OF THE  
CITY OF SACRAMENTO**

**NO FEE DOCUMENT  
Government Code § 27383**

**WHEN RECORDED MAIL TO:**

*(Space Above for Recorder's Use)*

**NO TRANSFER TAX DUE per Revenue and Taxation Code § 11922  
Grantee is a government agency**

**MAIL TAX STATEMENTS TO:**

**GRANT DEED**

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, Lenahan, Lee, Slater, & Pearse LLP, a California limited liability partnership ("Grantor"), hereby grants to the City of Sacramento, a California municipal corporation, ("Grantee"), all right, title, and interest in and to that certain real property situated in the City of Sacramento, County Sacramento, State of California, as described in Exhibit A, which is attached and incorporated in this Grant Deed by this reference. Grantor has caused this Grant Deed to be duly executed on \_\_\_\_\_, 2016.

**GRANTOR:**

Lenahan, Lee, Slater, & Pearse LLP

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

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

***[Notary Acknowledgment Required]***

Exhibit A  
Legal Description

The land situated in the County of Sacramento, City of Sacramento, State of California, described as follows:

Parcel Four:

A Condominium Estate Consisting of:

(1) Unit No. 3-A as shown on the "Condominium Plan 1421 K Street" attached to the declaration of restrictions for 15a and K Office Building, an Office Condominium Project, dated February 13, 1984, recorded March 2, 1984, in Book 840302 Page 280, Official Records, as amended by the first amendment thereto recorded March 16, 1984, in Book 840316 Page 2059, Official Records, by the second amendment thereto recorded July 23, 1984, in Book 840723 Page 1033, Official Records, and by the third amendment thereto recorded December 17, 1985, in Book 851217 Page 942, Official Records, and being within Lot A of 1421 "K" Street, a Condominium, according to the Official Plat thereof, filed in the Office of the Recorder of Sacramento County, California, on February 29, 1984, in Book 156 of Maps, Map No. 15; and

(2) An undivided 42.39 percent of the common area as defined in said Declaration as amended.

APN : 006-0115-016-0004



# City of Sacramento

Real Estate    Outside Agency    Recorder

(Outside Agency requires City to sign first.)   (City Clerk to Record)

Requires Council Approval:    No    YES

Council Date: October 4, 2016

## General Information

Type: **Purchase and Sale Agreement & Lease Back**    Attachment: None   Number: N/A

Original Document Number: N/A

\$ Not to Exceed: \$3,370,000

Original Contract Amount: None

\$2.89M PURCHASE \$0.48M Lease Back

Other Party: Lenahan, Lee, Slater and Pearse Deed:    None    Included    Separate

Project Name: 1030 15<sup>th</sup> Street, Suite 300 Purchase and Lease back **No. Certified Copies of Agreement: 0**

Project Number: 2568117

Bid Transaction #: N/A

E/SBE-DBE-M/WBE: N/A

## Department Information

Department: Public Works

Division: Facilities & Real Property

Project Mgr: Bill Sinclair

Supervisor: Richard Sanders

Contract Services: N/A

Date: 9/15/16

Division Mgr: Jon Blank

Phone Number: 808-1905

Org Number: 15004551

Comment: CAO: Please contact Bill Sinclair at x1905 once the agreements have been processed. Arrangements will be made for pick-up. Thank you.

### Review and Signature Routing

Department	Signature or Initial	Date
Project Mgr:	<i>WBS</i>	9/19/16
Supervisor:	<i>RS</i>	9/19/16
Division Manager:	<i>Jon Blank</i>	9/19/16
City Attorney	Signature or Initial	Date
City Attorney:	<i>MLH</i>	9/19/16
Attention:	Maila Hansen	

Send Interoffice Mail

Notify for Pick Up

Pre-Authorization	Signature or Initial	Date
Way, Jerry Department Director:	<i>Way</i>	9-19-16

Process	Signature or Initial	Date
City Clerk assign #		

Authorization	Signature or Initial	Date
City Mgr: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>		

### For City Clerk Processing Finalized:

Initial: \_\_\_\_\_

Date: \_\_\_\_\_

Imaged: \_\_\_\_\_

Initial: \_\_\_\_\_

Date: \_\_\_\_\_



This coversheet is to remain with the original signed Contract.

## Responsibility

**General Information:** May be completed by Project Manager or Contract Services.

**Department Information:** May be completed by Project Manager or Contract Services.

**Review and Signature Routing:**

**Department (not all roles required-dependent on Department Policy)**

Project Manager: Verification of Technical Specs.

Accounting: Verification of Funding Sources. (this may be NA for some departments)

Contract Services: BOT Number, Insurance, Bonds, Solicitation (BID, RFP, RFQ, RFI, Quote, Sole Source, or Emergency), Contractor Signatures, E/SBE, DBE or M/WBE Project Participation.

**City Attorney**

Approval of Contract Form and Bonds (if applicable)

Verification that Insurance Documents are Included (if required for contract approval)

**Authorization**

Department Director: Review All Contracts; Signing Authority <\$100,000

City Manager: Signing Authority delegated for < \$100,000

Signing Authority delegated to Assistant City Manager for = or > \$100,000  
**AFTER** Council Authorization

### Types of Contracts

Type	City Code	Type	City Code
Commodity	<b>3.56</b>	Reimbursement/Credit	
Development	<b>18.16</b>	Settlement	
Grant		Supplies	<b>3.56</b>
Hold Harmless			
Individual Participation			
Master Services			
Memorandum			
Non-Professional Services	<b>3.56</b>		
Owner Participation		<b>Received City Clerk (2<sup>nd</sup> Receipt)</b>	
Professional Services	<b>3.64</b>		
Public Project	<b>3.60</b>		
Real Property Lease City Owned	<b>3.68</b>		
Real Property Sale City Owned	<b>3.88</b>		
Real Property Non-City Owned (NCO)			

**LEASE AGREEMENT  
BETWEEN CITY OF SACRAMENTO AND  
LENAHAN, LEE, SLATER & PEARSE, LLP**

**1030 15th Street, Suite 300, Sacramento, CA 95814**

This Lease is made at Sacramento, California, as of \_\_\_\_\_, 2016 ("Effective Date"), by and between the City of Sacramento, a municipal corporation ("Landlord"), and Lenahan, Lee, Slater & Pearse, LLP, a California limited liability partnership, ("Tenant"), for the term, at the rental and subject to and upon all of the terms and conditions hereinafter set forth. Landlord and Tenant may be referred to collectively as "Parties" or in the singular as "Party," as the context requires.

