

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

THIS AGREEMENT OF PURCHASE AND SALE AND JOINT ESCROW INSTRUCTIONS (the "Agreement") is made and entered into as of \_\_\_\_\_, 2006, by and among Richards Boulevard Partners, a State of California general partnership and The Second Richards Boulevard Partnership, a State of California general partnership, collectively referred to herein as the "Seller", and THE CITY OF SACRAMENTO (the "Buyer").

**RECITALS:**

A. Seller is the owner of a 150,795 gross square foot three-story office building built in 2002 (the "Building") and situated on a 11.64 acre site, 5.443 acres of which is unimproved in the city of Sacramento, county of Sacramento, state of California, commonly known as the Discovery Centre and more particularly described in Exhibit "A" attached hereto and incorporated by reference (the "Property"). The Building includes 146,132 square feet of net rentable area.

B. Seller desires to sell the Property to the Buyer on the terms and conditions set forth in this Agreement and make a gift of the remaining fair market value of the Property as set forth herein.

C. The Buyer desires to purchase the Property from Seller and accept Seller's gift of the remaining value of the Property from the Seller pursuant to the terms and conditions set forth in this Agreement.

D. The parties have entered into an Option to Purchase Agreement dated \_\_\_\_\_, 2006, attached hereto as Exhibit "B" the terms of which are incorporated by reference.

E. The parties have entered into a Commercial Lease Agreement dated \_\_\_\_\_, 2006, attached hereto as Exhibit "C" the terms of which are incorporated by reference.

NOW THEREFORE, the parties agree as follow:

**SECTION 1. BARGAIN PURCHASE AND SALE.**

The Seller agrees to sell to the Buyer, and the Buyer agrees to purchase from the Seller, the Property on the terms and conditions set forth in this Agreement.

## **SECTION 2. PURCHASE PRICE.**

The purchase price for the Property shall be TWENTY NINE MILLION EIGHT HUNDRED FIFTY THOUSAND DOLLARS (\$29,850,000.00)(the "Purchase Price").

## **SECTION 3. PAYMENT OF PURCHASE PRICE.**

The purchase price shall be payable as follows:

**3.1 Earnest Money Deposit.** The Buyer will pay into escrow as provided in Section 4.1, the sum of ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) as an earnest money deposit, within ten (10) business days of the execution of this Agreement. At closing, the sum of ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) shall be credited toward payment of the Purchase Price.

**3.2 Cash Balance.** It is the Seller's expectation that the balance of the Purchase Price will be paid on the Closing Date via wire transfer of funds, a certified check, or a cashier's check, in the amount of TWENTY NINE MILLION SEVEN HUNDRED FIFTY THOUSAND DOLLARS (\$29,750,000.00), less a credit for any unused portion of the SIX MILLION FIVE HUNDRED THOUSAND DOLLAR (\$6,500,000) tenant improvement allowance provided by Seller, together with the amount due the Seller, if any, after the prorations are computed in accordance with Section 10.

## **SECTION 4. ESCROW.**

**4.1 Opening of Escrow.** Within ten (10) business days of the execution of this Agreement, Buyer shall deliver a nonrefundable deposit in the amount of ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) with Fidelity National Title (the "Escrow Holder"). The Buyer and the Seller shall deliver a fully executed copy of this Agreement to the Escrow Holder. The Buyer and the Seller hereby authorize their respective attorneys to execute and deliver into escrow any additional or supplemental instructions as may be necessary or convenient to implement the terms of this Agreement and to close this transaction. If the additional or supplemental instructions conflict with the express terms of this Agreement, the terms of this Agreement control.

**4.2 Closing Date.** This transaction shall close on or before December 31, 2006 (the "Closing Date"). However Seller reserves the right to extend the Closing Date to January 6, 2007, provided prior written notice is delivered to Buyer on or before December 10, 2006.

## **SECTION 5. CONDITIONS TO CLOSING.**

**5.1 Conditions Precedent to Buyer's Obligations.** The close of escrow and the Buyer's obligations with respect to the transaction contemplated by this Agreement are subject to the satisfaction, not later than the Closing Date (unless otherwise provided),

of the following conditions, and the obligations of the parties with respect to such conditions are as follows:

(a) **Title.** At closing Seller shall convey fee simple title to the Property by grant deed, subject only to non-delinquent real property taxes and items revealed in the preliminary title report to be provided to Buyer and to which Buyer does not timely object in writing.

(b) **Investigation and Review.** As a condition to closing, the documents described in this Section 5.1(b) (the "Investigation Documents") must be delivered to Marty Hanneman with the Buyer (or an individual designated in writing by him to receive documents on his behalf), and approved as provided below, and the results of the Buyer's site studies pursuant to Section 5.1(b)(1) below must be acceptable to the Buyer in its sole discretion.

Within twenty (20) days after executing this Agreement, unless otherwise specified, the Seller shall deliver or cause to be delivered to the Buyer the Investigation Documents. The Buyer shall have the right to review and approve each and every Investigation Document to its sole satisfaction within ten (10) days after the Buyer receives it. The Buyer's failure to respond timely shall constitute the Buyer's approval of the Investigation Document provided. If the Buyer disapproves any Investigation Document, the Buyer shall timely notify the Seller in writing, and the Seller shall have ten (10) days in which to cure. If a cure acceptable to the Buyer is not timely achieved, the Buyer may waive the requirement in writing, or elect to terminate this Agreement for failure to satisfy a condition precedent to the Buyer's obligation to close.

(1) **Records and Plans.** Copies of all architectural drawings, construction plans and specifications, "as-built" records of the improvements, environmental studies, inspection reports, and all topographical surveys and soil tests for or relating to the Property in the Seller's possession.

(2) **Leases.** A copy of each tenant's lease or rental agreement, together with all amendments to it.

(3) **Permits.** Copies of all permits, orders, letters, and other documents available to the Seller relating to the zoning and permitted uses of the Property.

(4) **Tax Notices.** Copies of all tax and assessment notices and bills for the Property for the most recent two property tax years, including a copy of the \$526,000 assessment issued by Buyer to construct a new area wide sewer system, the allocation of which will be addressed in Section 10.

(5) **Service Contracts.** Copies of all service or maintenance contracts with respect to the Property.

(c) **Representations, Warranties, and Covenants of Seller.** The Seller shall have duly performed each and every agreement to be performed by the Seller hereunder and the Seller's representations, warranties, and covenants set forth in this Agreement shall be true and correct as of the Closing Date.

(d) **No Material Changes.** At the Closing Date, there shall have been no material adverse changes related to or connected with the Property which have not otherwise been disclosed to Buyer in writing.

(e) **Seller's Deliveries.** The Seller shall have timely delivered each and every item to be delivered by the Seller pursuant to this Agreement.

(f) **Title Insurance.** As of the close of escrow, the Escrow Holder shall have issued or shall have committed to issue the title policy to the Buyer, at Seller's cost, for each parcel comprising the Property.

The conditions set forth in this Section 5.1 are solely for the benefit of the Buyer and may be waived only by the Buyer. The Buyer shall at all times have the right to waive any condition. Such waiver or waivers shall be in writing to the Seller. The waiver by the Buyer of any condition shall not relieve the Seller of any liability or obligation with respect to any representation, warranty, covenant, or agreement of the Seller. Neither the Seller nor the Buyer shall act or fail to act for the purpose of permitting or causing any condition to fail (except to the extent the Buyer, in its own discretion, exercises its right to disapprove any such items or matters).

**5.2 Form 8283; Qualified Appraisal.** Buyer acknowledges that Seller intends to claim the sale outlined in this Agreement as a bargain-sale for charitable purposes. Buyer further acknowledges that it is a qualified charitable organization under Section 170(c)(1) of the Internal Revenue Code of 1986 as amended and will acknowledge that it received the Property from Seller as required in the Internal Revenue Service Form 8283, as outlined herein. At least twenty (20) days prior to the Closing Date, Seller will deliver to Buyer a copy of a draft Form 8283, Noncash Charitable Contributions, that it anticipates it will file with its 2006 federal income tax return. Buyer acknowledges that in the event it sells, exchanges or otherwise disposes of the Property (or any portion thereof) within two (2) years of the Closing Date, Buyer shall file an Internal Revenue Service Form 8222 Donee Information Return with the Internal Revenue Service and provide a copy thereof to Seller.

At some point either at closing or when the Seller prepares its income tax return for the year in which the transfer is concluded, Seller will deliver to Buyer an acknowledgment on an Internal Revenue Service Form 8283 for Buyer's signature. Buyer hereby agrees that it will execute said Form 8283 and return it to Seller within five (5) business days of receipt. Buyer's acknowledgement and signature on the Form 8283 do not represent Buyer's agreement with Seller's claimed fair market value for the Property and Buyer claims no responsibility in that regard.

**5.3 Conditions Precedent to Seller's Obligations.** The close of escrow and the Seller's obligations with respect to the transactions contemplated by this Agreement are subject to the Buyer's delivery to the Escrow Holder on or before the Closing Date, for disbursement as provided herein:

- (a) The balance of the of the Purchase Price;
- (b) Assignments (if any); and
- (c) Prorations as set forth in Section 6.2.

**5.4 Failure of Conditions to Closing.** If any of the conditions set forth in Section 5.1, Section 5.2 or Section 5.3 are not timely satisfied or waived, for a reason other than the default of the Buyer or the Seller under this Agreement:

- (a) This Agreement, the escrow, and the rights and obligations of the Buyer and the Seller shall terminate, except as otherwise provided herein; and
- (b) The Escrow Holder is hereby instructed to promptly disburse to the Buyer, all funds held in escrow.

**5.5 Cancellation Fees and Expenses.** If this escrow terminates because of the non-satisfaction of any condition for a reason other than the default of the Seller or the Buyer under this Agreement, the Seller and the Buyer will equally bear any cancellation charges required to be paid to the Escrow Holder. If this escrow terminates because of the Seller's default, the Seller will bear any cancellation charges required to be paid to the Escrow Holder. If this escrow terminates because of the Buyer's default, the Buyer will bear any cancellation charges required to be paid to the Escrow Holder.

## **SECTION 6. DELIVERIES TO ESCROW HOLDER.**

**6.1 By Seller.** On or before the Closing Date, the Seller shall deliver the following in escrow to the Escrow Holder:

(a) **Deed.** A "Grant Deed" substantially in the form attached as Exhibit "6.1(a)" and incorporated by reference, duly executed and acknowledged in recordable form by the Seller, conveying the Property to the Buyer subject only to non-delinquent property taxes, items revealed in the Investigation Documents and not objected to by Buyer, and other matters that may be approved in writing by the Buyer.

(b) **Assignment of Leases.** An "Assignment of Leases" substantially in the form attached as Exhibit "6.1(b)" and incorporated by reference, duly executed and acknowledged by the Seller in recordable form, assigning to the Buyer all of the Seller's right, title, and interest in and to all the tenant leases and tenant deposits. As indicated herein, the tenant deposits will be credited to the Buyer at closing.

(c) **General Assignment.** A "General Assignment" substantially in the form attached as Exhibit "6.1(c)" and incorporated by reference, duly executed by the Seller, assigning to the Buyer all of the Seller's right, title, and interest in and to all service contracts accepted by the Buyer and all other intangible property constituting part of the property being sold.

(d) **Non-foreign Certification.** The Seller represents and warrants that it is not a "foreign person" as defined in Section 1445 of the Internal Revenue Code ("FIRPTA Certificate"). The Seller will give an affidavit to the Buyer to this effect in the form required by that statute and the Treasury Regulations promulgated thereunder.

(e) **Tenant Notification Letter.** A letter to tenants, duly executed by the Seller and dated as of the Closing Date, satisfactory in form and substance to the Buyer, notifying each tenant that:

- (1) The Property has been sold to the Buyer;
- (2) All of the Seller's right, title, and interest in and to the tenant leases and tenant deposits have been assigned to the Buyer; and
- (3) Commencing immediately, all rent and other payments and any notices under tenant leases are to be paid and sent to the Buyer.

(f) **Tenant Improvement Allowance.** The remaining unused tenant improvement allowance for the Building will be provided as an off-set against the Purchase Price. Said tenant improvement allowance will be set aside and reserved solely for construction of tenant improvements on the Building.

(g) **Proof of Authority.** Such proof of the Seller's authority and authorization to enter into this Agreement and consummate the transaction contemplated by it, and such proof of the power and authority of the persons executing and/or delivering any instruments, documents, or certificates on behalf of the Seller to act for and bind the Seller, as may be reasonably required by the Escrow Holder and/or the Buyer.

(h) **Lien Affidavits.** Any lien affidavits or mechanic's lien indemnifications as may be reasonably requested by the Escrow Holder in order to issue the title policy.

(i) **Form 8283.** The draft Form 8283 as set forth in Section 5.2.

**6.2 By Buyer.** On or before the Closing Date, the Buyer shall deliver the following in escrow to the Escrow Holder:

(a) **Purchase Price.** The purchase price in accordance with Section 3, above.

(b) **Prorations.** The amount due the Seller, if any, after the prorations are computed in accordance with Section 10 below.

## **SECTION 7. DELIVERIES TO BUYER AT CLOSING.**

The Seller shall deliver possession of the Property to the Buyer at close of escrow. On or before the Closing Date, the Seller shall deliver to the Buyer possession of the following:

**7.1 Tenant Leases.** Originals of all the tenant leases or, to the extent an original tenant lease is unavailable, a duplicate original of it with a certificate executed by Seller warranting the authenticity of the duplicate original.

**7.2 Service Contracts.** Originals of all service contracts or, to the extent an original service contract is unavailable, a duplicate original of it with a certificate executed by the Seller warranting the authenticity of the duplicate original.

**7.3 Keys.** Keys to all entrance doors to the improvements on the Property and keys to all personal property located on the Property, which keys shall be properly tagged for identification.

**7.4 Records and Plans.** To the extent not already delivered to the Buyer pursuant to Section 5.1(b)(1), copies of all architectural drawings, construction plans and specifications, "as-built" records of the improvements, environmental studies, inspection reports, and all topographical surveys and soil tests for or relating to the Property in the Seller's possession.

## **SECTION 8. TITLE INSURANCE AND TRANSFER TAXES.**

At closing, the Seller shall provide, at its expense, a standard owner's title insurance policy in the amount of the purchase price specified above, insuring title vested in the Buyer or its nominees, subject only to non-delinquent real property taxes and any other matters revealed by the Preliminary Commitment and not objected to by the Buyer pursuant to Section 5.1(a) above. Buyer agrees to pay or waive all applicable State of California and/or City of Sacramento transfer taxes generated by the transaction(s) outlined in this Agreement.

## **SECTION 9. ADJUSTMENTS.**

The Seller shall pay for the standard coverage title insurance policy, one-half of the recording charges, one-half of all escrow fees and costs, and Seller's share of prorations pursuant to Section 10 below. The Buyer shall pay one-half of the recording

charges, one-half of all escrow fees and costs, and the Buyer's share of prorations pursuant to Section 10 below. The Buyer and the Seller shall each pay its own legal and professional fees of other consultants incurred by the Buyer and the Seller, respectively. All other costs and expenses shall be allocated between the Buyer and Seller in accordance with the customary practice in Sacramento County, California. At closing, the Buyer shall contribute any funds necessary to pay its share of adjustments.

## **SECTION 10. PRORATIONS.**

**10.1 General.** Rental revenues, and other income, if any, from the Property and presently existing taxes, assessments, including but not limited to the sewer assessment disclosed in Section 5.1(b)(4) herein which the parties agree is the obligation of Buyer, improvement bonds, and other expenses, if any, affecting the Property, shall be prorated as of 12:00 o'clock p.m. on the Closing Date. For the purpose of calculating prorations, the Buyer shall be deemed to be in title to the Property and, therefore, entitled to the income and responsibility for the expenses for the entire day following the Closing Date.

**10.2 Delinquent Rentals.** Rentals are delinquent when payment of rent is due on or before the Closing Date but has not been made. Delinquent rentals shall be prorated between the Buyer and the Seller as specified above but not until the rents are actually collected. The Seller shall have the right to collect any delinquent rental, but shall not have the obligation to do so. All collection proceedings and procedures by the Seller shall require the prior approval of the Buyer, which shall not be unreasonably withheld. Delinquent rentals collected by the Seller or the Buyer, net of cost of collection (including attorney fees), shall be applied first to delinquent sums owed to the Seller before the Closing Date then to sums owned to the Buyer, as of the date of collection. The Buyer and the Seller agree that any payments due to either party as a result of collected delinquent rentals shall be payable when received.

**10.3 Tenant Deposits.** The amount of all tenant deposits shall be credited to the account of the Buyer.

**10.4 Method of Proration.** All prorations shall be made in accordance with customary practice in Sacramento County, California, except as expressly provided herein. The Buyer and the Seller agree to cause their accountants to prepare a schedule of tentative prorations before the Closing Date. Such prorations, if and to the extent known and agreed on as of the Closing Date, shall be paid by the Buyer to the Seller (if the prorations result in a net credit to the Seller) or by the Seller to the Buyer (if the prorations result in a net credit to the Buyer) by increasing or reducing the cash to be paid by the Buyer at closing. Any such prorations not determined or not agreed on as of the Closing Date shall be paid by the Buyer to the Seller, or by the Seller to the Buyer, as the case may be, in cash as soon as practicable following the Closing Date. A copy of the schedule of prorations as agreed upon by the Buyer and the Seller shall be delivered to the Escrow Holder at least three business days before the Closing Date.

**SECTION 11. DISBURSEMENTS AND OTHER ACTIONS BY ESCROW HOLDER.**

At closing, the Escrow Holder shall do the following:

**11.1 Funds.** Disburse all funds deposited with the Escrow Holder by the Buyer in payment of the Purchase Price as follows:

- (a) Offset the remaining unused tenant improvement fund against the Purchase Price.
- (b) Deduct all items chargeable to the account of the Seller pursuant to Section 9 above.
- (c) Disburse the balance of the Purchase Price to the Seller promptly on closing.
- (d) Disburse the remaining balance of the funds, if any, to the Buyer promptly on closing.

**11.2 Recording.** Cause the Grant Deed, tenant lease assignments (in that order), and any other documents that the parties may mutually direct to be recorded in the official records and obtain conformed copies for distribution to the Buyer and the Seller.

**11.3 Title Policy.** Issue the title policy to the Buyer.

**11.4 Disbursements of Documents to Buyer.** Disburse to the Buyer the General Assignment, the FIRPTA Certificate, the tenant notification letters and change of address notices duly executed by the Seller, and any other documents (or copies thereof) deposited into escrow by the Seller pursuant hereto.

**SECTION 12. SELLER'S REPRESENTATIONS AND WARRANTIES.**

In addition to any express agreements of the Seller contained herein, the Seller makes the following representations and warranties to the Buyer:

**12.1 Representations Regarding Seller's Authority.**

(a) The Seller has the legal power, right, and authority to enter into this Agreement and the instruments referred to herein and to consummate the transactions contemplated herein.

(b) All requisite action (corporate, limited liability company, trust, partnership, or otherwise) has been taken by the Seller in connection with entering into this Agreement, the instruments referred to herein, and the consummation of the

transactions contemplated herein. No further consent of any partner, shareholder, member, manager, creditor, investor, judicial or administrative body, governmental authority, or other party is required.

(c) The persons executing this Agreement and the instruments referred to herein on behalf of the Seller and the members, managers, partners, officers, or trustees of the Seller, if any, have the legal power, right, and actual authority to bind the Seller to the terms and conditions of this Agreement.

(d) This Agreement and all documents required to be executed by the Seller are and shall be valid, legally binding obligations of and enforceable against the Seller in accordance with their terms.

(e) Neither the execution and delivery of this Agreement and instruments referred to herein, nor the incurring of the obligations set forth herein, nor the consummation of the transactions hereby contemplated, nor compliance with the terms of this Agreement and the instruments referred to herein conflict with or 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 agreements or instruments to which the Seller is a party or affecting the Property.

## **12.2 Warranties and Representations Pertaining to Real Estate and Legal Matters.**

(a) The information contained in the recitals is true and correct.

(b) Except as disclosed to the Buyer in writing, there is no litigation, claim, or arbitration, pending or threatened, with regard to the Property or its operation.

(c) No attachments, execution proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization, or other proceedings are pending or, to the best of the Seller's knowledge, threatened against the Seller, nor are any such proceedings contemplated by the Seller.

(d) Except as disclosed to the Buyer in writing, to the best of the Seller's knowledge, the construction, occupancy, and operation of the Property materially conform to and comply with all applicable city, county, state, and federal law, statutes, ordinances, and regulations.

(e) Except as disclosed to the Buyer in writing, to the best of the Seller's knowledge, there are no material structural defects in the buildings, nor are there any major repairs required to operate the buildings in a lawful, safe, and efficient manner.

(f) The electrical, plumbing, heating, and air conditioning systems and any other utility systems will be in substantially the same condition at closing as when the Buyer conducted its inspection.

(g) The Seller has not entered into any other contracts for the sale of the Property, nor do any rights of first refusal or options exist to purchase the Property.

(h) The Seller has not received any notices from any insurance company of any defects or inadequacies in the Property.

(i) Any licenses and permits obtained by the Seller have been fully paid for and are not subject to any liens, encumbrances, or claims of any kind.

(j) To the best of the Seller's knowledge, the Property is materially in compliance with applicable state and federal environmental standards and requirements affecting it.

(k) Except as disclosed in writing to Buyer, the Seller has not received any notices of violation or advisory action by regulatory agencies regarding environmental control matters or permit compliance with respect to the Property.

(l) The Seller has not transferred hazardous waste from the Property to another location that is not in compliance with applicable environmental laws, regulations, or permit requirements. To the best of the Seller's knowledge, no other person has transferred hazardous waste from the Property to another location that is not in compliance with applicable environmental laws, regulations, or permit requirements.

(m) There are no proceedings, governmental administrative actions, or judicial proceedings pending or, to the best of the Seller's knowledge, contemplated under any federal, state, or local laws regulating the discharge of hazardous or toxic materials or substances into the environment.

(n) To the best of the Seller's knowledge, the Seller has not, during its ownership of the Property, stored, produced, or disposed of any hazardous substance, including asbestos, on the Property.

### **12.3 Representations Pertaining to Tenant Leases and Service Contracts.**

To the best of the Seller's knowledge:

(a) The leases, and all other information and documentation provided, or to be provided by the Seller to the Buyer in connection with this transaction are complete, true, and accurate, and are presented in a manner that is not misleading.

(b) All leases are in full force and effect with rents paid currently (except as otherwise indicated).

(c) With regard to the tenant leases, the Seller knows of no default by it or by any of the tenants, and there have been no verbal changes and no concessions granted with respect to the leases or tenants under the leases, except as indicated in the rent roll.

(d) The only service or maintenance contracts have been provided or disclosed in writing to the Buyer. Except where the Seller has indicated to the contrary, all the service contracts may be terminated without penalty or other payment, except for the current sum then owing by the Buyer on thirty (30) days' or less notice.

(e) There is no current default or breach under the terms and provisions of any of the service contracts. The service contracts have not been and will not be amended or modified except as indicated herein.

(f) As of the Closing Date, the Seller's interest in tenant leases and rentals due or to become due thereunder will not be subject to any assignment encumbrance, or liens.

(g) No leasing or brokerage fees or commissions of any nature whatsoever shall become due or owing to any person, firm, corporation, or entity after closing with respect to the tenant leases.

(h) The operating statements provided to the Buyer, are true and accurate in all material respects.

(i) The Seller has no employees whom the Buyer will be required to employ after closing.

#### **12.4 Representations, Warranties, and Covenants Regarding Operation of the Property Through the Close of Escrow.**

(a) The Seller further represents and warrants that, until this transaction is closed or escrow is terminated, whichever comes earlier, it shall:

(1) Operate and maintain the Property in a manner consistent with the Seller's past practices;

(2) Keep all existing insurance policies affecting the Property in full force and effect;

(3) Make all required payments of interest and principal on any existing financing;

(4) Comply with all government regulations;

(5) Keep the Buyer timely advised of any repair or improvement required to keep the Property in substantially the same condition as when inspected by the Buyer and that costs more than \$10,000.00.

(b) The Seller hereby agrees that the Seller will not hereafter modify, extend, or otherwise change any of the terms, covenants, or conditions of the tenant leases, or enter into new leases or any other obligations or agreements affecting the Property without the prior written consent of the Buyer, which consent shall not be unreasonably withheld. Without the prior written consent of the Buyer, the Seller shall not terminate any of the tenant leases, unless the tenant thereunder has materially defaulted in the payment of rent. Except as disclosed in writing to Buyer, the Seller shall not accept from any of the tenants payment of rent more than one month in advance or apply any security deposit to rent due from any tenant. Nothing contained herein shall restrict the right of the Seller to enter into month-to-month leases or grant month-to-month extensions of existing tenant leases in the ordinary course of business at rates consistent with those reflected in the rent roll, nor shall anything herein restrict the right of the Seller to enter into service contracts or extend existing service contracts in the ordinary course of business as long as such service contracts can be terminated, without penalty or payment by the Buyer, upon thirty (30) days' or less notice.

(c) The Seller will give the Buyer at least ten (10) business days' notice before commencing any action with respect to the Property and will refrain from bringing any such action except on such terms as are mutually acceptable to the Seller and the Buyer. The Buyer shall not unreasonably withhold the Buyer's consent to any action that the Seller wishes to institute before closing, and the Buyer's failure to disapprove any such action within five (5) business days after the Seller's request shall be deemed to constitute the Buyer's consent.

(d) The Seller will not enter into any new leases until the Buyer has given its written approval of leases submitted to it by the Seller, which approval will not be unreasonably withheld or delayed.

(e) Any lease submitted by the Seller to the Buyer will be accompanied by a statement setting forth in reasonable detail all out-of-pocket costs to be incurred in connection with each such lease during the interim period. This will include the cost of tenant improvements, leasing fees, any tenant concessions, any moving cost allowances, and any assumptions of existing rental or lease agreements. Such costs shall be approved in writing by the Buyer, together with the applicable lease, and such approval shall not be unreasonably withheld or delayed. Each of such costs shall be specifically set forth or, if it is not practical to designate a fixed amount, the manner of determining the amount of the cost shall be set forth.

(f) All such pre-approved costs that are incurred and paid out by the Seller before the Closing Date shall be reimbursed by the Buyer to the Seller by payment through the escrow at closing. All such costs that the Seller has incurred and that are payable following the Closing Date shall be assumed and paid by the Buyer as and when payable.

(g) If the sale does not close because of failure of any of the conditions, it is understood that the Buyer will have no responsibility for payment or reimbursement of any such costs approved by the Buyer.

(h) The Seller will not make any alterations to the Property or remove any of the personal property from it, unless the personal property so removed is simultaneously replaced with personal property of similar quality and utility.

**12.5 General Representation.** The Seller's representations and warranties contained herein are true and accurate, and are not misleading. The Seller's representations and warranties contained herein shall be continuing from the Closing Date and shall be true and correct as of the Closing Date with the same force and effect as if remade by the Seller in a separate certificate at that time.

### **SECTION 13. CONDITION OF PROPERTY.**

Other than as provided in the Seller's representations and warranties contained in this Agreement and those contained in any instrument delivered to the Buyer at closing, the Buyer acknowledges that it is purchasing the Property AS IS.

### **SECTION 14. BUYER'S REPRESENTATIONS AND WARRANTIES.**

In addition to any express agreements of the Buyer contained herein, the following constitute representations and warranties of the Buyer to the Seller:

#### **14.1 Representations Regarding Buyer's Authority.**

(a) The Buyer has the legal power, right, and authority to enter into this Agreement and the instruments referred to herein and to consummate the transactions contemplated herein.

(b) All requisite administrative and governmental action has been taken by the Buyer in connection with entering into this Agreement, the instruments referred to herein, and the consummation of the transactions contemplated herein. No further consent of any administrative or governmental body is required.

(c) The persons executing this Agreement and the instruments referred to herein on behalf of the Buyer have the legal power, right, and actual authority to bind the Buyer to the terms and conditions of this Agreement.

(d) This Agreement and all documents required to be executed by the Buyer are and shall be valid, legally binding obligations of and enforceable against the Buyer in accordance with their terms.

(e) Neither the execution and delivery of this Agreement and instruments referred to herein, nor the incurring of the obligations set forth herein, nor the consummation of the transactions hereby contemplated, nor compliance with the terms of this Agreement and the instruments referred to herein conflict with or 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 agreements or instruments to which the Buyer is a party or affecting the Property.

**14.2 General Representation.** The Buyer's representations and warranties contained herein are true and accurate, and are not misleading. The Buyer's representations and warranties contained herein shall be continuing from the Closing Date and shall be true and correct as of the Closing Date with the same force and effect as if made by the Buyer in a separate certificate at that time. The Buyer's representations and warranties contained herein shall survive the close of escrow and shall not merge into the deed and the recordation of the deed in the official records.

#### **SECTION 15. DAMAGE OR DESTRUCTION; CONDEMNATION.**

Until the close of escrow, the risk of loss shall be retained by the Seller. The Seller shall keep the Property fully insured until close of escrow. In the event all or any material portion (25% or more) of the Property is damaged, destroyed, or condemned or threatened with condemnation before the close of escrow, the Buyer may terminate this Agreement. In such event, escrow will be terminated, the earnest money deposit and accrued interest thereon will be promptly returned to the Buyer, and this Agreement shall have no further force or effect whatsoever. If a nonmaterial portion of the Property is destroyed or condemned, this Agreement shall remain in full force and effect, including, without limitation, the Buyer's obligation to close this transaction as provided for herein and to pay the full purchase price to the Seller. In such event, the Buyer shall be assigned all insurance proceeds or condemnation proceeds payable to or for the account of the Seller.

