



LAFCO MEETING AGENDA

Board Meeting Chambers, 70 West Hedding Street, First Floor

San Jose, CA 95110

February 1, 2017

1:15 PM

CHAIRPERSON: Sequoia Hall • VICE-CHAIRPERSON: TBD

COMMISSIONERS: Sergio Jimenez, Linda J. LeZotte, Rob Rennie, Mike Wasserman, Susan Vicklund Wilson, Ken Yeager

ALTERNATES: Sylvia Arenas, Cindy Chavez, Yoriko Kishimoto, Terry Trumbull

NOTICE TO THE PUBLIC

1. Pursuant to Government Code §84308, no LAFCO commissioner shall accept, solicit, or direct a contribution of more than \$250 from any party, or his/her agent; or any participant or his /or her agent, while a LAFCO proceeding is pending, and for three months following the date a final decision is rendered by LAFCO. Prior to rendering a decision on a LAFCO proceeding, any LAFCO commissioner who received a contribution of more than \$250 within the preceding 12 months from a party or participant shall disclose that fact on the record of the proceeding. If a commissioner receives a contribution which would otherwise require disqualification returns the contribution within 30 days of knowing about the contribution and the proceeding, the commissioner shall be permitted to participate in the proceeding. A party to a LAFCO proceeding shall disclose on the record of the proceeding any contribution of more than \$250 within the preceding 12 months by the party, or his or her agent, to a LAFCO commissioner. For forms, visit the LAFCO website at www.santaclaralafco.org. No party, or his or her agent and no participant, or his or her agent, shall make a contribution of more than \$250 to any LAFCO commissioner during the proceeding or for 3 months following the date a final decision is rendered by LAFCO.
2. Pursuant to Government Code Sections 56100.1, 56300, 56700.1, 57009 and 81000 et seq., any person or combination of persons who directly or indirectly contribute(s) a total of \$1,000 or more or expend(s) a total of \$1,000 or more in support of or in opposition to specified LAFCO proposals or proceedings, which generally include proposed reorganizations or changes of organization, may be required to comply with the disclosure requirements of the Political Reform Act (See also, Section 84250 et seq.). These requirements contain provisions for making disclosures of contributions and expenditures at specified intervals. More information on the scope of the required disclosures is available at the web site of the FPPC: www.fppc.ca.gov. Questions regarding FPPC material, including FPPC forms, should be directed to the FPPC's advice line at 1-866-ASK-FPPC (1-866-275-3772).
3. Pursuant to Government Code §56300(c), LAFCO adopted lobbying disclosure requirements which require that any person or entity lobbying the Commission or Executive Officer in regard to an application before LAFCO must file a declaration prior to the hearing on the LAFCO application or at the time of the hearing if that is the initial contact. In addition to submitting a declaration, any lobbyist speaking at the LAFCO hearing must so identify themselves as lobbyists and identify on the record the name of the person or entity making payment to them. Additionally every applicant shall file a declaration under penalty of perjury listing all lobbyists that they have hired to influence the action taken by LAFCO on their application. For forms, visit the LAFCO website at www.santaclaralafco.org.
4. Any disclosable public records related to an open session item on the agenda and distributed to all or a majority of the Commissioners less than 72 hours prior to that meeting are available for public inspection at the LAFCO Office, 70 W. Hedding Street, 11th Floor, San Jose, California, during normal business hours. (Government Code §54957.5.)
5. In compliance with the Americans with Disabilities Act, those requiring accommodation for this meeting should notify the LAFCO Clerk 24 hours prior to the meeting at (408) 993-4705.

70 West Hedding Street • 11th Floor, East Wing • San Jose, CA 95110 • (408) 993-4713 • www.santaclaralafco.org

COMMISSIONERS: Sequoia Hall, Sergio Jimenez, Linda J. LeZotte, Rob Rennie, Mike Wasserman, Susan Vicklund Wilson, Ken Yeager

ALTERNATE COMMISSIONERS: Sylvia Arenas, Cindy Chavez, Yoriko Kishimoto, Terry Trumbull

EXECUTIVE OFFICER: Neelima Palacherla

1. **ROLL CALL**
2. **WELCOME NEW LAFCO COMMISSIONERS**
3. **APPOINTMENT OF 2017 VICE-CHAIRPERSON**

Staff Recommendation

Appoint a commissioner to serve as the Vice-Chairperson for 2017.

4. **PUBLIC COMMENTS**

This portion of the meeting provides an opportunity for members of the public to address the Commission on matters not on the agenda, provided that the subject matter is within the jurisdiction of the Commission. No action may be taken on off-agenda items unless authorized by law. Speakers are limited to THREE minutes. All statements that require a response will be referred to staff for reply in writing.

5. **APPROVE MINUTES OF DECEMBER 7, 2016 LAFCO MEETING**

CLOSED SESSION

The Commission will recess into Closed Session to discuss Item No. 6 and reconvene into Open Session to consider the remainder of the Agenda.

6. **CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION**

Conference with Legal Counsel - Initiation of litigation pursuant to Government Code 54956.9(d)(4) (1 case)

7. **REPORT FROM THE CLOSED SESSION**

PUBLIC HEARING

8. Continued from October 5, 2016 and December 7, 2016 Meetings:

**MONTE SERENO URBAN SERVICE AREA AND SPHERE OF INFLUENCE
AMENDMENT 2016 (LUCKY ROAD)**

Proposal to expand Monte Sereno's Urban Service Area (USA) and Sphere of Influence (SOI) boundaries to include approximately 7.4 acres of land, located along Lucky Road.

POSSIBLE ACTIONS

Staff Recommended Project Action:

1. Deny the proposed Monte Sereno USA/SOI amendment.

Other Possible Project Actions:

2. Approve the USA/SOI amendment.
3. Approve the USA/SOI amendment conditioned on the City annexing its three remaining unincorporated islands

CEQA Action

1. Denial of the project does not require a CEQA action.

In order to approve the project, LAFCO as a Responsible Agency under CEQA, must take the following actions regarding the Mitigated Negative Declaration for this project:

- a. Find that the Initial Study and Mitigated Negative Declaration approved by the City of Monte Sereno on September 3, 2013 were completed in compliance with CEQA and are an adequate discussion of the environmental impacts of the project.
- b. Find that prior to making a decision on this project, LAFCO reviewed and considered the environmental effects of the project as outlined in the Initial Study and Mitigated Negative Declaration.

9. JARDIN DRIVE URBAN SERVICE AREA / SPHERE OF INFLUENCE AMENDMENT AND REORGANIZATION 2016

Proposal to amend the USA and SOI boundaries between Los Altos and Mountain View; and detach approximately 1.2 acres of land located along Jardin Drive from Mountain View, and to annex the territory to Los Altos and the County Library Services Area.

POSSIBLE ACTIONS

CEQA Action

1. As a Responsible Agency under CEQA, determine that the proposal is exempt from the provisions of CEQA pursuant to State CEQA Guidelines Section 15319.

Staff Recommended Project Action:

2. Approve the USA/SOI amendment between the cities of Mountain View and Los Altos, along Jardin Drive.
3. Approve the detachment of approximately 1.2 acres of land (APNs 170-22-002, 003, 004, 005, 006, 007, and a portion of APN 170-22-087), located on Jardin Drive, from the City of Mountain View and approve its concurrent annexation to the City of Los Altos and to the County Library Services Area, conditioned on disconnecting water service from Mountain View Municipal Water System and connecting to California Water Service Company.
4. Waive protest proceedings in accordance with Government Code Section 56663.

ITEMS FOR ACTION / INFORMATION

10. SETTLEMENT AGREEMENT BETWEEN LAFCO AND THE CITY OF MORGAN HILL REGARDING THE CITY'S GENERAL PLAN EIR**Staff Recommendation**

Authorize General Counsel to execute the Settlement Agreement.

11. EXECUTED LEASE AGREEMENT FOR LAFCO OFFICE SPACE

For Information Only.

12. FINANCE COMMITTEE FOR FISCAL YEAR 2017-2018**Staff Recommendation**

Establish a committee composed of three commissioners to work with staff to develop and recommend the proposed FY 2017-2018 LAFCO budget for consideration by the full commission.

13. EXECUTIVE OFFICER'S REPORT**13.1 NEW REPORTING REQUIREMENT FOR CERTAIN JOINT POWERS AUTHORITIES**

For Information Only.

13.2 UPDATE ON MHUSD'S POTENTIAL PLANS TO PURCHASE LANDS IN SOUTHEAST QUADRANT FOR FUTURE SCHOOL SITES AND FACILITIES

For Information Only.

13.3 MEETING WITH CALIFORNIA HIGH SPEED RAIL AUTHORITY STAFF

For Information Only.

13.4 SANTA CLARA COUNTY SPECIAL DISTRICTS ASSOCIATION MEETING

For Information Only.

13.5 SANTA CLARA COUNTY ASSOCIATION OF PLANNING OFFICIALS (SCCAPO) MEETING

For Information Only.

13.6 BAY AREA LAFCOS MEETING

For Information Only.

13.7 INTER-JURISDICTIONAL GIS WORKING GROUP MEETING

For Information Only.

14. CALAFCO RELATED ACTIVITIES

14.1 2017 CALAFCO STAFF WORKSHOP

Recommended Action: Authorize staff to attend the 2017 CALAFCO Staff Workshop and authorize travel expenses funded by the LAFCO budget.

14.2 REPORT ON THE CALAFCO LEGISLATIVE COMMITTEE MEETING

For Information Only.

15. PENDING APPLICATIONS / UPCOMING PROJECTS

16. COMMISSIONER REPORTS

17. NEWSPAPER ARTICLES / NEWSLETTERS

- CALAFCO Quarterly, January 2017

18. WRITTEN CORRESPONDENCE

17. ADJOURN

Adjourn to the regular LAFCO meeting on April 12, 2017 at **10:00 AM** in the Board Meeting Chambers, 70 West Hedding Street, San Jose.



LAFCO MEETING: February 1, 2017
TO: LAFCO
FROM: Neelima Palacherla, Executive Officer
Dunia Noel, Analyst
Emmanuel Abello, Clerk
SUBJECT: WELCOME NEW COMMISSIONERS

For Information Only

In early January 2017, the City of San Jose appointed Sergio Jimenez (Councilmember, City of San Jose) as the regular LAFCO member; and Sylvia Arenas (Councilmember, City of San Jose) as the alternate LAFCO member. Commissioner Jimenez replaces Commissioner Ash Kalra whose term on the San Jose City Council ended in December 2016. Alternate Commissioner Arenas replaces Alternate Commissioner Peralez (Councilmember, City of San Jose). Commissioner Jimenez's term on LAFCO expires on May 31, 2020 and Alternate Commissioner Arenas' term expires on May 31, 2020.

In January 2017, the Santa Clara County Cities Selection Committee appointed Alternate Commissioner Rob Rennie (Councilmember, City of Los Gatos) as the regular LAFCO member. Commissioner Rennie replaces Commissioner Martin-Milius whose term on the Sunnyvale City Council ended in early January 2017. Commissioner Rennie's term expires on May 31, 2020. The Alternate Cities member position is currently vacant. The Cities Selection Committee is scheduled to make the appointment on February 9, 2017.

LAFCO MEETING: February 1, 2017
TO: LAFCO
FROM: Neelima Palacherla, Executive Officer
Dunia Noel, Analyst
SUBJECT: APPOINTMENT OF 2017 VICE-CHAIRPERSON

RECOMMENDATION

Appoint a commissioner to serve as the Vice-Chairperson for 2017.

BACKGROUND

Pursuant to the LAFCO bylaws, the rotation schedule is as follows unless otherwise determined by the Commission:

- Cities member
- County member
- San Jose member
- Special Districts member
- County member
- Public member
- Special Districts member

As was noted at the December 7, 2016 LAFCO meeting, over the last few years, LAFCO has experienced frequent changes in its membership resulting in the need for deviation from the adopted chair rotation schedule in order to allow new commissioners adequate time to gain knowledge and experience on LAFCO matters, before serving as LAFCO Chairperson. For example:

- In February 2015, deviating from the rotation schedule, LAFCO appointed the County member (Mike Wasserman) as Chair for 2015; and the Cities member (Cat Tucker) as Vice-Chair, because the Cities member was newly appointed to LAFCO.
- In December 2015, to evenly distribute the Chair responsibilities amongst the members, LAFCO appointed Cat Tucker, the Cities member, as Chair for 2016; and Mike Wasserman, County member, as Vice-Chair for 2016.
- On May 31, 2016, Chair Tucker's term on LAFCO ended, resulting in the need for LAFCO to appoint a commissioner to serve as Chair for the remaining part of 2016. In June 2016, LAFCO once again appointed Mike Wasserman, the County

member, as Chair for the remainder of 2016 and appointed Tara Martin-Milius, the newly appointed Cities member, as Vice-Chair for the remainder of 2016.

Per the above rotation schedule, the LAFCO Chairperson for 2017 would be the San Jose member and the LAFCO Vice-Chairperson for 2017 would be the Special Districts member. However, at its December 7th meeting, LAFCO appointed the Special Districts member (Commissioner Hall) as LAFCO Chairperson for 2017, as there was no commissioner present from the City of San Jose. The Commission deferred the appointment of Vice-Chairperson for 2017 to the February 2017 LAFCO meeting.

Motion: LeZotte

Second: Hall

AYES: Hall, LeZotte, Milius, Wasserman, Wilson

NOES: None

ABSTAIN: None

ABSENT: Yeager

MOTION PASSED

7. APPROVE MINUTES OF OCTOBER 17, 2016 SPECIAL LAFCO MEETING

The Commission approved the minutes of October 17, 2016 Special LAFCO meeting.

Motion: LeZotte

Second: Hall

AYES: Hall, LeZotte, Milius, Wasserman, Wilson

NOES: None

ABSTAIN: None

ABSENT: Yeager

MOTION PASSED

Upon the order of the Chairperson, there being no objection, the Commission adjourned to Closed Session at 1:25 p.m., and considered the Agenda Item Nos. 8 and 9.

8. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION

Conference with Legal Counsel - Initiation of litigation pursuant to Government Code 54956.9(d)(4) (1 case)

9. CONFERENCE WITH REAL PROPERTY NEGOTIATORS

Real Property: 777 North First Street, Suites 400, 410, and 415, San Jose, CA 95112

Agency Negotiator: Neelima Palacherla

Negotiating Parties: Steve Botto

Under Negotiation: Price and terms of payment

The Commission reconvened to an open meeting at 1:52 p.m., and considered the remainder of the agenda.

10. REPORT FROM THE CLOSED SESSION

LAFCO Counsel Mala Subramanian informed that there is no report from the Closed Session.

11. Continued from October 5, 2016: MONTE SERENO URBAN SERVICE AREA (USA) AND SPHERE OF INFLUENCE (SOI) AMENDMENT 2016 (LUCKY ROAD)

Chairperson Wasserman indicated that the applicant has requested that the Commission continue the public hearing to February 1, 2017. He then determined that there is no request from members of the public to speak on the item.

Chairperson Wasserman proposed that the agenda, in addition to the staff recommendation, indicate all other possible actions. **Commissioner Wilson** informed there has been a discussion in the past about the format of the agenda and it was determined that only those actions that are possible under the LAFCO policies and guidelines be included in order to avoid confusion. **Chairperson Wasserman** suggested the agenda should indicate possible options for the Commission's consideration. Ms.

Palacherla informed that the staff report includes possible actions available to the Commission, including detailed discussion about each of the options and the reasons why staff is or is not recommending them. **Chairperson Wasserman** noted that while all the possible actions are discussed in the staff report, the agenda includes only the recommended action. He expressed agreement with Commissioner Wilson to omit actions that are not legally possible under LAFCO policies but he proposed that the agenda indicate "possible action" instead of "project action."

The Commission continued the public hearing to February 1, 2017.

Motion: Hall

Second: LeZotte

AYES: Hall, LeZotte, Milius, Wasserman, Wilson

NOES: None

ABSTAIN: None

ABSENT: Yeager

MOTION PASSED

12. LAFCO OFFICE SPACE: AUTHORIZATION TO LEASE PRIVATE OFFICE SPACE

Chairperson Wasserman determined that no member of the public has requested to speak on the item.

The Commission authorized the Executive Officer to execute a lease agreement for office space at 777 North First Street for a five-year lease term, not to exceed a total cost of \$225,000 and subject to review and approval by LAFCO Counsel. The executed lease agreement will be placed on the next LAFCO agenda for information purposes.

The Commission authorized the expenditure of an additional \$10,000, to fund information technology / telephone services for the new office space.

Motion: Wilson

Second: Milius

AYES: Hall, LeZotte, Milius, Wilson

NOES: Wasserman

ABSTAIN: None

ABSENT: Yeager

MOTION PASSED

13. EXECUTIVE OFFICER'S REPORT

13.1 UPDATE ON THE SANTA CLARA VALLEY CLIMATE & AGRICULTURE PROTECTION PROGRAM (CAPP)

Ms. Palacherla presented the staff report.