**BACKGROUND**

- A. Tenant currently owns and occupies the property located at 1030 15th Street, Suite 300, Sacramento, California 95814, also known as Assessor Parcel 006-0115-016-0004, as shown on Exhibit A attached hereto (hereinafter "Premises").
- B. Tenant desires to sell and Landlord desires to purchase the Premises pursuant to the terms and conditions of a separate Purchase and Sale Agreement and Joint Escrow Instructions ("Purchase Agreement") between the Parties. Title to the Premises shall transfer to Landlord upon recordation of a Grant Deed in accordance with the Purchase Agreement.
- C. Landlord currently owns the remaining portions of the building located at 1030 15th Street (commonly known as the "Panattoni Building"), and upon transfer of the Premises from Tenant to Landlord, Landlord shall own the entire building.
- D. Upon transfer to Landlord of title to the Premises, Tenant desires to lease the Premises from Landlord for a period of time while Tenant arranges to move its operations to a new location.

NOW, THEREFORE, in consideration of the foregoing background, Landlord and Tenant do hereby agree as follows:

**1. PREMISES.**

**1.1 Premises.** Upon transfer of title to the Premises from Tenant to Landlord, Landlord shall lease to Tenant and Tenant shall lease from Landlord the Premises at 1030 15th Street, Suite 300 in Sacramento, California according to the terms and conditions of this Lease. The Premises contain approximately 12,000 square feet of floor area. The Premises, together with other property owned by Landlord, comprise an office condominium building (hereinafter "Building") which is devoted to the purpose of a multi-tenant office center. The Premises comprise a single condominium unit on the third floor of the Building.

**1.2 As-Is Lease.** Landlord leases to Tenant and Tenant leases from Landlord, the Premises in "as-is" condition with all faults. Except as expressly set forth in this Lease, Landlord makes no warranty, express or implied, including, without limitation, any warranty of the habitability, merchantability, or fitness of the Premises for a particular purpose.

**2. TERM.**

The lease will be on a month-to-month basis, up to 24 months at Tenant's election, commencing when title to the Premises is transferred from Tenant to Landlord by recordation of a Grant Deed in accordance with the Purchase Agreement, and the lease will automatically renew each month until either Party terminates the lease. The Tenant has the right to terminate this Lease for any reason upon thirty (30) days written notice to the Landlord.. If the

Tenant's Initial: LLP

Landlord's Initial: \_\_\_\_\_

purchase and sale transaction between Landlord and Tenant fails to close and title is not transferred to Landlord, this Lease shall be of no force or effect.

**3. RENT.**

**3.1 Minimum Rent.** Tenant agrees to pay rent in the amount of twenty-thousand dollars (\$20,000) per month ("Minimum Rent") to Landlord at 915 I Street, 1<sup>st</sup> Floor, Revenue Division, Sacramento, California, 95814, Attention: Revenue Division Manager, or at such other place as Landlord shall from time to time in writing designate. Minimum Rent shall be payable, without notice or demand, on or before the first day of each month during the term of the lease from Landlord to Tenant. Tenant's obligation to pay Minimum Rent shall commence upon transfer of title to the Premises from Tenant to Landlord by recordation of a Grant Deed in accordance with the Purchase Agreement. Minimum Rent for any period less than one (1) month shall be a prorated portion of the Minimum Rent based upon a thirty (30) day month. Minimum Rent shall be paid to Landlord, without deduction or offset, in lawful money of the United States of America.

**3.2 Delinquent Rent.** In the event that the Minimum Rent is not received by Landlord on or before the tenth (10th) day of the month for which rent is due, rent for that month shall be automatically increased by an amount equal to ten (10%) percent of the current monthly rent (hereinafter "Late Fee"). The Late Fee shall be in addition to and not in lieu of all available remedies to Landlord based on Tenant's failure to make timely rent payment pursuant to this Lease. In addition to the Late Fee, in the event that any rent payment is not received by Landlord on or before thirty (30) days after it is due, Tenant shall be considered in default under the provisions of Section 18 below. All monetary obligations of Tenant to Landlord under the terms of this Lease, including but not limited to late fees, are deemed to be rent. All rental payments shall be applied to Tenant's earliest arrears.

**4. SECURITY DEPOSIT.**

No Security Deposit is required for this Lease, and no Security Deposit will be returned to Tenant upon termination of this Lease.

**5. PERSONAL PROPERTY TAXES.**

Tenant shall pay before delinquency all taxes, assessments, license fees, possessory interest taxes, and public charges levied, assessed or imposed upon or measured by the value of its business operation or its furniture, fixtures, leasehold improvements, equipment and other property of Tenant at any time situated on or installed in the Premises by Tenant. If at any time during the term of this Lease any of the foregoing are assessed as a part of the real property of which the Premises are a part, Tenant shall pay to Landlord upon demand the amount of such additional taxes as may be levied against said real property by reason thereof as reasonably apportioned by Landlord.

**6. USE.**

**6.1 Use.** Tenant shall use the Premises exclusively for office use pertaining to the law practice of Lenahan, Lee, Slater & Pearce, LLP, and for uses normally incident thereto, and for no other purpose without the prior written consent of Landlord.

**6.2 Suitability.** Tenant acknowledges that neither Landlord nor any agent of Landlord has made any representation or warranty with respect to the Premises or the suitability of the Premises or the Building for the conduct of Tenant's business. Tenant has agreed to lease the Premises in as-is condition and Landlord will not undertake any modification, alteration or improvement to the Premises.