#### **SECTION 16. NOTICES.**

All notices or other communications required or permitted under this Agreement must be in writing and must be sent by registered or certified mail, postage prepaid, return receipt requested, which notice and communications will be deemed received three

days after deposit in the United State mail, postage prepaid. Notice of change of address shall be given by written notice in the manner detailed in this paragraph.

If to Buyer: City of Sacramento  
Facilities and Real Property Management  
5730 24<sup>th</sup> Street, Bldg. 4  
Sacramento CA 95822  
Attn: Facilities Manager

With a copy to: Office of the City Attorney  
915 I Street 4<sup>th</sup> Floor  
Sacramento CA 95814

If to Seller: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

With a copy to: Frederick B. Sainick, Esq.  
Sainick & Whitney  
190 Newport Ctr Dr 2FL  
Newport Beach CA 92660

If to Escrow Holder: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**SECTION 18. REQUIRED ACTIONS OF BUYER AND SELLER.**

The Buyer and the Seller agree to execute all such instruments and documents and to take all actions pursuant to the provisions of this Agreement in order to consummate the transaction contemplated herein and shall use their best efforts to accomplish the close of escrow in accordance with the provisions herein.

**SECTION 19. ENTRY.**

The Buyer, its agents, and designees shall have reasonable access to the Property for the sole purpose of confirming that it is in substantially the same condition at closing as it was when inspected. The Buyer's right to access does not negate the warranties and covenants contained herein. The Buyer shall indemnify and hold the Seller harmless from any loss, damage, or claim arising out of the Buyer's access to the Property.

**SECTION 20. LEGAL AND EQUITABLE ENFORCEMENT OF THIS AGREEMENT.**

**20.1 Default by the Seller.** If the close of escrow and the consummation of the transaction herein contemplated fail to occur by reason of any default by the Seller, the Buyer shall be entitled to the return of the earnest money deposit of \$100,000.00 and shall have the right to pursue any other remedy available to it at law or equity, including the specific performance of this Agreement.

**20.2 Consequences of Buyer Default.** IF BUYER DEFAULTS IN THE PERFORMANCE OF THIS AGREEMENT, THE PARTIES AGREE THAT SELLER SHALL BE RELEASED FROM ANY OBLIGATION TO SELL THE PROPERTY TO BUYER AND SHALL RETAIN, AS LIQUIDATED DAMAGES, \$100,000.00 FROM THE EARNEST MONEY DEPOSIT PAID BY BUYER ON EXECUTION OF THIS AGREEMENT. THE PARTIES FURTHER AGREE THAT THE AMOUNT OF LIQUIDATED DAMAGES ESTABLISHED BY THIS PROVISION IS A REASONABLE ESTIMATE, UNDER THE CIRCUMSTANCES EXISTING ON THE DATE OF EXECUTION OF THIS AGREEMENT, OF WHAT SELLER'S DAMAGES WOULD BE IN THE EVENT OF A DEFAULT BY BUYER AND THAT SUCH LIQUIDATED DAMAGES SHALL CONSTITUTE SELLER'S SOLE AND EXCLUSIVE REMEDY IN THE EVENT OF A DEFAULT BY BUYER. THE PARTIES AGREE THAT THE EXACT CALCULATION OF SELLER'S DAMAGES CAUSED BY BUYER'S DEFAULT WOULD BE IMPRACTICABLE OR EXTREMELY DIFFICULT TO ASCERTAIN.

Initialed by Buyer: \_\_\_\_\_

Initialed by Seller: \_\_\_\_\_

**SECTION 21. ASSIGNMENT.**

The Buyer shall have no right to assign its rights and obligations under this Agreement unless preapproved by Seller in writing.

**SECTION 22. INDEMNIFICATION.**

**22.1 By Seller.** Seller agrees and covenants to 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, whether for outside counsel or the City Attorney), causes of action, claims, or judgments arising by reason of any death, bodily injury, personal injury, property or economic damage, violation of any law or regulation, or damage to the environment, including ambient air, soil, soil vapor, groundwater, or surface water, and resulting from or in any way connected with:

(a) 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.

(b) Any breach of this Agreement by Seller, its officers or employees.

(c) The use, storage, treatment, transportation, release, or disposal of hazardous waste, on or about any portion of the Property by any person or entity (except for the Buyer and persons or entities acting on Buyer's behalf or under Buyer's control), and which has occurred or will occur at any time before the close of escrow as provided herein.

**22.2 By Buyer.** Buyer agrees and covenants to indemnify, defend (with counsel acceptable to Sellers), 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 or economic damage, violation of any law or regulation, or damage to the environment, including ambient air, soil, soil vapor, groundwater, or surface water, and resulting from or in any way connected with:

(a) 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.

(b) Any breach of this Agreement by Buyer, its officers or employees.

(c) The use, storage, treatment, transportation, release, or disposal of hazardous waste, on or about any portion of the Property by any person or entity (except for Seller and persons or entities acting on Seller's behalf or under Seller's control), and which occurs at any time before the close of escrow as provided herein.

**22.3 Waiver.** The parties further agree and understand as follows: a party does not, and shall not be deemed to, waive any rights against the other party which it may have by reason of the aforesaid indemnity and hold harmless agreements because of any insurance coverage available; the scope of the aforesaid indemnity and hold harmless agreements is to be construed broadly and liberally to provide the maximum coverage in accordance with their terms; no specific term or word contained in this Section 22 shall be construed as a limitation on the scope of the indemnification and defense rights and obligations of the parties unless specifically so provided.

**22.4 Survival.** The provisions of this Section 22 shall survive the recording of any deeds hereunder.

## **SECTION 23. MISCELLANEOUS.**

**23.1 Partial Invalidity.** If any term or provision of this Agreement or the application to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each such term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

**23.2 Waivers.** No waiver of any breach of any covenant or provision contained herein shall be deemed a waiver of any preceding or succeeding breach thereof, or of any other covenant or provision herein contained. 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.

**23.3 Survival of Representations.** The covenants, agreements, representations, and warranties made herein shall survive the close of escrow and shall not merge into the deed and the recordation of it in the official records.

**23.4 Successors and Assigns.** This Agreement shall be binding on and shall inure to the benefit of the permitted successors and assigns of the parties to it.

**23.5 Attorney Fees.** If any action, arbitration, or other proceeding involving a dispute between Buyer and Seller is instituted in connection with any controversy arising out of this Agreement, the prevailing party shall be entitled to receive from the other party reasonable attorney fees, whether for a City of Sacramento attorney or outside legal counsel, expert witness fees, and costs to be determined by the court or arbitrator, including attorney fees and costs on any appeal.

**23.6 Entire Agreement.** This Agreement (including any exhibits attached or contemplated herein) is the final expression of, and contains the entire agreement between, the parties with respect to the subject matter of the Agreement and supersedes all prior understandings with respect to the purchase and sale of the Property and supersedes all prior proposals and counter-proposals related thereto and/or modifications thereof. The parties acknowledge they may have entered into an option agreement and a commercial lease related to the Property. This Agreement may not be modified, changed, supplemented, or terminated, nor may any obligations under it be waived, except by written instrument signed by the party to be charged or by its agent duly authorized in writing or as otherwise expressly permitted herein. The parties do not intend to confer any benefit on any third party firm, partnership, corporation, limited liability company or other entity or person other than the parties hereto.

**23.7 Time of Essence.** The Seller and the Buyer hereby acknowledge and agree that time is strictly of the essence with respect to each and every term, condition, obligation, and provision.

**23.8 Construction.** Headings at the beginning of each section and subsection are solely for the convenience of the parties and are not a part of this Agreement. Whenever required by the context of this Agreement, the singular shall include the plural, and the masculine shall include the feminine, and vice versa. This Agreement shall not be construed as if it had been prepared by one of the parties, but rather as if both parties had prepared it. Unless otherwise indicated, all references to sections and subsections are to this Agreement. All exhibits referred to in this Agreement are attached and incorporated by this reference.

**23.9 Computation of Periods of Time.** Unless otherwise specified, in computing any period of time described in this Agreement, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless the last day is a Saturday, Sunday, or legal holiday, in which event the time period runs until the end of the next succeeding business day. The last day of any period of time described in this Agreement is deemed to end at five o'clock p.m. Pacific time.

**23.10 Governing Law.** The parties acknowledge that this Agreement has been negotiated and entered into in the State of California. The parties expressly agree that this Agreement shall be governed by, interpreted under, and construed and enforced in accordance with the laws of the State of California.

**23.11 Confidentiality; Non-disclosure.** No disclosure of the terms of this Agreement or any confidential information of either party may be made without the written consent of the other party. Any press releases in connection with the closing shall be reviewed and approved by both parties in writing prior to release.

**23.12 Arbitration of Disputes.** Any dispute or claim in law or equity arising between the Buyer and Seller out of this Agreement will be decided by neutral binding arbitration in accordance with the California Arbitration Act (C.C.P. § 1280 et seq.) and not by court action except as provided by California law for judicial review of arbitration proceedings. If the parties can not agree on an arbitrator, a party may petition to the Superior Court for Contra Costa County for an order compelling arbitration and appointing a judge from Contra Costa Superior Court as arbitrator. Service of the petition may be made by first class mail, postage prepaid, to the last known address of the party served. Judgment upon an award rendered by the arbitrator may be entered in any court having jurisdiction. The parties will have the right to discovery in accordance with the Code of Civil Procedure § 1283.05.

The parties agree that the following procedure will govern the making of the award by the arbitrator: (a) a Tentative Award will be made by the arbitrator within 30 days following submission of the matter to the arbitrator; (b) the Tentative Award will explain the factual and legal basis for the arbitrator's decision as to each of the principal controverted issues; (c) the Tentative Award will be in writing unless the parties agree otherwise; provided, however, that if the hearing is conducted within one (1) day, the

Tentative Award may be made orally at the hearing in the presence of the parties. Within fifteen (15) days after the Tentative Award has been served or announced, any party may serve objections to the Tentative Award. Upon objections being timely served, the arbitrator may call for additional evidence, oral or written argument, or both. If no objections are timely filed, the Tentative Award will become final without further action by the parties or arbitrator. Within thirty (30) days after the filing of objections, the arbitrator will either make the Tentative Award final or modify or correct the Tentative Award, which will then become final as modified or corrected.

The provisions of C.C.P. § 128.5 authorizing the imposition of sanctions as a result of bad faith actions or tactics will apply to the arbitration proceedings.

NOTICE: By initializing in the ["agree"] space below, you are agreeing to have any dispute arising out of the matters included in this section decided by neutral arbitration as provided by California law and you are giving up any rights you might possess to have the matter litigated in court or jury trial. By initializing the ["agree"] space below you are giving up your judicial rights to discovery and appeal, unless those rights are specifically included in this section. If you refuse to submit to arbitration after agreeing to this provision, you may be compelled to arbitrate under the authority of the California Code of Civil Procedure. Your agreement to this arbitration provision is voluntary.

We have read and understand the foregoing and agree to submit disputes arising out of the matters included in this section to neutral arbitration.

Buyer agrees                       Buyer does not agree

Seller agrees                               Seller does not agree

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year written above.

**SELLER:**

**RICHARDS BOULEVARD PARTNERS, a California general partnership:**

**Sacramento Associates, a  
California general partnership,  
General Partner**

**Grove Investment Company, a  
California general partnership,  
General Partner**

By: \_\_\_\_\_  
Bruce E. Nott, Trustee of the  
Nott Family Trust u/d/t dated  
May 22, 1990, a General Partner

By: \_\_\_\_\_  
Bruce E. Nott, Trustee of the  
Nott Family Trust u/d/t dated  
May 22, 1990, a General Partner

Tentative Award may be made orally at the hearing in the presence of the parties. Within fifteen (15) days after the Tentative Award has been served or announced, any party may serve objections to the Tentative Award. Upon objections being timely served, the arbitrator may call for additional evidence, oral or written argument, or both. If no objections are timely filed, the Tentative Award will become final without further action by the parties or arbitrator. Within thirty (30) days after the filing of objections, the arbitrator will either make the Tentative Award final or modify or correct the Tentative Award, which will then become final as modified or corrected.

The provisions of C.C.P. § 128.5 authorizing the imposition of sanctions as a result of bad faith actions or tactics will apply to the arbitration proceedings.

NOTICE: By initializing in the ["agree"] space below, you are agreeing to have any dispute arising out of the matters included in this section decided by neutral arbitration as provided by California law and you are giving up any rights you might possess to have the matter litigated in court or jury trial. By initializing the ["agree"] space below you are giving up your judicial rights to discovery and appeal, unless those rights are specifically included in this section. If you refuse to submit to arbitration after agreeing to this provision, you may be compelled to arbitrate under the authority of the California Code of Civil Procedure. Your agreement to this arbitration provision is voluntary.

We have read and understand the foregoing and agree to submit disputes arising out of the matters included in this section to neutral arbitration.

<input type="checkbox"/> Buyer agrees	<input type="checkbox"/> Buyer does not agree
<input type="checkbox"/> Seller agrees	<input type="checkbox"/> Seller does not agree

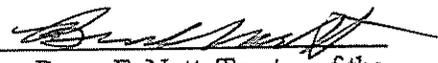
IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year written above.

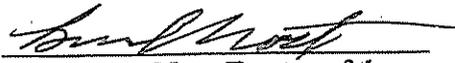
**SELLER:**

**RICHARDS BOULEVARD PARTNERS, a California general partnership:**

**Sacramento Associates, a  
California general partnership,  
General Partner**

**Grove Investment Company, a  
California general partnership,  
General Partner**

By:   
Bruce E. Nott, Trustee of the  
Nott Family Trust u/d/t dated  
May 22, 1990, a General Partner

By:   
Bruce E. Nott, Trustee of the  
Nott Family Trust u/d/t dated  
May 22, 1990, a General Partner

Page 21 – AGREEMENT OF PURCHASE AND SALE AND JOINT ESCROW  
INSTRUCTIONS

FA\CLIENTS\FAIT Insurance Partnership LLC\Documents\P&S Agreement 11-06-06 doc

By: Fait B Investments, LLC, a  
California limited liability company,  
a General Partner

By: \_\_\_\_\_  
Barrett C. Fait, Manager

By: Meadows Mobile Homes,  
California general  
partnership, a General Partner

By: \_\_\_\_\_  
James Lee, Trustee of  
the Lee Family Trust  
u/d/t dated 1/30/89, a  
General Partner

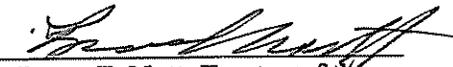
By: \_\_\_\_\_  
Barrett C. Fait, a  
General Partner

**THE SECOND RICHARDS BOULEVARD PARTNERSHIP, a California general  
partnership:**

**Sacramento Associates, a  
California general partnership,  
General Partner**

**Grove Investment Company, a  
California general partnership,  
General Partner**

By:   
Bruce E. Nott, Trustee of the  
Nott Family Trust u/d/t dated  
May 22, 1990, a General Partner

By:   
Bruce E. Nott, Trustee of the  
Nott Family Trust u/d/t dated  
May 22, 1990, a General Partner

By: Fait B Investments, LLC, a  
California limited liability company,  
a General Partner

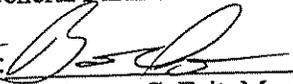
By: \_\_\_\_\_  
Barrett C. Fait, Manager

By: Meadows Mobile Homes,  
California general  
partnership, a General Partner

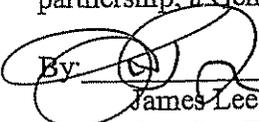
By: \_\_\_\_\_  
James Lee, Trustee of  
the Lee Family Trust  
u/d/t dated 1/30/89, a  
General Partner

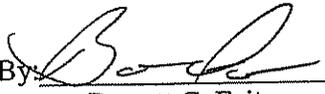
By: \_\_\_\_\_  
Barrett C. Fait, a  
General Partner

By: Fait B Investments, LLC, a  
California limited liability company,  
a General Partner

By:   
Barrett C. Fait, Manager

By: Meadows Mobile Homes,  
California general  
partnership, a General Partner

By:   
James Lee, Trustee of  
the Lee Family Trust  
u/d/t dated 1/30/89, a  
General Partner

By:   
Barrett C. Fait, a  
General Partner

**THE SECOND RICHARDS BOULEVARD PARTNERSHIP, a California general  
partnership:**

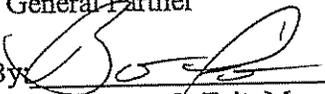
**Sacramento Associates, a  
California general partnership,  
General Partner**

**Grove Investment Company, a  
California general partnership,  
General Partner**

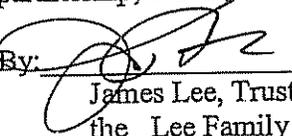
By: \_\_\_\_\_  
Bruce E. Nott, Trustee of the  
Nott Family Trust u/d/t dated  
May 22, 1990, a General Partner

By: \_\_\_\_\_  
Bruce E. Nott, Trustee of the  
Nott Family Trust u/d/t dated  
May 22, 1990, a General Partner

By: Fait B Investments, LLC, a  
California limited liability company,  
a General Partner

By:   
Barrett C. Fait, Manager

By: Meadows Mobile Homes,  
California general  
partnership, a General Partner

By:   
James Lee, Trustee of  
the Lee Family Trust  
u/d/t dated 1/30/89, a  
General Partner

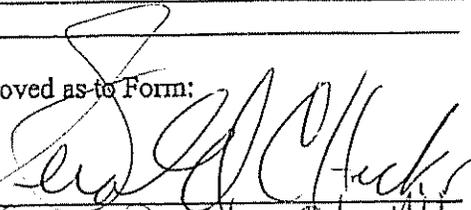
By:   
Barrett C. Fait, a  
General Partner

**BUYER:**

THE CITY OF SACRAMENTO

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

Approved as to Form:

By:   
Its: Senior Deputy City Attorney

Attested by:

\_\_\_\_\_  
City Clerk

**ACCEPTANCE OF ESCROW:**

\_\_\_\_\_, the Escrow Holder, by its duly authorized signature below, agrees to accept this escrow on the terms and conditions of, and to comply with the instructions contained in, the foregoing Agreement.

\_\_\_\_\_  
/s/ \_\_\_\_\_  
\_\_\_\_\_  
Print Name \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBITS:**

- A Legal Description of Property
- B Option to Purchase Agreement
- C Commercial Lease
- 6.1(a) Grant Deed
- 6.1(b) Assignment of Leases
- 6.1(c) General Assignment

Recording requested by:

and when recorded, please return this deed and tax statements to:

**DRAFT**

For recorder's use only

**California Grant Deed**

- This transfer is exempt from the documentary transfer tax.
- The documentary transfer tax is \$ \_\_\_\_\_ and is computed on:
  - the full value of the interest in the property conveyed
  - the full value less the value of liens of encumbrances remaining at the time of sale

The property is located in an:

- unincorporated area.
- the City of Sacramento.

For a valuable consideration, receipt of which is hereby acknowledged, Richards Boulevard Partners, a State of California general partnership and The Second Richards Boulevard Partnership, a State of California general partnership, hereby grant to the City of Sacramento the following real property in the City of Sacramento, County of Sacramento, State of California:

**[INSERT PROPERTY DESCRIPTION]**

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

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

State of California \_\_\_\_\_ )  
County of \_\_\_\_\_ ) ss

On \_\_\_\_\_ before me, \_\_\_\_\_ (name and title of the officer), personally appeared \_\_\_\_\_ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument

WITNESS my hand and official seal.

Signature \_\_\_\_\_

Notary Seal \_\_\_\_\_

**EXHIBIT " A "**

**LEGAL DESCRIPTION**

**EXHIBIT "A"**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SACRAMENTO, COUNTY OF SACRAMENTO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

Parcel One:

"Parcel B" as described in that certain Certificate of Compliance for Lot Line Adjustment recorded January 24, 2002, in Book 20020124, Page 1697, of Official Records, more particularly described as follows:

All of Parcel 2, together with all that portion of Parcel 1, as shown on that certain Parcel Map entitled "Discovery Centre", filed in Book 158 of Parcel Maps, Page 12, Official Records of Sacramento County, described as follows:

BEGINNING at the Northeast corner of said Parcel 2; thence, from said point of beginning, along the Easterly and Southerly lines of said Parcel 2, and along the Southerly and Westerly lines of said Parcel 1, the following seven (7) courses: 1) South 00°08'38" West 215.73 feet; 2) South 89°51'22" East 301.71 feet; 3) North 53°51'37" East 24.74 feet; 4) South 00°08'38" West 178.78 feet; 5) along the arc of a curve to the left, concave Southerly, having a radius of 1048.00 feet, subtended by a chord bearing North 88°36'25" West 62.72 feet; 6) South 89°40'42" West 1011.28 feet; and 7) North 00°08'59" East 142.05 feet; thence, leaving said Westerly line of said Parcel 1, North 89°40'42" East 325.29 feet to a point in the Westerly line of said Parcel 2; thence, along the Westerly and Northerly lines of said Parcel 2, the following two (2) courses: 1) North 00°08'38" East 242.03 feet; and 2) South 89°51'22" East 427.02 feet to the point of beginning.

EXCEPTING THEREFROM all mineral rights, interests and royalties, including without limiting the generality thereof, oil, gas and other hydrocarbon substances, as well as metallic or other solid minerals, in and under said property, without, however, the right of entry upon, into or through the surface of said property, as reserved in the Grant Deed executed by Southern Pacific Transportation Company, a Delaware Corporation, which recorded October 7, 1988, in Book 881007, Page 1364, of Official Records.

Assessor's Parcel Nos. 001-0210-045, 052 and 053, and 001-0040-036

Parcel Two:

A non-exclusive easement for ingress, egress, access to parking and circulation from and to Richards Boulevard Over the following described land:

All that certain real property situate in the City of Sacramento, County of Sacramento, State of California, described as follows:

All that portion of Parcels 1,2,3 and 4 as shown on that certain Parcel Map entitled Discovery Centre filed in Book 158 of Parcel Maps, Page 12, Official Records of Sacramento County, described as follows:

BEGINNING at the Southwest corner of said Parcel 1; thence from said point of beginning, along the Westerly line of said Parcel 1 North 00°08'59" East 142.05 feet; thence leaving said Westerly line North 89°40'42" East 309.78 feet; thence North 00°08'39" East 47.61 feet; thence along the arc of a curve to the left, concave Westerly, having a radius of 99.50 feet, subtended by a chord bearing North 09°24'04" West 33.00 feet; thence along the arc of a curve to the right, concave Easterly, having a radius of 100.50 feet, subtended by a chord bearing North 00°08'39" East 57.09 feet; thence along the arc of a curve to the left, concave Westerly, having a radius of 99.50 feet, subtended by a chord bearing North 09°41'23" East 33.00 feet; thence North 00°08'39" East 62.15; thence North 13°40'00" West 10.52 feet to a point in the Northerly line of said Parcel 1; thence along the Northerly line of said Parcels 1 and 2 South 89°51'22" East 35.51 feet; thence leaving said Northerly line of Parcel 2 South 11°44'52" West 12.42 feet; thence South 00°08'39" West 148.33 feet; thence along the arc of a curve to the left, concave Northerly, having a radius of 30.00 feet, subtended by a chord bearing South 44°51'22" East 42.43 feet; thence South 89°51'22" East 103.96 feet; thence along the arc of a curve to the right, concave Southerly, having a radius of 20.00 feet, subtended by a chord bearing South 74°51'22" East 10.35 feet; thence South 59°51'21" East 9.28 feet; thence along the arc of a curve to the left,

concave Northerly, having a radius of 20.00 feet, subtended by a chord bearing South 74°51'22" East 10.35 feet; thence South 89°51'22" East 44.68 feet; thence along the arc of a curve to the left, concave Northwesterly, having a radius of 4.00 feet, subtended by a chord bearing North 45°08'38" East 5.66 feet; thence North 00°08'39" East 13.50 feet; thence South 89°51'22" East 179.00 feet; thence South 00°08'38" West 12.00 feet; thence along the arc of a curve to the left, concave Northeasterly, having a radius of 4.00 feet, subtended by a chord bearing South 44°51'22" East 5.66 feet; thence North 89°49'11" East 304.96 feet; thence along the arc of a curve to the left, concave Northwesterly, having a radius of 20.00 feet, subtended by a chord bearing North 44°54'40" East 28.17 feet; thence North 00°08'39" East 2.33 feet; thence along the arc of a curve to the left, concave Westerly, having a radius of 100.00 feet, subtended by a chord bearing North 07°21'22" West 26.11 feet; thence North 14°51'22" West 13.43 feet; thence along the arc of a curve to the right, concave Easterly, having a radius of 100.00 feet, subtended by a chord bearing North 07°21'22" West 26.11 feet; thence North 00°08'38" East 110.21 feet to a point in the Northerly line of said Parcel 3; thence along the Northerly line of said Parcels 3 and 4 South 89°51'22" East 52.71 feet; thence leaving said Northerly line of Parcel 4 South 45°09'26" West 10.88 feet; thence South 00°12'55" West 204.06 feet; thence South 53°52'18" West 18.94 feet; thence South 89°40'42" West 4.01 feet to a point in the Easterly line of said Parcel 2; thence along the Easterly and Southerly lines of said Parcel 2 the following three (3) courses: (1) South 00°08'38" West 156.88 feet; (2) along the arc of a curve to the left, concave Southerly, having a radius of 1048.00 feet; subtended by a chord bearing North 88°36'25" West 62.72 feet and (3) South 89°40'42" West 1011.28 feet to the point of beginning.

**LEGAL DESCRIPTION**

**EXHIBIT "A"**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE IN THE CITY OF SACRAMENTO, COUNTY OF SACRAMENTO, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

Parcels 3, 4, 5 and 6 of the Parcel Map Discovery Centre, filed for recorded in the office of the County Recorder of Sacramento County, California, on July 31, 2000, in Book 158 of Parcel Maps, at Page 12; and

Parcel A, described as:

All that portion of Parcel 1, as shown on that certain Parcel Map entitled "Discovery Centre", filed in Book 158 of Parcel Maps, Page 12, Official Records of Sacramento County, described as follows:

BEGINNING at the Northwest corner of said Parcel 1; thence, from said point of beginning, along the Northerly and Easterly lines of said Parcel 1, the following two(2) courses: 1) South 89°51 '22"East 325.25 feet, and 2) South 00°08 '38"West 242.03 feet; thence, leaving said Easterly line, South 89°40 '42"West 325.29 feet to a point in the Westerly line of said Parcel 1; thence, along said Westerly line, North 00°08 '59"East 244.67 feet to the point of beginning.

Parcel A is shown as "Parcel A" of that certain Certificate of Compliance for Lot Line Adjustment recorded January 24, 2002, in Book 20020124, Page 1697, of Official Records.

EXCEPTING THEREFROM all mineral rights, interests and royalties, including without limiting the generality thereof, oil, gas and other hydrocarbon substances, as well as metallic or other solid minerals, in and under said property, without, however, the right of entry upon, into or through the surface of said property, as reserved in the Grant Deed executed by Southern Pacific Transportation Company, a Delaware Corporation, which recorded October 7, 1988, in Book 881007, Page 1364, of Official Records.

APN: 001-0210-051, 001-0210-049, 001-0210-048, 001-0210-047, 001-0210-046, 001-0210-041

**OPTION TO PURCHASE AGREEMENT**

THIS OPTION TO PURCHASE AGREEMENT (the "Agreement") is made and entered into as of Nov. 14, 2006, by and among Richards Boulevard Partners, a State of California general partnership and The Second Richards Boulevard Partnership, a State of California general partnership, collectively referred to herein as the "Optionors", and the City of Sacramento (the "Optionee").

**RECITALS:**

A. Optionors own a 150,795 gross square foot three-story office building built in 2002 (the "Building") and situated on an 11.64 acre site, 5.443 acres of which are unimproved, in the city of Sacramento, county of Sacramento, State of California, commonly known as the Discovery Centre, located at 300 Richards Boulevard, Sacramento, California 95814 (the "Property"). On site improvements to the Property include landscaping, lighting and at grade paved parking for 542 automobiles.

B. Optionors and Optionee contemplate entering into a Bargain Sale agreement (the "Purchase Agreement"), whereunder Optionors will agree to transfer the Property which Optionors believe has a fair market value of FIFTY ONE MILLION DOLLARS (\$51,000,000)(or as determined by a final appraisal) to Optionee in a transaction that is part sale and part gift for the sum of TWENTY NINE MILLION EIGHT HUNDRED FIFTY THOUSAND DOLLARS (\$29,850,000.00).

C. Optionors and Optionee have entered into that certain Commercial Lease dated November \_\_\_\_, 2006 (the "Lease"), whereunder Optionee agrees to lease the "Premises" as defined in the Commercial Lease for a ten (10) year term commencing August 1, 2007 through July 31, 2017.

D. Optionors desire to grant, and Optionee desires to acquire, an option to purchase the Property, all on the terms, and subject to the conditions hereinafter set forth and as set forth in the Purchase Agreement attached as Exhibit "A" hereto.

NOW THEREFORE, in consideration of the mutual agreements, promises, and covenants herein set forth, the parties agree as follows:

**SECTION 1. GRANT OF OPTION.**

The Commercial Lease referenced in Recital C above forms the consideration for the grant of the option contained herein. Optionors hereby grant to the Optionee the option to purchase the Property at the time, for the consideration, and upon the terms and conditions hereinafter set forth (the "Option"):

**1.1 Option Term.** The Optionee may exercise the Option on or before November 30, 2006; provided, however, (i) that notice is timely delivered to Optionors as set forth in Section 1.2, (ii) that Optionee is not in default as "Tenant" under the Lease, and (iii) the Lease

CITY  
AGREEMENT NO. 2006-1277

has not been terminated in accordance with its terms by either Landlord or Tenant at the time the Option is exercised.