Commissioner LeZotte inquired about participation of the Santa Clara Valley Habitat Agency (SCVHA) in the CAPP. Ms. Palacherla informed that LAFCO is not involved in the planning of the CAPP meetings and is unaware if SCVHA is participating in other CAPP activities. **Chairperson Wasserman** informed that the County and Santa Clara Valley Open Space Authority (OSA) could invite SCVHA to make a presentation at a CAPP meeting.

In response to an inquiry by **Commissioner Wilson**, Ms. Palacherla briefly described the various working groups that the County and OSA have established to gather expert and stakeholder input to CAPP. She reported that Rob Eastwood, County Planning Manager, has indicated that as part of the CAPP process, a more detailed ag lands mapping will be available in January 2017 for review by stakeholders.

AGENDA ITEM # 8

**MONTE SERENO URBAN SERVICE AREA (USA) AND
SPHERE OF INFLUENCE (SOI) AMENDMENT 2016
(LUCKY ROAD)**

The documents for this item were provided separately as follows:

October 5, 2016 Agenda Packet

- Staff Report
- Supplemental Information

December 7, 2016 Agenda Packet

- Correspondence from the applicant
- Comment letters

All the documents related to this application are available at:

www.santaclaralafco.org/documents/MonteSerenousA2016.pdf

LAFCO MEETING: February 1, 2017
TO: LAFCO
FROM: Neelima Palacherla, Executive Officer
Dunia Noel, Analyst
SUBJECT: JARDIN DRIVE URBAN SERVICE AREA / SPHERE OF INFLUENCE
AMENDMENT AND REORGANIZATION 2016

STAFF RECOMMENDATION

CEQA Action

1. As a Responsible Agency under CEQA, determine that the proposal is exempt from the provisions of CEQA pursuant to State CEQA Guidelines Section 15319.

Proposal

2. Approve the urban service area (USA) and sphere of influence (SOI) amendment between the cities of Mountain View and Los Altos along Jardin Drive as depicted in **Attachment A**.
3. Approve the detachment of approximately 1.2 acres of land (APNs 170-22-002, 003, 004, 005, 006, 007, and a portion of APN 170-22-087), located on Jardin Drive, from the City of Mountain View and approve its concurrent annexation to the City of Los Altos and to the County Library Services Area, as depicted in Exhibit A and Exhibit B of **Attachment B**, conditioned on disconnecting water service from Mountain View Municipal Water System and connecting to California Water Service Company.
4. Waive protest proceedings in accordance with Government Code Section 56663.

PROJECT DESCRIPTION

The City of Los Altos is seeking an amendment to the urban service area (USA) and sphere of influence (SOI) boundaries between the cities of Los Altos and Mountain View in order to detach approximately 1.2 acres comprising six properties (APNs 170-22-0002, 003, 004, 005, 006, and 007) and a portion of a seventh property (APN 170-22-087); from the City of Mountain View and to annex the properties to the City of Los Altos and the County Library Services Area, as requested by the property owners and supported by the City Councils of Mountain View and Los Altos. The remaining portion of APN 170-22-087 is currently within the City limits of Los Altos. Please see attached map depicting the proposal area. (**Attachment A**)

The proposed detachment/annexation is intended to eliminate confusion and/or delays in public service such as emergency services, sewer, street maintenance, and solid waste, caused by the incongruent jurisdictional boundaries and comingled public services in the area. Because the subject properties are currently within the SOI and USA of the City of Mountain View, such a detachment / annexation proposal (known as a reorganization proposal) would first require an USA/SOI amendment in order to include the properties in the USA/SOI of Los Altos.

BACKGROUND

The proposal area is surrounded by Los Altos on three sides and comprises 6 parcels that are currently located on the south side of Jardin Drive between Avalon Drive and Alicia Way, within the City of Mountain View. The proposal area also includes a portion of a seventh parcel located in Mountain View – the remaining portion of the parcel is within the City of Los Altos. These are the only parcels on the south side of Jardin Drive that are within the City of Mountain View. This has resulted in inconsistent addresses along Jardin Drive, due to which, according to the property owners, emergency service providers have had difficulties locating their properties. This has also resulted in confusion regarding the provision of garbage hauling service. Even though the half-street in front of the subject properties is within Mountain View city limits, the City of Los Altos has maintained and improved that part of the street along with the remaining portion of Jardin Drive. While the subject properties are in Mountain View jurisdiction and receive most services from Mountain View, they are served by the Los Altos sewer system.

As noted in the City's staff report, the proposal area was annexed into the City of Mountain View in 1951, shortly after properties on the north side of Jardin Drive were annexed and subdivided. In 1952 the surrounding land to the south, east, and west was incorporated into Los Altos.

Existing and Proposed Landuse Designations

All of the properties within the proposal area are developed with single family homes. The current General Plan designation for the area is Low Density Residential and the zoning designation is R1 Single Family. The City of Los Altos applied a General Plan designation of Single Family Small Lot, and a pre-zoning designation of R1-10 Single Family to the proposal area.

Detachment of Territory from Mountain View

Government Code Section 56751 requires that applications for reorganizations involving detachment of territory from a city be placed on the agenda of the next LAFCO meeting for informational purposes and requires a copy of the proposal to be forwarded to the city from which the detachment is requested. The law provides that if within 60 days of placing the item on the LAFCO agenda, the city adopts and transmits a resolution to LAFCO requesting termination of proceedings, then LAFCO must terminate the proceedings. The proposal for Jardin Drive Reorganization was placed on the December 2016 LAFCO Agenda as an informational item. The Mountain View City Council

adopted Resolution #18022 on January 26, 2016, supporting the proposed detachment from the City of Mountain View and annexation of the territory to the City of Los Altos.

Public Hearing Notice

Mailed notice of this item was provided to all landowners and registered voters within the affected territory and to all landowners and registered voters within 300 feet of the affected territory of the reorganization proposal, pursuant to Government Code Section 56157.

ENVIRONMENTAL ASSESSMENT

The City of Los Altos is the Lead Agency under the California Environmental Quality Act (CEQA) for the proposal. Per City Resolution No. 2016-26, adopted by the Los Altos City Council on August 23, 2016, the City determined that the proposed project is exempt under State CEQA Guidelines Section 15319, whereby CEQA provides that annexations to a city of areas containing existing public or private structures developed to the densities allowed by the current zoning or pre-zoning of either the gaining or losing governmental agency, provided that the extension of utility services to the existing development would have a capacity to serve only the existing development. The subject properties are built-out to the maximum permissible densities and are presently served by public utilities.

LAFCO is a Responsible Agency under CEQA for the USA/SOI amendment proposal and for the reorganization that includes detachment from Mountain View, annexation to Los Alto, and annexation to the County Library Services Area. LAFCO has determined that its approval of the proposal is exempt from the provisions of CEQA pursuant to State CEQA Guidelines Section 15319.

CONSISTENCY WITH LAFCO POLICIES

Conversion of / Impacts to Prime Agricultural Lands and Open Space

The proposal area does not contain open space or prime agricultural lands as defined in the Cortese Knox Hertzberg Act. Therefore the USA/ SOI amendment and the reorganization proposal will not impact agricultural or open space land.

Logical, Orderly and Efficient Boundaries

The subject area is surrounded by the City of Los Altos on three sides. The proposed detachment from the City of Mountain View and annexation to the City of Los Altos would create logical boundaries and allow all properties on the south side of Jardin Drive to be within a single jurisdiction. The County Surveyor has determined that the boundaries of the Jardin Drive reorganization are definite and certain and in compliance with LAFCO's road annexation policies. The proposal does not split lines of assessment or ownership. The proposal does not create islands or areas in which it would be difficult to provide municipal services.

Ability of City to Provide Urban Services

The USA/ SOI amendment will allow for detachment of the subject parcels from the City of Mountain View and allow for annexation to Los Altos and the County Library Service Area. The following table summarizes the changes in service providers that would occur as a result of the reorganization.

CHANGE IN SERVICE PROVIDERS

SERVICE	CURRENT SERVICE PROVIDER	SERVICE PROVIDER UPON REORGANIZATION
WATER	City of Mountain View	California Water Service Company
POLICE/ TRAFFIC ENFORCEMENT	City of Mountain View	City of Los Altos
SEWER	City of Los Altos	No change
STORM WATER	City of Mountain View	City of Los Altos
LIBRARY	City of Mountain View	County Library
FIRE PROTECTION	City of Mountain View	City of Los Altos by contract with SCCFPD
SOLID WASTE	City of Mountain View	City of Los Altos
ANIMAL SERVICES	City of Mountain View	City of Los Altos
STREET SWEEPING	City of Mountain View	City of Los Altos
SCHOOLS	Los Altos Elementary School District; Los Altos-Mountain View Union High School District	No change

As noted in the table above, the proposal area is currently receiving urban level services from various providers.

The properties in the proposal area currently receive water service from Mountain View’s municipal water system. Los Altos is served by a private water company, California Water Service Company (CalWater). In order to eliminate service provider inconsistency, both the cities have requested that the reorganization be conditioned upon the properties disconnecting from Mountain View’s municipal water system and connecting to CalWater. The property owners have entered into an agreement with CalWater under which CalWater has agreed to extend its existing mains and provide water service to the properties; and the property owners have agreed to pay CalWater an amount of \$161,119 which is the estimated cost of the extension.

The properties in the proposal area currently receive sewer service from the City of Los Altos, even though they are located within Mountain View. There will be no change in sewer service provision as a result of annexation to the City of Los Altos.

Upon annexation, the responsibility for providing fire protection services would transfer to the City of Los Altos which currently contracts with the Santa Clara County Central Fire Protection District (SCCFPD) for fire protection services. The SCCFPD would provide fire protection to the area upon annexation.

The City of Los Altos receives library service from the Santa Clara County Library and is within the County Library Service Area boundary. The proposal area currently receives library service from the City of Mountain View which is not within the County Library Service Area. Although the County Library Service Area currently does not serve any function since it has not been levying assessments since 2005 when its benefit assessment expired, the County Controller's Office uses the County Library Service Area to define the boundaries of the County Library's property taxing authority. The City of Los Altos is requesting concurrent annexation of the proposal area (per Resolution 94-11) to the County Library Service Area.

The City of Los Altos prepared a financial analysis of the expected revenues and expenses resulting from annexation of the proposal area. The City determined that the costs associated with providing city services to the subject properties is minimal.

Growth Inducing Impacts

The USA/SOI amendment and reorganization of the properties on Jardin Drive will not result in any growth inducing impacts. The area is fully developed. The proposed General Plan and zoning designations for the proposal area closely mirror the current land uses / development pattern and existing land use regulations.

Fiscal Impact to the Cities of Mountain View and Los Altos

The City of Mountain View currently receives approximately \$9,400 in property tax revenue from the proposal area. The County Controller's Office has indicated that upon reorganization and transfer of service responsibility, the same property tax revenue will be split between the City of Los Altos (approximately \$7,000) and the County Library Services Area (approximately \$1,800) and other miscellaneous districts.

No significant fiscal impacts are projected for affected agencies as a result of this USA/SOI amendment and reorganization.

SOI DETERMINATIONS

Pursuant to Government Code Section 56425, in amending a SOI for an agency, LAFCO is required to make written findings regarding the following:

- 1. Present and planned land uses in the area, including agricultural and open space lands.**

Present land uses in the area include single family residential uses. The area is fully developed with urban uses and services and there are no agricultural or open space lands within the proposal area.

2. Present and probable need for public services and facilities in the area

The area currently receives public services such as sewer, water, solid waste disposal, storm drainage and police and fire protection services from various providers. There is no expected change in the need for public services or facilities in the area.

3. The present capacity of public facilities and adequacy of public services that the agency provides or is authorized to provide

The present capacity of public facilities and public services appears to be adequate for the area. No new facilities are required to serve this area.

4. Existence of any social or economic communities of interest in the area, if LAFCO determines they are relevant to the agency

The area is surrounded by the City of Los Altos on three sides and as represented by the community, there is a service and economic interaction between the City of Los Altos and the area.

5. The present and probable need for sewer, municipal and industrial water or structural fire protection services or facilities in disadvantaged unincorporated communities within the existing sphere of influence.

There are no disadvantaged unincorporated communities within the existing sphere of influence of the City of Los Altos.

WAIVER OF LAFCO PROTEST PROCEEDING FOR JARDIN DRIVE REORGANIZATION

The Jardin Drive reorganization proposal area is considered inhabited territory (12 or more registered voters reside in the area), and all property owners in the proposal area have consented to the proposal. Pursuant to Government Code section 56663, LAFCO may waive protest proceedings if:

1. Mailed notice is provided to landowners and registered voters disclosing that unless written opposition to the proposal is received before the conclusion of the LAFCO proceedings, LAFCO intends to waive protest proceedings. The notice must also disclose that there is a potential for the extension or continuation of any previously authorized charge, fee, assessment, or tax by the local agency in the affected territory.
2. No written opposition to the proposal is received before the conclusion of the LAFCO proceedings.

LAFCO has provided the landowners and registered voters in the proposal area with notice including the required disclosures. To date, LAFCO has not received any written opposition to the proposal.

CONCLUSION

The owners of the subject properties have requested detachment from the City of Mountain View and annexation to the City of Los Altos in order to receive more consistent public, emergency and utility services. Both the cities of Mountain View and

Los Altos support this request which would clarify the boundary between the two cities and reduce confusion in delivery of emergency services, and clarify street maintenance, sewer service and garbage hauling responsibilities. The City of Los Altos has indicated that it has the ability to serve the subject properties and the property owners have entered into an agreement with CalWater for water service extension.

In the interest of ensuring logical boundaries and promoting efficient service delivery, staff recommends approval of the proposed USA / SOI amendment to facilitate the proposed detachment from Mountain View and annexation to Los Altos and the County Library Service Area, conditioned on the subject properties disconnecting from Mountain Municipal Water system and connecting to CalWater.

NEXT STEPS

Should LAFCO approve this reorganization proposal, upon receipt of documentation from the City of Los Altos that the subject properties have been disconnected from the Mountain View Municipal Water System and have been connected to CalWater, LAFCO will prepare and record a Certificate of Completion. The detachment from the City of Mountain View and annexation to the City of Los Altos becomes effective on the date the Certificate of Completion is recorded.

ATTACHMENTS

- Attachment A: Map of Proposed USA/SOI Amendment
- Attachment B: Legal description (Exhibit A) and Map (Exhibit B) of proposed Jardin Drive Reorganization 2016.