**6.3 Uses Prohibited.**

Tenant's Initial:         

Landlord's Initial: \_\_\_\_\_

A. Tenant agrees that it will not use or permit any person to use the Premises for any use or purpose in violation of any governmental law or authority and that Tenant shall at its sole cost and expense promptly comply with all laws, statues, ordinances and governmental rules, regulations and requirements now in force or which may hereafter be in force and with the requirements of any board of fire underwriters or other similar body now or hereafter constituted relating to or affecting the condition, use or occupancy of the Premises, excluding structural changes not relating to or affecting the condition, use of occupancy of the Premises, or not related or afforded by Tenant's improvements or acts. The judgment of any court of competent jurisdiction or the admission of Tenant in any action against Tenant, whether Landlord is a party thereto or not, that Tenant has violated any law, statute, ordinance or governmental rule, regulation or requirement, shall be conclusive of that fact as between Landlord and Tenant.

B. Tenant may not display or sell merchandise or allow carts, portable signs, devices or any other objects to be stored or to remain outside the defined exterior walls and permanent doorways of the Premises. Accordingly, Tenant shall not affix any sign to the roof of the Building. Tenant further agrees not to install any exterior lighting, amplifiers or similar devices or use in or about the Premises any advertising medium which may be heard or seen outside the Premises, such as flashing lights, searchlights, loudspeakers, phonographs or radio broadcasts.

C. Tenant shall not do or permit anything to be done in or about the Premises nor keep anything therein which will in any way increase the existing rate or affect any fire or other insurance upon the Premises or its contents, nor shall Tenant sell or permit to be kept, used or sold in or about the Premises any articles which may be prohibited by a standard form policy of fire insurance.

D. Tenant shall not do or permit anything to be done in or about the Premises which will in any way obstruct or interfere with the rights of other tenants or occupants of the Building of which the Premises are a part of, or injure or annoy them, or use or allow the Premises to be used for any unlawful or objectionable purpose, nor shall Tenant cause, maintain or permit any nuisance in, on or about the Premises. Tenant shall not commit or allow to be committed any waste in or upon the Premises. Tenant shall keep the Premises in a neat, clean and orderly condition, free of any objectionable noises, odors or nuisances.

#### 6.4 Covenants to Operate.

A. Tenant agrees that, continuously and uninterruptedly during the term of this Lease, it will operate and conduct Tenant's business in the Premises and be open for business and continuously remain open for business at least those days and hours as is customary for businesses of like character in the city in which the Premises are situated, except while the Premises are untenable by reason of fire or other casualty or if Tenant's business is temporarily interrupted by strikes, lockouts or similar causes beyond the reasonable control of Tenant. Tenant agrees that all trash and rubbish of Tenant shall be deposited within receptacles and that there shall be no trash receptacles permitted to remain outside of the Building.

B. Tenant shall secure all necessary permits and licenses and shall comply with all local, state, and federal laws and regulations applicable to the use of the Premises for the purposes contemplated herein. Tenant shall be liable for, and shall pay throughout the term of this Lease, all license fees and taxes covering the business conducted on the Premises, and any taxes on property of Tenant at the Premises.

#### 7. UTILITIES AND OTHER OPERATING COSTS.

Tenant agrees to pay all costs and expenses associated with its own telephone and computer use, including installation charges, and for all gas, power and electric current, and all other utilities supplied to the Premises as well as all costs and expenses for janitorial service for the interior of the Premises, and Tenant shall pay such costs and expenses directly to the utility

Tenant's Initial:     



Landlord's Initial:

or other service provider. Landlord shall not be liable in damages or otherwise for any failure or interruption of any utility service being furnished to the Premises. Tenant shall be responsible for all costs and expenses related to security measures, if any, desired by Tenant.

**8. MAINTENANCE AND REPAIRS.**

**8.1 Repairs By Landlord.** Landlord shall repair and maintain the structural portions of the Premises, including exterior walls and roof, but excluding windows, plate glass and doors. However, if such maintenance or repair is caused in whole or in part by the neglect, fault or omission of Tenant, its agents, employees or invitees, or by unauthorized breaking and entering, Tenant shall pay to Landlord the cost of such maintenance and repair. Landlord shall have no obligation to repair until a reasonable time after the receipt by Landlord of written notice from Tenant of the need for repairs. Unless otherwise specifically provided in this Lease, there shall be no abatement of rent and no liability to Landlord by reason of any injury to or interference with Tenant's business arising from the making of any repairs, alterations or improvements in or to any portion of the Premises or the Building. Tenant waives the provisions of any law, which may be waived under law, permitting Tenant to make repairs at Landlord expense.

**8.2 Repairs by Tenant.** Tenant shall maintain in good order, condition and repair the interior of the Premises, including but not limited to all plumbing and sprinkler systems installed therein, and the improvements and equipment installed by Tenant in the Premises, and shall replace all broken glass, including plate glass and exterior windows, and repair any broken doors. Tenant shall make all other repairs to the Premises except those which Landlord is specifically obligated to make pursuant to Section 8.1.

**8.3 Tenants Failure to Maintain.** In the event Tenant fails to maintain the Premises in good order, condition and repair, Landlord shall give Tenant written notice to do such acts as are reasonably required to maintain the Premises. In the event Tenant fails to commence such work within the time frame specified by Landlord in its written notice, Landlord may but is not obligated to, do such acts and expend such funds at the expense of Tenant as are reasonably required to perform the required maintenance. Any amount so expended by Landlord shall be paid by Tenant within the timeframe specified by Landlord with interest at ten percent (10%) per annum from the date the maintenance work was completed by Landlord. Landlord shall have no liability to Tenant for any damage, inconvenience or interference with the use of the Premises by Tenant as a result of performing any such maintenance work or by reason of undertaking the repairs required by Section 8.1.

**9. ALTERATIONS AND ADDITIONS.**

**9.1** Tenant shall not make any alterations or additions to the Premises without Landlord's prior written consent. All alterations, additions, and improvements made by Tenant to or upon the Premises, except furnishings, equipment or removable trade fixtures, shall at once when made or installed be deemed to have attached to the freehold and to have become the property of Landlord; provided, however, if prior to termination of this Lease, or within fifteen (15) days thereafter, Landlord so directs by written notice to Tenant, Tenant shall promptly remove the alterations, additions, or improvements which were placed in the Premises by Tenant and which are designated in said notice and shall repair any damage occasioned by such removal, and if Tenant fails to remove the specified items, Landlord may effect said removal and any necessary repairs to the Premises at Tenant's expense.