**1.2 Exercise of Option.** The election of the Optionee to exercise the Option must be evidenced by written notice delivered to Optionors on or before November 24, 2006, as provided in Section 5.7.

**1.3 Option Price.** The purchase price to be paid by Optionee to Optionors for the Property upon exercise of the Option shall be TWENTY NINE MILLION EIGHT HUNDRED FIFTY THOUSAND DOLLARS (\$29,850,000.00) payable to Optionors as outlined in Section 3 of the Purchase Agreement.

## **SECTION 2. TITLE INSURANCE.**

As outlined in Section 8 of the Purchase Agreement, Optionors shall obtain, at its expense, a standard owner's title insurance policy in the amount of the option price reflected in Section 1.3, above, and deliver it to Optionee at closing.

## **SECTION 3. DEED.**

Conveyance shall be by Optionors' good and sufficient grant deed conveying the Property free and clear of all liens and encumbrances, subject only to non-delinquent real property taxes and items revealed in the preliminary title report to be provided by Optionors to which Optionee does not timely object, and further excepting matters contained in the usual printed exceptions in the title insurance policy, and all liens or encumbrances suffered by or placed upon the Property by Optionee subsequent to the date of this Agreement.

## **SECTION 4. ACCEPTANCE BY OPTIONEE.**

At closing of the option purchase, Optionee accepts the land, buildings, improvements and all other aspects of the Property in their existing condition AS IS, including latent defects, without any representations or warranties from Optionor or any agent or representative of Optionors, expressed or implied, except to the extent expressly set forth in this Agreement. Optionee agrees that Optionee has ascertained, from sources other than Optionors or any agent or representative of Optionors, the condition of the Property and its suitability for Optionee's purposes, the applicable zoning, building, and other regulatory ordinances and laws, and the Optionee accepts the Property with full awareness of these ordinances and laws as they may affect the use or any intended future use of the Property, and Seller has made no representations with respect to such condition or suitability of the Property or such laws or ordinances.

## **SECTION 5. MISCELLANEOUS PROVISIONS.**

**5.1 Entire Agreement.** This Agreement constitutes the entire Agreement among the parties hereto pertaining to the subject matter hereof, and supersedes all prior agreements and understandings of the parties in connection therewith. No covenants, representations, or

conditions not expressed in this Agreement shall affect, or be effective to interpret, change, or restrict the expressed provisions of this Agreement.

**5.2 Nonwaiver.** Waiver by the parties of strict performance of any provision of this Agreement shall not be a waiver of or prejudice the parties' rights to require strict performance of the same provision in the future or of any other provision.

**5.3 Binding Effect.** This Agreement shall be binding upon and inure to the benefit of all of the parties and their estates, heirs, legatees, successors and permitted assigns.

**5.4 Assignment.** This Agreement shall not be assignable in whole or in part by Optionee without the prior written consent of Optionors.

**5.5 Attorney Fees.** If any action, arbitration, or other proceeding involving a dispute between Optionors and Optionee is instituted in connection with any controversy arising out of this Agreement, the prevailing party shall be entitled to receive from the other party reasonable attorney fees, whether for a City of Sacramento attorney or outside legal counsel, expert witness fees, and costs to be determined by the court or arbitrator, including attorney fees and costs on any appeal.

**5.6 Applicable Law.** This Agreement and the rights of the parties hereunder shall be interpreted in accordance with the laws of the State of California.

**5.7 Notice.** All notices or other communications required or permitted under this Agreement must be in writing and must be sent by registered or certified mail, postage prepaid, return receipt requested, which notice and communications will be deemed received three days after deposit in the United State mail, postage prepaid. Notice of change of address shall be given by written notice in the manner detailed in this paragraph.

If to Optionors: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

With a copy to: Frederick B. Sainick, Esq.  
Sainick & Whitney  
190 Newport Ctr Dr 2FL  
Newport Beach CA 92660

If to Optionee: City of Sacramento  
Facilities and Real Property Management  
5730 24<sup>th</sup> Street, Bldg. 4  
Sacramento CA 95822  
Attn: Facilities Manager

With a copy to: Office of the City Attorney  
915 I Street 4<sup>th</sup> Floor  
Sacramento CA 95814

**5.8 Amendments.** This Agreement may not be altered or amended except by a writing signed by each of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective the date and year first above written.

**OPTIONORS:**

**RICHARDS BOULEVARD PARTNERS, a California general partnership**

**Sacramento Associates, a  
California general partnership,  
General Partner**

**Grove Investment Company, a  
California general partnership,  
General Partner**

By: \_\_\_\_\_  
Bruce E. Nott, Trustee of the  
Nott Family Trust u/d/t dated  
May 22, 1990, a General Partner

By: \_\_\_\_\_  
Bruce E. Nott, Trustee of the  
Nott Family Trust u/d/t dated  
May 22, 1990, a General Partner

By: Fait B Investments, LLC, a  
California limited liability company,  
a General Partner

By: Meadows Mobile Homes,  
California general partnership, a  
General Partner

By:   
Barrett C. Fait, Manager

By:   
James Lee, Trustee of the  
Lee Family Trust u/d/t dated  
1/30/89, a General Partner

By:   
Barrett C. Fait, a General  
Partner

**THE SECOND RICHARDS BOULEVARD PARTNERSHIP, a California general partnership**

**Sacramento Associates, a California general partnership, General Partner**

**Grove Investment Company, a California general partnership, General Partner**

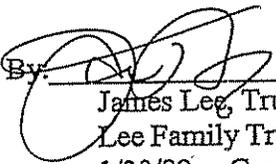
By: \_\_\_\_\_  
Bruce E. Nott, Trustee of the Nott Family Trust u/d/t dated May 22, 1990, a General Partner

By: \_\_\_\_\_  
Bruce E. Nott, Trustee of the Nott Family Trust u/d/t dated May 22, 1990, a General Partner

By: Fait B Investments, LLC, a California limited liability company, a General Partner

By: Meadows Mobile Homes, California general partnership, a General Partner

By:   
Barrett C. Fait, Manager

By:   
James Lee, Trustee of the Lee Family Trust u/d/t dated 1/30/89, a General Partner

By:   
Barrett C. Fait, a General Partner

**OPTIONEE:**

**THE CITY OF SACRAMENTO**

By:   
Its: ~~Ray Kerbridge~~ Ray Kerbridge - City Manager

Approved as to Form:

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

Attested by:

\_\_\_\_\_  
City Clerk

With a copy to: Office of the City Attorney  
915 I Street 4<sup>th</sup> Floor  
Sacramento CA 95814

**5.8 Amendments.** This Agreement may not be altered or amended except by a writing signed by each of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective the date and year first above written.

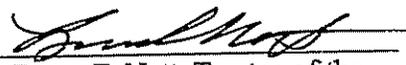
**OPTIONORS:**

**RICHARDS BOULEVARD PARTNERS, a California general partnership**

**Sacramento Associates, a  
California general partnership,  
General Partner**

**Grove Investment Company, a  
California general partnership,  
General Partner**

By:   
Bruce E. Nott, Trustee of the  
Nott Family Trust u/d/t dated  
May 22, 1990, a General Partner

By:   
Bruce E. Nott, Trustee of the  
Nott Family Trust u/d/t dated  
May 22, 1990, a General Partner

By: Fait B Investments, LLC, a  
California limited liability company,  
a General Partner

By: Meadows Mobile Homes,  
California general partnership, a  
General Partner

By: \_\_\_\_\_  
Barrett C. Fait, Manager

By: \_\_\_\_\_  
James Lee, Trustee of the  
Lee Family Trust u/d/t dated  
1/30/89, a General Partner

By: \_\_\_\_\_  
Barrett C. Fait, a General  
Partner

**THE SECOND RICHARDS BOULEVARD PARTNERSHIP, a California general partnership**

Sacramento Associates, a  
California general partnership,  
General Partner

Grove Investment Company, a  
California general partnership,  
General Partner

By: *Bruce E. Nott*  
Bruce E. Nott, Trustee of the  
Nott Family Trust u/d/t dated  
May 22, 1990, a General Partner

By: *Bruce E. Nott*  
Bruce E. Nott, Trustee of the  
Nott Family Trust u/d/t dated  
May 22, 1990, a General Partner

By: Fait B Investments, LLC, a  
California limited liability company,  
a General Partner

By: Meadows Mobile Homes,  
California general partnership, a  
General Partner

By: \_\_\_\_\_  
Barrett C. Fait, Manager

By: \_\_\_\_\_  
James Lee, Trustee of the  
Lee Family Trust u/d/t dated  
1/30/89, a General Partner

By: \_\_\_\_\_  
Barrett C. Fait, a General  
Partner

**OPTIONEE:**

**THE CITY OF SACRAMENTO**

By: *Ray Keebridge*  
Its: *Ray Keebridge - City Manager*

Approved as to Form:

By: *Sharon Hanks*  
Its: *Senior Deputy City Attorney*

Attested by:

*Dawn Bealwinkel*  
*ant* City Clerk  
11-17-06

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

THIS AGREEMENT OF PURCHASE AND SALE AND JOINT ESCROW INSTRUCTIONS (the "Agreement") is made and entered into as of \_\_\_\_\_, 2006, by and among Richards Boulevard Partners, a State of California general partnership and The Second Richards Boulevard Partnership, a State of California general partnership, collectively referred to herein as the "Seller", and THE CITY OF SACRAMENTO (the "Buyer").

**RECITALS:**

A. Seller is the owner of a 150,795 gross square foot three-story office building built in 2002 (the "Building") and situated on a 11.64 acre site, 5.443 acres of which is unimproved in the city of Sacramento, county of Sacramento, state of California, commonly known as the Discovery Centre and more particularly described in Exhibit "A" attached hereto and incorporated by reference (the "Property"). The Building includes 146,132 square feet of net rentable area.

B. Seller desires to sell the Property to the Buyer on the terms and conditions set forth in this Agreement and make a gift of the remaining fair market value of the Property as set forth herein.

C. The Buyer desires to purchase the Property from Seller and accept Seller's gift of the remaining value of the Property from the Seller pursuant to the terms and conditions set forth in this Agreement.

D. The parties have entered into an Option to Purchase Agreement dated \_\_\_\_\_, 2006, attached hereto as Exhibit "B" the terms of which are incorporated by reference.

E. The parties have entered into a Commercial Lease Agreement dated \_\_\_\_\_, 2006, attached hereto as Exhibit "C" the terms of which are incorporated by reference.

NOW THEREFORE, the parties agree as follow:

**SECTION 1. BARGAIN PURCHASE AND SALE.**

The Seller agrees to sell to the Buyer, and the Buyer agrees to purchase from the Seller, the Property on the terms and conditions set forth in this Agreement.

## SECTION 2. PURCHASE PRICE.

The purchase price for the Property shall be TWENTY NINE MILLION EIGHT HUNDRED FIFTY THOUSAND DOLLARS (\$29,850,000.00)(the "Purchase Price").

## SECTION 3. PAYMENT OF PURCHASE PRICE.

The purchase price shall be payable as follows:

**3.1 Earnest Money Deposit.** The Buyer will pay into escrow as provided in Section 4.1, the sum of ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) as an earnest money deposit, within ten (10) business days of the execution of this Agreement. At closing, the sum of ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) shall be credited toward payment of the Purchase Price.

**3.2 Cash Balance.** It is the Seller's expectation that the balance of the Purchase Price will be paid on the Closing Date via wire transfer of funds, a certified check, or a cashier's check, in the amount of TWENTY NINE MILLION SEVEN HUNDRED FIFTY THOUSAND DOLLARS (\$29,750,000.00), less a credit for any unused portion of the SIX MILLION FIVE HUNDRED THOUSAND DOLLAR (\$6,500,000) tenant improvement allowance provided by Seller, together with the amount due the Seller, if any, after the prorations are computed in accordance with Section 10.

## SECTION 4. ESCROW.

**4.1 Opening of Escrow.** Within ten (10) business days of the execution of this Agreement, Buyer shall deliver a nonrefundable deposit in the amount of ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) with Fidelity National Title (the "Escrow Holder"). The Buyer and the Seller shall deliver a fully executed copy of this Agreement to the Escrow Holder. The Buyer and the Seller hereby authorize their respective attorneys to execute and deliver into escrow any additional or supplemental instructions as may be necessary or convenient to implement the terms of this Agreement and to close this transaction. If the additional or supplemental instructions conflict with the express terms of this Agreement, the terms of this Agreement control.

**4.2 Closing Date.** This transaction shall close on or before December 31, 2006 (the "Closing Date"). However Seller reserves the right to extend the Closing Date to January 6, 2007, provided prior written notice is delivered to Buyer on or before December 10, 2006.

## SECTION 5. CONDITIONS TO CLOSING.

**5.1 Conditions Precedent to Buyer's Obligations.** The close of escrow and the Buyer's obligations with respect to the transaction contemplated by this Agreement are subject to the satisfaction, not later than the Closing Date (unless otherwise provided),

of the following conditions, and the obligations of the parties with respect to such conditions are as follows:

(a) **Title.** At closing Seller shall convey fee simple title to the Property by grant deed, subject only to non-delinquent real property taxes and items revealed in the preliminary title report to be provided to Buyer and to which Buyer does not timely object in writing.

(b) **Investigation and Review.** As a condition to closing, the documents described in this Section 5.1(b) (the "Investigation Documents") must be delivered to Marty Hanneman with the Buyer (or an individual designated in writing by him to receive documents on his behalf), and approved as provided below, and the results of the Buyer's site studies pursuant to Section 5.1(b)(1) below must be acceptable to the Buyer in its sole discretion.

Within twenty (20) days after executing this Agreement, unless otherwise specified, the Seller shall deliver or cause to be delivered to the Buyer the Investigation Documents. The Buyer shall have the right to review and approve each and every Investigation Document to its sole satisfaction within ten (10) days after the Buyer receives it. The Buyer's failure to respond timely shall constitute the Buyer's approval of the Investigation Document provided. If the Buyer disapproves any Investigation Document, the Buyer shall timely notify the Seller in writing, and the Seller shall have ten (10) days in which to cure. If a cure acceptable to the Buyer is not timely achieved, the Buyer may waive the requirement in writing, or elect to terminate this Agreement for failure to satisfy a condition precedent to the Buyer's obligation to close.

(1) **Records and Plans.** Copies of all architectural drawings, construction plans and specifications, "as-built" records of the improvements, environmental studies, inspection reports, and all topographical surveys and soil tests for or relating to the Property in the Seller's possession.

(2) **Leases.** A copy of each tenant's lease or rental agreement, together with all amendments to it.

(3) **Permits.** Copies of all permits, orders, letters, and other documents available to the Seller relating to the zoning and permitted uses of the Property.

(4) **Tax Notices.** Copies of all tax and assessment notices and bills for the Property for the most recent two property tax years, including a copy of the \$526,000 assessment issued by Buyer to construct a new area wide sewer system, the allocation of which will be addressed in Section 10.

(5) **Service Contracts.** Copies of all service or maintenance contracts with respect to the Property.

transactions contemplated herein. No further consent of any partner, shareholder, member, manager, creditor, investor, judicial or administrative body, governmental authority, or other party is required.

(c) The persons executing this Agreement and the instruments referred to herein on behalf of the Seller and the members, managers, partners, officers, or trustees of the Seller, if any, have the legal power, right, and actual authority to bind the Seller to the terms and conditions of this Agreement.

(d) This Agreement and all documents required to be executed by the Seller are and shall be valid, legally binding obligations of and enforceable against the Seller in accordance with their terms.

(e) Neither the execution and delivery of this Agreement and instruments referred to herein, nor the incurring of the obligations set forth herein, nor the consummation of the transactions hereby contemplated, nor compliance with the terms of this Agreement and the instruments referred to herein conflict with or 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 agreements or instruments to which the Seller is a party or affecting the Property.

## **12.2 Warranties and Representations Pertaining to Real Estate and Legal Matters.**

(a) The information contained in the recitals is true and correct.

(b) Except as disclosed to the Buyer in writing, there is no litigation, claim, or arbitration, pending or threatened, with regard to the Property or its operation.

(c) No attachments, execution proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization, or other proceedings are pending or, to the best of the Seller's knowledge, threatened against the Seller, nor are any such proceedings contemplated by the Seller.

(d) Except as disclosed to the Buyer in writing, to the best of the Seller's knowledge, the construction, occupancy, and operation of the Property materially conform to and comply with all applicable city, county, state, and federal law, statutes, ordinances, and regulations.

(e) Except as disclosed to the Buyer in writing, to the best of the Seller's knowledge, there are no material structural defects in the buildings, nor are there any major repairs required to operate the buildings in a lawful, safe, and efficient manner.

**5.3 Conditions Precedent to Seller's Obligations.** The close of escrow and the Seller's obligations with respect to the transactions contemplated by this Agreement are subject to the Buyer's delivery to the Escrow Holder on or before the Closing Date, for disbursement as provided herein:

- (a) The balance of the of the Purchase Price;
- (b) Assignments (if any); and
- (c) Prorations as set forth in Section 6.2.

**5.4 Failure of Conditions to Closing.** If any of the conditions set forth in Section 5.1, Section 5.2 or Section 5.3 are not timely satisfied or waived, for a reason other than the default of the Buyer or the Seller under this Agreement:

- (a) This Agreement, the escrow, and the rights and obligations of the Buyer and the Seller shall terminate, except as otherwise provided herein; and
- (b) The Escrow Holder is hereby instructed to promptly disburse to the Buyer, all funds held in escrow.

**5.5 Cancellation Fees and Expenses.** If this escrow terminates because of the non-satisfaction of any condition for a reason other than the default of the Seller or the Buyer under this Agreement, the Seller and the Buyer will equally bear any cancellation charges required to be paid to the Escrow Holder. If this escrow terminates because of the Seller's default, the Seller will bear any cancellation charges required to be paid to the Escrow Holder. If this escrow terminates because of the Buyer's default, the Buyer will bear any cancellation charges required to be paid to the Escrow Holder.

## **SECTION 6. DELIVERIES TO ESCROW HOLDER.**

**6.1 By Seller.** On or before the Closing Date, the Seller shall deliver the following in escrow to the Escrow Holder:

(a) **Deed.** A "Grant Deed" substantially in the form attached as Exhibit "6.1(a)" and incorporated by reference, duly executed and acknowledged in recordable form by the Seller, conveying the Property to the Buyer subject only to non-delinquent property taxes, items revealed in the Investigation Documents and not objected to by Buyer, and other matters that may be approved in writing by the Buyer.

(b) **Assignment of Leases.** An "Assignment of Leases" substantially in the form attached as Exhibit "6.1(b)" and incorporated by reference, duly executed and acknowledged by the Seller in recordable form, assigning to the Buyer all of the Seller's right, title, and interest in and to all the tenant leases and tenant deposits. As indicated herein, the tenant deposits will be credited to the Buyer at closing.

(c) **General Assignment.** A "General Assignment" substantially in the form attached as Exhibit "6.1(c)" and incorporated by reference, duly executed by the Seller, assigning to the Buyer all of the Seller's right, title, and interest in and to all service contracts accepted by the Buyer and all other intangible property constituting part of the property being sold.

(d) **Non-foreign Certification.** The Seller represents and warrants that it is not a "foreign person" as defined in Section 1445 of the Internal Revenue Code ("FIRPTA Certificate"). The Seller will give an affidavit to the Buyer to this effect in the form required by that statute and the Treasury Regulations promulgated thereunder.

(e) **Tenant Notification Letter.** A letter to tenants, duly executed by the Seller and dated as of the Closing Date, satisfactory in form and substance to the Buyer, notifying each tenant that:

- (1) The Property has been sold to the Buyer;
- (2) All of the Seller's right, title, and interest in and to the tenant leases and tenant deposits have been assigned to the Buyer; and
- (3) Commencing immediately, all rent and other payments and any notices under tenant leases are to be paid and sent to the Buyer.

(f) **Tenant Improvement Allowance.** The remaining unused tenant improvement allowance for the Building will be provided as an off-set against the Purchase Price. Said tenant improvement allowance will be set aside and reserved solely for construction of tenant improvements on the Building.

(g) **Proof of Authority.** Such proof of the Seller's authority and authorization to enter into this Agreement and consummate the transaction contemplated by it, and such proof of the power and authority of the persons executing and/or delivering any instruments, documents, or certificates on behalf of the Seller to act for and bind the Seller, as may be reasonably required by the Escrow Holder and/or the Buyer.

(h) **Lien Affidavits.** Any lien affidavits or mechanic's lien indemnifications as may be reasonably requested by the Escrow Holder in order to issue the title policy.

(i) **Form 8283.** The draft Form 8283 as set forth in Section 5.2.

**6.2 By Buyer.** On or before the Closing Date, the Buyer shall deliver the following in escrow to the Escrow Holder:

(a) **Purchase Price.** The purchase price in accordance with Section 3, above.

(b) **Prorations.** The amount due the Seller, if any, after the prorations are computed in accordance with Section 10 below.

#### **SECTION 7. DELIVERIES TO BUYER AT CLOSING.**

The Seller shall deliver possession of the Property to the Buyer at close of escrow. On or before the Closing Date, the Seller shall deliver to the Buyer possession of the following:

7.1 **Tenant Leases.** Originals of all the tenant leases or, to the extent an original tenant lease is unavailable, a duplicate original of it with a certificate executed by Seller warranting the authenticity of the duplicate original.

7.2 **Service Contracts.** Originals of all service contracts or, to the extent an original service contract is unavailable, a duplicate original of it with a certificate executed by the Seller warranting the authenticity of the duplicate original.

7.3 **Keys.** Keys to all entrance doors to the improvements on the Property and keys to all personal property located on the Property, which keys shall be properly tagged for identification.

7.4 **Records and Plans.** To the extent not already delivered to the Buyer pursuant to Section 5.1(b)(1), copies of all architectural drawings, construction plans and specifications, "as-built" records of the improvements, environmental studies, inspection reports, and all topographical surveys and soil tests for or relating to the Property in the Seller's possession.

#### **SECTION 8. TITLE INSURANCE AND TRANSFER TAXES.**

At closing, the Seller shall provide, at its expense, a standard owner's title insurance policy in the amount of the purchase price specified above, insuring title vested in the Buyer or its nominees, subject only to non-delinquent real property taxes and any other matters revealed by the Preliminary Commitment and not objected to by the Buyer pursuant to Section 5.1(a) above. Buyer agrees to pay or waive all applicable State of California and/or City of Sacramento transfer taxes generated by the transaction(s) outlined in this Agreement.

#### **SECTION 9. ADJUSTMENTS.**

The Seller shall pay for the standard coverage title insurance policy, one-half of the recording charges, one-half of all escrow fees and costs, and Seller's share of prorations pursuant to Section 10 below. The Buyer shall pay one-half of the recording

charges, one-half of all escrow fees and costs, and the Buyer's share of prorations pursuant to Section 10 below. The Buyer and the Seller shall each pay its own legal and professional fees of other consultants incurred by the Buyer and the Seller, respectively. All other costs and expenses shall be allocated between the Buyer and Seller in accordance with the customary practice in Sacramento County, California. At closing, the Buyer shall contribute any funds necessary to pay its share of adjustments.

## SECTION 10. PRORATIONS.

**10.1 General.** Rental revenues, and other income, if any, from the Property and presently existing taxes, assessments, including but not limited to the sewer assessment disclosed in Section 5.1(b)(4) herein which the parties agree is the obligation of Buyer, improvement bonds, and other expenses, if any, affecting the Property, shall be prorated as of 12:00 o'clock p.m. on the Closing Date. For the purpose of calculating prorations, the Buyer shall be deemed to be in title to the Property and, therefore, entitled to the income and responsibility for the expenses for the entire day following the Closing Date.

**10.2 Delinquent Rentals.** Rentals are delinquent when payment of rent is due on or before the Closing Date but has not been made. Delinquent rentals shall be prorated between the Buyer and the Seller as specified above but not until the rents are actually collected. The Seller shall have the right to collect any delinquent rental, but shall not have the obligation to do so. All collection proceedings and procedures by the Seller shall require the prior approval of the Buyer, which shall not be unreasonably withheld. Delinquent rentals collected by the Seller or the Buyer, net of cost of collection (including attorney fees), shall be applied first to delinquent sums owed to the Seller before the Closing Date then to sums owned to the Buyer, as of the date of collection. The Buyer and the Seller agree that any payments due to either party as a result of collected delinquent rentals shall be payable when received.

**10.3 Tenant Deposits.** The amount of all tenant deposits shall be credited to the account of the Buyer.

**10.4 Method of Proration.** All prorations shall be made in accordance with customary practice in Sacramento County, California, except as expressly provided herein. The Buyer and the Seller agree to cause their accountants to prepare a schedule of tentative prorations before the Closing Date. Such prorations, if and to the extent known and agreed on as of the Closing Date, shall be paid by the Buyer to the Seller (if the prorations result in a net credit to the Seller) or by the Seller to the Buyer (if the prorations result in a net credit to the Buyer) by increasing or reducing the cash to be paid by the Buyer at closing. Any such prorations not determined or not agreed on as of the Closing Date shall be paid by the Buyer to the Seller, or by the Seller to the Buyer, as the case may be, in cash as soon as practicable following the Closing Date. A copy of the schedule of prorations as agreed upon by the Buyer and the Seller shall be delivered to the Escrow Holder at least three business days before the Closing Date.

**SECTION 11. DISBURSEMENTS AND OTHER ACTIONS BY ESCROW HOLDER.**

At closing, the Escrow Holder shall do the following:

**11.1 Funds.** Disburse all funds deposited with the Escrow Holder by the Buyer in payment of the Purchase Price as follows:

- (a) Offset the remaining unused tenant improvement fund against the Purchase Price.
- (b) Deduct all items chargeable to the account of the Seller pursuant to Section 9 above.
- (c) Disburse the balance of the Purchase Price to the Seller promptly on closing.
- (d) Disburse the remaining balance of the funds, if any, to the Buyer promptly on closing.

**11.2 Recording.** Cause the Grant Deed, tenant lease assignments (in that order), and any other documents that the parties may mutually direct to be recorded in the official records and obtain conformed copies for distribution to the Buyer and the Seller.

**11.3 Title Policy.** Issue the title policy to the Buyer.

**11.4 Disbursements of Documents to Buyer.** Disburse to the Buyer the General Assignment, the FIRPTA Certificate, the tenant notification letters and change of address notices duly executed by the Seller, and any other documents (or copies thereof) deposited into escrow by the Seller pursuant hereto.

**SECTION 12. SELLER'S REPRESENTATIONS AND WARRANTIES.**

In addition to any express agreements of the Seller contained herein, the Seller makes the following representations and warranties to the Buyer:

**12.1 Representations Regarding Seller's Authority.**

(a) The Seller has the legal power, right, and authority to enter into this Agreement and the instruments referred to herein and to consummate the transactions contemplated herein.

(b) All requisite action (corporate, limited liability company, trust, partnership, or otherwise) has been taken by the Seller in connection with entering into this Agreement, the instruments referred to herein, and the consummation of the

transactions contemplated herein. No further consent of any partner, shareholder, member, manager, creditor, investor, judicial or administrative body, governmental authority, or other party is required.

(c) The persons executing this Agreement and the instruments referred to herein on behalf of the Seller and the members, managers, partners, officers, or trustees of the Seller, if any, have the legal power, right, and actual authority to bind the Seller to the terms and conditions of this Agreement.

(d) This Agreement and all documents required to be executed by the Seller are and shall be valid, legally binding obligations of and enforceable against the Seller in accordance with their terms.

(e) Neither the execution and delivery of this Agreement and instruments referred to herein, nor the incurring of the obligations set forth herein, nor the consummation of the transactions hereby contemplated, nor compliance with the terms of this Agreement and the instruments referred to herein conflict with or 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 agreements or instruments to which the Seller is a party or affecting the Property.

## **12.2 Warranties and Representations Pertaining to Real Estate and Legal Matters.**

(a) The information contained in the recitals is true and correct.

(b) Except as disclosed to the Buyer in writing, there is no litigation, claim, or arbitration, pending or threatened, with regard to the Property or its operation.

(c) No attachments, execution proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization, or other proceedings are pending or, to the best of the Seller's knowledge, threatened against the Seller, nor are any such proceedings contemplated by the Seller.

(d) Except as disclosed to the Buyer in writing, to the best of the Seller's knowledge, the construction, occupancy, and operation of the Property materially conform to and comply with all applicable city, county, state, and federal law, statutes, ordinances, and regulations.

(e) Except as disclosed to the Buyer in writing, to the best of the Seller's knowledge, there are no material structural defects in the buildings, nor are there any major repairs required to operate the buildings in a lawful, safe, and efficient manner.

(f) The electrical, plumbing, heating, and air conditioning systems and any other utility systems will be in substantially the same condition at closing as when the Buyer conducted its inspection.

(g) The Seller has not entered into any other contracts for the sale of the Property, nor do any rights of first refusal or options exist to purchase the Property.

(h) The Seller has not received any notices from any insurance company of any defects or inadequacies in the Property.

(i) Any licenses and permits obtained by the Seller have been fully paid for and are not subject to any liens, encumbrances, or claims of any kind.

(j) To the best of the Seller's knowledge, the Property is materially in compliance with applicable state and federal environmental standards and requirements affecting it.

(k) Except as disclosed in writing to Buyer, the Seller has not received any notices of violation or advisory action by regulatory agencies regarding environmental control matters or permit compliance with respect to the Property.