Jardin Drive Reorganization and Los Altos U.S.A./S.O.I. Amendment 2016

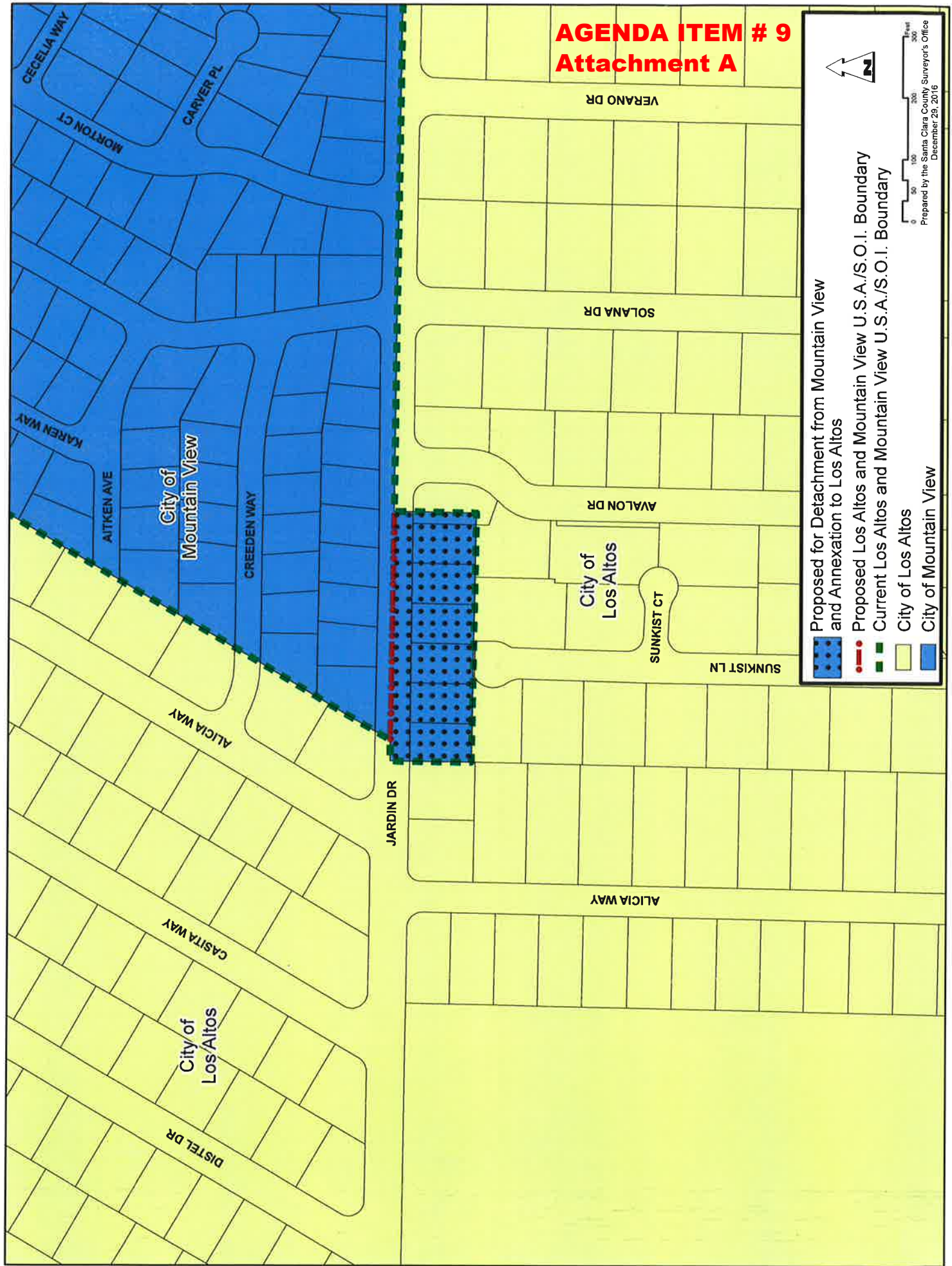


EXHIBIT "A"
JARDIN DRIVE REORGANIZATION 2016
GEOGRAPHIC DESCRIPTION

AGENDA ITEM # 9
Attachment B

ALL THAT CERTAIN REAL PROPERTY SITUATE IN THE CITY OF MOUNTAIN VIEW, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

PORTION OF SECTION 29, TOWNSHIP 6 SOUTH RANGE 2 WEST, M.D.B. & M., DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE WESTERLY LINE OF THAT 12.274 ACRE TRACT CONVEYED TO GEORGE JOHN DYMESICH, ET UX, BY DEED RECORDED JANUARY 16, 1945, BOOK 1243 OFFICIAL RECORDS, PAGE 121, WHICH BEARS NORTH 0° 02' EAST, ALONG SAID WESTERLY LINE 181.84 FEET FROM THE INTERSECTION THEREOF WITH THE NORTHERLY LINE OF TRACT NO. 687 ORCHARD MANOR NO. 2 MAP OF WHICH WAS FILED MARCH 20, 1950, BOOK 26 OF MAPS, PAGE 48, SANTA CLARA COUNTY RECORDS, SAID POINT OF BEGINNING ALSO BEING THE POINT OF INTERSECTION OF SAID WESTERLY LINE OF SAID 12.274 ACRE TRACT WITH THE SOUTHERLY LINE OF A 30 FOOT STRIP OF LAND (KNOWN AS JARDIN DRIVE) CONVEYED TO THE CITY OF MOUNTAIN VIEW, BY DEED RECORDED OCTOBER 16, 1951, BOOK 2300 OFFICIAL RECORDS, PAGE 198 AND BEING ON THE EXISTING LOS ALTOS CITY LIMITS ESTABLISHED BY THE ORIGINAL INCORPORATION OF SAID CITY;

(1) THENCE NORTH 0° 02' 00" EAST, 30.00 FEET ALONG SAID CITY LIMITS TO THE CENTER LINE OF SAID JARDIN DRIVE;

(2) THENCE ALONG SAID CENTER LINE OF JARDIN DRIVE NORTH 89°36'00" EAST, 34.55 FEET;

THENCE LEAVING SAID CITY LIMITS AND CONTINUING ALONG SAID CENTER LINE OF SAID JARDIN DRIVE (3) NORTH 89° 36'00" EAST, 370.03 FEET TO A POINT ON THE EXISTING CITY LIMITS ESTABLISHED BY SAID ORIGINAL INCORPORATION;

(4) THENCE SOUTH 0° 02' 00" WEST, 30.00 FEET ALONG SAID CITY LIMITS TO THE SOUTHERLY LINE OF SAID 30 FOOT STRIP OF LAND (KNOWN AS JARDIN DRIVE);

(5) THENCE SOUTH 0° 02' 00" WEST, 100.00 FEET;

(6) THENCE SOUTH 89° 36'00" WEST AND PARALLEL WITH SAID SOUTHERLY LINE OF THE 30 FOOT STRIP (KNOWN AS JARDIN DRIVE), 404.58 FEET

(7) THENCE NORTH 0° 02' 00" EAST ALONG SAID WESTERLY LINE OF THE 12.274 ACRE TRACT 100.00 FEET TO THE POINT OF BEGINNING AND CONTAINING 1.207 ACRES OF LAND MORE OR LESS

DISCLAIMER:

FOR ASSESSMENT PURPOSES ONLY. THIS DESCRIPTION OF LAND IS NOT A LEGAL PROPERTY DESCRIPTION AS DEFINED IN THE SUBDIVISION MAP ACT AND MAY NOT BE USED AS A BASIS FOR AND OFFER FOR SALE OF THE LAND DESCRIBED.



BY: LOUIS WADE HAMMOND PLS

A handwritten signature in black ink, appearing to read "L Wade Hammond", written over a horizontal line.

10-18-2016
 1"=60'
 12-19-2016
 REV.

POINT OF BEGINNING

EXHIBIT "B"
JARDIN DR.
REORGANIZATION 2016
 PORTION OF SECTION 29,
 TOWNSHIP 6 SOUTH RANGE
 2 WEST, M.D.B. & M

AREA: 1.207 ACRES+-

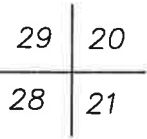
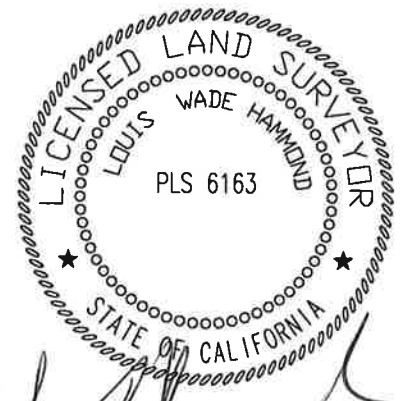
Line Table

Line no.	Length	Direction
1	30.00'	N0°02'00"E
2	34.55'	N89°36'00"E
3	370.03	N89°36'00"E
4	30.00'	S0°02'00"W
5	100.00'	S0°02'00"W
6	404.58'	S89°36'00"W
7	100.00'	N0°02'00"E

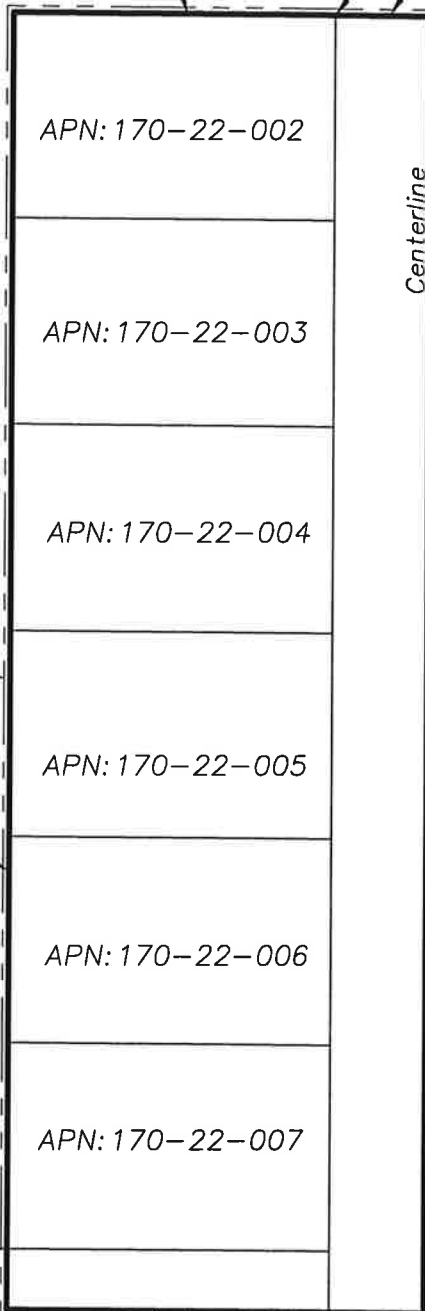
LEGEND

-  PROPOSED BOUNDARY
-  EXISTING CITY OF LOS ALTOS BOUNDARY

DISCLAIMER:
 FOR ASSESSMENT PURPOSES ONLY. THIS
 DESCRIPTION OF LAND IS NOT A LEGAL
 PROPERTY DESCRIPTION AS DEFINED IN THE
 SUBDIVISION MAP ACT AND MAY NOT BE
 USED AS A BASIS FOR AND OFFER FOR
 SALE OF THE LAND DESCRIBED.

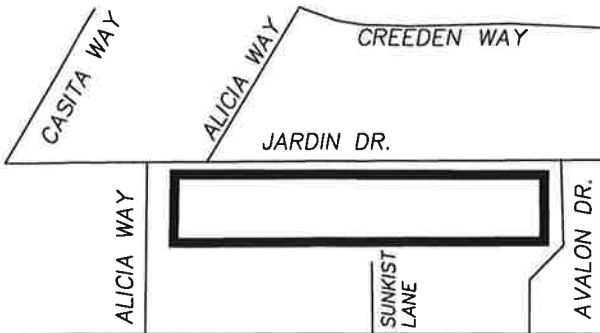


EXISTING LOS ALTOS
 CITY LIMITS
 ESTABLISHED BY
 ORIGINAL
 INCORPORATION



APN: 170-22-087
 AVALON DR.
 (56' WIDE)

LOCATION MAP



L. Wade Hammond
 Licensed Land Surveyor No. 6163
 36660 Newark Blvd. Suite C
 Newark, California 94560
 Tel: (510) 579-6112 Fax: (510) 991-8054
 wade@wh.landsurveyor.com



BEST BEST & KRIEGER
ATTORNEYS AT LAW

Memorandum

To: LAFCO
FROM: Mala Subramanian, General Counsel
DATE WRITTEN: January 25, 2017
RE: Settlement Agreement between LAFCO and the City of Morgan Hill regarding the City's General Plan EIR

Background

The City of Morgan Hill ("City") prepared an Environmental Impact Report for its proposed 2035 General Plan Update ("General Plan EIR"). Consistent with LAFCO's duties as a responsible agency, LAFCO submitted extensive comments to the City regarding the adequacy of the General Plan EIR under CEQA. On or about July 27, 2016, after considering and responding to all of the comments on the General Plan EIR, City adopted the Morgan Hill 2035 General Plan pursuant to the General Plan EIR and then filed a Notice of Determination regarding its adoption of the Morgan Hill 2035 General Plan pursuant to the General Plan EIR. This Notice of Determination began a 30-day statute of limitations for bringing an action to set aside certification of the General Plan EIR.

On August 3, 2016, LAFCO authorized initiation of litigation against the City regarding the General Plan EIR and also authorized the General Counsel to enter into a tolling agreement with the City to allow the parties time to pursue a settlement in lieu of litigation. On August 25, 2016, the parties entered into a Tolling Agreement ("Tolling Agreement") to toll the statute of limitations for LAFCO to bring a challenge to the General Plan EIR, which was further extended. During this tolling period, the parties have been engaged in discussions regarding the means by which to address LAFCO's concerns with the EIR without proceeding with litigation.

The attached Settlement Agreement was prepared between the two parties, which has already been executed by the City, to settle all matters and disputes related to the General Plan EIR and avoid litigation between the parties.

Analysis

City's Obligations

The Settlement Agreement provides that the City shall conduct environmental review under CEQA prior to any decision as to whether to initiate and carry-out a project concerning Urban Service Area ("USA") amendments and/or annexation of property located within the City's Urban Growth Boundary.

The nature of the project to be carried out by the City may be developed at the discretion of the City, but shall, in any event, result in the preparation and certification of an Environmental Impact Report considering the potential impacts of USA amendments and/or annexation of the property located



BEST BEST & KRIEGER
ATTORNEYS AT LAW

within the City's Urban Growth Boundary of the Morgan Hill 2035 General Plan ("Annexation EIR") and shall not tier from, or rely in any way on the General Plan EIR.

The Annexation EIR's analysis of environmental impacts will be based on the level of development authorized by the voters of the City on November 8, 2016 in its Ordinance updating and extending the City's Residential Development Control System until the year 2035 by amending the General Plan and Chapter 18.78 of the Municipal Code, also known as "Measure S."

The Annexation EIR will include a full water supply assessment and an assessment of the City's Water Infrastructure Master Plan and Wastewater Infrastructure Master Plan. Environmental review under CEQA of any proposal made to LAFCO for a USA amendment shall only rely on, or tier from, the Annexation EIR. The City shall not consider any proposal for USA amendment until such time as the Annexation EIR has been certified. However, projects within the USA as it exists as of the Effective Date of the Settlement Agreement may rely on and tier off of the General Plan EIR. The Settlement Agreement does not apply to, and is not intended to limit, the City's use of any previously certified EIR as the basis for submitting an annexation application to LAFCO.

LAFCO's Obligations

The Settlement Agreement provides that LAFCO will not file any lawsuit challenging the General Plan EIR. LAFCO will not to seek any fees or costs from City associated with LAFCO's participation in the administrative process for the General Plan EIR or associated with LAFCO's contemplated litigation regarding the General Plan EIR.

LAFCO reserves its rights, as a responsible agency, with regard to its review and consideration of the adequacy of the Annexation EIR and any CEQA documents that the City may approve, adopt, or certify in support of any future application it may submit to LAFCO.

Joint Obligations

The parties will work together to ensure preparation of adequate CEQA documents for any proposed annexation applications.

The Settlement Agreement is attached for your review and we recommend authorizing General Counsel to execute the Settlement Agreement. Alternative action is to discuss and direct staff.

Recommendation

Authorize General Counsel to execute the Settlement Agreement.

Attachment
Settlement Agreement

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made and entered into as of _____, 2017 (“Effective Date”) by and between the Local Agency Formation Commission of Santa Clara County (“LAFCO”) and the City of Morgan Hill (“City”). LAFCO and City are collectively referred to as the “Parties” and individually referred to as a “Party.”

RECITALS

A. Pursuant to the California Environmental Quality Act, Public Resources Code section 21000, et seq. (“CEQA”) the City prepared an Environmental Impact Report for its proposed 2035 General Plan Update (“General Plan EIR”).

B. Consistent with LAFCO’s duties as a responsible agency, LAFCO submitted extensive comments to the City regarding the adequacy of the General Plan EIR under CEQA.

C. On or about July 27, 2016, after considering and responding to all of the comments on the General Plan EIR, City adopted the Morgan Hill 2035 General Plan pursuant to the General Plan EIR.

D. On or about August 2, 2016, City filed a Notice of Determination regarding its adoption of the Morgan Hill 2035 General Plan pursuant to the General Plan EIR. Pursuant to Public Resources Code section 21167, this Notice of Determination began a 30-day statute of limitations for bringing an action to set aside certification of the General Plan EIR.

E. On August 25, 2016, the Parties entered into a Tolling Agreement (“Tolling Agreement”) to toll the statute of limitations for LAFCO to bring a challenge to the General Plan EIR.

F. On September 29, 2016, the Parties entered into the First Amendment to the Tolling Agreement to extend the period for which the statute of limitations is tolled until December 31, 2016.

G. On December 19, 2016, the Parties entered into the Second Amendment to the Tolling Agreement to extend the period for which the statute of limitations is tolled until February 15, 2017.

H. During this tolling period, the Parties have been engaged in discussions regarding the means by which to address LAFCO’s concerns with the EIR without proceeding with litigation.