**9.2** If Landlord provides written consent to any alterations or additions to the Premises, Tenant shall notify Landlord in writing of the expected date of commencement for any such work or construction in or about the Premises. Landlord shall have the right at any time and from time to time to post and maintain on the Premises such notices as Landlord deems necessary to protect the Premises and Landlord from mechanics' liens, or any other liens.

Tenant's Initial: UM

Landlord's Initial: \_\_\_\_\_

9.3 Landlord shall have no responsibility to make any improvements to the structure of the Premises, including those required by federal and state disability access laws, including the Americans with Disabilities Act. Any of Tenant's specific changes to the interior space of the Premises that trigger additional requirements under federal and state disability access laws shall be Tenant's sole responsibility.

**10. SURRENDER AT END OF TERM.**

Upon the termination of this Lease, Tenant shall surrender the Premises in good condition, ordinary wear and tear and damage by causes beyond the reasonable control of Tenant excepted. Within thirty (30) days of termination, Tenant or Tenant's representatives shall remove, at its sole cost and expense, Tenant's furniture, furnishings, equipment, inventory and trade fixtures. Should Tenant fail to remove said items within the thirty-day period, Tenant shall lose all right, title and interest in and to said items, and Landlord may elect to keep same upon the Premises or to sell, remove or demolish them without the requirement to reimburse Tenant therefor. Tenant shall indemnify Landlord against any loss or liability resulting from delay by Tenant in surrendering the Premises, including without limitation any claims made by any succeeding tenant founded on such delay.

**11. ENTRY BY LANDLORD.**

Landlord, its agents and employees, may enter the Premises at all reasonable times, upon prior notice to Tenant, for the purpose of exhibiting the same to prospective purchasers or tenants. Tenant hereby grants to Landlord such licenses or easements in and over the Premises or any portion thereof as shall be reasonably required for the installation or maintenance of mains, conduits, pipes or other facilities to serve the Building or any part thereof. Landlord, its agents and employees, shall have free access to the Premises during all reasonable hours, upon prior notice to Tenant, for the purpose of examining the Premises to ascertain if they are in good repair and to make reasonable repairs which Landlord may be required or permitted to make hereunder.

**12. LIENS.**

Tenant shall keep the Premises and the property in which the Premises are situated free from any liens arising out of any work performed, materials furnished or obligations incurred by or on behalf of Tenant. Landlord may require, at Landlord's sole option, that Tenant provide to Landlord, at Tenant's sole cost and expense, a lien and completion bond in an amount equal to one and one-half (1½) times the estimated cost of any improvements, additions, or alterations in the Premises which Tenant desires to make, to insure Landlord against any liability for mechanics' or materialmen's liens and to insure completion of the work.

**13. INDEMNITY.**

**13.1. Indemnity.** Tenant shall defend, indemnify and hold harmless Landlord, its officers and employees, from and against any and all actions, damages, costs, liabilities, claims, demands, losses, judgments, penalties, costs and expenses of every type and description, including but not limited to, any fees and/or costs reasonably incurred by Landlord's staff attorneys or outside attorneys and any fees and expenses incurred in enforcing this provision (hereinafter collectively referred to as "Liabilities"), including but not limited to Liabilities arising from personal injury or death, damage to personal, real or intellectual property or the environment, contractual or other economic damages, or regulatory penalties, arising out of or in any way connected with any occurrence on the Premises related to the use or occupancy of the Premises by Tenant, any subcontractor or agent, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, any and all conditions of the Premises, or performance of or failure to perform this Lease by Tenant, any subcontractor or agent, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, whether or not (i) such Liabilities are caused in part by a party indemnified hereunder or (ii) such Liabilities are litigated, settled or reduced to judgment; provided that the

Tenant's Initial: CM

Landlord's Initial: \_\_\_\_\_

foregoing indemnity does not apply to liability for any damage or expense for death or bodily injury to persons or damage to property to the extent arising from the sole negligence or willful misconduct of Landlord, its agents, servants, or independent contractors who are directly responsible to Landlord, except when such agents, servants, or independent contractors are under the direct supervision and control of Tenant.

**13.3 Insurance Policies.** The existence or acceptance by Landlord of any of the insurance policies or coverages described in this Lease shall not affect or limit any of Landlord's rights under this Section 13, nor shall the limits of such insurance limit the liability of Tenant hereunder. The provisions of this Section 13 shall survive any expiration or termination of this Lease.

**13.2 Assumption of Risk.** Tenant, as a material part of the consideration to Landlord, hereby assumes all risk of damage to property or injury to persons in, upon or about the Premises from any cause other than Landlord's gross negligence or willful misconduct, and Tenant hereby waives all claims in respect thereof against Landlord.

**14. INSURANCE.**

During the term of this lease, Tenant shall comply with the insurance requirements specified in the attached Exhibit B.

**15. DAMAGE OR DESTRUCTION.**

**15.1** In the event the Premises are damaged by fire or other perils covered by extended coverage insurance, Landlord agrees forthwith to repair them, and this Lease shall remain in full force and effect, except that Tenant shall be entitled to a proportionate reduction of the Minimum Rent from the date of damage and while such repairs are being made, such proportionate reduction to be based upon the extent to which the damage and making of such repairs shall reasonably interfere with the business carried on by Tenant in the Premises. If the damage is due to the fault or neglect of Tenant, its agents or employees, there shall be no abatement of rent.

**15.2** In the event the Premises are damaged as a result of any cause other than the perils covered by fire and extended coverage insurance, then Landlord shall forthwith repair them provided the extent of the destruction is less than ten percent (10%) of the then full replacement cost. If the extent of the destruction is 10% or greater of the then full replacement cost, Landlord shall have the option to either: (1) repair or restore such damage, this Lease continuing in full force and effect but the Minimum Rent to be proportionately reduced as above stated, or (2) to give notice to Tenant at any time within sixty (60) days after such damage, terminating this Lease as of the date specified in such notice, which date shall be no more than thirty (30) days after the giving of such notice. If fifty percent (50%) or more of the Building is damaged by any cause even though the Premises may not be affected, Landlord may give notice to Tenant at any time within sixty (60) days after such damage, terminating this Lease as of the date specified in such notice, which date shall be no more than thirty (30) days after the giving of such notice. In the event of termination, all interest of Tenant in the Premises shall terminate on the date so specified in such notice and the Minimum Rent, reduced by a proportionate reduction as above stated, shall be paid to the date of such termination.