(l) The Seller has not transferred hazardous waste from the Property to another location that is not in compliance with applicable environmental laws, regulations, or permit requirements. To the best of the Seller's knowledge, no other person has transferred hazardous waste from the Property to another location that is not in compliance with applicable environmental laws, regulations, or permit requirements.

(m) There are no proceedings, governmental administrative actions, or judicial proceedings pending or, to the best of the Seller's knowledge, contemplated under any federal, state, or local laws regulating the discharge of hazardous or toxic materials or substances into the environment.

(n) To the best of the Seller's knowledge, the Seller has not, during its ownership of the Property, stored, produced, or disposed of any hazardous substance, including asbestos, on the Property.

### 12.3 Representations Pertaining to Tenant Leases and Service Contracts.

To the best of the Seller's knowledge:

(a) The leases, and all other information and documentation provided, or to be provided by the Seller to the Buyer in connection with this transaction are complete, true, and accurate, and are presented in a manner that is not misleading.

(b) All leases are in full force and effect with rents paid currently (except as otherwise indicated).

(c) With regard to the tenant leases, the Seller knows of no default by it or by any of the tenants, and there have been no verbal changes and no concessions granted with respect to the leases or tenants under the leases, except as indicated in the rent roll.

(d) The only service or maintenance contracts have been provided or disclosed in writing to the Buyer. Except where the Seller has indicated to the contrary, all the service contracts may be terminated without penalty or other payment, except for the current sum then owing by the Buyer on thirty (30) days' or less notice.

(e) There is no current default or breach under the terms and provisions of any of the service contracts. The service contracts have not been and will not be amended or modified except as indicated herein.

(f) As of the Closing Date, the Seller's interest in tenant leases and rentals due or to become due thereunder will not be subject to any assignment encumbrance, or liens.

(g) No leasing or brokerage fees or commissions of any nature whatsoever shall become due or owing to any person, firm, corporation, or entity after closing with respect to the tenant leases.

(h) The operating statements provided to the Buyer, are true and accurate in all material respects.

(i) The Seller has no employees whom the Buyer will be required to employ after closing.

#### **12.4 Representations, Warranties, and Covenants Regarding Operation of the Property Through the Close of Escrow.**

(a) The Seller further represents and warrants that, until this transaction is closed or escrow is terminated, whichever comes earlier, it shall:

- (1) Operate and maintain the Property in a manner consistent with the Seller's past practices;
- (2) Keep all existing insurance policies affecting the Property in full force and effect;
- (3) Make all required payments of interest and principal on any existing financing;

(4) Comply with all government regulations;

(5) Keep the Buyer timely advised of any repair or improvement required to keep the Property in substantially the same condition as when inspected by the Buyer and that costs more than \$10,000.00.

(b) The Seller hereby agrees that the Seller will not hereafter modify, extend, or otherwise change any of the terms, covenants, or conditions of the tenant leases, or enter into new leases or any other obligations or agreements affecting the Property without the prior written consent of the Buyer, which consent shall not be unreasonably withheld. Without the prior written consent of the Buyer, the Seller shall not terminate any of the tenant leases, unless the tenant thereunder has materially defaulted in the payment of rent. Except as disclosed in writing to Buyer, the Seller shall not accept from any of the tenants payment of rent more than one month in advance or apply any security deposit to rent due from any tenant. Nothing contained herein shall restrict the right of the Seller to enter into month-to-month leases or grant month-to-month extensions of existing tenant leases in the ordinary course of business at rates consistent with those reflected in the rent roll, nor shall anything herein restrict the right of the Seller to enter into service contracts or extend existing service contracts in the ordinary course of business as long as such service contracts can be terminated, without penalty or payment by the Buyer, upon thirty (30) days' or less notice.

(c) The Seller will give the Buyer at least ten (10) business days' notice before commencing any action with respect to the Property and will refrain from bringing any such action except on such terms as are mutually acceptable to the Seller and the Buyer. The Buyer shall not unreasonably withhold the Buyer's consent to any action that the Seller wishes to institute before closing, and the Buyer's failure to disapprove any such action within five (5) business days after the Seller's request shall be deemed to constitute the Buyer's consent.

(d) The Seller will not enter into any new leases until the Buyer has given its written approval of leases submitted to it by the Seller, which approval will not be unreasonably withheld or delayed.

(e) Any lease submitted by the Seller to the Buyer will be accompanied by a statement setting forth in reasonable detail all out-of-pocket costs to be incurred in connection with each such lease during the interim period. This will include the cost of tenant improvements, leasing fees, any tenant concessions, any moving cost allowances, and any assumptions of existing rental or lease agreements. Such costs shall be approved in writing by the Buyer, together with the applicable lease, and such approval shall not be unreasonably withheld or delayed. Each of such costs shall be specifically set forth or, if it is not practical to designate a fixed amount, the manner of determining the amount of the cost shall be set forth.

(f) All such pre-approved costs that are incurred and paid out by the Seller before the Closing Date shall be reimbursed by the Buyer to the Seller by payment through the escrow at closing. All such costs that the Seller has incurred and that are payable following the Closing Date shall be assumed and paid by the Buyer as and when payable.

(g) If the sale does not close because of failure of any of the conditions, it is understood that the Buyer will have no responsibility for payment or reimbursement of any such costs approved by the Buyer.

(h) The Seller will not make any alterations to the Property or remove any of the personal property from it, unless the personal property so removed is simultaneously replaced with personal property of similar quality and utility.

**12.5 General Representation.** The Seller's representations and warranties contained herein are true and accurate, and are not misleading. The Seller's representations and warranties contained herein shall be continuing from the Closing Date and shall be true and correct as of the Closing Date with the same force and effect as if remade by the Seller in a separate certificate at that time.

### **SECTION 13. CONDITION OF PROPERTY.**

Other than as provided in the Seller's representations and warranties contained in this Agreement and those contained in any instrument delivered to the Buyer at closing, the Buyer acknowledges that it is purchasing the Property AS IS.

### **SECTION 14. BUYER'S REPRESENTATIONS AND WARRANTIES.**

In addition to any express agreements of the Buyer contained herein, the following constitute representations and warranties of the Buyer to the Seller:

#### **14.1 Representations Regarding Buyer's Authority.**

(a) The Buyer has the legal power, right, and authority to enter into this Agreement and the instruments referred to herein and to consummate the transactions contemplated herein.

(b) All requisite administrative and governmental action has been taken by the Buyer in connection with entering into this Agreement, the instruments referred to herein, and the consummation of the transactions contemplated herein. No further consent of any administrative or governmental body is required.

(c) The persons executing this Agreement and the instruments referred to herein on behalf of the Buyer have the legal power, right, and actual authority to bind the Buyer to the terms and conditions of this Agreement.

(d) This Agreement and all documents required to be executed by the Buyer are and shall be valid, legally binding obligations of and enforceable against the Buyer in accordance with their terms.

(e) Neither the execution and delivery of this Agreement and instruments referred to herein, nor the incurring of the obligations set forth herein, nor the consummation of the transactions hereby contemplated, nor compliance with the terms of this Agreement and the instruments referred to herein conflict with or 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 agreements or instruments to which the Buyer is a party or affecting the Property.

**14.2 General Representation.** The Buyer's representations and warranties contained herein are true and accurate, and are not misleading. The Buyer's representations and warranties contained herein shall be continuing from the Closing Date and shall be true and correct as of the Closing Date with the same force and effect as if made by the Buyer in a separate certificate at that time. The Buyer's representations and warranties contained herein shall survive the close of escrow and shall not merge into the deed and the recordation of the deed in the official records.

#### **SECTION 15. DAMAGE OR DESTRUCTION; CONDEMNATION.**

Until the close of escrow, the risk of loss shall be retained by the Seller. The Seller shall keep the Property fully insured until close of escrow. In the event all or any material portion (25% or more) of the Property is damaged, destroyed, or condemned or threatened with condemnation before the close of escrow, the Buyer may terminate this Agreement. In such event, escrow will be terminated, the earnest money deposit and accrued interest thereon will be promptly returned to the Buyer, and this Agreement shall have no further force or effect whatsoever. If a nonmaterial portion of the Property is destroyed or condemned, this Agreement shall remain in full force and effect, including, without limitation, the Buyer's obligation to close this transaction as provided for herein and to pay the full purchase price to the Seller. In such event, the Buyer shall be assigned all insurance proceeds or condemnation proceeds payable to or for the account of the Seller.

#### **SECTION 16. NOTICES.**

All notices or other communications required or permitted under this Agreement must be in writing and must be sent by registered or certified mail, postage prepaid, return receipt requested, which notice and communications will be deemed received three

days after deposit in the United State mail, postage prepaid. Notice of change of address shall be given by written notice in the manner detailed in this paragraph.

If to Buyer: City of Sacramento  
Facilities and Real Property Management  
5730 24<sup>th</sup> Street, Bldg. 4  
Sacramento CA 95822  
Attn: Facilities Manager

With a copy to: Office of the City Attorney  
915 I Street 4<sup>th</sup> Floor  
Sacramento CA 95814

If to Seller: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

With a copy to: Frederick B. Sainick, Esq.  
Sainick & Whitney  
190 Newport Ctr Dr 2FL  
Newport Beach CA 92660

If to Escrow Holder: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**SECTION 18. REQUIRED ACTIONS OF BUYER AND SELLER.**

The Buyer and the Seller agree to execute all such instruments and documents and to take all actions pursuant to the provisions of this Agreement in order to consummate the transaction contemplated herein and shall use their best efforts to accomplish the close of escrow in accordance with the provisions herein.

**SECTION 19. ENTRY.**

The Buyer, its agents, and designees shall have reasonable access to the Property for the sole purpose of confirming that it is in substantially the same condition at closing as it was when inspected. The Buyer's right to access does not negate the warranties and covenants contained herein. The Buyer shall indemnify and hold the Seller harmless from any loss, damage, or claim arising out of the Buyer's access to the Property.

**SECTION 20. LEGAL AND EQUITABLE ENFORCEMENT OF THIS AGREEMENT.**

**20.1 Default by the Seller.** If the close of escrow and the consummation of the transaction herein contemplated fail to occur by reason of any default by the Seller, the Buyer shall be entitled to the return of the earnest money deposit of \$100,000.00 and shall have the right to pursue any other remedy available to it at law or equity, including the specific performance of this Agreement.

**20.2 Consequences of Buyer Default.** IF BUYER DEFAULTS IN THE PERFORMANCE OF THIS AGREEMENT, THE PARTIES AGREE THAT SELLER SHALL BE RELEASED FROM ANY OBLIGATION TO SELL THE PROPERTY TO BUYER AND SHALL RETAIN, AS LIQUIDATED DAMAGES, \$100,000.00 FROM THE EARNEST MONEY DEPOSIT PAID BY BUYER ON EXECUTION OF THIS AGREEMENT. THE PARTIES FURTHER AGREE THAT THE AMOUNT OF LIQUIDATED DAMAGES ESTABLISHED BY THIS PROVISION IS A REASONABLE ESTIMATE, UNDER THE CIRCUMSTANCES EXISTING ON THE DATE OF EXECUTION OF THIS AGREEMENT, OF WHAT SELLER'S DAMAGES WOULD BE IN THE EVENT OF A DEFAULT BY BUYER AND THAT SUCH LIQUIDATED DAMAGES SHALL CONSTITUTE SELLER'S SOLE AND EXCLUSIVE REMEDY IN THE EVENT OF A DEFAULT BY BUYER. THE PARTIES AGREE THAT THE EXACT CALCULATION OF SELLER'S DAMAGES CAUSED BY BUYER'S DEFAULT WOULD BE IMPRACTICABLE OR EXTREMELY DIFFICULT TO ASCERTAIN.

Initialed by Buyer: \_\_\_\_\_

Initialed by Seller: \_\_\_\_\_

**SECTION 21. ASSIGNMENT.**

The Buyer shall have no right to assign its rights and obligations under this Agreement unless preapproved by Seller in writing.

**SECTION 22. INDEMNIFICATION.**

**22.1 By Seller.** Seller agrees and covenants to 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, whether for outside counsel or the City Attorney), causes of action, claims, or judgments arising by reason of any death, bodily injury, personal injury, property or economic damage, violation of any law or regulation, or damage to the environment, including ambient air, soil, soil vapor, groundwater, or surface water, and resulting from or in any way connected with:

(a) 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.

(b) Any breach of this Agreement by Seller, its officers or employees.

(c) The use, storage, treatment, transportation, release, or disposal of hazardous waste, on or about any portion of the Property by any person or entity (except for the Buyer and persons or entities acting on Buyer's behalf or under Buyer's control), and which has occurred or will occur at any time before the close of escrow as provided herein.

**22.2 By Buyer.** Buyer agrees and covenants to indemnify, defend (with counsel acceptable to Sellers), 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 or economic damage, violation of any law or regulation, or damage to the environment, including ambient air, soil, soil vapor, groundwater, or surface water, and resulting from or in any way connected with:

(a) 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.

(b) Any breach of this Agreement by Buyer, its officers or employees.

(c) The use, storage, treatment, transportation, release, or disposal of hazardous waste, on or about any portion of the Property by any person or entity (except for Seller and persons or entities acting on Seller's behalf or under Seller's control), and which occurs at any time before the close of escrow as provided herein.

**22.3 Waiver.** The parties further agree and understand as follows: a party does not, and shall not be deemed to, waive any rights against the other party which it may have by reason of the aforesaid indemnity and hold harmless agreements because of any insurance coverage available; the scope of the aforesaid indemnity and hold harmless agreements is to be construed broadly and liberally to provide the maximum coverage in accordance with their terms; no specific term or word contained in this Section 22 shall be construed as a limitation on the scope of the indemnification and defense rights and obligations of the parties unless specifically so provided.

**22.4 Survival.** The provisions of this Section 22 shall survive the recording of any deeds hereunder.

**SECTION 23. MISCELLANEOUS.**

**23.1 Partial Invalidity.** If any term or provision of this Agreement or the application to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each such term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

**23.2 Waivers.** No waiver of any breach of any covenant or provision contained herein shall be deemed a waiver of any preceding or succeeding breach thereof, or of any other covenant or provision herein contained. 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.

**23.3 Survival of Representations.** The covenants, agreements, representations, and warranties made herein shall survive the close of escrow and shall not merge into the deed and the recordation of it in the official records.

**23.4 Successors and Assigns.** This Agreement shall be binding on and shall inure to the benefit of the permitted successors and assigns of the parties to it.

**23.5 Attorney Fees.** If any action, arbitration, or other proceeding involving a dispute between Buyer and Seller is instituted in connection with any controversy arising out of this Agreement, the prevailing party shall be entitled to receive from the other party reasonable attorney fees, whether for a City of Sacramento attorney or outside legal counsel, expert witness fees, and costs to be determined by the court or arbitrator, including attorney fees and costs on any appeal.

**23.6 Entire Agreement.** This Agreement (including any exhibits attached or contemplated herein) is the final expression of, and contains the entire agreement between, the parties with respect to the subject matter of the Agreement and supersedes all prior understandings with respect to the purchase and sale of the Property and supersedes all prior proposals and counter-proposals related thereto and/or modifications thereof. The parties acknowledge they may have entered into an option agreement and a commercial lease related to the Property. This Agreement may not be modified, changed, supplemented, or terminated, nor may any obligations under it be waived, except by written instrument signed by the party to be charged or by its agent duly authorized in writing or as otherwise expressly permitted herein. The parties do not intend to confer any benefit on any third party firm, partnership, corporation, limited liability company or other entity or person other than the parties hereto.

**23.7 Time of Essence.** The Seller and the Buyer hereby acknowledge and agree that time is strictly of the essence with respect to each and every term, condition, obligation, and provision.

**23.8 Construction.** Headings at the beginning of each section and subsection are solely for the convenience of the parties and are not a part of this Agreement. Whenever required by the context of this Agreement, the singular shall include the plural, and the masculine shall include the feminine, and vice versa. This Agreement shall not be construed as if it had been prepared by one of the parties, but rather as if both parties had prepared it. Unless otherwise indicated, all references to sections and subsections are to this Agreement. All exhibits referred to in this Agreement are attached and incorporated by this reference.

**23.9 Computation of Periods of Time.** Unless otherwise specified, in computing any period of time described in this Agreement, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless the last day is a Saturday, Sunday, or legal holiday, in which event the time period runs until the end of the next succeeding business day. The last day of any period of time described in this Agreement is deemed to end at five o'clock p.m. Pacific time.

**23.10 Governing Law.** The parties acknowledge that this Agreement has been negotiated and entered into in the State of California. The parties expressly agree that this Agreement shall be governed by, interpreted under, and construed and enforced in accordance with the laws of the State of California.

**23.11 Confidentiality; Non-disclosure.** No disclosure of the terms of this Agreement or any confidential information of either party may be made without the written consent of the other party. Any press releases in connection with the closing shall be reviewed and approved by both parties in writing prior to release.

**23.12 Arbitration of Disputes.** Any dispute or claim in law or equity arising between the Buyer and Seller out of this Agreement will be decided by neutral binding arbitration in accordance with the California Arbitration Act (C.C.P. § 1280 et seq.) and not by court action except as provided by California law for judicial review of arbitration proceedings. If the parties can not agree on an arbitrator, a party may petition to the Superior Court for Contra Costa County for an order compelling arbitration and appointing a judge from Contra Costa Superior Court as arbitrator. Service of the petition may be made by first class mail, postage prepaid, to the last known address of the party served. Judgment upon an award rendered by the arbitrator may be entered in any court having jurisdiction. The parties will have the right to discovery in accordance with the Code of Civil Procedure § 1283.05.

The parties agree that the following procedure will govern the making of the award by the arbitrator: (a) a Tentative Award will be made by the arbitrator within 30 days following submission of the matter to the arbitrator; (b) the Tentative Award will explain the factual and legal basis for the arbitrator's decision as to each of the principal controverted issues; (c) the Tentative Award will be in writing unless the parties agree otherwise; provided, however, that if the hearing is conducted within one (1) day, the

Tentative Award may be made orally at the hearing in the presence of the parties. Within fifteen (15) days after the Tentative Award has been served or announced, any party may serve objections to the Tentative Award. Upon objections being timely served, the arbitrator may call for additional evidence, oral or written argument, or both. If no objections are timely filed, the Tentative Award will become final without further action by the parties or arbitrator. Within thirty (30) days after the filing of objections, the arbitrator will either make the Tentative Award final or modify or correct the Tentative Award, which will then become final as modified or corrected.

The provisions of C.C.P. § 128.5 authorizing the imposition of sanctions as a result of bad faith actions or tactics will apply to the arbitration proceedings.

NOTICE: By initializing in the ["agree"] space below, you are agreeing to have any dispute arising out of the matters included in this section decided by neutral arbitration as provided by California law and you are giving up any rights you might possess to have the matter litigated in court or jury trial. By initializing the ["agree"] space below you are giving up your judicial rights to discovery and appeal, unless those rights are specifically included in this section. If you refuse to submit to arbitration after agreeing to this provision, you may be compelled to arbitrate under the authority of the California Code of Civil Procedure. Your agreement to this arbitration provision is voluntary.

We have read and understand the foregoing and agree to submit disputes arising out of the matters included in this section to neutral arbitration.

Buyer agrees                       Buyer does not agree  
 Seller agrees                          Seller does not agree

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year written above.

**SELLER:**

**RICHARDS BOULEVARD PARTNERS, a California general partnership:**

Sacramento Associates, a  
California general partnership,  
General Partner

Grove Investment Company, a  
California general partnership,  
General Partner

By: \_\_\_\_\_  
Bruce E. Nott, Trustee of the  
Nott Family Trust u/d/t dated  
May 22, 1990, a General Partner

By: \_\_\_\_\_  
Bruce E. Nott, Trustee of the  
Nott Family Trust u/d/t dated  
May 22, 1990, a General Partner

Page 21 – AGREEMENT OF PURCHASE AND SALE AND JOINT ESCROW  
INSTRUCTIONS

F:\CLIENTS\FAIT Insurance Partnership LLC\Documents\F&S Agreement 11-06-06.doc

CITY 2006-1277  
AGREEMENT NO. \_\_\_\_\_

By: Fait B Investments, LLC, a  
California limited liability company,  
a General Partner

By: \_\_\_\_\_  
Barrett C. Fait, Manager

By: Meadows Mobile Homes,  
California general  
partnership, a General Partner

By: \_\_\_\_\_  
James Lee, Trustee of  
the Lee Family Trust  
u/d/t dated 1/30/89, a  
General Partner

By: \_\_\_\_\_  
Barrett C. Fait, a  
General Partner

**THE SECOND RICHARDS BOULEVARD PARTNERSHIP, a California general  
partnership:**

**Sacramento Associates, a  
California general partnership,  
General Partner**

**Grove Investment Company, a  
California general partnership,  
General Partner**

By: \_\_\_\_\_  
Bruce E. Nott, Trustee of the  
Nott Family Trust u/d/t dated  
May 22, 1990, a General Partner

By: \_\_\_\_\_  
Bruce E. Nott, Trustee of the  
Nott Family Trust u/d/t dated  
May 22, 1990, a General Partner

By: Fait B Investments, LLC, a  
California limited liability company,  
a General Partner

By: Meadows Mobile Homes,  
California general  
partnership, a General Partner

By: \_\_\_\_\_  
Barrett C. Fait, Manager

By: \_\_\_\_\_  
James Lee, Trustee of  
the Lee Family Trust  
u/d/t dated 1/30/89, a  
General Partner

By: \_\_\_\_\_  
Barrett C. Fait, a  
General Partner

Page 22 – AGREEMENT OF PURCHASE AND SALE AND JOINT ESCROW  
INSTRUCTIONS

F:\CLIENTS\FAIT Insurance Partnership LLC\Documents\P&S Agreement 11-06-06.doc

CITY  
AGREEMENT NO. 2006-1277

**BUYER:**

THE CITY OF SACRAMENTO

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

Approved as to Form:

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

Attested by:

\_\_\_\_\_  
City Clerk

**ACCEPTANCE OF ESCROW:**

\_\_\_\_\_, the Escrow Holder, by its duly authorized signature below, agrees to accept this escrow on the terms and conditions of, and to comply with the instructions contained in, the foregoing Agreement.

\_\_\_\_\_  
/s/ \_\_\_\_\_

\_\_\_\_\_  
*Print Name*

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

**EXHIBITS:**

- A Legal Description of Property
- B Option to Purchase Agreement
- C Commercial Lease
- 6.1(a) Grant Deed
- 6.1(b) Assignment of Leases
- 6.1(c) General Assignment



**AIR COMMERCIAL REAL ESTATE ASSOCIATION  
STANDARD INDUSTRIAL/COMMERCIAL SINGLE-  
TENANT LEASE -- NET**

**(DO NOT USE THIS FORM FOR MULTI-TENANT BUILDINGS)**

**1. Basic Provisions ("Basic Provisions").**

1.1 **Parties:** This Lease ("Lease"), dated for reference purposes only is made by and among Richards Boulevard Partners, a State of California general partnership ("Lessor") and the City of Sacramento ("Lessee"), (collectively the "Parties," or individually a "Party").

1.2 **Premises:** That certain real property, including all improvements therein or to be provided by Lessor under the terms of this Lease, and commonly known as "Discovery Centre" located at 300 Richards Boulevard in the County of Sacramento, State of California and generally described as a 150,795 gross square foot three-story office building situated on a 6.197 acre site; including 146,132 net "Rentable Square Feet" ("Premises"). On-site improvements include landscaping, lighting and at grade paved parking for 542 automobiles. (See also Paragraph 2)

1.3 **Term:** Ten years ("Original Term") commencing August 1, 2007 ("Commencement Date ") and ending July 31, 2017 ("Expiration Date"). (See also Paragraph 3)

1.4 Base Rent:	Year	Monthly Rate (per Rentable Square Foot)
	1	\$1.45
	2	\$1.60
	3	\$1.66
	4	\$1.71
	5	\$1.76
	6	\$1.81
	7	\$1.87
	8	\$1.92
	9	\$1.98
	10	\$2.04

Base rent payable on the 1<sup>st</sup> day of each month commencing August 1, 2007 ("Base Rent"). (See also Paragraph 4)

If this box is checked, there are provisions in this Lease for the Base Rent to be adjusted.

**1.5 Base Rent and Other Monies Paid Upon Execution:**

(a) Base Rent: \$\_\_\_\_\_ for the period \_\_\_\_\_

(b) Security Deposit: \$\_\_\_\_\_ ("Security Deposit"). (See also Paragraph

5)

(c) Association Fees: \$\_\_\_\_\_ for the period \_\_\_\_\_

CITY AGREEMENT NO. 2006-1276

**EXHIBIT " C "**

CITY AGREEMENT NO. 2006-1276

(d) Other: \$ \_\_\_\_\_ for \_\_\_\_\_

(e) Total Due Upon Execution of this Lease: \$ \_\_\_\_\_

1.6 Agreed Use: \_\_\_\_\_ (See also Paragraph 6)

1.7 **Parking Rights:** During the term of this Lease, Lessor shall make available to Lessee at least 400 parking spaces located on the Premises for Lessee's employees. Lessor's obligation pursuant to this Section 1.7 shall be limited to make such spaces available in whatever manner Lessor deems appropriate (attended, unattended, marked stalls, or other means), so long as the number of spaces referred to in this Section 1.7 are made available to Lessee's employees. Lessee's employees shall be required to pay as rental for each space the established parking rates for the Premises, as adjusted from time to time by Lessor.

1.8 **Tenant Improvement Allowance:** Lessor shall provide Lessee a tenant improvement allowance not to exceed the sum of SIX MILLION FIVE HUNDRED THOUSAND DOLLARS (\$6,500,000). Lessee shall be responsible for all tenant improvements. However, Lessee shall not make or cause to be made any alterations, additions or improvements or install or cause to be installed any fixture, floor covering, interior or exterior lighting, plumbing fixture, window covering, shade or awning, without first obtaining Lessor's written approval. Lessee shall present to Lessor plans and specifications for such work at the time approval is sought. If such consent is given by Lessor, all material and workmanship shall be of a quality consistent with the construction of the Premises and the Building at the Term Commencement Date.

All alterations, decorations, additions and improvements made by Lessee and affixed to the Premises by any means (the "Tenant Improvements") shall remain the property of Lessee for the term of this Lease and any extension of it. No Tenant Improvements shall be removed from the Premises at any time without the prior written consent of Lessor. Upon termination or expiration of this Lease or any extension of it, Lessee shall, if requested by Lessor but not otherwise, remove all Tenant Improvements, and restore the Premises to its original condition. If Lessor does not request such removal, then upon the termination or expiration of this Lease or any extension of it, and upon Lessee's removal from the Premises, all Tenant Improvements shall become the property of Lessor.

If Lessee shall make any Tenant Improvements to the Premises, Lessee shall promptly pay all contractors and materialmen who shall have furnished labor or materials therefor, and Lessee agrees to indemnify, defend and hold harmless Lessor and the Premises from any lien for construction labor or materials. Should any such lien be made or filed, Lessee shall bond against or discharge the same within 10 days after the lien is filed or attaches. Any such bond shall be written by a corporate surety duly qualified in the state of California and be issued in accordance with that state's laws.

1.9 **Insuring Party:** Lessor is the "Insuring Party" unless otherwise stated herein. (See also Paragraph 8)

1.10 **Real Estate Brokers:** Neither party has hired a real estate broker ("**Broker**") in this transaction and acknowledges that no brokerage relationships exist for which any payments would be due hereunder.

1.11 **Guarantor.** The obligations of the Lessee under this Lease are to be guaranteed by \_\_\_\_\_ ("**Guarantor**"). (See also Paragraph 37)

1.12 **Attachments.** Attached hereto are the following, all of which constitute a part of this Lease:

- an Addendum consisting of Paragraphs \_\_\_\_\_ through \_\_\_\_\_.
- a plot plan depicting the Premises;
- a current set of the Rules and Regulations;
- a Work Letter;
- other (specify): \_\_\_\_\_

## 2. Premises.

2.1 **Letting.** Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Premises, for the term, at the rental, and upon all of the terms, covenants and conditions set forth in this Lease. Unless otherwise provided herein, any statement of size set forth in this Lease, or that may have been used in calculating Rent, is an approximation which the Parties agree is reasonable and any payments based thereon are not subject to revision whether or not the actual size is more or less. **Note: Lessee is advised to verify the actual size prior to executing this Lease.**

2.2 **Condition.** Lessor shall deliver the Premises to Lessee broom clean and free of debris on the Commencement Date or the Early Possession Date, whichever first occurs ( "**Start Date**"), and, so long as the required service contracts described in Paragraph 7.1(b) below are obtained by Lessee and in effect within thirty days following the Start Date, warrants that the existing electrical, plumbing, fire sprinkler, lighting, heating, ventilating and air conditioning systems ( "**HVAC**"), loading doors, sump pumps, if any, and all other such elements in the Premises, other than those constructed by Lessee, shall be in good operating condition on said date and that the structural elements of the roof, bearing walls and foundation of any buildings on the Premises (the "**Building**") shall be free of material defects. If a non-compliance with said warranty exists as of the Start Date, or if one of such systems or elements should malfunction or fail within the appropriate warranty period, Lessor shall, as Lessor's sole obligation with respect to such matter, except as otherwise provided in this Lease, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, malfunction or failure, rectify same at Lessor's expense. The warranty periods shall be as follows: (i) 6 months as to the HVAC systems, and (ii) 30 days as to the remaining systems and other elements of the Building. If Lessee does not give Lessor the required notice within the appropriate warranty period, correction of any such non-compliance, malfunction or failure shall be the obligation of Lessee at Lessee's sole cost and expense.