I. LAFCO and City have now agreed to compromise and settle all matters and disputes between themselves in order to achieve a full and complete resolution of all claims that have been asserted or that could be asserted by LAFCO in any future disputes, claims, or legal action in relation to the General Plan EIR.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and/or covenants contained in this Agreement and any other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree, promise, and covenant as follows:

1. Recitals and Definitions Incorporated. Each recital and definition set forth above is incorporated herein by reference and is made part of this Agreement.
2. No Admission. All Parties understand and agree that nothing in this Agreement, or in the execution of this Agreement, shall constitute or be construed as an admission of error or wrongdoing by any Party or of any inadequacy or impropriety in connection with City's certification of the EIR.
3. City Obligations. Without admitting any liability, and in consideration of the terms of this Agreement, upon execution of the Agreement, City shall implement the following terms and actions:
 - 3.1. The City shall conduct environmental review under CEQA prior to any decision as to whether to initiate and carry-out a project (as defined in Public Resources Code section 21065 and CEQA Guidelines section 15378) concerning Urban Service Area ("USA") amendments and/or annexation of property located within the City's Urban Growth Boundary as defined in Figure CNF-1 of the Morgan Hill 2035 General Plan attached as "Exhibit A" and incorporated herein by reference.
 - 3.2. The nature of the project to be carried out by the City may be developed at the discretion of the City, but shall, in any event, result in the preparation and certification of an Environmental Impact Report considering the potential impacts of USA amendments and/or annexation of the property located within the City's Urban Growth Boundary as defined in Figure CNF-1 of the Morgan Hill 2035 General Plan ("Annexation EIR") and shall not tier from, or rely in any way (e.g., pursuant to CEQA, including but not limited to Public Resources Code sections 21094, 21083.3 and 21166 and/or CEQA Guidelines sections 15152, 15153, 15162, 15168, 15183, and 15385), on the General Plan EIR.
 - 3.2.1. The Annexation EIR's analysis of environmental impacts will be based on the level of development authorized by the voters of the City on November 8, 2016 in its Ordinance updating and extending the City's Residential Development Control System until the year 2035 by amending the General Plan and Chapter 18.78 of the Municipal Code, also known as "Measure S."
 - 3.2.2. The Annexation EIR will include:
 - 3.2.2.1. A full water supply assessment; and

3.2.2.2. An assessment of the City's Water Infrastructure Master Plan and Wastewater Infrastructure Master Plan.

- 3.3. Environmental review under CEQA of any proposal made to LAFCO for a USA amendment shall only rely on, or tier from, the Annexation EIR.
- 3.4. The City shall not consider any proposal for USA amendment until such time as the Annexation EIR has been certified. However, projects within the USA as it exists as of the Effective Date of this Agreement may rely on and tier off of the General Plan EIR.
- 3.5. This Agreement does not apply to, and is not intended to limit, the City's use of any previously certified EIR as the basis for submitting an annexation application to LAFCO.
4. LAFCO Obligations. Without admitting any liability, and in consideration of the terms of this Agreement, upon execution of the Settlement Agreement LAFCO shall implement the following terms and actions:
 - 4.1. LAFCO will not to file any lawsuit challenging the General Plan EIR.
 - 4.2. LAFCO will not to seek any fees or costs from City associated with LAFCO's participation in the administrative process for the General Plan EIR or associated with LAFCO's contemplated litigation regarding the General Plan EIR.
 - 4.3. LAFCO reserves its rights, as a responsible agency, with regard to its review and consideration of the adequacy of the Annexation EIR and any CEQA documents that City may approve, adopt, or certify in support of any future application it may submit to LAFCO.
5. Joint Obligations. The City and LAFCO will work together to ensure preparation of adequate CEQA documents for any proposed annexation application.
6. Third Party Beneficiary. Nothing in this Agreement, express or implied, is intended to confer upon any person, other than the Parties, any rights or benefits under or by reason of this Agreement.
7. Enforcement of Agreement. No action for breach of this Agreement shall be brought or maintained until: (a) the non-breaching Party provides written notice to the breaching Party which explains with particularity the nature of the claimed breach, and (b) within thirty (30) days after receipt of said notice, the breaching Party fails to cure the claimed breach or, in the case of a claimed breach which cannot be reasonably remedied within a thirty (30) day period, the breaching Party fails to commence to cure the claimed breach within such thirty (30) day period, and thereafter diligently complete the activities reasonably necessary to remedy the claimed breach.

8. Mutual Release. LAFCO and the City mutually release each other's affiliates, members, directors, officers, employees, agents, assigns, and attorneys from any and all claims, demands, liabilities, obligations, costs, expenses, fees, actions, and/or causes of action that the City and LAFCO have as of the effective date of this Agreement arising out of, or connected to, the General Plan EIR, whether known, unknown or suspected. Upon the Effective Date of this Agreement, the City and LAFCO have read and have otherwise been informed of the meaning of Section 1542 of the California Civil Code, and have consulted with their respective counsel, to the extent that any was desired, and understands the provisions of Section 1542. The City and LAFCO hereby expressly waive the rights and benefits conferred upon it by the provisions of Section 1542 of the California Civil Code, which provides:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.”

LAFCO Initials

City Initials

9. Damages. The Parties agree that (i) the performance of the obligations of this Agreement are paramount; (ii) in the event of a breach, monetary damages will provide inadequate relief; and (iii) that each may seek equitable relief to enforce such obligations. In the event of litigation to enforce this Agreement, the prevailing party shall be entitled to reimbursement for costs and reasonable attorney's fees.
10. Miscellaneous Provisions.
- 10.1. Notices. Any notice, request, or communication required to be given to either Party under this Agreement shall be given in writing and shall be personally delivered or mailed by prepaid registered or certified mail to the addresses below:

If to LAFCO:

Neelima Palacherla, Executive Officer
70 W. Hedding Street, 11th Floor, East Wing
San Jose, CA 95110
Telephone: (408) 993-4713
Email: Neelima.Palacherla@ceo.sccgov.org

With copies sent to:

Mala Subramanian
Best Best & Krieger LLP

2001 N. Main Street, Suite 390
Walnut Creek, CA 94596
Telephone: (925) 977-3303
Email: msubramanian@bbklaw.com

If to City:

City Manager
17575 Peak Avenue
Morgan Hill, CA 95037-4128
city.manager@morganhill.ca.gov

With copies sent to:

City Attorney
17575 Peak Avenue
Morgan Hill, CA 95037-4128
city.attorney@morganhill.ca.gov

In the event that any Party's address or contact information changes, that Party shall be responsible for notifying the other Party within five (5) working days of the change.

- 10.2. Entire Agreement. The Parties acknowledge that this Agreement is signed and executed without reliance upon any actual or implied promises, warranties, or representations made by either Party or by any representative of any Party, other than those which are expressly contained within this Agreement. This Agreement, including the true and correct Recitals above, inclusive of all definitions contained therein, that are incorporated by reference herein as operative covenants and specifically relied upon by the Parties in executing this Agreement, constitutes the entire agreement and understanding among and between the Parties and supersedes any and all other agreements whether oral or written between the Parties.
- 10.3. Amendments and Modifications. This Agreement may only be amended or modified through writing executed by all the Parties.
- 10.4. Choice of Law and Choice of Forum. This Agreement shall be deemed to have been executed and delivered within the State of California; the rights and obligations of the Parties hereunder shall be governed, construed, and enforced in accordance with the laws of the State of California. The venue for any dispute arising from or related to this Agreement, its performance, and its interpretation shall be the Superior Court of California, County of Santa Clara.
- 10.5. Authorized Signatory. Each Party represents and warrants to each other Party that its signature to this Agreement has the authority to bind the Party, and this Agreement does in fact bind the Party.

- 10.6. Counterparts. This Agreement may be executed in counterparts and when so executed by the Parties, shall become binding upon them and each such counterpart will be an original document.
- 10.7. Severability. If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the rest of this Agreement shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.
- 10.8. Effective Date. This Agreement is effective as of the Effective Date written in the first paragraph.

IN WITNESS WHEREOF, this Agreement is executed and agreed to by the following:

**LOCAL AGENCY FORMATION COMMISSION
OF SANTA CLARA COUNTY**

By: _____ Date: _____

Name: _____

Title: _____

CITY OF MORGAN HILL

By:  _____ Date: 1/23/2017

Name: Donald A. Larkin

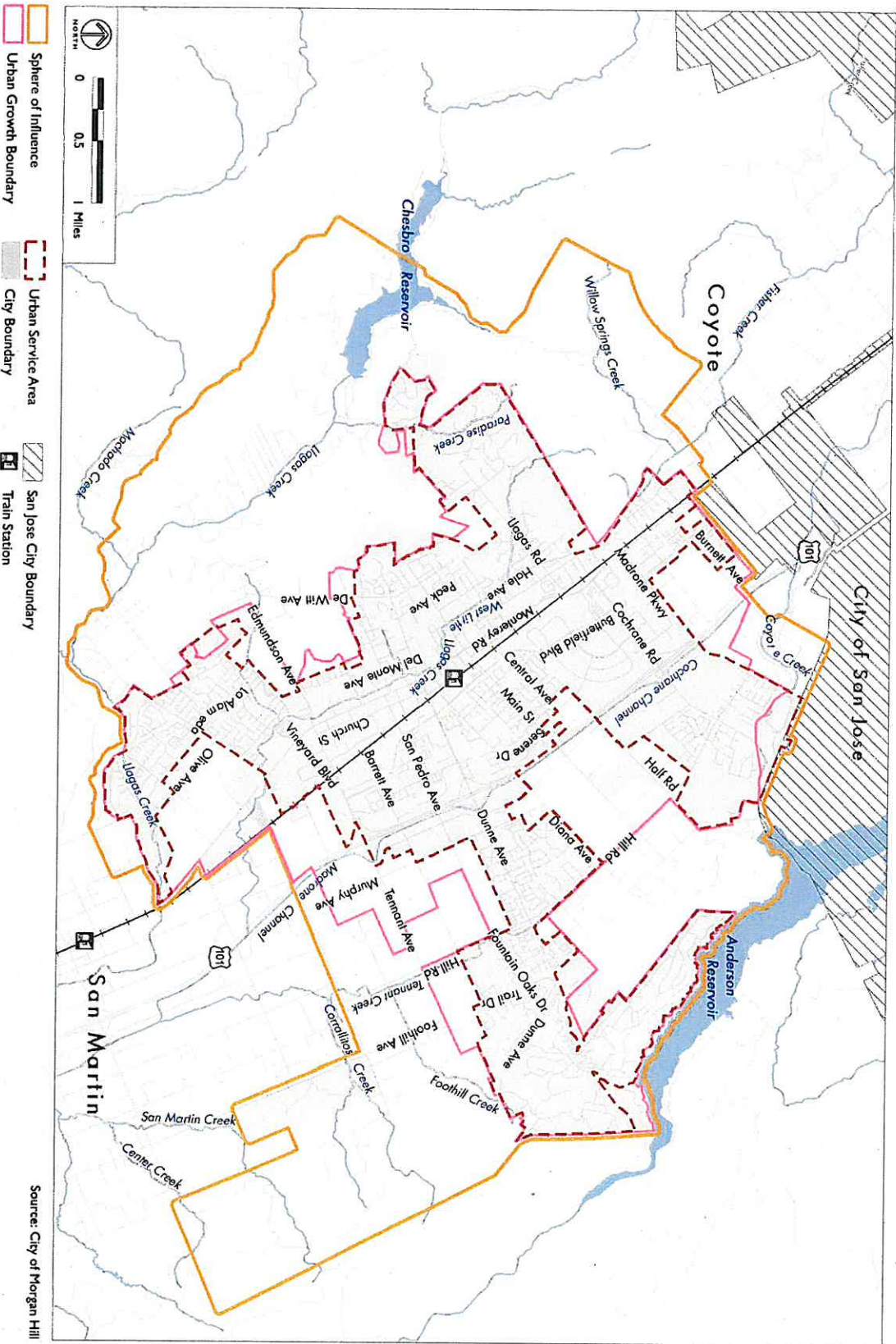
Title: City Attorney

EXHIBIT A

Figure CNF-1 of the Morgan Hill 2035 General Plan

[Attached behind this page]

Figure CNF-1 City Boundaries



LAFCO MEETING: February 1, 2017
TO: LAFCO
FROM: Neelima Palacherla, Executive Officer
Dunia Noel, Analyst
SUBJECT: EXECUTED LEASE AGREEMENT FOR LAFCO OFFICE SPACE

FOR INFORMATION ONLY

We are pleased to report that we have an executed lease agreement (**Attachment A**) for office space at 777 North First Street in San Jose. This office space is adjacent to the County Government Center, just south of the old San Jose City Hall. The term of the lease is 62 months, commencing on February 1, 2017 and ending March 31, 2022. The total leasing cost is \$221,244 and includes two free months of rent.

You may recall that at its December meeting, the Commission authorized the Executive Officer to execute a lease agreement for office space at 777 North First Street in San Jose for a five-year lease term not to exceed a total cost of \$225,000.

Per the lease terms, some necessary improvements to the office space will be completed by February 1, 2017. Staff is working with County ISD in order to address our IT/network connections and phone needs. Staff is also working with County vendors in order to purchase furniture and equipment for the office space. It is anticipated that the new office will be ready for staff's full use in late March.

ATTACHMENT

Attachment A: Executed Lease for Private Office Space Located at 777 N. First Street, San Jose

- 1.7 **Base Rent and Other Monies Paid Upon Execution:**
 (a) **Base Rent:** \$3,404.00 for the period April, 2017
 (b) **Security Deposit:** \$3,982.00 ("Security Deposit"). (See also Paragraph 5)
 (c) **Parking:** \$N/A for the period N/A
 (d) **Other:** \$N/A for N/A
 (e) **Total Due Upon Execution of this Lease:** \$7,386.00
 1.8 **Agreed Use:** General Office Use.

(See also Paragraph 6)

1.9 **Base Year; Insuring Party.** The Base Year is 2017. Lessor is the "Insuring Party". (See also Paragraphs 4.2 and 8)

1.10 **Real Estate Brokers:** (See also Paragraph 15 and 25)

(a) **Representation:** The following real estate brokers (the "Brokers") and brokerage relationships exist in this transaction (check applicable boxes):

- Ritchie Commercial, Inc. represents Lessor exclusively ("Lessor's Broker");
 represents Lessee exclusively ("Lessee's Broker"); or
 represents both Lessor and Lessee ("Dual Agency").

(b) **Payment to Brokers:** Upon execution and delivery of this Lease by both Parties, Lessor shall pay to the Brokers the brokerage fee agreed to in a separate written agreement (or if there is no such agreement, the sum of _____ or 5% of the total Base Rent) for the brokerage services rendered by the Brokers.

1.11 **Guarantor.** The obligations of the Lessee under this Lease shall be guaranteed by N/A ("Guarantor"). (See also Paragraph 37)

1.12 **Business Hours for the Building:** 8:00 a.m. to 6:00 p.m., Mondays through Fridays (except Building Holidays) and N/A a.m. to N/A p.m. on Saturdays (except Building Holidays). "Building Holidays" shall mean the dates of observation of New Year's Day, President's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day, and _____.

1.13 **Lessor Supplied Services.** Notwithstanding the provisions of Paragraph 11.1, Lessor is NOT obligated to provide the following within the Premises:

- Janitorial services
 Electricity
 Other (specify): Voice/Data Communications and Security

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

- an Addendum consisting of Paragraphs 50 through 50; Option to Extend Lease Term
 a plot plan depicting the Premises;
 a current set of the Rules and Regulations;
 a Work Letter;
 a janitorial schedule;
 other (specify): Lease Exhibit "A" consisting of a narrative description and graphic depiction of improvements and modifications to the Premises.

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. While the approximate square footage of the Premises may have been used in the marketing of the Premises for purposes of comparison, the Base Rent stated herein is NOT tied to square footage and is not subject to adjustment should the actual size be determined to be different. **Note: Lessee is advised to verify the actual size prior to executing this Lease.**

2.2 **Condition.** Lessor shall deliver the Premises to Lessee in a clean condition on the Commencement Date or the Early Possession Date, whichever first occurs ("Start Date"), and warrants that the existing electrical, plumbing, fire sprinkler, lighting, heating, ventilating and air conditioning systems ("HVAC"), and all other items which the Lessor is obligated to construct pursuant to the Work Letter attached hereto, if any, other than those constructed by Lessee, shall be in good operating condition on said date, that the structural elements of the roof, bearing walls and foundation of the Unit shall be free of material defects, and that the Premises do not contain hazardous levels of any mold or fungi defined as toxic under applicable state or federal law. Lessor also warrants, that unless otherwise specified in writing, Lessor is unaware of (i) any recorded Notices of Default affecting the Premise; (ii) any delinquent amounts due under any loan secured by the Premises; and (iii) any bankruptcy proceeding affecting the Premises.

2.3 **Compliance.** Lessor warrants that to the best of its knowledge the improvements on the Premises and the Common Areas 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 49), 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 zoning and other Applicable Requirements are appropriate for Lessee's intended use, and acknowledges that**


INITIALS


INITIALS

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. 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, the remediation of any Hazardous Substance, or the reinforcement or other physical modification of the Premises ("**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 the 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 shall pay for such Capital Expenditure and Lessee shall only be obligated to pay, each month during the remainder of the term of this Lease or any extension thereof, on the date that on which the Base Rent is due, an amount equal to 1/144th of the portion of such costs reasonably attributable to the Premises. Lessee shall pay Interest on the balance but may prepay its obligation at any time. If, however, 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 nonvoluntary, 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 have any right to terminate this Lease.