**15.3** Landlord shall not be required to repair any injury or damage by fire or other cause, or to make any repairs or replacements of any leasehold improvements, fixtures, or other personal property of Tenant.

**16. CONDEMNATION.**

If twenty-five percent (25%) or more of the Premises shall be taken or appropriated by any public or quasi-public authority under the power of eminent domain, either Party hereto

Tenant's Initial: CMR

Landlord's Initial: \_\_\_\_\_

shall have the right, at its option, within sixty (60) days after such taking or appropriation, to terminate this Lease upon thirty (30) days' written notice to the other Party. If any part of the Premises is so taken (and neither Party elects to terminate as herein provided), the Minimum Rent thereafter to be paid shall be equitably reduced. If any part of the Building other than the Premises is so taken, Landlord shall have the right, at its option, within sixty (60) days of said taking, to terminate this Lease upon written notice to Tenant. In the event of any taking or appropriation whatsoever, Landlord shall be entitled to any and all awards and/or settlements which may be given and Tenant shall have no claim against Landlord for losses associated with a taking or termination of this Lease. Nothing contained herein, however, shall be deemed to preclude Tenant from obtaining, or to give Landlord any interest in, any award to Tenant for loss of or damage to Tenant's trade fixtures and removable personal property or for damage for cessation or interruption of Tenant's business.

**17. ASSIGNMENT AND SUBLEASE.**

**17.1** Tenant shall not voluntarily or by operation of law assign, transfer, mortgage or otherwise encumber all or any part of Tenant's interest in this Lease or in the Premises, and shall not sublet or license all or any part of the Premises, without the prior written consent of Landlord in each instance, and any attempted assignment, transfer, mortgage, encumbrance, subletting or license without such consent shall be wholly void. Without in any way limiting Landlord's right to refuse to give such consent for any other reason or reasons, Landlord reserves the right to refuse to give such consent if in Landlord's sole discretion and opinion the financial worth of the proposed new tenant is less than that of the Tenant executing this Lease at the time of such execution. Tenant shall pay a fee of five hundred dollars (\$500) to Landlord for processing each consent to assignment, transfer or sublease. Said processing fee shall be deemed earned by Landlord when paid and shall not be refundable.

**17.2** No subletting or assignment, even with the consent of Landlord, shall relieve Tenant of its obligation to pay the rent and to perform all of the other obligations to be performed by Tenant hereunder. The acceptance of rent by Landlord from any other person shall not be deemed to be a waiver by Landlord of any provision of this Lease or to be a consent to any assignment, subletting or other transfer. Consent to one assignment, subletting or other transfer shall not be deemed to constitute consent to any subsequent assignment, subletting or other transfer.

**17.3** The covenants and conditions herein contained shall apply to and bind the heirs, successors, executors, administrators and assigns of Tenant.

**18. WAIVER OF SUBROGATION.**

Landlord and Tenant hereby mutually waive their respective rights of recovery against each other for any loss insured by fire, extended coverage and other property insurance policies existing for the benefit of the respective Party. Each Party shall apply to its insurer to obtain said waivers and shall secure any special endorsements if required by its insurer to comply with this provision.

**19. SUBORDINATION; ATTORNMENT; QUIET ENJOYMENT.**

**19.1 Subordination.** This Lease at Landlord's option shall be subordinate to all ground or underlying leases which now exist or may hereafter be executed affecting the Premises or the land upon which the Premises are situated or both, and to the lien of any mortgages or deeds of trust in any amount or amounts whatsoever now or hereafter placed on or against the land or improvements or either thereof, of which the Premises are a part, or on or against Landlord's interest or estate therein, or on or against any ground or underlying leases. Tenant agrees to execute any further instruments which may be requested or required to evidence such subordination. If Landlord elects to have this Lease deemed prior to the lien of its mortgage, deed of trust or ground lease, Landlord shall give written notice thereof to Tenant, and this Lease shall be deemed prior to such mortgage, deed of trust or ground lease,

Tenant's Initial:     *CR*    

Landlord's Initial: \_\_\_\_\_

whether this Lease is dated prior or subsequent to the date of said mortgage, deed of trust or ground lease or the date of the recording thereof.

**19.2 Attornment.** In the event any proceedings are brought for default under any ground or underlying lease or in the event of foreclosure or the exercise of the power of sale under any mortgage or deed of trust covering the Premises, Tenant shall attorn to the purchaser upon any such foreclosure or sale and recognize such purchaser as the Landlord under this Lease, provided said purchaser expressly agrees in writing to be bound by the terms of this Lease.

**19.3 Quiet Enjoyment.** Upon Tenant paying the rent specified herein and observing and performing all of the provisions to be observed and performed by Tenant under this Lease, including compliance with any Covenants, Conditions or Restrictions affecting the Premises or the Building, Tenant shall have quiet possession of the Premises during the entire term of this Lease, subject to all provisions of this Lease and of any such Covenants, Conditions or Restrictions, and to the terms of any ground or underlying lease, mortgage or deed of trust.

**20. DEFAULT; REMEDIES.**

**20.1 Default.** The occurrence of any of the following shall constitute a default and breach of this Lease by Tenant:

A. Any failure by Tenant to pay the rent, including any applicable Late Fee, within 30 days after it is due.

B. The abandonment or vacating of the Premises by Tenant.

C. Failure by Tenant to observe or perform any other provision of this Lease to be observed or performed by Tenant, where such failure continues for thirty (30) days after written notice thereof by Landlord to Tenant; provided, however, that if the nature of the default is such that it cannot reasonably be cured within the thirty (30) day period, Tenant shall not be deemed to be in default if Tenant commences to cure its default within the 30 day period and thereafter diligently pursues the same to completion.