2.3 **Compliance.** Lessor warrants that the improvements on the Premises comply with the building codes, applicable laws, covenants or restrictions of record, regulations, and ordinances ( "**Applicable Requirements**" ) that were in effect at the time that each improvement, or portion thereof, was constructed. Said warranty does not apply to the use to which Lessee will put the Premises, modifications which may be required by the Americans with Disabilities Act or any similar laws as a result of Lessee's use (see Paragraph 50), or to any Alterations or Utility Installations (as defined in Paragraph 7.3(a)) made or to be made by Lessee. **NOTE: Lessee is responsible for determining whether or not the Applicable Requirements, and especially the zoning, are appropriate for Lessee's intended use, and acknowledges that past uses of the Premises may no longer be allowed.** If the Premises do not comply with said warranty, Lessor shall, except as otherwise provided, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, rectify the same at Lessor's expense. If Lessee does not give Lessor written notice of a non-compliance with this warranty within 6 months following the Start Date, correction of that non-compliance shall be the obligation of Lessee at Lessee's sole cost and expense. If the Applicable Requirements are hereafter changed so as to require during the term of this Lease the construction of an addition to or an alteration of the Premises and/or Building, the remediation of any Hazardous Substance, or the reinforcement or other physical modification of the Unit, Premises and/or Building ( "**Capital Expenditure**" ), Lessor and Lessee shall allocate the cost of such work as follows:

(a) Subject to Paragraph 2.3(c) below, if such Capital Expenditures are required as a result of the specific and unique use of the Premises by Lessee as compared with uses by tenants in general, Lessee shall be fully responsible for the cost thereof, provided, however that if such Capital Expenditure is required during the last 2 years of this Lease and the cost thereof exceeds 6 months' Base Rent, Lessee may instead terminate this Lease unless Lessor notifies Lessee, in writing, within 10 days after receipt of Lessee's termination notice that Lessor has elected to pay the difference between the actual cost thereof and an amount equal to 6 months' Base Rent. If Lessee elects termination, Lessee shall immediately cease the use of the Premises which requires such Capital Expenditure and deliver to Lessor written notice specifying a termination date at least 90 days thereafter. Such termination date shall, however, in no event be earlier than the last day that Lessee could legally utilize the Premises without commencing such Capital Expenditure.

(b) If such Capital Expenditure is not the result of the specific and unique use of the Premises by Lessee (such as, governmentally mandated seismic modifications), then Lessor and Lessee shall allocate the obligation to pay for such costs pursuant to the provisions of Paragraph 7.1(d); provided, however, that if such Capital Expenditure is required during the last 2 years of this Lease or if Lessor reasonably determines that it is not economically feasible to pay its share thereof, Lessor shall have the option to terminate this Lease upon 90 days prior written notice to Lessee unless Lessee notifies Lessor, in writing, within 10 days after receipt of Lessor's termination notice that Lessee will pay for such Capital Expenditure. If Lessor does not elect to terminate, and fails to tender its share of any such Capital Expenditure, Lessee may advance such funds and deduct same, with Interest, from Rent until Lessor's share of such costs have been fully paid. If Lessee is unable to finance Lessor's share, or if the balance of the Rent due and payable for the remainder of this Lease is not sufficient to fully reimburse Lessee on an offset basis, Lessee shall have the right to terminate this Lease upon 30 days written notice to Lessor.

(c) Notwithstanding the above, the provisions concerning Capital Expenditures are intended to apply only to non-voluntary, unexpected, and new Applicable Requirements. If the Capital Expenditures are instead triggered by Lessee as a result of an actual or proposed change in use, change in intensity of use, or modification to the Premises then, and in that event, Lessee shall either: (i) immediately cease such changed use or intensity of use and/or take such other steps as may be necessary to eliminate the requirement for such Capital Expenditure, or (ii) complete such Capital Expenditure at its own expense. Lessee shall not, however, have any right to terminate this Lease.

2.4 **Acknowledgements.** Lessee acknowledges that: (a) it has been advised by Lessor and/or Brokers to satisfy itself with respect to the condition of the Premises (including but not limited to the electrical, HVAC and fire sprinkler systems, security, environmental aspects, and compliance with Applicable Requirements and the Americans with Disabilities Act), and their suitability for Lessee's intended use, (b) Lessee has made such investigation as it deems necessary with reference to such matters and assumes all responsibility therefore as the same relate to its occupancy of the Premises, and (c) neither Lessor, Lessor's agents, nor Brokers have made any oral or written representations or warranties with respect to said matters other than as set forth in this Lease. In addition, Lessor acknowledges that: (i) Brokers have made no representations, promises or warranties concerning Lessee's ability to honor the Lease or suitability to occupy the Premises, and (ii) it is Lessor's sole responsibility to investigate the financial capability and/or suitability of all proposed tenants.

2.5 **Lessee as Prior Owner/Occupant.** The warranties made by Lessor in Paragraph 2 shall be of no force or effect if immediately prior to the Start Date Lessee was the owner or occupant of the Premises. In such event, Lessee shall be responsible for any necessary corrective work.

### 3. **Term.**

3.1 **Term.** The Commencement Date, Expiration Date and Original Term of this Lease are as specified in Paragraph 1.3.

3.2 **Early Possession.** If Lessee totally or partially occupies the Premises prior to the Commencement Date, the obligation to pay Base Rent shall be abated for the period of such early possession. All other terms of this Lease (including but not limited to the obligations to pay Real Property Taxes and insurance premiums and to maintain the Premises) shall, however, be in effect during such period. Any such early possession shall not affect the Expiration Date.

3.3 **Delay In Possession.** Lessor agrees to use its best commercially reasonable efforts to deliver possession of the Premises to Lessee by the Commencement Date. If, despite said efforts, Lessor is unable to deliver possession by such date, Lessor shall not be subject to any liability therefore, nor shall such failure affect the validity of this Lease. Lessee shall not, however, be obligated to pay Rent or perform its other obligations until Lessor delivers possession of the Premises and any period of rent abatement that Lessee would otherwise have enjoyed shall run from the date of delivery of possession and continue for a period equal to what Lessee would otherwise have enjoyed under the terms hereof, but minus any days of delay caused by the acts or omissions of Lessee. If possession is not delivered within 60 days after the Commencement Date, Lessee may, at its option, by notice in writing within 10 days after the end of such 60 day period, cancel this Lease, in which event the Parties shall be discharged from all obligations hereunder. If such written notice is not received by Lessor within said 10 day period,

Lessee's right to cancel shall terminate. If possession of the Premises is not delivered within 120 days after the Commencement Date, this Lease shall terminate unless other agreements are reached between Lessor and Lessee, in writing.

3.4 **Lessee Compliance.** Lessor shall not be required to deliver possession of the Premises to Lessee until Lessee complies with its obligation to provide evidence of insurance (Paragraph 8.1). Pending delivery of such evidence, Lessee shall be required to perform all of its obligations under this Lease from and after the Start Date, including the payment of Rent, notwithstanding Lessor's election to withhold possession pending receipt of such evidence of insurance. Further, if Lessee is required to perform any other conditions prior to or concurrent with the Start Date, the Start Date shall occur but Lessor may elect to withhold possession until such conditions are satisfied.

#### 4. **Rent.**

4.1 **Rent Defined.** All monetary obligations of Lessee to Lessor under the terms of this Lease (except for the Security Deposit) are deemed to be rent ("**Rent**").

4.2 **Payment.** Lessee shall cause payment of Rent to be received by Lessor in lawful money of the United States on or before the day on which it is due, without offset or deduction (except as specifically permitted in this Lease). Rent for any period during the term hereof which is for less than one full calendar month shall be prorated based upon the actual number of days of said month. Payment of Rent shall be made to Lessor at its address stated herein or to such other persons or place as Lessor may from time to time designate in writing. Acceptance of a payment which is less than the amount then due shall not be a waiver of Lessor's rights to the balance of such Rent, regardless of Lessor's endorsement of any check so stating. In the event that any check, draft, or other instrument of payment given by Lessee to Lessor is dishonored for any reason, Lessee agrees to pay to Lessor the sum of \$25 in addition to any Late Charge and Lessor, at its option, may require all future payments to be made by Lessee to be by cashier's check. Payments will be applied first to accrued late charges and attorney's fees, second to accrued interest, then to Base Rent and Operating Expense Increase, and any remaining amount to any other outstanding charges or costs.

4.3 **Association Fees.** In addition to the Base Rent, Lessee shall pay to Lessor each month an amount equal to any owner's association or condominium fees levied or assessed against the Premises. Said monies shall be paid at the same time and in the same manner as the Base Rent.

5. **Security Deposit.** Lessee shall deposit with Lessor upon execution hereof the Security Deposit as security for Lessee's faithful performance of its obligations under this Lease. If Lessee fails to pay Rent, or otherwise Defaults under this Lease, Lessor may use, apply or retain all or any portion of said Security Deposit for the payment of any amount due Lessor or to reimburse or compensate Lessor for any liability, expense, loss or damage which Lessor may suffer or incur by reason thereof. If Lessor uses or applies all or any portion of the Security Deposit, Lessee shall within 10 days after written request therefore deposit monies with Lessor sufficient to restore said Security Deposit to the full amount required by this Lease. If the Base Rent increases during the term of this Lease, Lessee shall, upon written request from Lessor, deposit additional moneys with Lessor so that the total amount of the Security Deposit shall at all times bear the same proportion to the increased Base Rent as the initial Security Deposit bore to the initial Base Rent. Should the Agreed Use be amended to accommodate a material change in the business of

Lessee or to accommodate a sublessee or assignee, Lessor shall have the right to increase the Security Deposit to the extent necessary, in Lessor's reasonable judgment, to account for any increased wear and tear that the Premises may suffer as a result thereof. If a change in control of Lessee occurs during this Lease and following such change the financial condition of Lessee is, in Lessor's reasonable judgment, significantly reduced, Lessee shall deposit such additional monies with Lessor as shall be sufficient to cause the Security Deposit to be at a commercially reasonable level based on such change in financial condition. Lessor shall not be required to keep the Security Deposit separate from its general accounts. Within 14 days after the expiration or termination of this Lease, if Lessor elects to apply the Security Deposit only to unpaid Rent, and otherwise within 30 days after the Premises have been vacated pursuant to Paragraph 7.4(c) below, Lessor shall return that portion of the Security Deposit not used or applied by Lessor. No part of the Security Deposit shall be considered to be held in trust, to bear interest or to be prepayment for any monies to be paid by Lessee under this Lease.

## 6. Use.

6.1 **Use.** Lessee shall use and occupy the Premises only for the Agreed Use, or any other legal use which is reasonably comparable thereto, and for no other purpose. Lessee shall not use or permit the use of the Premises in a manner that is unlawful, creates damage, waste or a nuisance, or that disturbs occupants of or causes damage to neighboring premises or properties. Lessor shall not unreasonably withhold or delay its consent to any written request for a modification of the Agreed Use, so long as the same will not impair the structural integrity of the improvements on the Premises or the mechanical or electrical systems therein, and/or is not significantly more burdensome to the Premises. If Lessor elects to withhold consent, Lessor shall within 7 days after such request give written notification of same, which notice shall include an explanation of Lessor's objections to the change in the Agreed Use.

## 6.2 Hazardous Substances.

(a) **Reportable Uses Require Consent.** The term "**Hazardous Substance**" as used in this Lease shall mean any product, substance, or waste whose presence, use, manufacture, disposal, transportation, or release, either by itself or in combination with other materials expected to be on the Premises, is either: (i) potentially injurious to the public health, safety or welfare, the environment or the Premises, (ii) regulated or monitored by any governmental authority, or (iii) a basis for potential liability of Lessor to any governmental agency or third party under any applicable statute or common law theory. Hazardous Substances shall include, but not be limited to, hydrocarbons, petroleum, gasoline, and/or crude oil or any products, by-products or fractions thereof. Lessee shall not engage in any activity in or on the Premises which constitutes a Reportable Use of Hazardous Substances without the express prior written consent of Lessor and timely compliance (at Lessee's expense) with all Applicable Requirements. "**Reportable Use**" shall mean (i) the installation or use of any above or below ground storage tank, (ii) the generation, possession, storage, use, transportation, or disposal of a Hazardous Substance that requires a permit from, or with respect to which a report, notice, registration or business plan is required to be filed with, any governmental authority, and/or (iii) the presence at the Premises of a Hazardous Substance with respect to which any Applicable Requirements requires that a notice be given to persons entering or occupying the Premises or neighboring properties. Notwithstanding the foregoing, Lessee may use any ordinary and customary materials reasonably required to be used in the normal course of the Agreed Use, ordinary office supplies (copier toner, liquid paper, glue, etc.) and common household cleaning materials, so long as such use is in compliance with all Applicable Requirements, is not a

Reportable Use, and does not expose the Premises or neighboring property to any meaningful risk of contamination or damage or expose Lessor to any liability therefore. In addition, Lessor may condition its consent to any Reportable Use upon receiving such additional assurances as Lessor reasonably deems necessary to protect itself, the public, the Premises and/or the environment against damage, contamination, injury and/or liability, including, but not limited to, the installation (and removal on or before Lease expiration or termination) of protective modifications (such as concrete encasements) and/or increasing the Security Deposit.

(b) **Duty to Inform Lessor.** If Lessee knows, or has reasonable cause to believe, that a Hazardous Substance has come to be located in, on, under or about the Premises, other than as previously consented to by Lessor, Lessee shall immediately give written notice of such fact to Lessor, and provide Lessor with a copy of any report, notice, claim or other documentation which it has concerning the presence of such Hazardous Substance.

(c) **Lessee Remediation.** Lessee shall not cause or permit any Hazardous Substance to be spilled or released in, on, under, or about the Premises (including through the plumbing or sanitary sewer system) and shall promptly, at Lessee's expense, comply with all Applicable Requirements and take all investigatory and/or remedial action reasonably recommended, whether or not formally ordered or required, for the cleanup of any contamination of, and for the maintenance, security and/or monitoring of the Premises or neighboring properties, that was caused or materially contributed to by Lessee, or pertaining to or involving any Hazardous Substance brought onto the Premises during the term of this Lease, by or for Lessee, or any third party.

(d) **Lessee Indemnification.** Lessee shall indemnify, defend and hold Lessor, its agents, employees, lenders and ground lessor, if any, harmless from and against any and all loss of rents and/or damages, liabilities, judgments, claims, expenses, penalties, and attorneys' and consultants' fees arising out of or involving any Hazardous Substance brought onto the Premises by or for Lessee, or any third party (provided, however, that Lessee shall have no liability under this Lease with respect to underground migration of any Hazardous Substance under the Premises from adjacent properties not caused or contributed to by Lessee). Lessee's obligations shall include, but not be limited to, the effects of any contamination or injury to person, property or the environment created or suffered by Lessee, and the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease. **No termination, cancellation or release agreement entered into by Lessor and Lessee shall release Lessee from its obligations under this Lease with respect to Hazardous Substances, unless specifically so agreed by Lessor in writing at the time of such agreement.**

(e) **Lessor Indemnification.** Lessor and its successors and assigns shall indemnify, defend, reimburse and hold Lessee, its employees and lenders, harmless from and against any and all environmental damages, including the cost of remediation, which result from Hazardous Substances which existed on the Premises prior to Lessee's occupancy or which are caused by the gross negligence or willful misconduct of Lessor, its agents or employees. Lessor's obligations, as and when required by the Applicable Requirements, shall include, but not be limited to, the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease.

(f) **Investigations and Remediations.** Lessor shall retain the responsibility and pay for any investigations or remediation measures required by governmental entities

having jurisdiction with respect to the existence of Hazardous Substances on the Premises prior to Lessee's occupancy, unless such remediation measure is required as a result of Lessee's use (including "Alterations", as defined in paragraph 7.3(a) below) of the Premises, in which event Lessee shall be responsible for such payment. Lessee shall cooperate fully in any such activities at the request of Lessor, including allowing Lessor and Lessor's agents to have reasonable access to the Premises at reasonable times in order to carry out Lessor's investigative and remedial responsibilities.

(g) **Lessor Termination Option.** If a Hazardous Substance Condition (see Paragraph 9.1(e)) occurs during the term of this Lease, unless Lessee is legally responsible therefore (in which case Lessee shall make the investigation and remediation thereof required by the Applicable Requirements and this Lease shall continue in full force and effect, but subject to Lessor's rights under Paragraph 6.2(d) and Paragraph 13), Lessor may, at Lessor's option, either (i) investigate and remediate such Hazardous Substance Condition, if required, as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) if the estimated cost to remediate such condition exceeds 12 times the then monthly Base Rent or \$100,000, whichever is greater, give written notice to Lessee, within 30 days after receipt by Lessor of knowledge of the occurrence of such Hazardous Substance Condition, of Lessor's desire to terminate this Lease as of the date 60 days following the date of such notice. In the event Lessor elects to give a termination notice, Lessee may, within 10 days thereafter, give written notice to Lessor of Lessee's commitment to pay the amount by which the cost of the remediation of such Hazardous Substance Condition exceeds an amount equal to 12 times the then monthly Base Rent or \$100,000, whichever is greater. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within 30 days following such commitment. In such event, this Lease shall continue in full force and effect, and Lessor shall proceed to make such remediation as soon as reasonably possible after the required funds are available. If Lessee does not give such notice and provide the required funds or assurance thereof within the time provided, this Lease shall terminate as of the date specified in Lessor's notice of termination.

6.3 **Lessee's Compliance with Applicable Requirements.** Except as otherwise provided in this Lease, Lessee shall, at Lessee's sole expense, fully, diligently and in a timely manner, materially comply with all Applicable Requirements, the requirements of any applicable fire insurance underwriter or rating bureau, and the recommendations of Lessor's engineers and/or consultants which relate in any manner to the such Requirements, without regard to whether such Requirements are now in effect or become effective after the Start Date. Lessee shall, within 10 days after receipt of Lessor's written request, provide Lessor with copies of all permits and other documents, and other information evidencing Lessee's compliance with any Applicable Requirements specified by Lessor, and shall immediately upon receipt, notify Lessor in writing (with copies of any documents involved) of any threatened or actual claim, notice, citation, warning, complaint or report pertaining to or involving the failure of Lessee or the Premises to comply with any Applicable Requirements.

6.4 **Inspection; Compliance.** Lessor and Lessor's "Lender" (as defined in Paragraph 30) and consultants shall have the right to enter into Premises at any time, in the case of an emergency, and otherwise at reasonable times after reasonable notice, for the purpose of inspecting the condition of the Premises and for verifying compliance by Lessee with this Lease. The cost of any such inspections shall be paid by Lessor, unless a violation of Applicable Requirements, or a Hazardous Substance Condition (see paragraph 9.1) is found to exist or be

imminent, or the inspection is requested or ordered by a governmental authority. In such case, Lessee shall upon request reimburse Lessor for the cost of such inspection, so long as such inspection is reasonably related to the violation or contamination. In addition, Lessee shall provide copies of all relevant material safety data sheets (MSDS) to Lessor within 10 days of the receipt of a written request therefore.

## 7. Maintenance; Repairs, Utility Installations; Trade Fixtures and Alterations.

### 7.1 Lessee's Obligations.

(a) **In General.** Subject to the provisions of Paragraph 2.2 (Condition), 2.3 (Compliance), 6.3 (Lessee's Compliance with Applicable Requirements), 7.2 (Lessor's Obligations), 9 (Damage or Destruction), and 14 (Condemnation), Lessee shall, at Lessee's sole expense, keep the Premises, Utility Installations (intended for Lessee's exclusive use, no matter where located), and Alterations in good order, condition and repair (whether or not the portion of the Premises requiring repairs, or the means of repairing the same, are reasonably or readily accessible to Lessee, and whether or not the need for such repairs occurs as a result of Lessee's use, any prior use, the elements or the age of such portion of the Premises), including, but not limited to, all equipment or facilities, such as plumbing, HVAC equipment, electrical, lighting facilities, boilers, pressure vessels, fire protection system, fixtures, walls (interior and exterior), foundations, ceilings, roofs, roof drainage systems, floors, windows, doors, plate glass, skylights, landscaping, driveways, parking lots, fences, retaining walls, signs, sidewalks and parkways located in, on, or adjacent to the Premises. Lessee, in keeping the Premises in good order, condition and repair, shall exercise and perform good maintenance practices, specifically including the procurement and maintenance of the service contracts required by Paragraph 7.1(b) below. Lessee's obligations shall include restorations, replacements or renewals when necessary to keep the Premises and all improvements thereon or a part thereof in good order, condition and state of repair. Lessee shall, during the term of this Lease, keep the exterior appearance of the Building in a first-class condition (including, e.g. graffiti removal) consistent with the exterior appearance of other similar facilities of comparable age and size in the vicinity, including, when necessary, the exterior repainting of the Building.

(b) **Service Contracts.** Lessee shall, at Lessee's sole expense, procure and maintain contracts, with copies to Lessor, in customary form and substance for, and with contractors specializing and experienced in the maintenance of the following equipment and improvements, if any, if and when installed on the Premises: (i) HVAC equipment, (ii) boiler, and pressure vessels, (iii) fire extinguishing systems, including fire alarm and/or smoke detection, (iv) landscaping and irrigation systems, (v) roof covering and drains, (vi) clarifiers (vii) basic utility feed to the perimeter of the Building, and (viii) any other equipment, if reasonably required by Lessor. However, Lessor reserves the right, upon notice to Lessee, to procure and maintain any or all of such service contracts, and if Lessor so elects, Lessee shall reimburse Lessor, upon demand, for the cost thereof.

(c) **Failure to Perform.** If Lessee fails to perform Lessee's obligations under this Paragraph 7.1, Lessor may enter upon the Premises after 10 days' prior written notice to Lessee (except in the case of an emergency, in which case no notice shall be required), perform such obligations on Lessee's behalf, and put the Premises in good order, condition and repair, and Lessee shall promptly pay to Lessor a sum equal to 115% of the cost thereof.

(d) **Replacement.** Subject to Lessee's indemnification of Lessor as set forth in Paragraph 8.7 below, and without relieving Lessee of liability resulting from Lessee's failure to exercise and perform good maintenance practices, if an item described in Paragraph 7.1(b) cannot be repaired other than at a cost which is in excess of 50% of the cost of replacing such item, then such item shall be replaced by Lessor, and the cost thereof shall be prorated between the Parties and Lessee shall only be obligated to pay, each month during the remainder of the term of this Lease, on the date on which Base Rent is due, an amount equal to the product of multiplying the cost of such replacement by a fraction, the numerator of which is one, and the denominator of which is 144 (i.e. 1/144th of the cost per month). Lessee shall pay interest on the unamortized balance at a rate that is commercially reasonable in the judgment of Lessor's accountants. Lessee may, however, prepay its obligation at any time.

7.2 **Lessor's Obligations.** Subject to the provisions of Paragraphs 2.2 (Condition), 2.3 (Compliance), 9 (Damage or Destruction) and 14 (Condemnation), it is intended by the Parties hereto that Lessor have no obligation, in any manner whatsoever, to repair and maintain the Premises, or the equipment therein, all of which obligations are intended to be that of the Lessee. It is the intention of the Parties that the terms of this Lease govern the respective obligations of the Parties as to maintenance and repair of the Premises, and they expressly waive the benefit of any statute now or hereafter in effect to the extent it is inconsistent with the terms of this Lease.

### 7.3 **Utility Installations; Trade Fixtures; Alterations.**

(a) **Definitions.** The term "Utility Installations" refers to all floor and window coverings, air and/or vacuum lines, power panels, electrical distribution, security and fire protection systems, communication cabling, lighting fixtures, HVAC equipment, plumbing, and fencing in or on the Premises. The term "Trade Fixtures" shall mean Lessee's machinery and equipment that can be removed without doing material damage to the Premises. The term "Alterations" shall mean any modification of the improvements, other than Utility Installations or Trade Fixtures, whether by addition or deletion. "Lessee Owned Alterations and/or Utility Installations" are defined as Alterations and/or Utility Installations made by Lessee that are not yet owned by Lessor pursuant to Paragraph 7.4(a).

(b) **Consent.** Lessee shall not make any Alterations or Utility Installations to the Premises without Lessor's prior written consent. Lessee may, however, make non-structural Utility Installations to the interior of the Premises (excluding the roof) without such consent but upon notice to Lessor, as long as they are not visible from the outside, do not involve puncturing, relocating or removing the roof or any existing walls, will not affect the electrical, plumbing, HVAC, and/or life safety systems, and the cumulative cost thereof during this Lease as extended does not exceed a sum equal to 3 month's Base Rent in the aggregate or a sum equal to one month's Base Rent in any one year. Notwithstanding the foregoing, Lessee shall not make or permit any roof penetrations and/or install anything on the roof without the prior written approval of Lessor. Lessor may, as a precondition to granting such approval, require Lessee to utilize a contractor chosen and/or approved by Lessor. Any Alterations or Utility Installations that Lessee shall desire to make and which require the consent of the Lessor shall be presented to Lessor in written form with detailed plans. Consent shall be deemed conditioned upon Lessee's: (i) acquiring all applicable governmental permits, (ii) furnishing Lessor with copies of both the permits and the plans and specifications prior to commencement of the work, and (iii) compliance with all conditions of said permits and other Applicable Requirements in a prompt and expeditious manner. Any Alterations or Utility Installations shall be performed in a

workmanlike manner with good and sufficient materials. Lessee shall promptly upon completion furnish Lessor with as-built plans and specifications. For work which costs an amount in excess of one month's Base Rent, Lessor may condition its consent upon Lessee providing a lien and completion bond in an amount equal to 150% of the estimated cost of such Alteration or Utility Installation and/or upon Lessee's posting an additional Security Deposit with Lessor.

(c) **Liens; Bonds.** Lessee shall pay, when due, all claims for labor or materials furnished or alleged to have been furnished to or for Lessee at or for use on the Premises, which claims are or may be secured by any mechanic's or materialmen's lien against the Premises or any interest therein. Lessee shall give Lessor not less than 10 days notice prior to the commencement of any work in, on or about the Premises, and Lessor shall have the right to post notices of non-responsibility. If Lessee shall contest the validity of any such lien, claim or demand, then Lessee shall, at its sole expense defend and protect itself, Lessor and the Premises against the same and shall pay and satisfy any such adverse judgment that may be rendered thereon before the enforcement thereof. If Lessor shall require, Lessee shall furnish a surety bond in an amount equal to 150% of the amount of such contested lien, claim or demand, indemnifying Lessor against liability for the same. If Lessor elects to participate in any such action, Lessee shall pay Lessor's attorneys' fees and costs.

#### 7.4 **Ownership; Removal; Surrender; and Restoration.**

(a) **Ownership.** Subject to Lessor's right to require removal or elect ownership as hereinafter provided, all Alterations and Utility Installations made by Lessee shall be the property of Lessee, but considered a part of the Premises. Except as otherwise provided in writing, Lessor may, at any time, elect in writing to be the owner of all or any specified part of the Lessee Owned Alterations and Utility Installations. Unless otherwise instructed per paragraph 7.4(b) hereof, all Lessee Owned Alterations and Utility Installations shall, at the expiration or termination of this Lease, become the property of Lessor and be surrendered by Lessee with the Premises.

(b) **Removal.** By delivery to Lessee of written notice from Lessor not earlier than 90 and not later than 30 days prior to the end of the term of this Lease, Lessor may require that any or all Lessee Owned Alterations or Utility Installations be removed by the expiration or termination of this Lease. Lessor may require the removal at any time of all or any part of any Lessee Owned Alterations or Utility Installations made without the required consent.

(c) **Surrender; Restoration.** Lessee shall surrender the Premises by the Expiration Date or any earlier termination date, with all of the improvements, parts and surfaces thereof broom clean and free of debris, and in good operating order, condition and state of repair, ordinary wear and tear excepted. "Ordinary wear and tear" shall not include any damage or deterioration that would have been prevented by good maintenance practice. Notwithstanding the foregoing, if this Lease is for 12 months or less, then Lessee shall surrender the Premises in the same condition as delivered to Lessee on the Start Date with NO allowance for ordinary wear and tear. Lessee shall repair any damage occasioned by the installation, maintenance or removal of Trade Fixtures, Lessee owned Alterations and/or Utility Installations, furnishings, and equipment as well as the removal of any storage tank installed by or for Lessee. Lessee shall completely remove from the Premises any and all Hazardous Substances brought onto the Premises by or for Lessee, or any third party (except Hazardous Substances which were deposited via underground migration from areas outside of the Premises, or if applicable, the Project) even

if such removal would require Lessee to perform or pay for work that exceeds statutory requirements. Trade Fixtures shall remain the property of Lessee and shall be removed by Lessee. Any personal property of Lessee not removed on or before the Expiration Date or any earlier termination date shall be deemed to have been abandoned by Lessee and may be disposed of or retained by Lessor as Lessor may desire. The failure by Lessee to timely vacate the Premises pursuant to this Paragraph 7.4(c) without the express written consent of Lessor shall constitute a holdover under the provisions of Paragraph 26 below.

## 8. Insurance; Indemnity.

8.1 **Payment For Insurance.** Lessee shall pay for all insurance required under Paragraph 8 except to the extent of the cost attributable to liability insurance carried by Lessor under Paragraph 8.2(b).

### 8.2 Liability Insurance.

(a) **Carried by Lessee.** Lessor acknowledges that Lessee is a self-insured public entity. Lessee shall provide a letter of self-insurance stating that Lessee's self-insurance program adequately protects against claims arising out of the performance of this including claims for bodily injury, personal injury and property damage based upon or arising out of the ownership, use, occupancy or maintenance of the Premises and all areas appurtenant thereto. Lessee's failure to provide evidence of self-insurance or insurance as required in this Lease shall constitute a material breach of contract and is grounds for termination of this Lease. Self-insurance shall be on an occurrence basis providing single limit coverage in an amount not less than \$1,000,000 per occurrence with an annual aggregate of not less than \$2,000,000. The limits of said insurance shall not, however, limit the liability of Lessee nor relieve Lessee of any obligation hereunder. All insurance carried by Lessee shall be primary to and not contributory with any similar insurance carried by Lessor, whose insurance shall be considered excess insurance only.