2.4 Acknowledgements. Lessee acknowledges that: (a) it has been given an opportunity to inspect and measure the Premises, (b) Lessee has been advised by Lessor and/or Brokers to satisfy itself with respect to the size and 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 their suitability for Lessee's intended use, (c) Lessee has made such investigation as it deems necessary with reference to such matters and assumes all responsibility therefor as the same relate to its occupancy of the Premises, (d) it is not relying on any representation as to the size of the Premises made by Brokers or Lessor, (e) the square footage of the Premises was not material to Lessee's decision to lease the Premises and pay the Rent stated herein, and (f) 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.

2.6 Vehicle Parking. So long as Lessee is not in default, and subject to the Rules and Regulations attached hereto, and as established by Lessor from time to time, Lessee shall be entitled to rent and use the number of parking spaces specified in Paragraph 1.2(b) at the rental rate applicable from time to time for monthly parking as set by Lessor and/or its licensee.

(a) If Lessee commits, permits or allows any of the prohibited activities described in the Lease or the rules then in effect, then Lessor shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove or tow away the vehicle involved and charge the cost to Lessee, which cost shall be immediately payable upon demand by Lessor.

(b) ~~The monthly rent per parking space specified in Paragraph 1.2(b) is subject to change upon 30 days prior written notice to Lessee. The rent for the parking is payable one month in advance prior to the first day of each calendar month.~~

2.7 Common Areas - Definition. The term "**Common Areas**" is defined as all areas and facilities outside the Premises and within the exterior boundary line of the Project and interior utility raceways and installations within the Premises that are provided and designated by the Lessor from time to time for the general nonexclusive use of Lessor, Lessee and other tenants of the Project and their respective employees, suppliers, shippers, customers, contractors and invitees, including, but not limited to, common entrances, lobbies, corridors, stairwells, public restrooms, elevators, parking areas, loading and unloading areas, trash areas, roadways, walkways, driveways and landscaped areas.

2.8 Common Areas - Lessee's Rights. Lessor grants to Lessee, for the benefit of Lessee and its employees, suppliers, shippers, contractors, customers and invitees, during the term of this Lease, the nonexclusive right to use, in common with others entitled to such use, the Common Areas as they exist from time to time, subject to any rights, powers, and privileges reserved by Lessor under the terms hereof or under the terms of any rules and regulations or restrictions governing the use of the Project. Under no circumstances shall the right herein granted to use the Common Areas be deemed to include the right to store any property, temporarily or permanently, in the Common Areas. Any such storage shall be permitted only by the prior written consent of Lessor or Lessor's designated agent, which consent may be revoked at any time. In the event that any unauthorized storage shall occur then Lessor shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove the property and charge the cost to Lessee, which cost shall be immediately payable upon demand by Lessor.

2.9 Common Areas - Rules and Regulations. Lessor or such other person(s) as Lessor may appoint shall have the exclusive control and management of the Common Areas and shall have the right, from time to time, to adopt, modify, amend and enforce reasonable rules and regulations ("**Rules and Regulations**") for the management, safety, care, and cleanliness of the grounds, the parking and unloading of vehicles and the preservation of good order, as well as for the convenience of other occupants or tenants of the Building and the Project and their invitees. The Lessee agrees to abide by and conform to all such Rules and Regulations, and shall use its best efforts to cause its employees, suppliers, shippers, customers, contractors and invitees to so abide and conform. Lessor shall not be responsible to Lessee for the noncompliance with said Rules and Regulations by other tenants of the Project.

2.10 Common Areas - Changes. Lessor shall have the right, in Lessor's sole discretion, from time to time:


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- (a) To make changes to the Common Areas, including, without limitation, changes in the location, size, shape and number of the lobbies, windows, stairways, air shafts, elevators, escalators, restrooms, driveways, entrances, parking spaces, parking areas, loading and unloading areas, ingress, egress, direction of traffic, landscaped areas, walkways and utility raceways;
- (b) To close temporarily any of the Common Areas for maintenance purposes so long as reasonable access to the Premises remains available;
- (c) To designate other land outside the boundaries of the Project to be a part of the Common Areas;
- (d) To add additional buildings and improvements to the Common Areas;
- (e) To use the Common Areas while engaged in making additional improvements, repairs or alterations to the Project, or any portion thereof; and
- (f) To do and perform such other acts and make such other changes in, to or with respect to the Common Areas and Project as Lessor may, in the exercise of sound business judgment, deem to be appropriate.

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.** Any provision herein granting Lessee Early Possession of the Premises is subject to and conditioned upon the Premises being available for such possession prior to the Commencement Date. Any grant of Early Possession only conveys a non-exclusive right to occupy the Premises. 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 Lessee's Share of the Operating Expense Increase) shall 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 therefor, nor shall such failure affect the validity of this Lease or change the Expiration Date. 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, as the same may be extended under the terms of any Work Letter executed by Parties, 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 8.5). 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 **Operating Expense Increase.** Lessee shall pay to Lessor during the term hereof, in addition to the Base Rent, Lessee's Share of the amount by which all Operating Expenses for each Comparison Year exceeds the amount of all Operating Expenses for the Base Year, such excess being hereinafter referred to as the "**Operating Expense Increase**", in accordance with the following provisions:

(a) "**Base Year**" is as specified in Paragraph 1.9.

(b) "**Comparison Year**" is defined as each calendar year during the term of this Lease subsequent to the Base Year; provided, however, Lessee shall have no obligation to pay a share of the Operating Expense Increase applicable to the first 12 months of the Lease Term (other than such as are mandated by a governmental authority, as to which government mandated expenses Lessee shall pay Lessee's Share, notwithstanding they occur during the first twelve (12) months). Lessee's Share of the Operating Expense Increase for the first and last Comparison Years of the Lease Term shall be prorated according to that portion of such Comparison Year as to which Lessee is responsible for a share of such increase.

(c) The following costs relating to the ownership and operation of the Project, calculated as if the Project was at least 95% occupied, are defined as "**Operating Expenses**":

(i) Costs relating to the operation, repair, and maintenance in neat, clean, safe, good order and condition, but not the replacement (see subparagraph (g)), of the following:

(aa) The Common Areas, including their surfaces, coverings, decorative items, carpets, drapes and window coverings, and including parking areas, loading and unloading areas, trash areas, roadways, sidewalks, walkways, stairways, parkways, driveways, landscaped areas, striping, bumpers, irrigation systems, Common Area lighting facilities, building exteriors and roofs, fences and gates;

(bb) All heating, air conditioning, plumbing, electrical systems, life safety equipment, communication systems and other equipment used in common by, or for the benefit of, tenants or occupants of the Project, including elevators and escalators, tenant directories, fire detection systems including sprinkler system maintenance and repair;

(cc) All other areas and improvements that are within the exterior boundaries of the Project but outside of the Premises and/or any other space occupied by a tenant.

(ii) The cost of trash disposal, janitorial and security services, pest control services, and the costs of any environmental inspections;

(iii) The cost of any other service to be provided by Lessor that is elsewhere in this Lease stated to be an "**Operating Expense**";

(iv) The cost of the premiums for the insurance policies maintained by Lessor pursuant to paragraph 8 and any deductible portion of an insured loss concerning the Building or the Common Areas;

(v) The amount of the Real Property Taxes payable by Lessor pursuant to paragraph 10;

(vi) The cost of water, sewer, gas, electricity, and other publicly mandated services not separately metered;

(vii) Labor, salaries, and applicable fringe benefits and costs, materials, supplies and tools, used in maintaining and/or cleaning the Project and accounting and management fees attributable to the operation of the Project;

(viii) The cost of any capital improvement to the Building or the Project not covered under the provisions of Paragraph 2.3 provided; however, that Lessor shall allocate the cost of any such capital improvement over a 12 year period and Lessee shall not be

required to pay more than Lessee's Share of 1/144th of the cost of such Capital Expenditure in any given month;

~~(ix) The cost to replace equipment or improvements that have a useful life for accounting purposes of 5 years or less.~~

~~(x) Reserves set aside for maintenance, repair and/or replacement of Common Area improvements and equipment.~~

~~(d) Any item of Operating Expense that is specifically attributable to the Premises, the Building or to any other building in the Project or to the operation, repair and maintenance thereof, shall be allocated entirely to such Premises, Building, or other building. However, any such item that is not specifically attributable to the Building or to any other building or to the operation, repair and maintenance thereof, shall be equitably allocated by Lessor to all buildings in the Project.~~

~~(e) The inclusion of the improvements, facilities and services set forth in Subparagraph 4.2(c) shall not be deemed to impose an obligation upon Lessor to either have said improvements or facilities or to provide those services unless the Project already has the same, Lessor already provides the services, or Lessor has agreed elsewhere in this Lease to provide the same or some of them.~~

~~(f) Lessee's Share of Operating Expense Increase is payable monthly on the same day as the Base Rent is due hereunder. The amount of such payments shall be based on Lessor's estimate of the Operating Expense Increases. Within 60 days after written request (but not more than once each year) Lessor shall deliver to Lessee a reasonably detailed statement showing Lessee's Share of the actual Common Area Operating Expenses for the preceding year. If Lessee's payments during such Year exceed Lessee's Share, Lessee shall credit the amount of such over-payment against Lessee's future payments. If Lessee's payments during such Year were less than Lessee's Share, Lessee shall pay to Lessor the amount of the deficiency within 10 days after delivery by Lessor to Lessee of said statement. Lessor and Lessee shall forthwith adjust between them by cash payment any balance determined to exist with respect to that portion of the last Comparison Year for which Lessee is responsible as to Operating Expense Increases, notwithstanding that the Lease term may have terminated before the end of such Comparison Year.~~

~~(g) Operating Expenses shall not include the costs of replacement for equipment or capital components such as the roof, foundations, exterior walls or a Common Area capital improvement, such as the parking lot paving, elevators, fences that have a useful life for accounting purposes of 5 years or more.~~

~~(h) Operating Expenses shall not include any expenses paid by any tenant directly to third parties, or as to which Lessor is otherwise reimbursed by any third party, other tenant, or by insurance proceeds. See Section 1.6.~~

4.3 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). All monetary amounts shall be rounded to the nearest whole dollar. In the event that any invoice prepared by Lessor is inaccurate such inaccuracy shall not constitute a waiver and Lessee shall be obligated to pay the amount set forth 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 Rent be paid 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 Common Area Operating Expenses, and any remaining amount to any other outstanding charges or costs.

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 already due Lessor, for Rents which will be due in the future, and/ 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 therefor 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 monies 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 90 days after the expiration or termination of this Lease, Lessor shall return that portion of the Security Deposit not used or applied by Lessor. Lessor shall upon written request provide Lessee with an accounting showing how that portion of the Security Deposit that was not returned was applied. 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. THE SECURITY DEPOSIT SHALL NOT BE USED BY LESSEE IN LIEU OF PAYMENT OF THE LAST MONTH'S RENT.

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. Other than guide, signal and seeing eye dogs, Lessee shall not keep or allow in the Premises any pets, animals, birds, fish, or reptiles. Lessor shall not unreasonably withhold or delay its consent to any request for a modification of the Agreed Use, so long as the same will not impair the structural integrity of the improvements of the Building, will not adversely affect the mechanical, electrical, HVAC, and other systems of the Building, and/or will not affect the exterior appearance of the Building. 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, byproducts 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 such as 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 therefor. 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 areas outside of the Project not caused or contributed to by Lessee or any Hazardous Substances that are present on the Property at the Commencement Date). 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.** Except as otherwise provided in paragraph 8.7, 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 therefor (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 Premises, without regard to whether said Applicable 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. Likewise, Lessee shall immediately give written notice to Lessor of: (i) any water damage to the Premises and any suspected seepage, pooling, dampness or other condition conducive to the production of mold; or (ii) any mustiness or other odors that might indicate the presence of mold in the Premises.

6.4 **Inspection; Compliance.** Lessor and Lessor's "Lender" (as defined in Paragraph 30) and consultants authorized by Lessor 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 and/or testing the condition of the Premises and/or 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 9.1e) 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


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provide copies of all relevant material safety data sheets (**MSDS**) to Lessor within 10 days of the receipt of written request therefor. Lessee acknowledges that any failure on its part to allow such inspections or testing 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, should the Lessee fail to allow such inspections and/or testing in a timely fashion 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 for the remainder to the Lease. 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 allow such inspection and/or testing. Such increase in Base Rent shall in no event constitute a waiver of Lessee's Default or Breach with respect to such failure nor prevent the exercise of any of the other rights and remedies granted hereunder.

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

7.1 Lessee's Obligations. Notwithstanding Lessor's obligation to keep the Premises in good condition and repair, Lessee shall be responsible for payment of the cost thereof to Lessor as additional rent for that portion of the cost of any maintenance and repair of the Premises, or any equipment (wherever located) that serves only Lessee or the Premises, to the extent such cost is attributable to abuse or misuse. In addition, Lessee rather than the Lessor shall be responsible for the cost of painting, repairing or replacing wall coverings, and to repair or replace any similar improvements within the Premises. Lessor may, at its option, upon reasonable notice, elect to have Lessee perform any particular such maintenance or repairs the cost of which is otherwise Lessee's responsibility hereunder."

7.2 Lessor's Obligations. Subject to the provisions of Paragraphs 2.2 (Condition), 2.3 (Compliance), 4.2 (Operating Expenses), 6 (Use), 7.1 (Lessee's Obligations), 9 (Damage or Destruction) and 14 (Condemnation), Lessor, subject to reimbursement pursuant to Paragraph 4.2, shall keep in good order, condition and repair the foundations, exterior walls, structural condition of interior bearing walls, exterior roof, fire sprinkler system, fire alarm and/or smoke detection systems, fire hydrants, and the Common Areas. Lessee expressly waives 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 lines, vacuum lines, power panels, electrical distribution, security and fire protection systems, communication cabling, lighting fixtures, HVAC equipment, and plumbing 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 Alterations or 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, ceilings, floors or any existing walls, will not affect the electrical, plumbing, HVAC, and/or life safety systems, do not trigger the requirement for additional modifications and/or improvements to the Premises resulting from Applicable Requirements, such as compliance with Title 24, and the cumulative cost thereof during this Lease as extended does not exceed \$2000. 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~~ is 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 asbuilt 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. 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 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 the Lessee occupies the Premises 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 also 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) to the level specified in Applicable 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


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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 Insurance Premiums. The cost of the premiums for the insurance policies maintained by Lessor pursuant to paragraph 8 are included as Operating Expenses (see paragraph 4.2 (c)(iv)). Said costs shall include increases in the premiums resulting from additional coverage related to requirements of the holder of a mortgage or deed of trust covering the Premises, Building and/or Project, increased valuation of the Premises, Building and/or Project, and/or a general premium rate increase. Said costs shall not, however, include any premium increases resulting from the nature of the occupancy of any other tenant of the Building. If the Project was not insured for the entirety of the Base Year, then the base premium shall be the lowest annual premium reasonably obtainable for the required insurance as of the Start Date, assuming the most nominal use possible of the Building and/or Project. In no event, however, shall Lessee be responsible for any portion of the premium cost attributable to liability insurance coverage in excess of \$2,000,000 procured under Paragraph 8.2(b).

8.2 Liability Insurance.

(a) **Carried by Lessee.** Lessee shall obtain and keep in force a Commercial General Liability policy of insurance protecting Lessee and Lessor as an additional insured against 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. Such 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. Lessee shall add Lessor as an additional insured by means of an endorsement at least as broad as the Insurance Service Organization's "Additional Insured-Managers or Lessors of Premises" Endorsement and coverage shall also be extended to include damage caused by heat, smoke or fumes from a hostile fire. The policy shall not contain any intra-insured exclusions as between insured persons or organizations, but shall include coverage for liability assumed under this Lease as an "insured contract" for the performance of Lessee's indemnity obligations under this Lease. The limits of said insurance shall not, however, limit the liability of Lessee nor relieve Lessee of any obligation hereunder. Lessee shall provide an endorsement on its liability policy(ies) which provides that its insurance 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.** Lessor shall obtain and keep in force a policy or policies of insurance in the name of Lessor, with loss payable to Lessor, any ground-lessor, and to any Lender insuring loss or damage to the Building and/or Project. The amount of such insurance shall be equal to the full insurable replacement cost of the Building and/or Project, 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. Lessee Owned Alterations and Utility Installations, Trade Fixtures, and Lessee's personal property shall be insured by Lessee not by Lessor. 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 unless required by a Lender), 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 also contain an agreed valuation provision in lieu of any coinsurance clause, waiver of subrogation, and inflation guard protection causing an increase in the annual property insurance coverage amount by a factor of not less than the adjusted U.S. Department of Labor Consumer Price Index for All Urban Consumers for the city nearest to where the Premises are located. If such insurance coverage has a deductible clause, the deductible amount shall not exceed \$5,000 per occurrence.