D. The making by Tenant of any general assignment or general arrangement for the benefit of creditors; the filing by or against Tenant of a petition to have Tenant adjudicated bankrupt or of a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Tenant, the same is dismissed within sixty (60) days); the appointment of a trustee or receiver to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where possession is not restored to Tenant within thirty (30) days; or the attachment, execution or other judicial seizure of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where such seizure is not discharged within thirty (30) days.

**20.2 Remedies.** In the event of any such default or breach by Tenant, Landlord may take the following actions (which shall not limit the Landlord in the exercise of any right or remedy at law or in equity which Landlord may have by reason of such default or breach):

A. Maintain this Lease in full force and effect and recover the rent and other monetary charges as they become due, without terminating Tenant's right to possession, irrespective of whether Tenant shall have abandoned the Premises. In the event Landlord elects not to terminate this Lease, Landlord shall have the right to attempt to re-let the Premises at such rent and upon such conditions and for such a term, and to do all acts necessary to maintain or preserve the Premises, as Landlord deems reasonable and necessary, without being deemed to have elected to terminate this Lease, including removal of all persons and property from the Premises; such property may be removed and stored in a public warehouse or elsewhere at the cost of and for the account of Tenant. In the event any such re-letting occurs, this Lease shall terminate automatically upon the new tenant taking possession

Tenant's Initial:         

Landlord's Initial: \_\_\_\_\_

of the Premises. Notwithstanding that Landlord fails to elect to terminate this Lease initially, Landlord may elect to terminate this Lease at any time upon default of Tenant or for any other reason in accordance with Section 3.

B. Terminate Tenant's right to possession by any lawful means, in which case Tenant shall immediately surrender possession of the Premises to Landlord. In such event, Landlord shall be entitled to recover from Tenant all damages incurred by Landlord by reason of Tenant's default, including without limitation the following:

(1) The worth at the time of award of any unpaid rent due at the time of such termination; plus

(2) The worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that is proved could have been reasonably avoided; plus

(3) The worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that is proved could be reasonably avoided; plus

(4) Any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of events would be likely to result therefrom; plus

(5) At Landlord's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable State law.

C. Upon any re-entry following termination, Landlord shall have the right to make any reasonable repairs, alterations or modifications to the Premises which Landlord in its sole discretion deems reasonable and necessary.

D. As used in Section 20.2(B)(1) above, the "worth at the time of award" is computed by allowing interest at the rate of ten percent (10%) per annum from the date of default. As used in 20.2(B)(2) and (B)(3) above, the "worth at the time of award" is computed by discounting such amount at the discount rate of the U.S. Federal Reserve Bank at the time of award plus one percent (1%). The term "rent", as used in this Section 20.2, shall be deemed to be the rent to be paid pursuant to Section 3 and all other monetary sums required to be paid by Tenant pursuant to the terms of this Lease.

**20.3 Late Fees.** Tenant hereby acknowledges that late payment by Tenant to Landlord or rent or other sums due hereunder will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting expenses and late fees which may be imposed on Landlord by the terms of any mortgage or deed of trust covering the Premises. Accordingly, if any installment of rent or any other sum due from Tenant shall not be received by Landlord or Landlord's designee within ten (10) days after such amount shall be due, Tenant shall pay to Landlord a Late Fee equal to ten percent (10%) of such overdue amount, or 10% of the monthly Minimum Rent as specified in Section 3. The parties hereby agree that such Late Fee represents a fair and reasonable estimate of the costs that Landlord would incur by reason of late payment by Tenant. Acceptance of such Late Fee by Landlord shall in no event constitute a waiver of Tenant's default with respect to such overdue amount, nor prevent Landlord from exercising any of the other rights and remedies granted hereunder.

**20.4 Default by Landlord.** Landlord shall not be in default unless Landlord fails to perform its obligations as required under this Lease within thirty (30) days after written notice by Tenant to Landlord and to the holder of any first mortgage or deed of trust covering the Premises whose name and address shall have theretofore been furnished to Tenant in writing, specifying wherein Landlord has failed to perform such obligations; provided that if the nature

Tenant's Initial:         

Landlord's Initial: \_\_\_\_\_

of Landlord's obligation is such that more than thirty (30) days are required for performance, then Landlord shall not be in default if Landlord commences performance within such thirty (30) day period and thereafter diligently pursues the same to completion.

**21. PARKING AND COMMON AREAS.**

**21.1** Tenant shall have, for the benefit of Tenant, its agents, employees, customers, and licensees, (1) a non-exclusive right to use the Building common areas and an exclusive right to use seven (7) parking stalls located on the first level of the Building, at all times and without charge during the full term of this Lease.

**21.2** Notwithstanding the foregoing Section 21.1, the condemnation or other taking by any public authority, or sale in lieu of condemnation, of any or all of such common and parking areas shall not constitute a violation of this Lease, and Landlord reserves the right to: (1) close, if necessary, all or any portion of such common or parking areas to such extent as may be legally necessary to prevent a dedication thereof or the accrual of any rights of any person or of the public therein; (2) close temporarily all or any portion of the common areas to discourage non-customer use; (3) use portions of the common areas while engaged in making additional improvements or repairs or alterations to the Building; and (4) do and perform such other acts in, to, and with respect to the common areas as Landlord shall reasonably determine to be appropriate for the Building. Landlord further reserves the right to increase or reduce the common areas and to change the entrances, exits, traffic lanes and the boundaries and locations of such common and parking areas, provided that no such modifications or changes shall materially reduce the total amount of the common or parking areas available under this Section.

**21.3** Tenant, in the use of said common and parking areas, agrees to comply with such reasonable rules and regulations for parking as Landlord may adopt from time to time for the orderly and proper operation of said common and parking areas. Such rules may include but shall not be limited to the following: (1) Restriction of employee parking to a limited, designated area or areas; and (2) Regulation of the removal, storage and disposal of Tenant's refuse and other rubbish at the sole cost and expense of Tenant.

**22. MISCELLANEOUS.**

**22.1 Rules and Regulations.** Tenant shall faithfully observe and comply with the rules and regulations that Landlord shall from time to time promulgate and/or modify. Further, Tenant shall faithfully observe and comply with the rules and regulations stated in the "Declaration of Restrictions for 15th and K Office Building," recorded in Book 8403-2, Page 0280. Landlord shall not be responsible to Tenant for the non-performance of any said rules and regulations by any other tenants or occupants of the Building.