(b) **Carried by Lessor.** Lessor shall maintain liability insurance as described in Paragraph 8.2(a), in addition to, and not in lieu of, the insurance required to be maintained by Lessee. Lessee shall not be named as an additional insured therein.

### 8.3 Property Insurance - Building, Improvements and Rental Value.

(a) **Building and Improvements.** The Lessee shall obtain and keep in force a policy or policies with Lessor and any Lender named as loss payee. The amount of such insurance shall be equal to the full replacement cost of the Premises, as the same shall exist from time to time, or the amount required by any Lender, but in no event more than the commercially reasonable and available insurable value thereof. If the coverage is available and commercially appropriate, such policy or policies shall insure against all risks of direct physical loss or damage (except the perils of flood and/or earthquake), including coverage for debris removal and the enforcement of any Applicable Requirements requiring the upgrading, demolition, reconstruction or replacement of any portion of the Premises as the result of a covered loss. Said policy or policies shall contain an inflation guard protection causing an increase in the annual property insurance coverage amount by the inflation factor utilized by the Lessor's property insurer. The deductible amount shall not exceed \$100,000 per occurrence, and Lessee shall be liable for such deductible amount in the event of an Insured Loss.

(b)**Rental Value.** The Lessee shall obtain and keep in force a policy with loss payable to Lessor and any Lender, insuring the loss of the full Rent for one year. Said insurance shall be adjusted annually to reflect the projected Rent otherwise payable by Lessee, for the next 12 month period. Lessee shall be liable for any deductible amount in the event of such loss.

(c)**Adjacent Premises.** If the Premises are part of a larger building, or of a group of buildings owned by Lessor which are adjacent to the Premises, the Lessee shall pay for any increase in the premiums for the property insurance of such building or buildings if said increase is caused by Lessee's acts, omissions, use or occupancy of the Premises.

#### 8.4 Lessee's Property; Business Interruption Insurance.

(a)**Property Damage.** Lessee shall obtain and maintain insurance coverage on all of Lessee's personal property, Trade Fixtures, and Lessee Owned Alterations and Utility Installations. Such insurance shall be full replacement cost coverage with a deductible of not to exceed \$100,000 per occurrence. The proceeds from any such insurance shall be used by Lessee for the replacement of personal property, Trade Fixtures and Lessee Owned Alterations and Utility Installations. Lessee shall provide Lessor with written evidence that such insurance is in force.

(b)**Business Interruption.** Lessee shall obtain and maintain loss of income and extra expense insurance in amounts as will reimburse Lessee for direct or indirect loss of earnings attributable to all perils commonly insured against by prudent lessees in the business of Lessee or attributable to prevention of access to the Premises as a result of such perils.

(c)**No Representation of Adequate Coverage.** Lessor makes no representation that the limits or forms of coverage of insurance specified herein are adequate to cover Lessee's property, business operations or obligations under this Lease.

8.5 **Insurance Policies.** Insurance required herein shall be by companies duly licensed or admitted to transact business in the state where the Premises are located, and maintaining during the policy term a "General Policyholders Rating" of at least B+, V, as set forth in the most current issue of "Best's Insurance Guide", or such other rating as may be required by a Lender. Lessee shall not do or permit to be done anything which invalidates the required insurance policies. Lessee shall, prior to the Start Date, deliver to Lessor certificates evidencing the existence and amounts of the required insurance. No such policy shall be cancelable or subject to modification except after 30 days prior written notice to Lessor. If either Party shall fail to procure and maintain the insurance required to be carried by it, the other Party may, but shall not be required to, procure and maintain the same.

8.6 **Waiver of Subrogation.** Without affecting any other rights or remedies, Lessee and Lessor each hereby release and relieve the other, and waive their entire right to recover damages against the other, for loss of or damage to its property arising out of or incident to the perils required to be insured against herein. The effect of such releases and waivers is not limited by the amount of insurance carried or required, or by any deductibles applicable hereto.

8.7 **Indemnity.** Except for Lessor's gross negligence or willful misconduct, Lessee shall indemnify, protect, defend and hold harmless the Premises, Lessor and its agents, Lessor's master or ground lessor, partners and Lenders, from and against any and all claims, loss of rents and/or damages, liens, judgments, penalties, attorneys' and consultants' fees, expenses and/or

liabilities arising out of, involving, or in connection with, the use and/or occupancy of the Premises by Lessee. If any action or proceeding is brought against Lessor by reason of any of the foregoing matters, Lessee shall upon notice defend the same at Lessee's expense by counsel reasonably satisfactory to Lessor and Lessor shall cooperate with Lessee in such defense. Lessor need not have first paid any such claim in order to be defended or indemnified.

8.8 **Exemption of Lessor from Liability.** Lessor shall not be liable for injury or damage to the person or goods, wares, merchandise or other property of Lessee, Lessee's employees, contractors, invitees, customers, or any other person in or about the Premises, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, or from the breakage, leakage, obstruction or other defects of pipes, fire sprinklers, wires, appliances, plumbing, HVAC or lighting fixtures, or from any other cause, whether the said injury or damage results from conditions arising upon the Premises or upon other portions of the building of which the Premises are a part, or from other sources or places. Lessor shall not be liable for any damages arising from any act or neglect of any other tenant of Lessor nor from the failure of Lessor to enforce the provisions of any other lease in the Project. Notwithstanding Lessor's negligence or breach of this Lease, Lessor shall under no circumstances be liable for injury to Lessee's business or for any loss of income or profit therefrom.

8.9 **Failure to Provide Insurance.** Lessee acknowledges that any failure on its part to obtain or maintain the insurance required herein will expose Lessor to risks and potentially cause Lessor to incur costs not contemplated by this Lease, the extent of which will be extremely difficult to ascertain. Accordingly, for any month or portion thereof that Lessee does not maintain the required insurance and/or does not provide Lessor with the required binders or certificates evidencing the existence of the required insurance, the Base Rent shall be automatically increased, without any requirement for notice to Lessee, by an amount equal to 10% of the then existing Base Rent or \$100, whichever is greater. The parties agree that such increase in Base Rent represents fair and reasonable compensation for the additional risk/ costs that Lessor will incur by reason of Lessee's failure to maintain the required insurance. Such increase in Base Rent shall in no event constitute a waiver of Lessee's Default or Breach with respect to the failure to maintain such insurance, prevent the exercise of any of the other rights and remedies granted hereunder, nor relieve Lessee of its obligation to maintain the insurance specified in this Lease.

## 9. **Damage or Destruction.**

### 9.1 **Definitions.**

(a) **"Premises Partial Damage"** shall mean damage or destruction to the improvements on the Premises, other than Lessee Owned Alterations and Utility Installations, which can reasonably be repaired in 6 months or less from the date of the damage or destruction. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

(b) **"Premises Total Destruction"** shall mean damage or destruction to the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which cannot reasonably be repaired in 6 months or less from the date of the damage or destruction. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

(c) **"Insured Loss"** shall mean damage or destruction to improvements on the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which was caused by an event required to be covered by the insurance described in Paragraph 8, irrespective of any deductible amounts or coverage limits involved.

(d) **"Replacement Cost"** shall mean the cost to repair or rebuild the improvements owned by Lessor at the time of the occurrence to their condition existing immediately prior thereto, including demolition, debris removal and upgrading required by the operation of Applicable Requirements, and without deduction for depreciation.

(e) **"Hazardous Substance Condition"** shall mean the occurrence or discovery of a condition involving the presence of, or a contamination by, a Hazardous Substance as defined in Paragraph 6.2(a), in, on, or under the Premises which requires repair, remediation, or restoration.

**9.2 Partial Damage - Insured Loss.** If a Premises Partial Damage that is an Insured Loss occurs, then Lessor shall, at Lessor's expense, repair such damage (but not Lessee's Trade Fixtures or Lessee Owned Alterations and Utility Installations) as soon as reasonably possible and this Lease shall continue in full force and effect; provided, however, that Lessee shall, at Lessor's election, make the repair of any damage or destruction the total cost to repair of which is \$10,000 or less, and, in such event, Lessor shall make any applicable insurance proceeds available to Lessee on a reasonable basis for that purpose. Notwithstanding the foregoing, if the required insurance was not in force or the insurance proceeds are not sufficient to effect such repair, the Insuring Party shall promptly contribute the shortage in proceeds (except as to the deductible which is Lessee's responsibility) as and when required to complete said repairs. In the event, however, such shortage was due to the fact that, by reason of the unique nature of the improvements, full replacement cost insurance coverage was not commercially reasonable and available, Lessor shall have no obligation to pay for the shortage in insurance proceeds or to fully restore the unique aspects of the Premises unless Lessee provides Lessor with the funds to cover same, or adequate assurance thereof, within 10 days following receipt of written notice of such shortage and request therefore. If Lessor receives said funds or adequate assurance thereof within said 10 day period, the party responsible for making the repairs shall complete them as soon as reasonably possible and this Lease shall remain in full force and effect. If such funds or assurance are not received, Lessor may nevertheless elect by written notice to Lessee within 10 days thereafter to: (i) make such restoration and repair as is commercially reasonable with Lessor paying any shortage in proceeds, in which case this Lease shall remain in full force and effect, or (ii) have this Lease terminate 30 days thereafter. Lessee shall not be entitled to reimbursement of any funds contributed by Lessee to repair any such damage or destruction. Premises Partial Damage due to flood or earthquake shall be subject to Paragraph 9.3, notwithstanding that there may be some insurance coverage, but the net proceeds of any such insurance shall be made available for the repairs if made by either Party.

**9.3 Partial Damage - Uninsured Loss.** If a Premises Partial Damage that is not an Insured Loss occurs, unless caused by a negligent or willful act of Lessee (in which event Lessee shall make the repairs at Lessee's expense), Lessor may either: (i) repair such damage as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) terminate this Lease by giving written notice to Lessee within 30 days after receipt by Lessor of knowledge of the occurrence of such damage. Such termination shall be effective 60 days following the date of such notice. In the event Lessor elects to terminate this Lease, Lessee shall have the right within 10 days after receipt of the termination notice to give written

notice to Lessor of Lessee's commitment to pay for the repair of such damage without reimbursement from Lessor. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within 30 days after making such commitment. In such event this Lease shall continue in full force and effect, and Lessor shall proceed to make such repairs as soon as reasonably possible after the required funds are available. If Lessee does not make the required commitment, this Lease shall terminate as of the date specified in the termination notice.

**9.4 Total Destruction.** Notwithstanding any other provision hereof, if a Premises Total Destruction occurs, this Lease shall terminate 60 days following such Destruction. If the damage or destruction was caused by the gross negligence or willful misconduct of Lessee, Lessor shall have the right to recover Lessor's damages from Lessee, except as provided in Paragraph 8.

**9.5 Damage Near End of Term.** If at any time during the last 6 months of this Lease there is damage for which the cost to repair exceeds one month's Base Rent, whether or not an Insured Loss, Lessor may terminate this Lease effective 60 days following the date of occurrence of such damage by giving a written termination notice to Lessee within 30 days after the date of occurrence of such damage. Notwithstanding the foregoing, if Lessee at that time has an exercisable option to extend this Lease or to purchase the Premises, then Lessee may preserve this Lease by, (a) exercising such option and (b) providing Lessor with any shortage in insurance proceeds (or adequate assurance thereof) needed to make the repairs on or before the earlier of (i) the date which is 10 days after Lessee's receipt of Lessor's written notice purporting to terminate this Lease, or (ii) the day prior to the date upon which such option expires. If Lessee duly exercises such option during such period and provides Lessor with funds (or adequate assurance thereof) to cover any shortage in insurance proceeds, Lessor shall, at Lessor's commercially reasonable expense, repair such damage as soon as reasonably possible and this Lease shall continue in full force and effect. If Lessee fails to exercise such option and provide such funds or assurance during such period, then this Lease shall terminate on the date specified in the termination notice and Lessee's option shall be extinguished.

**9.6 Abatement of Rent; Lessee's Remedies.**

(a) **Abatement.** In the event of Premises Partial Damage or Premises Total Destruction or a Hazardous Substance Condition for which Lessee is not responsible under this Lease, the Rent payable by Lessee for the period required for the repair, remediation or restoration of such damage shall be abated in proportion to the degree to which Lessee's use of the Premises is impaired, but not to exceed the proceeds received from the Rental Value insurance. All other obligations of Lessee hereunder shall be performed by Lessee, and Lessor shall have no liability for any such damage, destruction, remediation, repair or restoration except as provided herein.

(b) **Remedies.** If Lessor shall be obligated to repair or restore the Premises and does not commence, in a substantial and meaningful way, such repair or restoration within 90 days after such obligation shall accrue, Lessee may, at any time prior to the commencement of such repair or restoration, give written notice to Lessor and to any Lenders of which Lessee has actual notice, of Lessee's election to terminate this Lease on a date not less than 60 days following the giving of such notice. If Lessee gives such notice and such repair or restoration is not commenced within 30 days thereafter, this Lease shall terminate as of the date specified in said notice. If the repair or restoration is commenced within such 30 days, this Lease shall continue in full force and effect. "Commence" shall mean either the unconditional authorization

of the preparation of the required plans, or the beginning of the actual work on the Premises, whichever first occurs.

**9.7 Termination; Advance Payments.** Upon termination of this Lease pursuant to Paragraph 6.2(g) or Paragraph 9, an equitable adjustment shall be made concerning advance Base Rent and any other advance payments made by Lessee to Lessor. Lessor shall, in addition, return to Lessee so much of Lessee's Security Deposit as has not been, or is not then required to be, used by Lessor.

**9.8 Waive Statutes.** Lessor and Lessee agree that the terms of this Lease shall govern the effect of any damage to or destruction of the Premises with respect to the termination of this Lease and hereby waive the provisions of any present or future statute to the extent inconsistent herewith.

## **10. Real Property Taxes.**

**10.1 Definition.** As used herein, the term "**Real Property Taxes**" shall include any form of assessment; real estate, general, special, ordinary or extraordinary, or rental levy or tax (other than inheritance, personal income or estate taxes); improvement bond; and/or license fee imposed upon or levied against any legal or equitable interest of Lessor in the Premises or the Project, Lessor's right to other income therefrom, and/or Lessor's business of leasing, by any authority having the direct or indirect power to tax and where the funds are generated with reference to the Building address and where the proceeds so generated are to be applied by the city, county or other local taxing authority of a jurisdiction within which the Premises are located. Real Property Taxes shall also include any tax, fee, levy, assessment or charge, or any increase therein: (i) imposed by reason of events occurring during the term of this Lease, including but not limited to, a change in the ownership of the Premises, and (ii) levied or assessed on machinery or equipment provided by Lessor to Lessee pursuant to this Lease.

**10.2 Payment of Taxes.** In addition to Base Rent, Lessee shall pay to Lessor an amount equal to the Real Property Tax installment due at least 20 days prior to the applicable delinquency date. If any such installment shall cover any period of time prior to or after the expiration or termination of this Lease, Lessee's share of such installment shall be prorated. In the event Lessee incurs a late charge on any Rent payment, Lessor may estimate the current Real Property Taxes, and require that such taxes be paid in advance to Lessor by Lessee monthly in advance with the payment of the Base Rent. Such monthly payments shall be an amount equal to the amount of the estimated installment of taxes divided by the number of months remaining before the month in which said installment becomes delinquent. When the actual amount of the applicable tax bill is known, the amount of such equal monthly advance payments shall be adjusted as required to provide the funds needed to pay the applicable taxes. If the amount collected by Lessor is insufficient to pay such Real Property Taxes when due, Lessee shall pay Lessor, upon demand, such additional sum as is necessary. Advance payments may be intermingled with other moneys of Lessor and shall not bear interest. In the event of a Breach by Lessee in the performance of its obligations under this Lease, then any such advance payments may be treated by Lessor as an additional Security Deposit.

**10.3 Joint Assessment.** If the Premises are not separately assessed, Lessee's liability shall be an equitable proportion of the Real Property Taxes for all of the land and improvements included within the tax parcel assessed, such proportion to be conclusively determined by

Lessor from the respective valuations assigned in the assessor's work sheets or such other information as may be reasonably available.

10.4 **Personal Property Taxes.** Lessee shall pay, prior to delinquency, all taxes assessed against and levied upon Lessee Owned Alterations, Utility Installations, Trade Fixtures, furnishings, equipment and all personal property of Lessee. When possible, Lessee shall cause its Lessee Owned Alterations and Utility Installations, Trade Fixtures, furnishings, equipment and all other personal property to be assessed and billed separately from the real property of Lessor. If any of Lessee's said property shall be assessed with Lessor's real property, Lessee shall pay Lessor the taxes attributable to Lessee's property within 10 days after receipt of a written statement setting forth the taxes applicable to Lessee's property.

11. **Utilities and Services.** Lessee shall pay for all water, gas, heat, light, power, telephone, trash disposal and other utilities and services supplied to the Premises, together with any taxes thereon. If any such services are not separately metered or billed to Lessee, Lessee shall pay a reasonable proportion, to be determined by Lessor, of all charges jointly metered or billed. There shall be no abatement of rent and Lessor shall not be liable in any respect whatsoever for the inadequacy, stoppage, interruption or discontinuance of any utility or service due to riot, strike, labor dispute, breakdown, accident, repair or other cause beyond Lessor's reasonable control or in cooperation with governmental request or directions.

12. **Assignment and Subletting.**

12.1 **Lessor's Consent Required.**

(a) Lessee shall not voluntarily or by operation of law assign, transfer, mortgage or encumber (collectively, "assign or assignment") or sublet all or any part of Lessee's interest in this Lease or in the Premises without Lessor's prior written consent.

(b) An assignment or subletting without consent shall, at Lessor's option, be a Default curable after notice per Paragraph 13.1(c), or a noncurable Breach without the necessity of any notice and grace period. If Lessor elects to treat such unapproved assignment or subletting as a noncurable Breach, Lessor may either: (i) terminate this Lease, or (ii) upon 30 days written notice, increase the monthly Base Rent to 110% of the Base Rent then in effect. Further, in the event of such Breach and rental adjustment, (i) the purchase price of any option to purchase the Premises held by Lessee shall be subject to similar adjustment to 110% of the price previously in effect, and (ii) all fixed and non-fixed rental adjustments scheduled during the remainder of the Lease term shall be increased to 110% of the scheduled adjusted rent.

(c) Lessee's remedy for any breach of Paragraph 12.1 by Lessor shall be limited to compensatory damages and/or injunctive relief.

12.2 **Terms and Conditions Applicable to Assignment and Subletting.**

(a) Regardless of Lessor's consent, no assignment or subletting shall: (i) be effective without the express written assumption by such assignee or sublessee of the obligations of Lessee under this Lease, (ii) release Lessee of any obligations hereunder, or (iii) alter the primary liability of Lessee for the payment of Rent or for the performance of any other obligations to be performed by Lessee.

(b) Lessor may accept Rent or performance of Lessee's obligations from any person other than Lessee pending approval or disapproval of an assignment. Neither a delay in the approval or disapproval of such assignment nor the acceptance of Rent or performance shall constitute a waiver or estoppel of Lessor's right to exercise its remedies for Lessee's Default or Breach.

(c) Lessor's consent to any assignment or subletting shall not constitute a consent to any subsequent assignment or subletting.

(d) In the event of any Default or Breach by Lessee, Lessor may proceed directly against Lessee, any Guarantors or anyone else responsible for the performance of Lessee's obligations under this Lease, including any assignee or sublessee, without first exhausting Lessor's remedies against any other person or entity responsible therefore to Lessor, or any security held by Lessor.

(e) Each request for consent to an assignment or subletting shall be in writing, accompanied by information relevant to Lessor's determination as to the financial and operational responsibility and appropriateness of the proposed assignee or sublessee, including but not limited to the intended use and/or required modification of the Premises, if any, together with a fee of \$500 as consideration for Lessor's considering and processing said request. Lessee agrees to provide Lessor with such other or additional information and/or documentation as may be reasonably requested. (See also Paragraph 36)

(f) Any assignee of, or sublessee under, this Lease shall, by reason of accepting such assignment or entering into such sublease, be deemed to have assumed and agreed to conform and comply with each and every term, covenant, condition and obligation herein to be observed or performed by Lessee during the term of said assignment or sublease, other than such obligations as are contrary to or inconsistent with provisions of an assignment or sublease to which Lessor has specifically consented to in writing.

(g) Lessor's consent to any assignment or subletting shall not transfer to the assignee or sublessee any Option granted to the original Lessee by this Lease unless such transfer is specifically consented to by Lessor in writing. (See Paragraph 39.2)

**12.3 Additional Terms and Conditions Applicable to Subletting.** The following terms and conditions shall apply to any subletting by Lessee of all or any part of the Premises and shall be deemed included in all subleases under this Lease whether or not expressly incorporated therein:

(a) Lessee hereby assigns and transfers to Lessor all of Lessee's interest in all Rent payable on any sublease, and Lessor may collect such Rent and apply same toward Lessee's obligations under this Lease; provided, however, that until a Breach shall occur in the performance of Lessee's obligations, Lessee may collect said Rent. In the event that the amount collected by Lessor exceeds Lessee's obligations any such excess shall be refunded to Lessee. Lessor shall not, by reason of the foregoing or any assignment of such sublease, nor by reason of the collection of Rent, be deemed liable to the sublessee for any failure of Lessee to perform and comply with any of Lessee's obligations to such sublessee. Lessee hereby irrevocably authorizes and directs any such sublessee, upon receipt of a written notice from Lessor stating that a Breach exists in the performance of Lessee's obligations under this Lease, to pay to Lessor all Rent due and to become due under the sublease. Sublessee shall rely upon any such notice from Lessor

and shall pay all Rents to Lessor without any obligation or right to inquire as to whether such Breach exists, notwithstanding any claim from Lessee to the contrary.

(b) In the event of a Breach by Lessee, Lessor may, at its option, require sublessee to attorn to Lessor, in which event Lessor shall undertake the obligations of the sublessor under such sublease from the time of the exercise of said option to the expiration of such sublease; provided, however, Lessor shall not be liable for any prepaid rents or security deposit paid by such sublessee to such sublessor or for any prior Defaults or Breaches of such sublessor.

(c) Any matter requiring the consent of the sublessor under a sublease shall also require the consent of Lessor.

(d) No sublessee shall further assign or sublet all or any part of the Premises without Lessor's prior written consent.

(e) Lessor shall deliver a copy of any notice of Default or Breach by Lessee to the sublessee, who shall have the right to cure the

Default of Lessee within the grace period, if any, specified in such notice. The sublessee shall have a right of reimbursement and offset from and against Lessee for any such Defaults cured by the sublessee.

### 13. **Default; Breach; Remedies.**

13.1 **Default; Breach.** A "Default" is defined as a failure by the Lessee to comply with or perform any of the terms, covenants, conditions or Rules and Regulations under this Lease. A "Breach" is defined as the occurrence of one or more of the following Defaults, and the failure of Lessee to cure such Default within any applicable grace period:

(a) The abandonment of the Premises; or the vacating of the Premises without providing a commercially reasonable level of security, or where the coverage of the property insurance described in Paragraph 8 is jeopardized as a result thereof, or without providing reasonable assurances to minimize potential vandalism.

(b) The failure of Lessee to make any payment of Rent or any Security Deposit required to be made by Lessee hereunder, whether to Lessor or to a third party, when due, to provide reasonable evidence of insurance or surety bond, or to fulfill any obligation under this Lease which endangers or threatens life or property, where such failure continues for a period of 3 business days following written notice to Lessee.

(c) The failure by Lessee to provide (i) reasonable written evidence of compliance with Applicable Requirements, (ii) the service contracts, (iii) the rescission of an unauthorized assignment or subletting, (iv) an Estoppel Certificate, (v) a requested subordination, (vi) evidence concerning any guaranty and/or Guarantor, (vii) any document requested under Paragraph 42, (viii) material safety data sheets (MSDS), or (ix) any other documentation or information which Lessor may reasonably require of Lessee under the terms of this Lease, where any such failure continues for a period of 10 days following written notice to Lessee.

(d) A Default by Lessee as to the terms, covenants, conditions or provisions of this Lease, or of the rules adopted under Paragraph 40 hereof, other than those described in subparagraphs 13.1(a), (b) or (c), above, where such Default continues for a period of 30 days after written notice; provided, however, that if the nature of Lessee's Default is such that more than 30 days are reasonably required for its cure, then it shall not be deemed to be a Breach if Lessee commences such cure within said 30 day period and thereafter diligently prosecutes such cure to completion.

(e) The occurrence of any of the following events: (i) the making of any general arrangement or assignment for the benefit of creditors; (ii) becoming a "debtor" as defined in 11 U.S.C. §101 or any successor statute thereto (unless, in the case of a petition filed against Lessee, the same is dismissed within 60 days); (iii) the appointment of a trustee or receiver to take possession of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where possession is not restored to Lessee within 30 days; or (iv) the attachment, execution or other judicial seizure of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where such seizure is not discharged within 30 days; provided, however, in the event that any provision of this subparagraph (e) is contrary to any applicable law, such provision shall be of no force or effect, and not affect the validity of the remaining provisions.

(f) The discovery that any financial statement of Lessee or of any Guarantor given to Lessor was materially false.

(g) If the performance of Lessee's obligations under this Lease is guaranteed: (i) the death of a Guarantor, (ii) the termination of a Guarantor's liability with respect to this Lease other than in accordance with the terms of such guaranty, (iii) a Guarantor's becoming insolvent or the subject of a bankruptcy filing, (iv) a Guarantor's refusal to honor the guaranty, or (v) a Guarantor's breach of its guaranty obligation on an anticipatory basis, and Lessee's failure, within 60 days following written notice of any such event, to provide written alternative assurance or security, which, when coupled with the then existing resources of Lessee, equals or exceeds the combined financial resources of Lessee and the Guarantors that existed at the time of execution of this Lease.

**13.2 Remedies.** If Lessee fails to perform any of its affirmative duties or obligations, within 10 days after written notice (or in case of an emergency, without notice), Lessor may, at its option, perform such duty or obligation on Lessee's behalf, including but not limited to the obtaining of reasonably required bonds, insurance policies, or governmental licenses, permits or approvals. Lessee shall pay to Lessor an amount equal to 115% of the costs and expenses incurred by Lessor in such performance upon receipt of an invoice therefore. In the event of a Breach, Lessor may, with or without further notice or demand, and without limiting Lessor in the exercise of any right or remedy which Lessor may have by reason of such Breach:

(a) Terminate Lessee's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Lessee shall immediately surrender possession to Lessor. In such event Lessor shall be entitled to recover from Lessee: (i) the unpaid Rent which had been earned at the time of termination; (ii) the worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that the Lessee proves could have been reasonably avoided; (iii) the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that the

Lessee proves could be reasonably avoided; and (iv) any other amount necessary to compensate Lessor for all the detriment proximately caused by the Lessee's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including but not limited to the cost of recovering possession of the Premises, expenses of reletting, including necessary renovation and alteration of the Premises, reasonable attorneys' fees, and that portion of any leasing commission paid by Lessor in connection with this Lease applicable to the unexpired term of this Lease. The worth at the time of award of the amount referred to in provision (iii) of the immediately preceding sentence shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of the District within which the Premises are located at the time of award plus one percent. Efforts by Lessor to mitigate damages caused by Lessee's Breach of this Lease shall not waive Lessor's right to recover damages under Paragraph 12. If termination of this Lease is obtained through the provisional remedy of unlawful detainer, Lessor shall have the right to recover in such proceeding any unpaid Rent and damages as are recoverable therein, or Lessor may reserve the right to recover all or any part thereof in a separate suit. If a notice and grace period required under Paragraph 13.1 was not previously given, a notice to pay rent or quit, or to perform or quit given to Lessee under the unlawful detainer statute shall also constitute the notice required by Paragraph 13.1. In such case, the applicable grace period required by Paragraph 13.1 and the unlawful detainer statute shall run concurrently, and the failure of Lessee to cure the Default within the greater of the two such grace periods shall constitute both an unlawful detainer and a Breach of this Lease entitling Lessor to the remedies provided for in this Lease and/or by said statute.

(b) Continue the Lease and Lessee's right to possession and recover the Rent as it becomes due, in which event Lessee may sublet or assign, subject only to reasonable limitations. Acts of maintenance, efforts to relet, and/or the appointment of a receiver to protect the Lessor's interests, shall not constitute a termination of the Lessee's right to possession.

(c) Pursue any other remedy now or hereafter available under the laws or judicial decisions of the state wherein the Premises are located. The expiration or termination of this Lease and/or the termination of Lessee's right to possession shall not relieve Lessee from liability under any indemnity provisions of this Lease as to matters occurring or accruing during the term hereof or by reason of Lessee's occupancy of the Premises.

**13.3 Inducement Recapture.** Any agreement for free or abated rent or other charges, or for the giving or paying by Lessor to or for Lessee of any cash or other bonus, inducement or consideration for Lessee's entering into this Lease, all of which concessions are hereinafter referred to as "**Inducement Provisions**," shall be deemed conditioned upon Lessee's full and faithful performance of all of the terms, covenants and conditions of this Lease. Upon Breach of this Lease by Lessee, any such Inducement Provision shall automatically be deemed deleted from this Lease and of no further force or effect, and any rent, other charge, bonus, inducement or consideration theretofore abated, given or paid by Lessor under such an inducement Provision shall be immediately due and payable by Lessee to Lessor, notwithstanding any subsequent cure of said Breach by Lessee. The acceptance by Lessor of rent or the cure of the Breach which initiated the operation of this paragraph shall not be deemed a waiver by Lessor of the provisions of this paragraph unless specifically so stated in writing by Lessor at the time of such acceptance.