(b) **Rental Value.** Lessor shall also obtain and keep in force a policy or policies in the name of Lessor with loss payable to Lessor and any Lender, insuring the loss of the full Rent for one year with an extended period of indemnity for an additional 180 days ("**Rental Value insurance**"). Said insurance shall contain an agreed valuation provision in lieu of any coinsurance clause, and the amount of coverage shall be adjusted annually to reflect the projected Rent otherwise payable by Lessee, for the next 12 month period.

(c) **Adjacent Premises.** Lessee shall pay for any increase in the premiums for the property insurance of the Building and for the Common Areas or other buildings in the Project if said increase is caused by Lessee's acts, omissions, use or occupancy of the Premises.

(d) **Lessee's Improvements.** Since Lessor is the Insuring Party, Lessor shall not be required to insure Lessee Owned Alterations and Utility Installations unless the item in question has become the property of Lessor under the terms of this Lease.

8.4 Lessee's Property; Business Interruption Insurance; Worker's Compensation 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 \$1,000 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.

(b) **Worker's Compensation Insurance.** Lessee shall obtain and maintain Worker's Compensation Insurance in such amount as may be required by Applicable Requirements. Such policy shall include a 'Waiver of Subrogation' endorsement. Lessee shall provide Lessor with a copy of such endorsement along with the certificate of insurance or copy of the policy required by paragraph 8.5.

(c) **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.

(d) **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 maintaining during the policy term a "General Policyholders Rating" of at least A-, VII, 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 certified copies of policies of such insurance or certificates with copies of the required endorsements evidencing the existence and amounts of the required insurance. No such policy shall be cancelable or subject to modification except after 10 days prior written notice to Lessor. Lessee shall, at least 30 days prior to the expiration of such policies, furnish Lessor with evidence of renewals or "insurance binders" evidencing renewal thereof, or Lessor may increase his liability insurance coverage and charge the cost thereof to Lessee, which amount shall be payable by Lessee to Lessor upon demand. Such policies shall be for a term of at least one year, or the length of the remaining term of this Lease, whichever is less. 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


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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. The Parties agree to have their respective property damage insurance carriers waive any right to subrogation that such companies may have against Lessor or Lessee, as the case may be, so long as the insurance is not invalidated thereby.

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 and its Agents from Liability.** ~~Notwithstanding the negligence or breach of this Lease by Lessor~~ Except for Lessor's negligence or willful misconduct or its agents, neither Lessor nor its agents shall be liable under any circumstances for: (i) 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, indoor air quality, the presence of mold 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, or from other sources or places, (ii) any damages arising from any act or neglect of any other tenant of Lessor or from the failure of Lessor or its agents to enforce the provisions of any other lease in the Project, or (iii) injury to Lessee's business or for any loss of income or profit therefrom. Instead, it is intended that Lessee's sole recourse in the event of such damages or injury be to file a claim on the insurance policy(ies) that Lessee is required to maintain pursuant to the provisions of paragraph 8.

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 3 months or less from the date of the damage or destruction, and the cost thereof does not exceed a sum equal to 6 month's Base Rent. 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 improvements on the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which cannot reasonably be repaired in 3 months or less from the date of the damage or destruction and/or the cost thereof exceeds a sum equal to 6 month's Base Rent. 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 8.3(a), 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, in, on, or under the Premises which requires 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 \$5,000 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 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 therefor. 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 (subject to reimbursement pursuant to Paragraph 4.2), 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


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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 8.6.

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 is 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.

10. **Real Property Taxes.**

10.1 **Definitions.** 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 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 Project address. "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 Project, (ii) a change in the improvements thereon, and/or (iii) levied or assessed on machinery or equipment provided by Lessor to Lessee pursuant to this Lease.

10.2 **Payment of Taxes.** Except as otherwise provided in Paragraph 10.3, Lessor shall pay the Real Property Taxes applicable to the Project, and said payments shall be included in the calculation of Operating Expenses in accordance with the provisions of Paragraph 4.2.

10.3 **Additional Improvements.** Operating Expenses shall not include Real Property Taxes specified in the tax assessor's records and work sheets as being caused by additional improvements placed upon the Project by other lessees or by Lessor for the exclusive enjoyment of such other lessees. Notwithstanding Paragraph 10.2 hereof, Lessee shall, however, pay to Lessor at the time Operating Expenses are payable under Paragraph 4.2, the entirety of any increase in Real Property Taxes if assessed solely by reason of Alterations, Trade Fixtures or Utility Installations placed upon the Premises by Lessee or at Lessee's request or by reason of any alterations or improvements to the Premises made by Lessor subsequent to the execution of this Lease by the Parties.

10.4 **Joint Assessment.** If the Building is not separately assessed, Real Property Taxes allocated to the Building 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 determined by Lessor from the respective valuations assigned in the assessor's work sheets or such other information as may be reasonably available. Lessor's reasonable determination thereof, in good faith, shall be conclusive.


10.5 **Personal Property Taxes.** Lessee shall pay prior to delinquency all taxes assessed against and levied upon Lessee Owned Alterations and Utility Installations, Trade Fixtures, furnishings, equipment and all personal property of Lessee contained in the Premises. 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.**

11.1 **Services Provided by Lessor.** Lessor shall provide heating, ventilation, air conditioning, reasonable amounts of electricity for normal lighting and office machines, water for reasonable and normal drinking and lavatory use in connection with an office, and replacement light bulbs and/or fluorescent tubes and ballasts for standard overhead fixtures. Lessor shall also provide janitorial services to the Premises and Common Areas 5 times per week, excluding Building Holidays, or pursuant to the attached janitorial schedule, if any. Lessor shall not, however, be required to provide janitorial services to kitchens or storage areas included within the Premises.

11.2 **Services Exclusive to Lessee.** Notwithstanding the provisions of paragraph 11.1, Lessee shall pay for all water, gas, light, power, telephone and other utilities and services specially or exclusively supplied and/or metered exclusively to the Premises or to Lessee, together with any taxes thereon. If a service is deleted by Paragraph 1.13 and such service is not separately metered to the Premises, Lessee shall pay at Lessor's option, either Lessee's Share or a reasonable proportion to be determined by Lessor of all charges for such jointly metered service.

11.3 **Hours of Service.** Said services and utilities shall be provided during times set forth in Paragraph 1.12. Utilities and services required at other times shall be subject to advance request and reimbursement by Lessee to Lessor of the cost thereof.


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11.4 **Excess Usage by Lessee.** Lessee shall not make connection to the utilities except by or through existing outlets and shall not install or use machinery or equipment in or about the Premises that uses excess water, lighting or power, or suffer or permit any act that causes extra burden upon the utilities or services, including but not limited to security and trash services, over standard office usage for the Project. Lessor shall require Lessee to reimburse Lessor for any excess expenses or costs that may arise out of a breach of this subparagraph by Lessee. Lessor may, in its sole discretion, install at Lessee's expense supplemental equipment and/or separate metering applicable to Lessee's excess usage or loading.

11.5 **Interruptions.** 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) Unless Lessee is a corporation and its stock is publicly traded on a national stock exchange, a change in the control of Lessee shall constitute an assignment requiring consent. The transfer, on a cumulative basis, of 25% or more of the voting control of Lessee shall constitute a change in control for this purpose.

(c) The involvement of Lessee or its assets in any transaction, or series of transactions (by way of merger, sale, acquisition, financing, transfer, leveraged buyout or otherwise), whether or not a formal assignment or hypothecation of this Lease or Lessee's assets occurs, which results or will result in a reduction of the Net Worth of Lessee by an amount greater than 25% of such Net Worth as it was represented at the time of the execution of this Lease or at the time of the most recent assignment to which Lessor has consented, or as it exists immediately prior to said transaction or transactions constituting such reduction, whichever was or is greater, shall be considered an assignment of this Lease to which Lessor may withhold its consent. "Net Worth of Lessee" shall mean the net worth of Lessee (excluding any guarantors) established under generally accepted accounting principles.

(d) An assignment or subletting without consent shall, at Lessor's option, be a Default curable after notice per Paragraph 13.1(d), 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.

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

(f) Lessor may reasonably withhold consent to a proposed assignment or subletting if Lessee is in Default at the time consent is requested.

(g) Notwithstanding the foregoing, allowing a de minimis portion of the Premises, i.e. 20 square feet or less, to be used by a third party vendor in connection with the installation of a vending machine or payphone shall not constitute a subletting.

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, entering into such sublease, or entering into possession of the Premises or any portion thereof, 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 then outstanding 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.


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(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 8.3 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. THE ACCEPTANCE BY LESSOR OF A PARTIAL PAYMENT OF RENT OR SECURITY DEPOSIT SHALL NOT CONSTITUTE A WAIVER OF ANY OF LESSOR'S RIGHTS, INCLUDING LESSOR'S RIGHT TO RECOVER POSSESSION OF THE PREMISES.

(c) The failure of Lessee to allow Lessor and/or its agents access to the Premises or the commission of waste, act or acts constituting public or private nuisance, and/or an illegal activity on the Premises by Lessee, where such actions continue for a period of 3 business days following written notice to Lessee. In the event that Lessee commits waste, a nuisance or an illegal activity a second time then, the Lessor may elect to treat such conduct as a non-curable Breach rather than a Default.

(d) 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 or financial statements, (v) a requested subordination, (vi) evidence concerning any guaranty and/or Guarantor, (vii) any document requested under Paragraph 41, (viii) material data safety 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.

(e) A Default by Lessee as to the terms, covenants, conditions or provisions of this Lease, or of the rules adopted under Paragraph 2.9 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.

(f) 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 is contrary to any applicable law, such provision shall be of no force or effect, and not affect the validity of the remaining provisions.

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

(h) 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 therefor. 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 any damages to which Lessor is otherwise entitled. 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


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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, the cost of tenant improvements for Lessee paid for or performed by Lessor, 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 shall bear interest from the 31st day after it was due. 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 for any such expense in excess of such offset. 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 rentable floor area of the Premises, or more than 25% of Lessee's Reserved Parking Spaces, if any, are 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 paid by the condemnor 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 therefor. 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 **Additional Commission.** In addition to the payments owed pursuant to Paragraph 1.10 above, Lessor agrees that: (a) if Lessee exercises any Option, (b) if Lessee or anyone affiliated with Lessee acquires from Lessor any rights to the Premises or other premises owned by Lessor and located within the Project, (c) if Lessee remains in possession of the Premises, with the consent of Lessor, after the expiration of this Lease, or (d) if Base Rent is increased, whether by agreement or operation of an escalation clause herein, then, Lessor shall pay Brokers a fee in accordance with the fee schedule of the Brokers in effect at the time the Lease was executed.

15.2 **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.

15.3 **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 10 days after written notice from the other Party (the "**Requesting Party**")


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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 AIRCommercial 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 10 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 encumbrancers 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. In addition, Lessee acknowledges that any failure on its part to provide such an Estoppel Certificate 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, should the Lessee fail to execute and/or deliver a requested Estoppel Certificate in a timely fashion the monthly 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 for remainder of the Lease. 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 provide the Estoppel Certificate. Such increase in Base Rent shall in no event constitute a waiver of Lessee's Default or Breach with respect to the failure to provide the Estoppel Certificate nor prevent the exercise of any of the other rights and remedies granted hereunder.

(c) If Lessor desires to finance, refinance, or sell the Premises, or any part thereof, Lessee and all Guarantors shall within 10 days after written notice from Lessor 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. 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 Project, 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.

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, or by email, 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 72 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 guarantees next day delivery shall be deemed given 24 hours after delivery of the same to the Postal Service or courier. Notices delivered by hand, or transmitted by facsimile transmission or by email shall be deemed delivered upon actual receipt. If notice is received on a Saturday, Sunday or legal holiday, it shall be deemed received on the next business day.

24. **Waivers.**

(a) 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.

(b) 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.

(c) THE PARTIES AGREE THAT THE TERMS OF THIS LEASE SHALL GOVERN WITH REGARD TO ALL MATTERS RELATED THERETO AND HEREBY WAIVE THE PROVISIONS OF ANY PRESENT OR FUTURE STATUTE TO THE EXTENT THAT SUCH STATUTE IS INCONSISTENT WITH THIS LEASE.

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


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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 Parties agree that no lawsuit or other legal proceeding involving any breach of duty, error or omission relating to this Lease may be brought against Broker more than one year after the Start Date and that the liability (including court costs and attorneys' fees), of any Broker with respect to any such lawsuit and/or legal proceeding 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. Holdover Base Rent shall be calculated on a monthly basis. 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 the new owner, this Lease will automatically become a new lease between Lessee and such new owner, and (ii) Lessor shall thereafter be relieved of any further obligations hereunder and such new owner shall assume all of Lessor's obligations, 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 which was not paid or credited to such new owner.

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, if requested by Lessee, 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. *Absent a Non-Disturbance Agreement, so long as Lessee is not in default, it shall not be disturbed so long as it attorns to the record owner and record owner shall honor the terms of this Lease, including any options.*

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.


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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. 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 on 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. Lessor may not place any sign on the exterior of the Building that covers any of the windows of the Premises. Except for ordinary "For Sublease" signs which may be placed only on the Premises, Lessee shall not place any sign upon the Project 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.** All requests for consent shall be in writing. 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 therefor. 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.

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 any Option, as defined below, then the following provisions shall apply.

39.1 **Definition.** "Option" shall mean: (a) the right to extend or reduce the term of or renew this Lease or to extend or reduce the term of 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, the right of first offer 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.

40. **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. In the event, however, that Lessor should elect to provide security services, then the cost thereof shall be an Operating Expense.

41. **Reservations.**


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(a) Lessor reserves the right: (i) to grant, without the consent or joinder of Lessee, such easements, rights and dedications that Lessor deems necessary, (ii) to cause the recordation of parcel maps and restrictions, (iii) to create and/or install new utility raceways, so long as such easements, rights, dedications, maps, restrictions, and utility raceways do not unreasonably interfere with the use of the Premises by Lessee. Lessor may also: change the name, address or title of the Building or Project upon at least 90 days prior written notice; provide and install, at Lessee's expense, Building standard graphics on the door of the Premises and such portions of the Common Areas as Lessor shall reasonably deem appropriate; grant to any lessee the exclusive right to conduct any business as long as such exclusive right does not conflict with any rights expressly given herein; and to place such signs, notices or displays as Lessor reasonably deems necessary or advisable upon the roof, exterior of the Building or the Project or on signs in the Common Areas. Lessee agrees to sign any documents reasonably requested by Lessor to effectuate such rights. The obstruction of Lessee's view, air, or light by any structure erected in the vicinity of the Building, whether by Lessor or third parties, shall in no way affect this Lease or impose any liability upon Lessor.

(b) Lessor also reserves the right to move Lessee to other space of comparable size in the Building or Project. Lessor must provide at least 45 days prior written notice of such move, and the new space must contain improvements of comparable quality to those contained within the Premises. Lessor shall pay the reasonable out of pocket costs that Lessee incurs with regard to such relocation, including the expenses of moving and necessary stationary revision costs. In no event, however, shall Lessor be required to pay an amount in excess of two months Base Rent. Lessee may not be relocated more than once during the term of this Lease.

(c) Lessee shall not: (i) use a representation (photographic or otherwise) of the Building or Project or their name(s) in connection with Lessee's business; or (ii) suffer or permit anyone, except in emergency, to go upon the roof of the Building.

42. **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. A Party who does not initiate suit for the recovery of sums paid "under protest" within 6 months shall be deemed to have waived its right to protest such payment.

43. **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.

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

45. **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.

46. **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 nonmonetary 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.

47. **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.

48. **Arbitration of Disputes.** An Addendum requiring the Arbitration of all disputes between the Parties and/or Brokers arising out of this Lease is is not attached to this Lease.

49. **Accessibility; Americans with Disabilities Act.**

(a) The Premises: have not undergone an inspection by a Certified Access Specialist (CASp). have undergone an inspection by a Certified Access Specialist (CASp) and it was determined that the Premises met all applicable construction-related accessibility standards pursuant to California Civil Code §55.51 et seq. have undergone an inspection by a Certified Access Specialist (CASp) and it was determined that the Premises did not meet all applicable construction-related accessibility standards pursuant to California Civil Code §55.51 et seq.

(b) 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 AND SIZE OF THE PREMISES, THE STRUCTURAL INTEGRITY, THE CONDITION OF THE ROOF AND OPERATING SYSTEMS, COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT AND THE SUITABILITY OF THE PREMISES FOR LESSEE'S INTENDED USE.**

WARNING: IF THE PREMISES ARE 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 ARE LOCATED.