**22.2 Estoppel Certificate.** Tenant shall at any time and from time to time, upon not less than ten (10) days' prior written notice from Landlord, execute, acknowledge and deliver to Landlord a statement in writing (a) certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease as so modified is in full force and effect), and the date to which the rental and other charges are paid in advance, if any, and (b) acknowledging that there are not, to Tenant's knowledge, any uncured defaults on the part of Landlord hereunder, or specifying such defaults if any are claimed and (c) setting forth the date of commencement of rents and expiration of the term hereof. Any such statement may be relied upon by any prospective purchaser or encumbrancer of all or any portion of the real property of which the Premises are a part.

**22.3 Transfer of Landlord's Interest.** In the event of a sale or conveyance by Landlord of Landlord's interest in the Premises or the Building, other than a transfer for security purposes only, Landlord shall be relieved of all obligations and liabilities accruing thereafter on the part of Landlord provided that any funds in the hands of Landlord at the time of transfer in which Tenant has an interest shall be delivered to Landlord's successor.

Tenant's Initial:         

Landlord's Initial: \_\_\_\_\_

**22.4 Captions; Attachments; Defined Terms.**

A. The captions of the paragraphs of this Lease are for convenience only and shall not be deemed to be relevant in resolving any question of interpretation or construction of any Section of this Lease.

B. Exhibits and addenda attached or affixed hereto are deemed a part of this Lease and are incorporated herein by reference.

C. If the Tenant consists of more than one individual, the obligations hereunder imposed shall be joint and several. The term "Landlord" shall mean only the owner or owners at the time in question of the fee title or a tenant's interest in a ground lease of the Premises or the Building. The obligations contained in this Lease to be performed by Landlord shall be binding on Landlord's successors and assigns only during their respective periods of ownership.

**22.5 Entire Agreement.** This document, including all Exhibits, contains the entire agreement between the Parties and supersedes whatever oral or written understanding they may have had prior to the execution of this Lease. No alteration to the terms of this Lease shall be valid unless approved in writing by Tenant, and by Landlord, in accordance with applicable provisions of the Sacramento City Code. This Lease shall not be effective or binding on any Party until fully executed by both parties hereto.

**22.6 Severability.** If any portion of this Lease or the application thereof to any person or circumstance shall be held invalid or unenforceable, the remainder of this Lease shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

**22.7 Attorney Fees.** The Parties shall bear their own costs and attorneys' fees incurred in connection with this Lease.

**22.8 Time.** Time is of the essence of this Lease and each and every provision hereof.

**22.9 Binding Effect; Choice of Law.** The parties hereto agree that all the provisions hereof are to be construed as both covenants and conditions as though the words importing such covenants and conditions were used in each separate paragraph hereof, and all rights and remedies of the Parties shall be cumulative and non-exclusive of any other remedy at law or in equity. This Lease shall be governed by the laws of the State of California. Venue of any litigation arising out of or connected with this Lease shall lie exclusively in the state trial court or Federal District Court located in Sacramento County in the State of California, and the parties consent to jurisdiction over their persons and over the subject matter of any such litigation in such courts, and consent to service of process issued by such courts.

**22.10 Waiver.** No covenant, term or condition or the breach thereof shall be deemed waived, except by written consent of the Party against whom the waiver is claimed, and any waiver or the breach of any covenant, term or condition shall not be deemed to be a waiver of any subsequent covenant, term or condition. Acceptance by Landlord of any performance by Tenant after the time the same shall have become due shall not constitute a waiver by Landlord of the breach or default of any covenant, term or condition unless otherwise expressly agreed to by Landlord in writing.

**22.11 Surrender of Premises.** The voluntary or other surrender of this Lease by Tenant, or a mutual cancellation thereof, shall not work a merger, and shall at the option of Landlord terminate all or any existing subleases or may at the option of Landlord operate as an assignment to it any or all such subleases.

**22.12 Inability to Perform.** If either Party hereto shall be delayed or prevented from the performance of any act required hereunder by reason of strike, labor trouble, acts of God or any other cause beyond the reasonable control of such Party (financial inability excepted),

Tenant's Initial: LM

Landlord's Initial: \_\_\_\_\_

and such party is otherwise without fault, then performance of such act shall be excused for the period of the delay, provided that the foregoing shall not excuse Tenant from the prompt payment of any rental or other charge required of Tenant hereunder unless otherwise specifically so stated in this Lease.

**22.13 Reasonable Consent.** Wherever in this Lease Landlord or Tenant is required to give its consent or approval to any action on the part of the other, such consent or approval shall not be unreasonably withheld.

**23.14 Notices.** All notices or demands of any kind required or desired to be given by Landlord or Tenant hereunder shall be in writing and shall be deemed delivered forty-eight (48) hours after depositing the notice or demand in the United States mail, certified or registered, postage prepaid, addressed as follows:

To Landlord:	To Tenant:
City of Sacramento	Lenahan, Lee, Slater & Pearse, LLP
Facilities and Real Property Management	1030 15 <sup>th</sup> Street, Suite 300
915 I Street, 2 <sup>nd</sup> Floor	Sacramento, CA 95814
Sacramento, CA 95814	Attn: President
Attn: Real Property Superintendent	

**23.15 Tenant Not Agent.** Except as Landlord may specify in writing, Tenant and Tenant's personnel shall have no authority, express or implied, to act on behalf of Landlord in any capacity whatsoever as an agent. Tenant and Tenant's personnel shall have no authority, express or implied, to bind Landlord to any obligations whatsoever.

**23.16. Recordation.** Neither Landlord nor Tenant shall record this Lease. If Landlord so elects, it may record a short form hereof, in which case Tenant agrees to execute and deliver to Landlord a notarized copy of the memorandum of such short form.

**23.17. Brokers.** Tenant warrants that it has had no dealings with any real estate broker or agents in connection with the negotiation of this Lease except for Turton Commercial Real Estate. Turton Commercial is not entitled to a commission in connection with this Lease.

**23.18. Authority.** The person signing this Agreement for Tenant represents and warrants that he/she is fully authorized to sign this Agreement on behalf of Tenant and to bind Tenant to the performance of its obligations hereunder.