**13.4 Late Charges.** Lessee hereby acknowledges that late payment by Lessee of Rent will cause Lessor 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 charges, and late charges which may be imposed upon Lessor by any Lender. Accordingly, if any Rent shall not be received by Lessor within 5 days after such amount shall be due, then, without any requirement for notice to Lessee, Lessee shall immediately pay to Lessor a one-time late charge equal to 10% of each such overdue amount or \$100, whichever is greater. The Parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Lessor will incur by reason of such late payment. Acceptance of such late charge by Lessor shall in no event constitute a waiver of Lessee's Default or Breach with respect to such overdue amount, nor prevent the exercise of any of the other rights and remedies granted hereunder. In the event that a late charge is payable hereunder, whether or not collected, for 3 consecutive installments of Base Rent, then notwithstanding any provision of this Lease to the contrary, Base Rent shall, at Lessor's option, become due and payable quarterly in advance.

13.5 **Interest.** Any monetary payment due Lessor hereunder, other than late charges, not received by Lessor, when due as to scheduled payments (such as Base Rent) or within 30 days following the date on which it was due for non-scheduled payment, shall bear interest from the date when due, as to scheduled payments, or the 31st day after it was due as to non-scheduled payments. The interest ( "**Interest**") charged shall be computed at the rate of 10% per annum but shall not exceed the maximum rate allowed by law. Interest is payable in addition to the potential late charge provided for in Paragraph 13.4.

13.6 **Breach by Lessor.**

(a) **Notice of Breach.** Lessor shall not be deemed in breach of this Lease unless Lessor fails within a reasonable time to perform an obligation required to be performed by Lessor. For purposes of this Paragraph, a reasonable time shall in no event be less than 30 days after receipt by Lessor, and any Lender whose name and address shall have been furnished Lessee in writing for such purpose, of written notice specifying wherein such obligation of Lessor has not been performed; provided, however, that if the nature of Lessor's obligation is such that more than 30 days are reasonably required for its performance, then Lessor shall not be in breach if performance is commenced within such 30 day period and thereafter diligently pursued to completion.

(b) **Performance by Lessee on Behalf of Lessor.** In the event that neither Lessor nor Lender cures said breach within 30 days after receipt of said notice, or if having commenced said cure they do not diligently pursue it to completion, then Lessee may elect to cure said breach at Lessee's expense and offset from Rent the actual and reasonable cost to perform such cure, provided however, that such offset shall not exceed an amount equal to the greater of one month's Base Rent or the Security Deposit, reserving Lessee's right to seek reimbursement from Lessor. Lessee shall document the cost of said cure and supply said documentation to Lessor.

14. **Condemnation.** If the Premises or any portion thereof are taken under the power of eminent domain or sold under the threat of the exercise of said power (collectively "**Condemnation**"), this Lease shall terminate as to the part taken as of the date the condemning authority takes title or possession, whichever first occurs. If more than 10% of the Building, or more than 25% of that portion of the Premises not occupied by any building, is taken by Condemnation, Lessee may, at Lessee's option, to be exercised in writing within 10 days after Lessor shall have given Lessee written notice of such taking (or in the absence of such notice, within 10 days after the condemning authority shall have taken possession) terminate this Lease as

of the date the condemning authority takes such possession. If Lessee does not terminate this Lease in accordance with the foregoing, this Lease shall remain in full force and effect as to the portion of the Premises remaining, except that the Base Rent shall be reduced in proportion to the reduction in utility of the Premises caused by such Condemnation. Condemnation awards and/or payments shall be the property of Lessor, whether such award shall be made as compensation for diminution in value of the leasehold, the value of the part taken, or for severance damages; provided, however, that Lessee shall be entitled to any compensation for Lessee's relocation expenses, loss of business goodwill and/or Trade Fixtures, without regard to whether or not this Lease is terminated pursuant to the provisions of this Paragraph. All Alterations and Utility Installations made to the Premises by Lessee, for purposes of Condemnation only, shall be considered the property of the Lessee and Lessee shall be entitled to any and all compensation which is payable therefore. In the event that this Lease is not terminated by reason of the Condemnation, Lessor shall repair any damage to the Premises caused by such Condemnation.

#### 15. **Brokerage Fees.**

15.1 **Assumption of Obligations.** Any buyer or transferee of Lessor's interest in this Lease shall be deemed to have assumed Lessor's obligation hereunder. Brokers shall be third party beneficiaries of the provisions of Paragraphs 1.10, 15, 22 and 31. If Lessor fails to pay to Brokers any amounts due as and for brokerage fees pertaining to this Lease when due, then such amounts shall accrue Interest. In addition, if Lessor fails to pay any amounts to Lessee's Broker when due, Lessee's Broker may send written notice to Lessor and Lessee of such failure and if Lessor fails to pay such amounts within 10 days after said notice, Lessee shall pay said monies to its Broker and offset such amounts against Rent. In addition, Lessee's Broker shall be deemed to be a third party beneficiary of any commission agreement entered into by and/or between Lessor and Lessor's Broker for the limited purpose of collecting any brokerage fee owed.

15.2 **Representations and Indemnities of Broker Relationships.** Lessee and Lessor each represent and warrant to the other that it has had no dealings with any person, firm, broker or finder (other than the Brokers, if any) in connection with this Lease, and that no one other than said named Brokers is entitled to any commission or finder's fee in connection herewith. Lessee and Lessor do each hereby agree to indemnify, protect, defend and hold the other harmless from and against liability for compensation or charges which may be claimed by any such unnamed broker, finder or other similar party by reason of any dealings or actions of the indemnifying Party, including any costs, expenses, attorneys' fees reasonably incurred with respect thereto.

#### 16. **Estoppel Certificates.**

(a) Each Party (as "**Responding Party**") shall within 15 days after written notice from the other Party (the "**Requesting Party**") execute, acknowledge and deliver to the Requesting Party a statement in writing in form similar to the then most current "**Estoppel Certificate**" form published by the AIR Commercial Real Estate Association, plus such additional information, confirmation and/or statements as may be reasonably requested by the Requesting Party.

(b) If the Responding Party shall fail to execute or deliver the Estoppel Certificate within such 15 day period, the Requesting Party may execute an Estoppel Certificate stating that: (i) the Lease is in full force and effect without modification except as may be represented by the Requesting Party, (ii) there are no uncured defaults in the Requesting Party's

performance, and (iii) if Lessor is the Requesting Party, not more than one month's rent has been paid in advance. Prospective purchasers and encumbrances may rely upon the Requesting Party's Estoppel Certificate, and the Responding Party shall be estopped from denying the truth of the facts contained in said Certificate.

(c) If Lessor desires to finance, refinance, or sell the Premises, or any part thereof, Lessee and all Guarantors shall deliver to any potential lender or purchaser designated by Lessor such financial statements as may be reasonably required by such lender or purchaser, including but not limited to Lessee's financial statements for the past 3 years. All such financial statements shall be received by Lessor and such lender or purchaser in confidence and shall be used only for the purposes herein set forth.

17. **Definition of Lessor.** The term "Lessor" as used herein shall mean the owner or owners at the time in question of the fee title to the Premises, or, if this is a sublease, of the Lessee's interest in the prior lease. In the event of a transfer of Lessor's title or interest in the Premises or this Lease, Lessor shall deliver to the transferee or assignee (in cash or by credit) any unused Security Deposit held by Lessor. Except as provided in Paragraph 15, upon such transfer or assignment and delivery of the Security Deposit, as aforesaid, the prior Lessor shall be relieved of all liability with respect to the obligations and/or covenants under this Lease thereafter to be performed by the Lessor. Subject to the foregoing, the obligations and/or covenants in this Lease to be performed by the Lessor shall be binding only upon the Lessor as hereinabove defined.

18. **Severability.** The invalidity of any provision of this Lease, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof.

19. **Days.** Unless otherwise specifically indicated to the contrary, the word "days" as used in this Lease shall mean and refer to calendar days.

20. **Limitation on Liability.** The obligations of Lessor under this Lease shall not constitute personal obligations of Lessor or its partners, members, directors, officers or shareholders, and Lessee shall look to the Premises, and to no other assets of Lessor, for the satisfaction of any liability of Lessor with respect to this Lease, and shall not seek recourse against Lessor's partners, members, directors, officers or shareholders, or any of their personal assets for such satisfaction.

21. **Time of Essence.** Time is of the essence with respect to the performance of all obligations to be performed or observed by the Parties under this Lease.

22. **No Prior or Other Agreements; Broker Disclaimer.** This Lease contains all agreements between the Parties with respect to any matter mentioned herein, and no other prior or contemporaneous agreement or understanding shall be effective. Lessor and Lessee each represents and warrants to the Brokers that it has made, and is relying solely upon, its own investigation as to the nature, quality, character and financial responsibility of the other Party to this Lease and as to the use, nature, quality and character of the Premises. Brokers have no responsibility with respect thereto or with respect to any default or breach hereof by either Party. The liability (including court costs and attorneys' fees), of any Broker with respect to negotiation, execution, delivery or performance by either Lessor or Lessee under this Lease or any amendment or modification hereto shall be limited to an amount up to the fee received by such Broker pursuant to this Lease; provided, however, that the foregoing limitation on each Broker's liability shall not be applicable to any gross negligence or willful misconduct of such Broker.

23. Notices.

23.1 **Notice Requirements.** All notices required or permitted by this Lease or applicable law shall be in writing and may be delivered in person (by hand or by courier) or may be sent by regular, certified or registered mail or U.S. Postal Service Express Mail, with postage prepaid, or by facsimile transmission, and shall be deemed sufficiently given if served in a manner specified in this Paragraph 23. The addresses noted adjacent to a Party's signature on this Lease shall be that Party's address for delivery or mailing of notices. Either Party may by written notice to the other specify a different address for notice, except that upon Lessee's taking possession of the Premises, the Premises shall constitute Lessee's address for notice. A copy of all notices to Lessor shall be concurrently transmitted to such party or parties at such addresses as Lessor may from time to time hereafter designate in writing.

23.2 **Date of Notice.** Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, the postmark thereon. If sent by regular mail the notice shall be deemed given 48 hours after the same is addressed as required herein and mailed with postage prepaid. Notices delivered by United States Express Mail or overnight courier that guarantee next day delivery shall be deemed given 24 hours after delivery of the same to the Postal Service or courier. Notices transmitted by facsimile transmission or similar means shall be deemed delivered upon telephone confirmation of receipt (confirmation report from fax machine is sufficient), provided a copy is also delivered via delivery or mail. If notice is received on a Saturday, Sunday or legal holiday, it shall be deemed received on the next business day.

24. **Waivers.** No waiver by Lessor of the Default or Breach of any term, covenant or condition hereof by Lessee, shall be deemed a waiver of any other term, covenant or condition hereof, or of any subsequent Default or Breach by Lessee of the same or of any other term, covenant or condition hereof. Lessor's consent to, or approval of, any act shall not be deemed to render unnecessary the obtaining of Lessor's consent to, or approval of, any subsequent or similar act by Lessee, or be construed as the basis of an estoppel to enforce the provision or provisions of this Lease requiring such consent. The acceptance of Rent by Lessor shall not be a waiver of any Default or Breach by Lessee. Any payment by Lessee may be accepted by Lessor on account of moneys or damages due Lessor, notwithstanding any qualifying statements or conditions made by Lessee in connection therewith, which such statements and/or conditions shall be of no force or effect whatsoever unless specifically agreed to in writing by Lessor at or before the time of deposit of such payment.

25. **Disclosures Regarding The Nature of a Real Estate Agency Relationship.**

(a) When entering into a discussion with a real estate agent regarding a real estate transaction, a Lessor or Lessee should from the outset understand what type of agency relationship or representation it has with the agent or agents in the transaction. Lessor and Lessee acknowledge being advised by the Brokers in this transaction, as follows:

(i) Lessor's Agent. A Lessor's agent under a listing agreement with the Lessor acts as the agent for the Lessor only. A Lessor's agent or subagent has the following affirmative obligations: To the Lessor: A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Lessor. To the Lessee and the Lessor: a. Diligent exercise of reasonable skills and care in performance of the agent's duties. b. A duty of honest and fair dealing and good faith. c. A duty to disclose all facts known to the agent materially affecting the

value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

(ii) Lessee's Agent. An agent can agree to act as agent for the Lessee only. In these situations, the agent is not the Lessor's agent, even if by agreement the agent may receive compensation for services rendered, either in full or in part from the Lessor. An agent acting only for a Lessee has the following affirmative obligations. To the Lessee: A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Lessee. To the Lessee and the Lessor: a. Diligent exercise of reasonable skills and care in performance of the agent's duties. b. A duty of honest and fair dealing and good faith. c. A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

(iii) Agent Representing Both Lessor and Lessee. A real estate agent, either acting directly or through one or more associate licenses, can legally be the agent of both the Lessor and the Lessee in a transaction, but only with the knowledge and consent of both the Lessor and the Lessee. In a dual agency situation, the agent has the following affirmative obligations to both the Lessor and the Lessee: a. A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either Lessor or the Lessee. b. Other duties to the Lessor and the Lessee as stated above in subparagraphs (i) or (ii). In representing both Lessor and Lessee, the agent may not without the express permission of the respective Party, disclose to the other Party that the Lessor will accept rent in an amount less than that indicated in the listing or that the Lessee is willing to pay a higher rent than that offered. The above duties of the agent in a real estate transaction do not relieve a Lessor or Lessee from the responsibility to protect their own interests. Lessor and Lessee should carefully read all agreements to assure that they adequately express their understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional.

(b) Brokers have no responsibility with respect to any default or breach hereof by either Party. The liability (including court costs and attorneys' fees), of any Broker with respect to any breach of duty, error or omission relating to this Lease shall not exceed the fee received by such Broker pursuant to this Lease; provided, however, that the foregoing limitation on each Broker's liability shall not be applicable to any gross negligence or willful misconduct of such Broker.

(c) Lessor and Lessee agree to identify to Brokers as "Confidential" any communication or information given Brokers that is considered by such Party to be confidential.

26. **No Right To Holdover.** Lessee has no right to retain possession of the Premises or any part thereof beyond the expiration or termination of this Lease. In the event that Lessee holds over, then the Base Rent shall be increased to 150% of the Base Rent applicable immediately preceding the expiration or termination. Nothing contained herein shall be construed as consent by Lessor to any holding over by Lessee.

27. **Cumulative Remedies.** No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

28. **Covenants and Conditions; Construction of Agreement.** All provisions of this Lease to be observed or performed by Lessee are both covenants and conditions. In construing this Lease, all headings and titles are for the convenience of the Parties only and shall not be considered a part of this Lease. Whenever required by the context, the singular shall include the plural and vice versa. This Lease shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it.

29. **Binding Effect; Choice of Law.** This Lease shall be binding upon the Parties, their personal representatives, successors and assigns and be governed by the laws of the State in which the Premises are located. Any litigation between the Parties hereto concerning this Lease shall be initiated in the county in which the Premises are located.

30. **Subordination; Attornment; Non-Disturbance.**

30.1 **Subordination.** This Lease and any Option granted hereby shall be subject and subordinate to any ground lease, mortgage, deed of trust, or other hypothecation or security device (collectively, "**Security Device**"), now or hereafter placed upon the Premises, to any and all advances made on the security thereof, and to all renewals, modifications, and extensions thereof. Lessee agrees that the holders of any such Security Devices (in this Lease together referred to as "**Lender**") shall have no liability or obligation to perform any of the obligations of Lessor under this Lease. Any Lender may elect to have this Lease and/or any Option granted hereby superior to the lien of its Security Device by giving written notice thereof to Lessee, whereupon this Lease and such Options shall be deemed prior to such Security Device, notwithstanding the relative dates of the documentation or recordation thereof.

30.2 **Attornment.** In the event that Lessor transfers title to the Premises, or the Premises are acquired by another upon the foreclosure or termination of a Security Device to which this Lease is subordinated (i) Lessee shall, subject to the non-disturbance provisions of Paragraph 30.3, attorn to such new owner, and upon request, enter into a new lease, containing all of the terms and provisions of this Lease, with such new owner for the remainder of the term hereof, or, at the election of such new owner, this Lease shall automatically become a new Lease between Lessee and such new owner, upon all of the terms and conditions hereof, for the remainder of the term hereof, and (ii) Lessor shall thereafter be relieved of any further obligations hereunder and such new owner shall assume all of Lessor's obligations hereunder, except that such new owner shall not: (a) be liable for any act or omission of any prior lessor or with respect to events occurring prior to acquisition of ownership; (b) be subject to any offsets or defenses which Lessee might have against any prior lessor, (c) be bound by prepayment of more than one month's rent, or (d) be liable for the return of any security deposit paid to any prior lessor.

30.3 **Non-Disturbance.** With respect to Security Devices entered into by Lessor after the execution of this Lease, Lessee's subordination of this Lease shall be subject to receiving a commercially reasonable non-disturbance agreement (a "**Non-Disturbance Agreement**") from the Lender which Non-Disturbance Agreement provides that Lessee's possession of the Premises, and this Lease, including any options to extend the term hereof, will not be disturbed so long as Lessee is not in Breach hereof and attorns to the record owner of the Premises. Further, within 60 days after the execution of this Lease, Lessor shall use its commercially

reasonable efforts to obtain a Non-Disturbance Agreement from the holder of any pre-existing Security Device which is secured by the Premises. In the event that Lessor is unable to provide the Non-Disturbance Agreement within said 60 days, then Lessee may, at Lessee's option, directly contact Lender and attempt to negotiate for the execution and delivery of a Non-Disturbance Agreement.

**30.4 Self-Executing.** The agreements contained in this Paragraph 30 shall be effective without the execution of any further documents; provided, however, that, upon written request from Lessor or a Lender in connection with a sale, financing or refinancing of the Premises, Lessee and Lessor shall execute such further writings as may be reasonably required to separately document any subordination, attornment and/or Non-Disturbance Agreement provided for herein.

**31. Attorneys' Fees.** If any Party or Broker brings an action or proceeding involving the Premises whether founded in tort, contract or equity, or to declare rights hereunder, the Prevailing Party (as hereafter defined) in any such proceeding, action, or appeal thereon, shall be entitled to reasonable attorneys' fees, whether for a City of Sacramento attorney or outside legal counsel. Such fees may be awarded in the same suit or recovered in a separate suit, whether or not such action or proceeding is pursued to decision or judgment. The term, "**Prevailing Party**" shall include, without limitation, a Party or Broker who substantially obtains or defeats the relief sought, as the case may be, whether by compromise, settlement, judgment, or the abandonment by the other Party or Broker of its claim or defense. The attorneys' fees award shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse all attorneys' fees reasonably incurred. In addition, Lessor shall be entitled to attorneys' fees, costs and expenses incurred in the preparation and service of notices of Default and consultations in connection therewith, whether or not a legal action is subsequently commenced in connection with such Default or resulting Breach (\$200 is a reasonable minimum per occurrence for such services and consultation).

**32. Lessor's Access; Showing Premises; Repairs.** Lessor and Lessor's agents shall have the right to enter the Premises at any time, in the case of an emergency, and otherwise at reasonable times after reasonable prior notice for the purpose of showing the same to prospective purchasers, lenders, or tenants, and making such alterations, repairs, improvements or additions to the Premises as Lessor may deem necessary or desirable and the erecting, using and maintaining of utilities, services, pipes and conduits through the Premises and/or other premises as long as there is no material adverse effect to Lessee's use of the Premises. All such activities shall be without abatement of rent or liability to Lessee.

**33. Auctions.** Lessee shall not conduct, nor permit to be conducted, any auction upon the Premises without Lessor's prior written consent. Lessor shall not be obligated to exercise any standard of reasonableness in determining whether to permit an auction.

**34. Signs.** Lessor may place on the Premises ordinary "For Sale" signs at any time and ordinary "For Lease" signs during the last 6 months of the term hereof. Except for ordinary "for sublease" signs, Lessee shall not place any sign upon the Premises without Lessor's prior written consent. All signs must comply with all Applicable Requirements.

**35. Termination; Merger.** Unless specifically stated otherwise in writing by Lessor, the voluntary or other surrender of this Lease by Lessee, the mutual termination or cancellation hereof, or a termination hereof by Lessor for Breach by Lessee, shall automatically terminate

any sublease or lesser estate in the Premises; provided, however, that Lessor may elect to continue any one or all existing subtenancies. Lessor's failure within 10 days following any such event to elect to the contrary by written notice to the holder of any such lesser interest, shall constitute Lessor's election to have such event constitute the termination of such interest.

36. **Consents.** Except as otherwise provided herein, wherever in this Lease the consent of a Party is required to an act by or for the other Party, such consent shall not be unreasonably withheld or delayed. Lessor's actual reasonable costs and expenses (including but not limited to architects', attorneys', engineers' and other consultants' fees) incurred in the consideration of, or response to, a request by Lessee for any Lessor consent, including but not limited to consents to an assignment, a subletting or the presence or use of a Hazardous Substance, shall be paid by Lessee upon receipt of an invoice and supporting documentation therefore. Lessor's consent to any act, assignment or subletting shall not constitute an acknowledgment that no Default or Breach by Lessee of this Lease exists, nor shall such consent be deemed a waiver of any then existing Default or Breach, except as may be otherwise specifically stated in writing by Lessor at the time of such consent. The failure to specify herein any particular condition to Lessor's consent shall not preclude the imposition by Lessor at the time of consent of such further or other conditions as are then reasonable with reference to the particular matter for which consent is being given. In the event that either Party disagrees with any determination made by the other hereunder and reasonably requests the reasons for such determination, the determining party shall furnish its reasons in writing and in reasonable detail within 10 business days following such request.

37. **Guarantor.**

37.1 **Execution.** The Guarantors, if any, shall each execute a guaranty in the form most recently published by the AIR Commercial Real Estate Association, and each such Guarantor shall have the same obligations as Lessee under this Lease.

37.2 **Default.** It shall constitute a Default of the Lessee if any Guarantor fails or refuses, upon request to provide: (a) evidence of the execution of the guaranty, including the authority of the party signing on Guarantor's behalf to obligate Guarantor, and in the case of a corporate Guarantor, a certified copy of a resolution of its board of directors authorizing the making of such guaranty, (b) current financial statements, (c) an Estoppel Certificate, or (d) written confirmation that the guaranty is still in effect.

38. **Quiet Possession.** Subject to payment by Lessee of the Rent and performance of all of the covenants, conditions and provisions on Lessee's part to be observed and performed under this Lease, Lessee shall have quiet possession and quiet enjoyment of the Premises during the term hereof.

39. **Options.** If Lessee is granted an Option, as defined below, then the following provisions shall apply:

39.1 **Definition.** "Option" shall mean: (a) the right to extend the term of or renew this Lease or to extend or renew any lease that Lessee has on other property of Lessor; (b) the right of first refusal or first offer to lease either the Premises or other property of Lessor; (c) the right to purchase or the right of first refusal to purchase the Premises or other property of Lessor.

**39.2 Options Personal To Original Lessee.** Any Option granted to Lessee in this Lease is personal to the original Lessee, and cannot be assigned or exercised by anyone other than said original Lessee and only while the original Lessee is in full possession of the Premises and, if requested by Lessor, with Lessee certifying that Lessee has no intention of thereafter assigning or subletting.

**39.3 Multiple Options.** In the event that Lessee has any multiple Options to extend or renew this Lease, a later Option cannot be exercised unless the prior Options have been validly exercised.

**39.4 Effect of Default on Options.**

(a) Lessee shall have no right to exercise an Option: (i) during the period commencing with the giving of any notice of Default and continuing until said Default is cured, (ii) during the period of time any Rent is unpaid (without regard to whether notice thereof is given Lessee), (iii) during the time Lessee is in Breach of this Lease, or (iv) in the event that Lessee has been given 3 or more notices of separate Default, whether or not the Defaults are cured, during the 12 month period immediately preceding the exercise of the Option.

(b) The period of time within which an Option may be exercised shall not be extended or enlarged by reason of Lessee's inability to exercise an Option because of the provisions of Paragraph 39.4(a).

(c) An Option shall terminate and be of no further force or effect, notwithstanding Lessee's due and timely exercise of the Option, if, after such exercise and prior to the commencement of the extended term or completion of the purchase, (i) Lessee fails to pay Rent for a period of 30 days after such Rent becomes due (without any necessity of Lessor to give notice thereof), or (ii) if Lessee commits a Breach of this Lease which has not otherwise been cured under Paragraph 13.

**40. Lessee's Exercise of Option Granted in Option to Purchase Agreement.** Lessor and Lessee have entered into an Option to Purchase Agreement dated November \_\_, 2006, pursuant to which Lessee has been granted an option to purchase the Premises from Lessor under the terms of an Agreement of Purchase and Sale and Joint Escrow Instructions. If Lessee exercises the option to purchase the Premises from Lessor, all obligations of Lessor due to Lessee under the terms of this Lease shall terminate on the "Closing Date" of the Agreement of Purchase and Sale and Joint Escrow Instructions.

**41. Multiple Buildings.** If the Premises are a part of a group of buildings controlled by Lessor, Lessee agrees that it will abide by and conform to all reasonable rules and regulations which Lessor may make from time to time for the management, safety, and care of said properties, including the care and cleanliness of the grounds and including the parking, loading and unloading of vehicles, and to cause its employees, suppliers, shippers, customers, contractors and invitees to so abide and conform. Lessee also agrees to pay its fair share of common expenses incurred in connection with such rules and regulations.

**42. Security Measures.** Lessee hereby acknowledges that the Rent payable to Lessor hereunder does not include the cost of guard service or other security measures, and that Lessor shall have no obligation whatsoever to provide same. Lessee assumes all responsibility for the

protection of the Premises, Lessee, its agents and invitees and their property from the acts of third parties.

43. **Reservations.** Lessor reserves to itself the right, from time to time, to grant, without the consent or joinder of Lessee, such easements, rights and dedications that Lessor deems necessary, and to cause the recordation of parcel maps and restrictions, so long as such easements, rights, dedications, maps and restrictions do not unreasonably interfere with the use of the Premises by Lessee. Lessee agrees to sign any documents reasonably requested by Lessor to effectuate any such easement rights, dedication, map or restrictions.

44. **Performance Under Protest.** If at any time a dispute shall arise as to any amount or sum of money to be paid by one Party to the other under the provisions hereof, the Party against whom the obligation to pay the money is asserted shall have the right to make payment "under protest" and such payment shall not be regarded as a voluntary payment and there shall survive the right on the part of said Party to institute suit for recovery of such sum. If it shall be adjudged that there was no legal obligation on the part of said Party to pay such sum or any part thereof, said Party shall be entitled to recover such sum or so much thereof as it was not legally required to pay.

45. **Authority; Multiple Parties; Execution.**

(a) If either Party hereto is a corporation, trust, limited liability company, partnership, or similar entity, each individual executing this Lease on behalf of such entity represents and warrants that he or she is duly authorized to execute and deliver this Lease on its behalf. Each party shall, within 30 days after request, deliver to the other party satisfactory evidence of such authority.

(b) If this Lease is executed by more than one person or entity as "Lessee", each such person or entity shall be jointly and severally liable hereunder. It is agreed that any one of the named Lessees shall be empowered to execute any amendment to this Lease, or other document ancillary thereto and bind all of the named Lessees, and Lessor may rely on the same as if all of the named Lessees had executed such document.

(c) This Lease may be executed by the Parties in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

46. **Conflict.** Any conflict between the printed provisions of this Lease and typewritten or handwritten provisions shall be controlled by the typewritten or handwritten provisions.

47. **Offer.** Preparation of this Lease by either Party or their agent and submission of same to the other Party shall not be deemed an offer to lease to the other Party. This Lease is not intended to be binding until executed and delivered by all Parties hereto.

48. **Amendments.** This Lease may be modified only in writing, signed by the Parties in interest at the time of the modification. As long as they do not materially change Lessee's obligations hereunder, Lessee agrees to make such reasonable non-monetary modifications to this Lease as may be reasonably required by a Lender in connection with the obtaining of normal financing or refinancing of the Premises.

49. **Waiver of Jury Trial. THE PARTIES HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING INVOLVING THE PROPERTY OR ARISING OUT OF THIS AGREEMENT.**

50. **Mediation and Arbitration of Disputes.** Should any dispute or controversy arising from or related to this Lease arise among the Parties that the Parties are incapable of resolving themselves through good faith negotiation, then such dispute or controversy shall be submitted for resolution by J.A.M.S./ENDISPUTE ("JAMS") using their offices located in Sacramento, California. The panel of possible hearing officers shall be limited to hearing officers who were formerly judges on the Contra Costa County Superior Court, but otherwise selected in accordance with JAMS rules. Any dispute shall first be submitted to JAMS for mediation pursuant to the mediation services provided by JAMS. Should the dispute between the Parties not be successfully mediated by JAMS within 60 days of its submission (subject to any extension agreed to by the Parties) then and in such event the dispute shall be submitted for binding arbitration by and under the rules of the JAMS for commercial real estate disputes (or commercial disputes if there are no rules for commercial real estate disputes). The hearing officer for any mediation shall be different from the hearing officer used to hear any arbitration which results from a failure of the mediation process, unless otherwise specifically agreed upon by the parties in writing after the end of the mediation process. Hearings relating to the binding arbitration shall commence not sooner than 120 days after the initial submission of the matter for mediation nor more than 180 days after such date. Discovery shall be permitted in the discretion of the hearing officer selected to hear the dispute and to the extent that such hearing officer deems appropriate. Judgment upon any award by the arbitrators may be entered in any court having jurisdiction thereof. It is agreed that the prevailing party in any such arbitration or other action arising from or relating to this Agreement shall be entitled to reimbursement of its reasonable costs and expenses, including attorneys' fees.