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

Executed at: San Jose, California

Executed at: San Jose, California

On: January 11, 2017

On: December 28, 2016

By LESSOR:

LA FAMILIA, LP a California Limited Partnership

By: [Signature]
MCM Diversified, a California corporation Authorized Property Manager as Agent for Landlord named above

Name Printed: Martin Menne

Title: President

By: _____

Name Printed: _____

Title: _____

Address: 777 North First Street, Suite 600

San Jose, CA 95112

Attention: Tom Lewis

Telephone: (408) 288-2400

Facsimile: ()

Email: tlewis@mcmdiversified.com

Email: _____

Federal ID No. _____

By LESSEE:

Local Agency Formation Commission of Santa Clara County

By: [Signature]

Name Printed: Neelima Palacherla

Title: Executive officer

Approved as to form: _____

By: [Signature]

Name Printed: Mala Subramanian

Title: LAFCO Counsel

Address: _____

Telephone: ()

Facsimile: ()

Email: _____

Email: _____

Federal ID No. _____

LESSOR'S BROKER:

Ritchie Commercial, Inc

Attn: Steve Botto

Address: 34 West Santa Clara Street

San Jose, CA 95113

Telephone: (408) 971-2700

Facsimile: (408) 971-1600

Email: sbotto@ritchiecommercial.com

Broker/Agent BRE License #: 01209214/01055282

LESSEE'S BROKER:

N/A

Attn: _____

Address: _____

Telephone: ()

Facsimile: ()

Email: _____

Broker/Agent BRE License #: _____

[Signature]
INITIALS

[Signature]
INITIALS

NOTICE: These forms are often modified to meet 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, 500 N Brand Blvd, Suite 900, Glendale, CA 91203. Telephone No. (213) 687-8777. Fax No.: (213) 687-8616.

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OPTION(S) TO EXTEND STANDARD LEASE ADDENDUM

Dated November 28, 2016

By and Between (Lessor) La Familia, LP

By and Between (Lessee) Local Agency Formation Commission of Santa Clara County

Address of Premises: 777 North First Street, Suites 400, 410 & 420
San Jose, CA 95112

Paragraph 50

A. OPTION(S) TO EXTEND:

Lessor hereby grants to Lessee the option to extend the term of this Lease for One (1) additional thirty six (36) month period(s) commencing when the prior term expires upon each and all of the following terms and conditions:

(i) In order to exercise an option to extend, Lessee must give written notice of such election to Lessor and Lessor must receive the same at least 4 but not more than 6 months prior to the date that the option period would commence, time being of the essence. If proper notification of the exercise of an option is not given and/or received, such option shall automatically expire. Options (if there are more than one) may only be exercised consecutively.

(ii) The provisions of paragraph 39, including those relating to Lessee's Default set forth in paragraph 39.4 of this Lease, are conditions of this Option.

(iii) Except for the provisions of this Lease granting an option or options to extend the term, all of the terms and conditions of this Lease except where specifically modified by this option shall apply.

(iv) This Option 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 without the intention of thereafter assigning or subletting.

(v) The monthly rent for each month of the option period shall be calculated as follows, using the method(s) indicated below:
(Check Method(s) to be Used and Fill in Appropriately)

I. **Cost of Living Adjustment(s) (COLA)**

a. On (Fill in COLA Dates): _____

~~the Base Rent shall be adjusted by the change, if any, from the Base Month specified below, in the Consumer Price Index of the Bureau of Labor Statistics of the U.S. Department of Labor for (select one): CPI W (Urban Wage Earners and Clerical Workers) or CPI U (All Urban Consumers), for (Fill in Urban Area): -~~

~~All Items (1982-1984 = 100), herein referred to as "CPI".~~

b. ~~The monthly Base Rent payable in accordance with paragraph A.I.a. of this Addendum shall be calculated as follows: the Base Rent set forth in paragraph 1.5 of the attached Lease, shall be multiplied by a fraction the numerator of which shall be the CPI of the calendar month 2 months prior to the month(s) specified in paragraph A.I.a. above during which the adjustment is to take effect, and the denominator of which shall be the CPI of the calendar month which is 2 months prior to (select one): the first month of the term of this Lease as set forth in paragraph 1.3 ("Base Month") or~~

[Signature]

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[Signature]
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(Fill in Other "Base Month"):-

The sum so calculated shall constitute the new monthly Base Rent hereunder, but in no event, shall any such new monthly Base Rent be less than the Base Rent payable for the month immediately preceding the rent adjustment.

c. In the event the compilation and/or publication of the CPI shall be transferred to any other governmental department or bureau or agency or shall be discontinued, then the index most nearly the same as the CPI shall be used to make such calculation. In the event that the Parties cannot agree on such alternative index, then the matter shall be submitted for decision to the American Arbitration Association in accordance with the then rules of said Association and the decision of the arbitrators shall be binding upon the parties. The cost of said Arbitration shall be paid equally by the Parties.

II. Market Rental Value Adjustment(s) (MRV)

a. On (Fill in MRV Adjustment Date(s)) April 1, 2022

the Base Rent shall be adjusted to the "Market Rental Value" of the property as follows:

1) Four months prior to each Market Rental Value Adjustment Date described above, the Parties shall attempt to agree upon what the new MRV will be on the adjustment date. If agreement cannot be reached, within thirty days, then:

(a) Lessor and Lessee shall immediately appoint a mutually acceptable appraiser or broker to establish the new MRV within the next 30 days. Any associated costs will be split equally between the Parties, or

(b) Both Lessor and Lessee shall each immediately make a reasonable determination of the MRV and submit such determination, in writing, to arbitration in accordance with the following provisions:

(i) Within 15 days thereafter, Lessor and Lessee shall each select an independent third party appraiser or broker ("Consultant" - check one) of their choice to act as an arbitrator (Note: the parties may not select either of the Brokers that was involved in negotiating the Lease). The two arbitrators so appointed shall immediately select a third mutually acceptable Consultant to act as a third arbitrator.

(ii) The 3 arbitrators shall within 30 days of the appointment of the third arbitrator reach a decision as to what the actual MRV for the Premises is, and whether Lessor's or Lessee's submitted MRV is the closest thereto. The decision of a majority of the arbitrators shall be binding on the Parties. The submitted MRV which is determined to be the closest to the actual MRV shall thereafter be used by the Parties.

(iii) If either of the Parties fails to appoint an arbitrator within the specified 15 days, the arbitrator timely appointed by one of them shall reach a decision on his or her own, and said decision shall be binding on the Parties.

(iv) The entire cost of such arbitration shall be paid by the party whose submitted MRV is not selected, ie. the one that is NOT the closest to the actual MRV.

2) When determining MRV, the Lessor, Lessee and Consultants shall consider the terms of comparable market transactions which shall include, but not limited to, rent, rental adjustments, abated rent, lease term and financial condition of tenants.

3) Notwithstanding the foregoing, the new Base Rent shall not be less than the rent payable for the month immediately preceding the rent adjustment.

b. Upon the establishment of each New Market Rental Value:

1) the new MRV will become the new "Base Rent" for the purpose of calculating any further Adjustments, and

2) the first month of each Market Rental Value term shall become the new "Base Month" for the purpose of calculating any further Adjustments.

III. Fixed Rental Adjustment(s) (FRA)

The Base Rent shall be increased to the following amounts on the dates set forth below:-

On (Fill in FRA Adjustment Date(s)):

The New Base Rent shall be:-

IV. Initial Term Adjustments.

The formula used to calculate adjustments to the Base Rate during the original Term of the Lease shall continue to be used during the extended term.


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B. NOTICE:

Unless specified otherwise herein, notice of any rental adjustments, other than Fixed Rental Adjustments, shall be made as specified in paragraph 23 of the Lease.

C. BROKER'S FEE:

The Brokers shall be paid a Brokerage Fee for each adjustment specified above in accordance with paragraph 15 of the Lease or if applicable, paragraph 9 of the Sublease.

NOTICE: These forms are often modified to meet 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, 500 N Brand Blvd, Suite 900, Glendale, CA 91203.

Telephone No. (213) 687-8777. Fax No.: (213) 687-8616.


INITIALS


INITIALS



RULES AND REGULATIONS FOR STANDARD OFFICE LEASE

Dated: November 28, 2016

By and Between La Familia, LP, Lessor and Local Agency Formation Commission of Santa Clara County

GENERAL RULES

1. Lessee shall not suffer or permit the obstruction of any Common Areas, including driveways, walkways and stairways.
2. Lessor reserves the right to refuse access to any persons Lessor in good faith judges to be a threat to the safety and reputation of the Project and its occupants.
3. Lessee shall not make or permit any noise or odors that annoy or interfere with other lessees or persons having business within the Project.
4. Lessee shall not keep animals or birds within the Project, and shall not bring bicycles, motorcycles or other vehicles into areas not designated as authorized for same.
5. Lessee shall not make, suffer or permit litter except in appropriate receptacles for that purpose.
6. Lessee shall not alter any lock or install new or additional locks or bolts.
7. Lessee shall be responsible for the inappropriate use of any toilet rooms, plumbing or other utilities. No foreign substances of any kind are to be inserted therein.
8. Lessee shall not deface the walls, partitions or other surfaces of the Premises or Project.
9. Lessee shall not suffer or permit anything in or around the Premises or Building that causes excessive vibration or floor loading in any part of the Project.
10. Furniture, significant freight and equipment shall be moved into or out of the building only with the Lessor's knowledge and consent, and subject to such reasonable limitations, techniques and timing, as may be designated by Lessor. Lessee shall be responsible for any damage to the Office Building Project arising from any such activity.
11. Lessee shall not employ any service or contractor for services or work to be performed in the Building, except as approved by Lessor.
12. Lessor reserves the right to close and lock the Building on Saturdays, Sundays and Building Holidays, and on other days between the hours of 6:00 P.M. and 8:00 A.M. of the following day. If Lessee uses the Premises during such periods, Lessee shall be responsible for securely locking any doors it may have opened for entry.
13. Lessee shall return all keys at the termination of its tenancy and shall be responsible for the cost of replacing any keys that are lost.
14. No window coverings, shades or awnings shall be installed or used by Lessee.
15. No Lessee, employee or invitee shall go upon the roof of the Building.
16. Lessee shall not suffer or permit smoking or carrying of lighted cigars or cigarettes in areas reasonably designated by Lessor or by applicable governmental agencies as non-smoking areas.
17. Lessee shall not use any method of heating or air conditioning other than as provided by Lessor.
18. Lessee shall not install, maintain or operate any vending machines upon the Premises without Lessor's written consent.
19. The Premises shall not be used for lodging or manufacturing, cooking or food preparation.
20. Lessee shall comply with all safety, fire protection and evacuation regulations established by Lessor or any applicable governmental agency.
21. Lessor reserves the right to waive any one of these rules or regulations, and/or as to any particular Lessee, and any such waiver shall not constitute a waiver of any other rule or regulation or any subsequent application thereof to such Lessee.
22. Lessee assumes all risks from theft or vandalism and agrees to keep its Premises locked as may be required.
23. Lessor reserves the right to make such other reasonable rules and regulations as it may from time to time deem necessary for the appropriate operation and safety of the Project and its occupants. Lessee agrees to abide by these and such rules and regulations.

PARKING RULES

1. Parking areas shall be used only for parking by vehicles no longer than full size, passenger automobiles herein called "Permitted Size Vehicles." Vehicles other than Permitted Size Vehicles are herein referred to as "Oversized Vehicles."
2. Lessee shall not permit or allow any vehicles that belong to or are controlled by Lessee or Lessee's employees, suppliers, shippers, customers, or invitees to be loaded, unloaded, or parked in areas other than those designated by Lessor for such activities.
3. Parking stickers or identification devices shall be the property of Lessor and be returned to Lessor by the holder thereof upon termination of the holder's parking privileges. Lessee will pay such replacement charge as is reasonably established by Lessor for the loss of such devices.
4. Lessor reserves the right to refuse the sale of monthly identification devices to any person or entity that willfully refuses to comply with the applicable rules, regulations, laws and/or agreements.


INITIALS

PAGE 1 OF 2


INITIALS

5. Lessor reserves the right to relocate all or a part of parking spaces from floor to floor, within one floor, and/or to reasonably adjacent offsite location(s), and to reasonably allocate them between compact and standard size spaces, as long as the same complies with applicable laws, ordinances and regulations.
6. Users of the parking area will obey all posted signs and park only in the areas designated for vehicle parking.
7. Unless otherwise instructed, every person using the parking area is required to park and lock his own vehicle. Lessor will not be responsible for any damage to vehicles, injury to persons or loss of property, all of which risks are assumed by the party using the parking area.
8. Validation, if established, will be permissible only by such method or methods as Lessor and/or its licensee may establish at rates generally applicable to visitor parking.
9. The maintenance, washing, waxing or cleaning of vehicles in the parking structure or Common Areas is prohibited.
10. Lessee shall be responsible for seeing that all of its employees, agents and invitees comply with the applicable parking rules, regulations, laws and agreements.
11. Lessor reserves the right to modify these rules and/or adopt such other reasonable and non-discriminatory rules and regulations as it may deem necessary for the proper operation of the parking area.
12. Such parking use as is herein provided is intended merely as a license only and no bailment is intended or shall be created hereby.

NOTICE: These forms are often modified to meet 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, 500 N Brand Blvd, Suite 900, Glendale, CA 91203. Telephone No. (213) 687-8777. Fax No.: (213) 687-8616.



INITIALS

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INITIALS

EXHIBIT A

**777 N FIRST STREET
JANITORIAL SPECIFICATIONS**

<u>A. OFFICE AREAS</u>	Daily	Weekly	Monthly	Quarterly	Annually
Empty all waste receptacles	X				
Insert plastic liner	X or as needed				
Horizontal dusting	X				
Vertical dusting		X			
Remove spider webs	X				
Vacuum carpets	X				
Vacuum upholstered furniture		X			
Spot clean all carpeted areas	X				
Dust mop tile floors	X				
Damp mop tile floors			X		
Clean baseboards	X				
<u>B. LOBBY, COMMON AREAS</u>					
Clean ashtrays and urns	X				
Clean entrance glass	X				
Damp mop tile floors	X				
Sweep outside entrances	X				
Spray buff tile floors				X	
Spot clean carpets		X			
Remove spider webs	X				
Vertical and horizontal dusting	X				
<u>C. BATHROOM SERVICES</u>					
Mop floor surface	X				
Scrub and disinfect floors	X				
Horizontal cleaning	X				
Empty waste bins	X				
Refill all dispensers	X				
Clean mirrors, frames	X				
Clean wash basins	X				
Clean toilets and urinals	X				
Remove all gum, tar, etc.	X				
Clean and disinfect drains		X			
<u>D. BUILDING EXTERIOR</u>					
Clean entrance walkways		X			
<u>E. SUPPLIES</u>					
Cleaning supplies	Included				
Paper supplies	Included				

**La Familia, LP & Local Agency Formation Commission of Santa Clara
County**

Lease Exhibit "A"

Page 1 of 2

LESSOR, at Lessor's cost shall perform the following improvements and modifications to the Premises:

- 1) Remove the existing wall separating the private offices create one single room;
- 2) Install a building standard door with frosted glass window in the North wall of suite 420;
- 3) Clean the exterior of the windows;
- 4) Install Lessee's choice of building standard carpeting in the Premises (carpet choice subject to Lessor's approval);

Carpet Choice #1: Bulletin 00550 Seal the Deal 10368

- 5) Paint the Premises with building standard paint in Lessee's choice of two (2) colors (paint colors subject to Lessor's approval);

Paint Color #1: Kelly Moore Swiss Coffee 23

- 6) Install a locking mailbox on the exterior of the main suite entrance door or on the wall adjacent to it;
- 7) Install room darkening window shades on the exterior windows in the conference room in suite 420 and light filtering window shades on all other exterior windows;

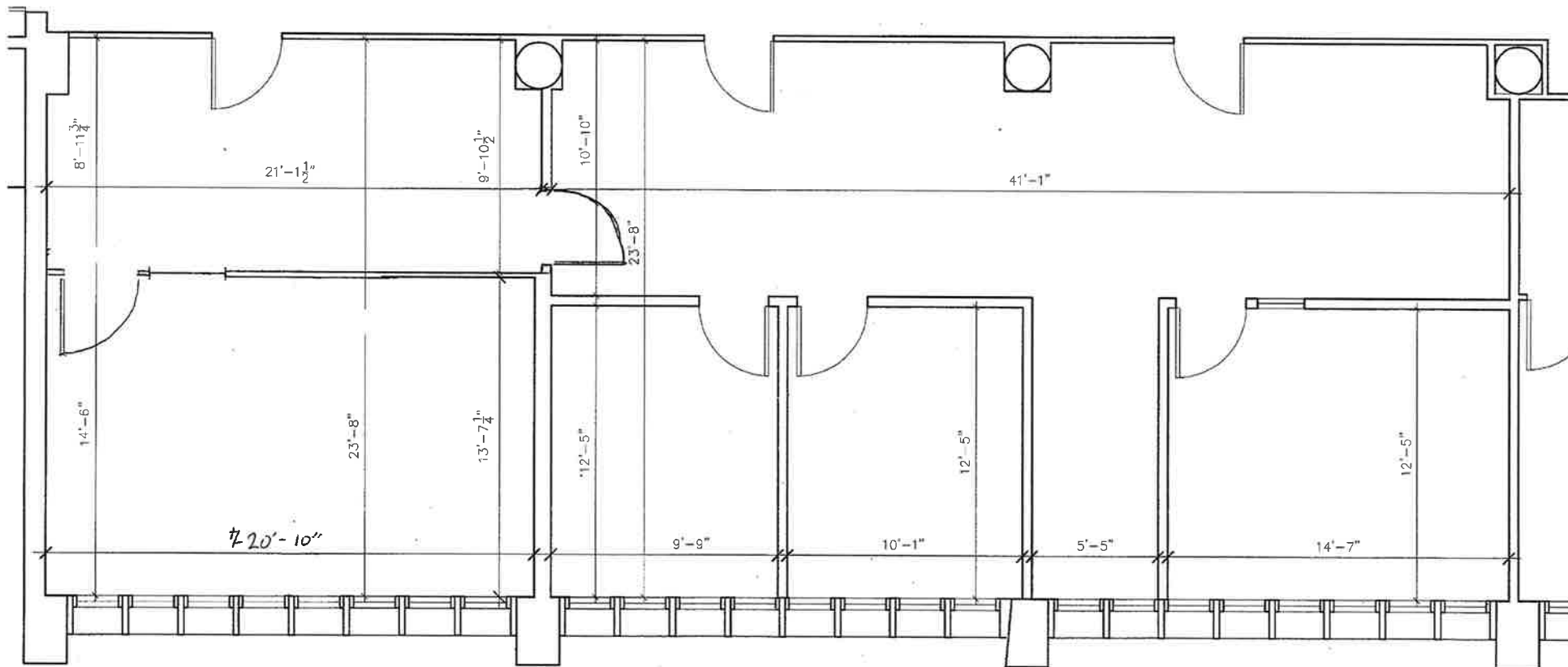
Room Darkening Shades: PO47 White Bone

Light Filtering Shades: White / Bone F 502

- 8) Replace any stained or damaged ceiling tiles and HVAC registers;
- 9) Deliver the Premises for occupancy with all existing Building and Premises systems in good and safe working order and condition.