*(Signature Page Follows)*

Tenant's Initial: 

Landlord's Initial: \_\_\_\_\_

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the date first above stated.

**LANDLORD:**  
CITY OF SACRAMENTO  
A Municipal Corporation

**TENANT:**  
Lenahan, Lee, Slater and Pearse, LLC,  
a California Limited Liability Partnership

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

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

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

Name: William R MASERNIK, JR

Title: \_\_\_\_\_

Its: PARTNER \_\_\_\_\_

For: John F. Shirey, City Manager

Approved As To Form:

Approved as to Legal Form

By: Maile Hanson  
City Attorney

By: N/A \_\_\_\_\_

Attest:

By: \_\_\_\_\_  
City Clerk

**Exhibits:**  
Exhibit A – Description of Premises  
Exhibit B – Lease Insurance Requirements

Tenant's Initial: WRJ

Landlord's Initial: \_\_\_\_\_

Exhibit A

**Description of Premises**

Parcel Four:

A Condominium Estate Consisting of:

Unit No. 3-A as shown on the "Condominium Plan 1421 K Street" attached to the declaration of restrictions for 15th and K Office Building, an Office Condominium Project, dated February 13, 1984, recorded March 2, 1984, in Book 840302 Page 280, Official Records, as amended by the first amendment thereto recorded March 16, 1984, in Book 840316 Page 2059, Official Records, by the second amendment thereto recorded July 23, 1984, in Book 840723 Page 1033, Official Records, and by the third amendment thereto recorded December 17, 1985, in Book 851217 Page 942, Official Records, and being within Lot A of 1421 "K" Street, a Condominium, according to the Official Plat thereof, filed in the Office of the Recorder of Sacramento County, California, on February 29, 1984, in Book 156 of Maps, Map No. 15; and

An undivided 42.39 percent of the common area as defined in said Declaration as amended.

APN: 006-0115-016-0004

Tenant's Initial: \_\_\_\_\_



Landlord's Initial: \_\_\_\_\_

## Exhibit B

### **Lease Insurance Requirements**

During the term of this Lease,, Tenant shall maintain in full force and effect at its own cost and expense the following insurance coverage. By requiring the insurance herein, Landlord does not represent that the coverage and limits will necessarily be adequate to protect Tenant. It is understood and agreed by Tenant that the required insurance coverage and limits shall not be deemed as a limitation on Tenant's liability under the indemnities granted to Landlord in this Lease.

Insurance requirements are subject to review and revision every five (5) years to assure that policy terms, conditions and limits are maintained in accordance with current insurance industry standards for comparable premises and buildings.

#### A. Minimum Scope & Limits of Insurance Coverage

- (1) Commercial General Liability Insurance is required providing coverage at least as broad as ISO CGL Form 00 01 on an occurrence basis for bodily injury including death of one or more persons, property damage and personal injury, with limits of not less than one million dollars (\$1,000,000). The policy shall include coverage for premises, operations, products and completed operations, contractual liability and liquor liability for the term of the policy. The policy shall include a fire legal liability limit of \$250,000.
- (2) All Risk Property Insurance including coverage for special perils is required for all improvements, fixtures and equipment. All property insurance must be for replacement value and name the City of Sacramento as loss payee.
- (3) Workers' Compensation Insurance with statutory limits, and Employers' Liability Insurance with limits of not less than one million dollars (\$1,000,000) are required. The Worker's Compensation policy shall include a waiver of subrogation in favor of the City of Sacramento.
- (4) Automobile Liability Insurance providing coverage at least as broad as ISO Form CA 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than one million dollars (\$1,000,000) per accident. The policy shall provide coverage for owned, non-owned and/or hired autos as appropriate to the operations of Tenant.

#### B. Additional Insured Coverage

General Liability Insurance The City of Sacramento, its officials, employees and volunteers shall be covered by policy terms or endorsement as additional insured as respects general liability arising out of activities performed by or on behalf of the Tenant including products and completed operations of LESSEE and premises owned, leased or used by LESSEE.

#### C. Other Insurance Provisions

The policies are to contain or be endorsed to contain the following provisions.

- (1) Tenant's insurance coverage, including excess insurance, shall be primary as respects the City of Sacramento, its officials, employees and volunteers. Any insurance or self-insurance maintained by City of Sacramento, its officials, employees or volunteers shall be in excess of Tenant's insurance and shall not contribute with it.

Tenant's Initial: \_\_\_\_\_



Landlord's Initial: \_\_\_\_\_

- (2) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City of Sacramento, its officials, employees and volunteers.
- (3) Coverage shall state that Tenant's insurance shall apply separately to each insured against whom claim is made or suit is brought except with respect to the limits of the insurer's liability.
- (4) Landlord will be provided with thirty (30) days written notice of cancellation or material change in the policy terms or language.

D. Acceptability of Insurers

Insurance shall be placed with insurers with a Bests' rating of not less than A:VI. Self-insured retentions, policy terms or other variations that do not comply with the requirements of this section must be declared to Landlord's representative and approved by Landlord's Risk Management Division in writing prior to execution of this Lease.

E. Verification of Coverage

- (1) Tenant shall provide initial insurance documents to the Landlord's representative, prior to execution of the final agreement. All future insurance renewal documents shall be sent to:

MAIL:  
City of Sacramento  
c/o EXIGIS, LLC  
P.O. Box 4668 ECM - #35050  
New York, NY 10168-4668

FAX: (888) 355-3599  
EMAIL: certificates-sacramento@riskworks.com

- (2) Copies of policies shall be delivered to the Landlord on demand.
- (3) Landlord may withdraw its offer or cancel this Lease if the certificates of insurance and endorsements required have not been provided prior to execution of this Lease. Failure to provide insurance certificates and endorsements and keep such certificates and endorsements current will be considered a material breach by Tenant of this Lease.

F. Contractors

Lessee shall require and verify that all contractors and subcontractors maintain insurance coverage that meets the minimum scope and limits of insurance coverage specified in subsections A, B, C and D above.

Tenant's Initial: CMY

Landlord's Initial: \_\_\_\_\_