51. **Americans with Disabilities Act.** Since compliance with the Americans with Disabilities Act (ADA) is dependent upon Lessee's specific use of the Premises, Lessor makes no warranty or representation as to whether or not the Premises comply with ADA or any similar legislation. In the event that Lessee's use of the Premises requires modifications or additions to the Premises in order to be in ADA compliance, Lessee agrees to make any such necessary modifications and/or additions at Lessee's expense.

LESSOR AND LESSEE HAVE CAREFULLY READ AND REVIEWED THIS LEASE AND EACH TERM AND PROVISION CONTAINED HEREIN, AND BY THE EXECUTION OF THIS LEASE SHOW THEIR INFORMED AND VOLUNTARY CONSENT THERETO. THE PARTIES HEREBY AGREE THAT, AT THE TIME THIS LEASE IS EXECUTED, THE TERMS OF THIS LEASE ARE COMMERCIALY REASONABLE AND EFFECTUATE THE INTENT AND PURPOSE OF LESSOR AND LESSEE WITH RESPECT TO THE PREMISES.

**ATTENTION: NO REPRESENTATION OR RECOMMENDATION IS MADE BY THE AIR COMMERCIAL REAL ESTATE ASSOCIATION OR BY ANY BROKER AS TO THE LEGAL SUFFICIENCY, LEGAL EFFECT, OR TAX CONSEQUENCES OF THIS LEASE OR THE TRANSACTION TO WHICH IT RELATES. THE PARTIES ARE URGED TO:**

1. **SEEK ADVICE OF COUNSEL AS TO THE LEGAL AND TAX CONSEQUENCES OF THIS LEASE.**

2. RETAIN APPROPRIATE CONSULTANTS TO REVIEW AND INVESTIGATE THE CONDITION OF THE PREMISES. SAID INVESTIGATION SHOULD INCLUDE BUT NOT BE LIMITED TO: THE POSSIBLE PRESENCE OF HAZARDOUS SUBSTANCES, THE ZONING OF THE PREMISES, THE STRUCTURAL INTEGRITY, THE CONDITION OF THE ROOF AND OPERATING SYSTEMS, AND THE SUITABILITY OF THE PREMISES FOR LESSEE'S INTENDED USE.

**WARNING:** IF THE PREMISES IS LOCATED IN A STATE OTHER THAN CALIFORNIA, CERTAIN PROVISIONS OF THE LEASE MAY NEED TO BE REVISED TO COMPLY WITH THE LAWS OF THE STATE IN WHICH THE PREMISES IS LOCATED.

The parties hereto have executed this Lease at the place and on the dates specified above their respective signatures.

Executed at: Newport Beach, CA

Executed at: SACRAMENTO, CA

On: November 13, 2006

On: November 16 2006

By LESSOR:

By LESSEE:

By: Sacramento Associates, a California general partnership, General Partner

By: [Signature] for: Ray Kertridge  
City Manager

By: \_\_\_\_\_  
Bruce E. Nott, Trustee of the Nott Family Trust u/d/t dated May 22, 1990, a General Partner

Name Printed: Marty Handeman  
Title: Asst. City Manager  
Address: 915 1st St  
SACRAMENTO CA 95814  
Telephone (916) 808-5704  
Facsimile ( ) \_\_\_\_\_  
Federal ID No. \_\_\_\_\_

By: FAIT B Investments, LLC, a California limited liability company, a General Partner

Approved as to Form:

By: [Signature]  
Barrett C. Fait, Manager

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Attested by: \_\_\_\_\_

Address: 190 Newport Center Drive, Ste 100  
Newport Beach CA 92660  
Telephone (949) 644-1860  
Facsimile (949) 644-1142  
Federal ID No. 93-0985736

\_\_\_\_\_  
City Clerk

By: Grove Investment Company, a California general partnership, General Partner

By: \_\_\_\_\_  
Bruce E. Nott, Trustee of the Nott Family Trust u/d/t dated May 22, 1990, a General Partner

By: Meadows Mobile Homes, a California  
general partnership, a General Partner

By:   
James Lee, Trustee of the Lee  
Family Trust u/d/t dated  
1/30/89, a General Partner

By:   
Barrett C. Fait,  
a General Partner

Address: PO Box 1960  
Newport Beach CA 92658  
Telephone (949) 644-1860  
Facsimile (949) 644-1142  
Federal ID No. 95-3045788

**NOTE: These forms are often modified to meet the changing requirements of law and industry needs. Always write or call to make sure you are utilizing the most current form: AIR COMMERCIAL REAL ESTATE ASSOCIATION, 700 So. Flower Street, Suite 600, Los Angeles, California 90017. (213) 687-8777. Fax No. (213) 687-8616**

© Copyright 2001 - By AIR Commercial Real Estate Association. All rights reserved. No part of these works may be reproduced in any form without permission in writing.

2. RETAIN APPROPRIATE CONSULTANTS TO REVIEW AND INVESTIGATE THE CONDITION OF THE PREMISES. SAID INVESTIGATION SHOULD INCLUDE BUT NOT BE LIMITED TO: THE POSSIBLE PRESENCE OF HAZARDOUS SUBSTANCES, THE ZONING OF THE PREMISES, THE STRUCTURAL INTEGRITY, THE CONDITION OF THE ROOF AND OPERATING SYSTEMS, AND THE SUITABILITY OF THE PREMISES FOR LESSEE'S INTENDED USE.

**WARNING: IF THE PREMISES IS LOCATED IN A STATE OTHER THAN CALIFORNIA, CERTAIN PROVISIONS OF THE LEASE MAY NEED TO BE REVISED TO COMPLY WITH THE LAWS OF THE STATE IN WHICH THE PREMISES IS LOCATED.**

The parties hereto have executed this Lease at the place and on the dates specified above their respective signatures.

Executed at: Newport Beach, CA

Executed at: SACRAMENTO, CA

On: November 13, 2006

On: November 16, 2006

By LESSOR:

By LESSEE:

By: Sacramento Associates, a California general partnership, General Partner

By: Marty Hanjeman <sup>son: Ray Kerbridge</sup>  
City Manager

By: Bruce E. Nott  
Bruce E. Nott, Trustee of the Nott Family Trust u/d/t dated May 22, 1990, a General Partner

Name Printed: Marty Hanjeman  
Title: Asst. City Manager  
Address: 915 I st. 5th FL  
SACRAMENTO CA 95814  
Telephone (916) 828-5704  
Facsimile ( ) \_\_\_\_\_  
Federal ID No. \_\_\_\_\_

By: FAIT B Investments, LLC, a California limited liability company, a General Partner

Approved as to Form: \_\_\_\_\_  
By: David H. Harkis  
Its: Senior Deputy City Attorney  
Attested by: \_\_\_\_\_

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

Barrett C. Fait, Manager  
Address: 190 Newport Center Drive, Ste 100  
Newport Beach CA 92660  
Telephone ( ) \_\_\_\_\_  
Facsimile ( ) \_\_\_\_\_  
Federal ID No. 93-0985736

Dawn Beekunick  
City Clerk 11-17-06

By: Grove Investment Company, a California general partnership, General Partner

By: Bruce E. Nott  
Bruce E. Nott, Trustee of the Nott Family Trust u/d/t dated May 22, 1990, a General Partner

CITY AGREEMENT NO. 2006-1276

CITY AGREEMENT NO. 2006-1276

Recording requested by:

and when recorded, please return this deed and tax statements to:

**DRAFT**

For recorder's use only

**California Grant Deed**

- This transfer is exempt from the documentary transfer tax.
- The documentary transfer tax is \$ \_\_\_\_\_ and is computed on:
  - the full value of the interest in the property conveyed
  - the full value less the value of liens of encumbrances remaining at the time of sale

The property is located in an:

- unincorporated area.
- the City of Sacramento.

For a valuable consideration, receipt of which is hereby acknowledged, Richards Boulevard Partners, a State of California general partnership and The Second Richards Boulevard Partnership, a State of California general partnership, hereby grant to the City of Sacramento the following real property in the City of Sacramento, County of Sacramento, State of California:

**[INSERT PROPERTY DESCRIPTION]**

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

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

State of California \_\_\_\_\_ )  
 County of \_\_\_\_\_ ) ss

On \_\_\_\_\_ before me, \_\_\_\_\_ (name and title of the officer), personally appeared \_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

Notary Seal

**EXHIBIT " 6.1(a) "**

## ASSIGNMENT OF LEASE AGREEMENT

**FROM:** Richards Boulevard Partners,  
A California general partnership ("Assignor");

**TO:** The City of Sacramento,  
A California \_\_\_\_\_ ("Assignee").

**DATED:** December \_\_\_\_, 2006.

### SECTION 1. ASSIGNMENT TO ASSIGNEE

For good and valuable consideration, Assignor assigns and transfers to Assignee all right, title and interest of Assignor in and to the Real Estate Lease as amended (the "Lease"), between Assignor and Clear Channel Outdoor, fka Patrick Media Group, Inc., dated June 1, 1991, which relates to an advertising sign located on the real property commonly known as the Discovery Centre, located at 300 Richards Boulevard in the County of Sacramento, State of California. A copy of the Lease is being delivered to Assignee concurrently with execution and delivery of this Assignment of Lease Agreement.

### SECTION 2. REPRESENTATIONS OF ASSIGNOR

2.1 Assignor is the lessor under the Lease, and has the right to make this assignment and transfer;

2.2 Assignor has not made or executed any prior assignment or transfer of, nor encumbered Assignor's interest in, the Lease; and

2.3 Assignor is not in default under any term or condition of the Lease.

2.4 Assignor represents that the lessee under the Lease is not in default under the Lease. Lessee acknowledges and agrees that Assignor makes no representation or guaranty as to the future performance of or payment of rents or other amounts by any lessee under the Lease.

### SECTION 3. ASSUMPTION BY ASSIGNEE

Assignee assumes and agrees to perform and observe all obligations of the lessor provided in the Lease and by California law and agrees to indemnify, defend and hold harmless Assignor with respect to such obligations as shall arise or accrue on or after the date that title to the above-described real property is conveyed to Assignee by recordation of a deed.

**EXECUTED** in counterparts, each of which shall be deemed an original, as of the date first set forth above.

**ASSIGNOR:**

RICHARDS BOULEVARD PARTNERS, a California general partnership

**Sacramento Associates, a  
California general partnership,  
General Partner**

**Grove Investment Company, a  
California general partnership,  
General Partner**

By: \_\_\_\_\_  
Bruce E. Nott, Trustee of the  
Nott Family Trust u/d/t dated  
May 22, 1990, a General Partner

By: \_\_\_\_\_  
Bruce E. Nott, Trustee of the  
Nott Family Trust u/d/t dated  
May 22, 1990, a General Partner

By: Fait B Investments, LLC, a  
California limited liability company,  
a General Partner

By: Meadows Mobile Homes,  
California general partnership, a  
General Partner

By: \_\_\_\_\_  
Barrett C. Fait, Manager

By: \_\_\_\_\_  
James Lee, Trustee of the  
Lee Family Trust u/d/t  
dated 1/30/89, a General  
Partner

By: \_\_\_\_\_  
Barrett C. Fait, a General  
Partner

**ASSIGNEE:**

THE CITY OF SACRAMENTO

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

Approved as to Form:

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

Attested by:

\_\_\_\_\_  
City Clerk



DATE June 10, 1991

REAL ESTATE LEASE

LEASE # 15-44000

1. The undersigned, as Lessor, hereby leases and grants exclusively to PATRICK MEDIA GROUP, INC., (hereinafter called Lessee) the property (with free access to and upon same) described as: 300 Richards Blvd St 438 13' w/o North 5th Street (1,274'.13" x 313'.60") Irreg  
APN # 001-0210-027

INITIAL  
[Signature]  
[Signature]

In the County of Sacramento  
In the State of California, commencing on June 1, 19 91, for the purpose of erecting and maintaining advertising signs thereon, including supporting structures, illumination facilities and connections, service ladders and other appurtenances thereon.

2. Lessee shall pay Lessor rental of One Thousand Eight Hundred \$ n/100 (\$ 1800.00) Dollars per year, payable in monthly installments, beginning on the completion of construction of Lessee's signs. During the period prior to completion of construction and for the entire period during which no advertising copy is displayed on the property by Lessee, the rental shall be Ten (\$10.00) Dollars.

INITIAL  
[Signature]  
[Signature]

3. Lessor warrants that Lessor is the OWNER of the above-described real estate and has full authority to make this agreement; and the Lessee shall have the right to make any necessary applications with, and obtain permits from, governmental bodies for the construction and maintenance of Lessee's signs, at the sole discretion of Lessee. All such permits shall always remain the property of Lessee.

4. Lessee shall save the Lessor harmless from all damage to persons or property by reason of accidents resulting from the negligent acts of its agents, employees or others employed in the construction, maintenance, repair or removal of its signs on the property.

5. This agreement is a lease (not a license), and all signs, structures and improvements placed on the premises by or for the Lessee shall remain the property of the Lessee, and that, notwithstanding the fact that the same constitute real estate fixtures, Lessee shall have the right to remove the same at any time during the term of the Lease, or after the expiration of the Lease.

INITIAL  
[Signature]  
[Signature]

6. The term of this Lease will be four (4) years commencing on the date set forth above. This lease shall continue in full force and effect for its term and thereafter for subsequent successive like terms unless terminated at the end of such term or any successive like term upon written notice by the Lessor or Lessee served not less than ninety (90) days before the end of such term or subsequent like term, provided that Lessee shall have the right to terminate the Lease at the end of any sixty day period upon written notice to Lessor served not less than (60) days prior to the end of such sixty day period. (See Rider)

7. In the event of condemnation of the subject premises or any part thereof by proper authorities, or relocation of the highway, the Lessor grants to the Lessee the right to relocate its display(s) on Lessor's remaining property adjoining the condemned property or the relocated highway. Any condemnation award for Lessee's property shall accrue to Lessee.

INITIAL  
[Signature]  
[Signature]

8. In the event that (a) any of Lessee's signs on the premises become entirely or partially obstructed or destroyed; (b) the premises cannot safely be used for the erection or maintenance of Lessee's signs thereon for any reason; (c) the view of the location for advertising purposes becomes diminished; (d) the view of Lessee's signs are obstructed or impaired in any way by any object or growth on any property or on any neighboring property owned or controlled by Lessor; (e) the Lessee is unable to obtain any necessary permit for the erection and/or maintenance of such sign(s) as the Lessee may desire; (f) the Lessee be prevented by law from construction and/or maintaining on the premises such sign(s) as the Lessee may desire; then the Lessee, may at its option, adjust the rent in proportion to the decreased value of the premises for advertising purposes, or may terminate the Lease on fifteen (15) days' notice in writing. Lessor agrees thereupon to return to the Lessee any rent paid in advance for the unexpired term.

INITIAL  
[Signature]  
[Signature]

9. If Lessee is prevented by law, government order or other causes beyond Lessee's control from illuminating its signs, the Lessee may reduce the rental provided by paragraph 2 by one-half (1/2), with such reduced rental to remain in effect as long as such condition continues to exist. Lessee agrees to pay all electrical power costs used by the signs. Prepaid rent beyond the termination date

10. This Lease shall constitute the sole agreement of the parties relating to the premises. Neither party will be bound by any terms, oral or written, not set forth specifically in this Lease. This Lease is binding upon and inures to the benefit of the heirs, executors, successors, and assigns of Lessee and Lessor.

11. All rents to be paid pursuant to this Lease, and all notices are to be forwarded to the undersigned Lessor at the address noted below the Lessor's signature.

EXECUTED by the Lessor in the presence of Ernest Gallardo who is hereby requested to sign as witness.

WITNESS: \_\_\_\_\_

LESSOR(S) Richards Boulevard Partners

ACCEPTED: PATRICK MEDIA GROUP, INC.

[Signature]

BY: [Signature]

Address: 3184 J Airway Ave.

TITLE: JAMES G. HUGHES

Costa Mesa, CA 92626-4619

Manager  
Real Estate Department

FORM G 1/87

RIDER

Lessor shall have the right to terminate the Lease at any time during the period of this Lease if the Lessor is to redevelop the property by erecting thereon a permanent, private, commercial or residential complex. Lessee shall remove its sign within sixty (60) days after receipt of written notice from Lessor that the development project has been approved by the City of Sacramento. The Lessor will upon giving such notice of building, return to the Lessee any prepaid rent beyond the effective termination date.

INITIAL  
*[Handwritten Signature]*

\_\_\_\_\_  
\_\_\_\_\_

LESSOR

Broker copy  
returned  
& cc: Tim/Meadows  
9-15-95 jm

ADDENDUM I DATED JULY 19, 1995 TO  
REAL ESTATE LEASE DATED JUNE 1, 1991  
BY AND BETWEEN  
PATRICK MEDIA GROUP, INC., AS "LESSEE"  
AND  
RICHARDS BOULEVARD PARTNERS AS "LESSOR"

Section 2: The following language shall be added to Section 2 of the Lease:

"During the extended term of the Lease Lessee shall pay to Lessor rental of One Thousand Eight Hundred Dollars per year payable in monthly installments of One Hundred Fifty Dollars."

Section 6: Section 6 of the Lease shall be amended as follows:

The second sentence of Section 6 shall be deleted in its entirety and the following shall be added:

"The term of this Lease shall be extended for a period of one year, commencing June 1, 1995 and ending May 31, 1996, provided that Lessee shall have the right to terminate the Lease at the end of any sixty day period upon written notice to Lessor served not less than (60) days prior to the end of such sixty day period. Upon expiration of the extended term, occupancy shall revert to a month-to-month tenancy and will require a thirty (30) day written notice for cancellation by either Lessor or Lessee."

All other terms and conditions of the Lease shall remain in full force and effect.

THE ABOVE TERMS ARE ACKNOWLEDGED AND AGREE TO:

LESSOR:  
Richards Boulevard Partners

LESSEE:  
Patrick Media Group, Inc.

BY: Bruce E. Nett

BY: David McWalters

PRINTED  
NAME: Bruce E. Nett

PRINTED DAVID McWALTERS  
NAME: Manager  
Real Estate Department

DATE: 7-21-95

DATE: 9/11/95

G•R•D•V•E



INVESTMENT  
COMPANY

LESSOR

CO: Jay Meadows

9-22-98

ADDENDUM II DATED SEPTEMBER 4, 1998 TO  
 REAL ESTATE LEASE DATED JUNE 1, 1991  
 AND AMENDED BY ADDENDUM I DATED JULY 19, 1995  
 BY AND BETWEEN  
 PATRICK MEDIA GROUP, INC., AS "LESSEE"  
 AND  
 RICHARDS BOULEVARD PARTNERS, AS "LESSOR"

Section 2: During the extended term of the Lease, specified in Section 6 below, Lessee shall pay to Lessor rental charges as follows:

September 1, 1998 - August 31, 1999:	\$300.00 per month (Base Rent)
September 1, 1999 - August 31, 2000:	CPI Adjusted Base Rent
September 1, 2000 - August 31, 2001:	CPI Adjusted Base Rent

Base Rent adjusted annually based on the annual percentage increase in the CPI Index (U.S. City Average, All Items Series A [1982 - 1984 = 100], Urban Wage Earners and Clerical Workers) from June, 1998 to June, 1999 and each preceeding June thereafter. In no event shall the rent be adjusted downward, regardless of the CPI fluctuation.

Section 6: The term of the Lease shall be extended for a period of three (3) years, commencing September 1, 1998 and ending August 31, 2001.

All other terms and conditions of the Lease shall remain in full force and effect, including Lessor's right to terminate this agreement pursuant to the Rider attached to the Lease.

THE ABOVE TERMS ARE ACKNOWLEDGED AND AGREED TO:

LESSOR:

RICHARDS BOULEVARD PARTNERS

BY: Bruce E. Nott

PRINTED NAME: Bruce E. Nott

DATE: 9-23-98

LESSEE:

PATRICK MEDIA GROUP, INC.

BY: D.C. Sweeney

PRINTED NAME: D.C. Sweeney  
Real Estate Manager  
Northern California Division

DATE: 9-10-98

G·R·O·V·E



INVESTMENT COMPANY



October 24, 2001

RECEIVED

NOV - 1 2001

GROVE INVESTMENT CO.

LESSOR

cc: Patty 11-14-01

Mr. Ernie Gallardo  
Grove Investment Company  
3184 J Airway Avenue  
Costa Mesa, CA 92626-4619

LETTER AGREEMENT  
ADDENDUM III TO LEASE  
DATED JUNE 1, 1991

RE: Lease #44000, Sacramento  
Richards Blvd. SL 795' w/o 6<sup>th</sup> St.

Dear Mr. Gallardo:

This letter is in reference to the advertising structure located on the above described property.

Clear Channel Outdoor, Inc. (CCO) is agreeable to increasing the annual rental to \$4,200.00, payable monthly, effective September 1, 2001. Effective September 1, 2002, the annual rental shall be increased to \$4,380.00, payable monthly. The term of this agreement shall be for two (2) years.

It is agreeable to both parties that CCO will be permitted to illuminate the sign immediately following the installation of a power source at above described property. CCO will either pay for electricity directly to the local provider or will make monthly payments to Lessor based on the current electrical rates, if Lessee is to use Lessor's power source. It is within the sole discretion of Lessor to determine the most efficient means of illuminating the sign. All other terms and conditions of the existing Lease Agreement dated June 10, 1991 shall remain the same.

If this meets with your approval, please sign the original of this letter and return it to this office for processing. The copy is to be retained for your records.

Should you have any questions concerning this arrangement, please contact Patrick Powers at (510) 835-5900. Thank you for your consideration in this matter.

Sincerely,

David G. Sweeney  
Vice President/Real Estate  
Northern California Division

ACCEPTED AND AGREED:

Ernie Gallardo  
Grove Investment Company

510 835-5900 Tel  
834-9410 Fax

Clear Channel Outdoor

1601 Maritime Street • Oakland, CA 94607 • Phone 510.835.5900 • Fax 510.834.9410 • www.clearchannel.com

WORLDWIDE

2 P 298720027862 (WED) NOV 8 2006 11:41/ST.11:40/NO. 6350027862 P

FROM GROVE INV.

SENT BY: RICHARD DICK & ASSOCIATES;  
FROM GROVE INV.

949 631 8813;  
(WED) NOV 8 2006 10:50/ST.

NOV-8-06 3:47PM;

PAGE 7/9

10:49/NO. 6350027860 P 2

(R•D•A•E)



REALTY SERVICES, INC.

March 7, 2005

Mr. Toby Sturek  
Real Estate Manager  
Clear Channel Outdoor/Northern California  
555 12<sup>th</sup> Street, Suite 950  
Oakland, CA 94607

Re: **LEASE ADDENDUM IV**  
**MARCH 2, 2005**  
Lease #44000, Sacramento  
300 Richards Blvd SL 795' w/o 6<sup>th</sup> St.

Dear Mr. Sturek:

Please accept this letter as Richard Boulevard Partners' acceptance of your letter dated March 2, 2005, which amends the existing Lease Agreement referenced above and is henceforth referred to as **LEASE ADDENDUM IV** (Addendum).

Two (2) original copies of the Addendum have been executed and are being returned herewith. This Addendum extends the term of the Lease for two (2) years from March 1, 2005 and increases the annual rent to \$5,100.00, which shall be paid in the amount of \$425.00 per month.

All other terms of the Lease, subject to **Addendum I** dated July 19, 1995; **Addendum II** dated September 4, 1998 and **Addendum III** dated October 24, 2001, shall remain the same.

SENT BY: RICHARD DICK & ASSOCIATES;  
FROM GROVE INV.

949 681 8813;  
(WED)NOV

NOV-8-06 3:47PM;

PAGE 8/9

8 2006 10:50/ST. 10:49/NO. 635002/860 P 3

Mr. Toby Sturek  
October 7, 2005  
Page 2

Please have the two (2) originals signed by Mr. Hooper, President and General Manager of Clear Channel Northern California and return one fully executed copy to the undersigned. Thank you.

Sincerely



Ernest Gallardo, CFO

RECEIVED



MAR 7 2005

GROVE INVESTMENT CO.

MAR 14 2005

GROVE INVESTMENT CO.

March 2, 2005

Mr. Ernest Gallardo  
Grove Realty Services, Inc.  
3184 J Alrway Avenue  
Costa Mesa, CA 92626



RE: Lease #44000, Sacramento  
300 Richards Blvd. SL 795 FT w/o 6<sup>th</sup> Street

Dear Mr. Gallardo,

This letter is in reference to the advertising structure located on the property described above.

Clear Channel Outdoor is agreeable to increasing the annual rental to Five Thousand One Hundred (\$5,100) Dollars, payable monthly, effective March 1, 2005. The term of this agreement shall be two (2) years. All other terms and conditions of the existing Lease Agreement dated June 10, 1991 shall remain the same.

Should this agreement meet with your approval, please sign both letters and return to my office for further processing. We will resend one original signed copy for your records.

Please contact me at (510) 835-5900 should you have any questions.

Sincerely,

Toby Sturek  
Real Estate Manager  
Clear Channel Outdoor/Northern California

Bill Hooper  
President and General Manager  
Clear Channel Outdoor/Northern California

ACCEPTED AND AGREED:

Ernest Gallardo  
Grove Realty Services, Inc.

**GENERAL ASSIGNMENT AGREEMENT**

**FROM:** Richards Boulevard Partners,  
a California general partnership ("Assignor");

**TO:** The City of Sacramento,  
a California \_\_\_\_\_ ("Assignee");

**DATED:** December \_\_\_\_, 2006. ("Effective Date").

**RECITALS**

A. The Assignee is purchasing certain real property commonly known as the Discovery Centre, located at 300 Richards Boulevard in the County of Sacramento, State of California from the Assignor pursuant to the terms of an Agreement of Purchase and Sale and Joint Escrow Instructions dated November \_\_\_\_, 2006 (the "Purchase Agreement").

B. In connection with the sale, the parties wish to provide for the assignment to the Assignee of the Assignor's rights under certain contracts and the assumption by the Assignee of the Assignor's obligations under those contracts.

**AGREEMENT**

The parties agree as follows:

**SECTION 1. ASSIGNMENT TO ASSIGNEE**

The Assignor transfers and assigns to the Assignee, and its successors and assigns, all of the Assignor's right, title, and interest in the contracts and agreements identified on the attached Schedule A (the "Contracts") as of the Effective Date of this Agreement.

**SECTION 2. ASSUMPTION BY ASSIGNEE**

The Assignee accepts the assignment of the Contracts and assumes, from and after the Effective Date, all of the Assignor's obligations pursuant to each of the Contracts, provided, however, that the Assignee does not assume and shall not be responsible for payments due or other obligations arising under the Contracts before the Effective Date. The Assignee agrees to be bound by the terms of the Contracts and to perform all obligations under the Contracts.

**SECTION 3. REPRESENTATIONS AND WARRANTIES**

3.1 The Assignor is not in default under any of the Contracts nor, to the Assignor's best knowledge, does there exist any event that, with notice or the passage of time or both, would constitute a material default or event of default by the Assignor under any of the Contracts.

3.2 The Assignor is not aware of any default by any other party to any of the Contracts or of any event that (whether with or without notice, lapse of time, or both) would constitute a default by any other party with respect to the obligations of that party under any of the Contracts.

3.3 To the knowledge of the Assignor, there are no facts existing that indicate that any of the Contracts may be totally or partially terminated or suspended by the other parties.

3.4 Complete and accurate copies of the Contracts have been delivered to the Assignee.

3.5 The Contracts are assignable and no previous assignment of the Assignor's interest in the Contracts has been made.

3.6 No consents of any third party are required to assign the Contracts to the Assignee. When consent is necessary, all other parties to the Contracts have consented to the assignment of the Contracts to the Assignee without requiring modifications of the Assignor's rights or obligations under the Contracts.

3.7 Each of the Contracts is valid, binding, and enforceable by the Assignor in accordance with its terms and is in full force and effect, subject to bankruptcy, reorganization, insolvency, and other similar laws affecting the enforcement of creditors' rights in general and to general principles of equity (regardless of whether considered in a proceeding in equity or an action at law).

3.8 There is no proceeding or threatened proceeding that would materially interfere with the assignment of any of the Contracts.

**EXECUTED** in counterparts, each of which shall be deemed an original, as of the date first set forth above.

**ASSIGNOR:**

RICHARDS BOULEVARD PARTNERS, a California general partnership

**Sacramento Associates, a  
California general partnership,  
General Partner**

**Grove Investment Company, a  
California general partnership,  
General Partner**

By: \_\_\_\_\_  
Bruce E. Nott, Trustee of the  
Nott Family Trust u/d/t dated  
May 22, 1990, a General Partner

By: \_\_\_\_\_  
Bruce E. Nott, Trustee of the  
Nott Family Trust u/d/t dated  
May 22, 1990, a General Partner

By: Fait B Investments, LLC, a  
California limited liability company,  
a General Partner

By: \_\_\_\_\_  
Barrett C. Fait, Manager

By: Meadows Mobile Homes,  
California general partnership, a  
General Partner

By: \_\_\_\_\_  
James Lee, Trustee of the  
Lee Family Trust w/d/t  
dated 1/30/89, a General  
Partner

By: \_\_\_\_\_  
Barrett C. Fait, a General  
Partner

**ASSIGNEE:**

THE CITY OF SACRAMENTO

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

Approved as to Form:

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

Attested by:

\_\_\_\_\_  
City Clerk

**SCHEDULE A  
CONTRACTS**