LESSEE, at Lessee's cost may elect to install electronic locksets on the doors to the Premises. Lessor, at no cost to Lessor, will cooperate with Lessee and its vendors to facilitate the installation of such electronic locks.

La Familia, LP & SCC-LAFCO
Exhibit "A" Page 2





LAFCO MEETING: February 1, 2017
TO: LAFCO
FROM: Neelima Palacherla, Executive Officer
Dunia Noel, Analyst
SUBJECT: FINANCE COMMITTEE FOR FISCAL YEAR 2017-2018

STAFF RECOMMENDATION

Establish a committee composed of three commissioners to work with staff to develop and recommend the proposed FY 2017-2018 LAFCO budget for consideration by the full commission.

BACKGROUND

The Cortese Knox Hertzberg Local Government Reorganization Act of 2000 (CKH Act) which became effective on January 1, 2001, requires LAFCO, as an independent agency, to annually adopt a draft budget by May 1 and a final budget by June 15 at noticed public hearings. Both the draft and the final budgets are required to be transmitted to the cities, the special districts and the County. LAFCO's Finance Committee will discuss and recommend both a preliminary and then a final FY 2017-2018 LAFCO budget to the commission for adoption.

The time commitment for commissioners serving on this committee would be limited to 1 or 2 meetings, between the months of February and May.

LAFCO MEETING: February 1, 2017
TO: LAFCO
FROM: Neelima Palacherla, Executive Officer
Dunia Noel, Analyst
SUBJECT: EXECUTIVE OFFICER'S REPORT

13.1 NEW REPORTING REQUIREMENT FOR CERTAIN JOINT POWERS AUTHORITIES

For Information Only.

On January 17, 2017, LAFCO staff sent out a letter (**Attachment 1**) to affected local agencies notifying them of Senate Bill 1266 (McGuire), which became effective January 1, 2017, and requires certain Joint Powers Authorities (JPAs) to file their agreements and amendments with LAFCO within specific time-frames.

SB 1266 is intended to help LAFCOs fulfill their statutory responsibilities/goals of promoting efficient delivery of local government services, facilitating shared service opportunities and serving as community resources on local government services. The law does not grant LAFCOs any regulatory authority over JPA formation or boundaries.

13.2 UPDATE ON MHUSD'S POTENTIAL PLANS TO PURCHASE LANDS IN SOUTHEAST QUADRANT FOR FUTURE SCHOOL SITES AND FACILITIES

For Information Only.

On January 18, 2017, LAFCO staff sent a letter (**Attachment B**) to Steve Betando (Superintendent, Morgan Hill Unified School District) and the District's Board of Trustees concerning their potential plans to purchase lands in the Southeast Quadrant for future school sites and facilities.

As you may recall, in February 2016, LAFCO provided a similar letter to the District when staff noticed that the February 2, 2016 District Board Meeting agenda included items to consider potentially purchasing these lands. At the time, the subject parcels were part of a major urban service area amendment application from the City of Morgan Hill, which was under review by LAFCO staff and was scheduled to be considered by LAFCO at its March 2016 Public Hearing.

On March 11, 2016, LAFCO denied the City of Morgan Hill's application and these lands remain unincorporated, located outside of the City of Morgan Hill's Urban Service Area and planned for non-urban, agricultural, and rural uses. However, the District has continued to be interested in purchasing some of these parcels for future school sites and facilities.

LAFCO continues to encourage the District and the City to work collaboratively to proactively plan for and locate schools within the existing city limits, away from farmland, in order to prevent the conversion of valuable farmland, make use of existing services/infrastructure, and help reduce greenhouse gas emissions.

13.3 MEETING WITH CALIFORNIA HIGH SPEED RAIL AUTHORITY STAFF

For Information Only.

On January 18, 2017, LAFCO staff met with Ben Tripousis (Northern California Regional Director, California High Speed Rail Authority) to receive an update on the Authority's high speed rail planning efforts in Santa Clara County, particularly concerning the Authority's consideration of two potential locations for a future high-speed rail station in Gilroy. One of those locations is within the City's downtown, generally in the vicinity of the existing Caltrain Station. The other location is outside of the City of Gilroy, east of US 101. The Authority is working with affected local agencies and the communities to identify a preferred alternative station location which will be analyzed in its upcoming environmental review process.

In March 2011, LAFCO provided a letter to the Authority highlighting some of the significant areas of conflict between a proposed East Gilroy station location and LAFCO policies, and encouraging the consideration of alternative station locations that are more consistent with LAFCO policies, state law and other local/regional interjurisdictional goals, plans and policies.

Staff continues to monitor the Authority's planning process and will provide comments, as necessary.

13.4 SANTA CLARA COUNTY SPECIAL DISTRICTS ASSOCIATION MEETING

For Information Only.

On December 5, 2016, Commissioner Hall, Alternate Commissioner Kishimoto and Executive Officer Palacherla attended the quarterly meeting of the Santa Clara County Special Districts Association (SDA).

Commissioner Hall provided an update on LAFCO's efforts to lease private office space and the potential for increased costs to the member agencies as a result of the move out of the County facilities. EO Palacherla provided an update on LAFCO activities and informed the group about SB 1266's reporting requirements.

The meeting included a presentation by guest speaker, former Assembly Member Rich Gordon, who stressed the importance of establishing good working relationships and urged the districts to conduct outreach to increase the legislature's and public's understanding of what districts do.

The meeting also included a legislative update by the California Special Districts (CSDA) representative. Special district members/staff in attendance at the meeting provided updates on current projects / issues of interest to the group.

13.5 SANTA CLARA COUNTY ASSOCIATION OF PLANNING OFFICIALS (SCCAPO) MEETING

For Information Only.

Executive Officer Palacherla attended the January 11, 2017 meeting of the SCCAPO that was hosted by the City of Mountain View. The meeting included a discussion of the role of SCCAPO and how to ensure that it continues to be an important forum and resource for Planning Officials across the county; potential future discussion/presentation topics of interest to the attendees; and different ways to organize the meetings in order to increase participation. Attendees also discussed some of the regional planning efforts that are underway in the county. Staff from the various cities provided updates on current and anticipated planning and development projects in their jurisdiction. Executive Officer Palacherla announced that LAFCO will be moving into its own office space, and offered to host a SCCAPO meeting later in the year.

13.6 BAY AREA LAFCOS MEETING

For Information Only.

On December 15th, Executive Officer Palacherla and Analyst Noel attended the Bay Area LAFCOs meeting, which is a semi-annual meeting of Executive Officers and Analysts from the nine Bay Area LAFCOs. The group discussed various current and upcoming projects at each LAFCO; how various LAFCOs are coordinating outreach to their local legislators on LAFCO matters; whether LAFCOs in the Coastal Region might consider a rotation schedule similar to LAFCOs in the Southern Region, where each of the Coastal counties would have an opportunity to serve on the CALAFCO Board; and how LAFCOs plan to notify local agencies about SB 1266 (McGuire).

13.7 INTER-JURISDICTIONAL GIS WORKING GROUP MEETING

For Information Only.

Analyst Noel attended the December 14th meeting of the Inter-Jurisdictional GIS Working Group that includes staff from various county departments that use and maintain GIS data, particularly LAFCO related data. The meeting was hosted by the County Assessor's Office's GIS staff, who provided an overview of how they created

their tax rate area boundaries GIS layer and how they update this layer on an ongoing basis, as a result of cities and special districts boundary changes.

Analyst Noel and Chris Wilson (County/LAFCO Surveyor) presented their review and recommendations for prioritizing and addressing some identified discrepancies between the cities limits boundaries GIS layer and the tax rate area boundaries GIS layer. Analyst Noel and LAFCO Surveyor Wilson; along with staff from the County Planning Office, County Assessor's Office, and County Geographic Information Services; will be working together over the next year to systematically investigate and resolve nearly 60 known discrepancies. It was decided that the Working Group would receive periodic progress reports, as necessary. At the meeting, participants also shared updates on current GIS and boundary change activities within their department or agency. The next meeting will be hosted by the LAFCO office.

ATTACHMENTS

- Attachment A: Notification Letter to Local Agencies on SB 1266 & New Reporting Requirement for Certain Joint Powers Authorities (dated January 17, 2017)
- Attachment B: Letter to Morgan Hill Unified School District re: District's Potential Plans to Purchase Lands in SEQ for Future School Sites and Facilities (dated January 18, 2017)

DATE: January 17, 2017

TO: City Managers and County Executive
Special District Managers
City Public Works / Community Development Directors
City / District Attorneys
County Board of Supervisors and City Council Members
Special District Board Members

FROM: Neelima Palacherla, Executive Officer

SUBJECT: **New Reporting Requirement for Certain Joint Powers Authorities**

The purpose of this memo is to notify the County, cities, and districts of Senate Bill 1266 (McGuire), which became effective on January 1, 2017, and imposes new reporting requirements on certain Joint Powers Authorities (JPAs).

Requirement for Certain JPAs to File their Agreements and Amendments with LAFCO within Specified Time Periods

Effective January 1, 2017, SB 1266 provides that:

1. JPAs under Government Code Section 56047.7 that are formed for the purpose of providing municipal services and include a county, city, or special district member are required to file a copy of their joint powers agreement and any amendments to their agreement with LAFCO within 30 days of the effective date of the agreement or its amendment.
2. JPAs under Government Code Section 56047.7 that are formed prior to January 1, 2017 for the purpose of providing municipal services and include a county, city, or special district member are required to file a copy of their agreement and any amendments to their agreement with LAFCO no later than July 1, 2017.
3. A subject JPA that fails to make the required filings within the specified timeframes would be prohibited from issuing bonds or incurring any indebtedness until those filings have been made.

Please note that the scope of the reporting is limited to those JPAs that include a county, city or district member and provide a municipal service such as water, waste water, storm water, recycled water, solid waste, fire protection, police, recreation, street lighting, animal control, library, roads, emergency medical service, vector control, flood

protection, community facilities, weed abatement, environmental protection, habitat mitigation, gas & electricity, or broad band.

SB 1266 is intended to help LAFCOs fulfill their statutory responsibilities/goals of promoting efficient delivery of local government services, facilitating shared service opportunities and serving as community resources on local government services. It does not grant LAFCOs any regulatory authority over JPA formation or boundaries.

Please Make the Required Filings as soon as possible

In order to streamline the reporting process, we are requesting that subject JPAs provide copies of their agreements in electronic format to LAFCO at lafco@ceo.sccgov.org. All submittals will be followed by formal acknowledgement by LAFCO for agency records. Thank you for your time and cooperation.

Attachment:

1. Senate Bill 1266 (McGuire)

Senate Bill No. 1266

CHAPTER 173

An act to amend Section 6503.6 of, and to add Section 6503.8 to, the Government Code, relating to local government.

[Approved by Governor August 22, 2016. Filed with
Secretary of State August 22, 2016.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1266, McGuire. Joint Exercise of Powers Act: agreements: filings.

The Joint Exercise of Powers Act generally authorizes 2 or more public agencies, by agreement, to jointly exercise any common power, which is generally termed a joint powers agreement. When a joint powers agreement provides for the creation of an agency or entity, separate from the parties to the agreement and responsible for its administration, existing law requires that agency or entity to cause a notice of the agreement or amendment to be prepared and filed, as specified, with the Secretary of State. Existing law requires an agency or entity that files a notice of agreement or amendment with the Secretary of State to also file a copy of the original joint powers agreement, and any amendment to the agreement, with the Controller.

This bill would require an agency or entity required to file documents with the Controller, as described above, that meets the definition of a joint powers authority or joint powers agency, as specified, that was formed for the purpose of providing municipal services and that includes a local agency member, as specified, to also file a copy of the agreement or amendment to the agreement with the local agency formation commission in each county within which all or any part of a local agency member's territory is located within 30 days after the effective date of the agreement or amendment to the agreement. The bill would also require an agency or entity that meets the definition of a joint powers authority or joint powers agency, as specified, that was formed for the purpose of providing municipal services prior to the effective date of this act and that includes a local agency member, as specified, to file a copy of the agreement and any amendments to the agreement with the local agency formation commission in each county within which all or any part of a local agency member's territory is located no later than July 1, 2017. This bill would prohibit an agency or entity administering an agreement or amendment that has failed to make the required filings within the specified timeframes from issuing bonds or incurring any indebtedness until those filings have been made.

By requiring specified joint powers agencies to file certain documents with a local agency formation commission, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

The people of the State of California do enact as follows:

SECTION 1. Section 6503.6 of the Government Code is amended to read:

6503.6. (a) When an agency or entity files a notice of agreement or amendment to the agreement with the office of the Secretary of State pursuant to Section 6503.5, the agency or entity shall file a copy of the full text of the original joint powers agreement, and any amendment to the agreement, with the Controller. An agency or entity that meets the definition of a joint powers authority or joint powers agency under Section 56047.7 that was formed for the purpose of providing municipal services and that includes a local agency member that is a city, district, or county shall, within 30 days after the effective date of the agreement or amendment to the agreement, file a copy of the agreement or amendment to the agreement with the local agency formation commission in each county within which all or any part of a local agency member's territory is located.

(b) Notwithstanding any other provision of this chapter, any agency or entity administering a joint powers agreement or amendment to such an agreement, which agreement or amendment becomes effective on or after the effective date of this section, which fails to file the notice with a local agency formation commission required by this section within 30 days after the effective date of the agreement or amendment shall not thereafter, and until those filings are completed, issue any bonds or incur indebtedness of any kind.

SEC. 2. Section 6503.8 is added to the Government Code, to read:

6503.8. (a) No later than July 1, 2017, an agency or entity that meets the definition of a joint powers authority or joint powers agency under Section 56047.7 that was formed for the purpose of providing municipal services prior to the effective date of this section, and that includes a local agency member that is a city, district, or county, shall cause a copy of the agreement and any amendments to the agreement to be filed with the local agency formation commission in each county within which all or any part of a local agency member's territory is located.

(b) Notwithstanding any other provision of this chapter, any agency or entity administering a joint powers agreement or amendment to such an agreement, which fails to file the notice with a local agency formation commission required by this section on or before July 1, 2017, shall not thereafter, and until those filings are completed, issue any bonds or incur indebtedness of any kind.

SEC. 3. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

January 18, 2017

VIA EMAIL [betandos@mhusd.org]

Steve Betando, Superintendent
Morgan Hill Unified School District
15600 Concord Circle
Morgan Hill, CA 95037

**RE: MHUSD'S POTENTIAL PLANS TO PURCHASE LANDS IN SOUTHEAST
QUADRANT FOR FUTURE SCHOOL SITES AND FACILITIES**

Dear Mr. Betando,

On February 2, 2016, LAFCO provided the Morgan Hill Unified School District with a letter raising concerns about the District's potential plans to purchase properties (i.e. APNs 817-18-001 & 002; and APNs 817-16-002, 003, 004, & 005) for future school sites and facilities within the unincorporated area known as the Southeast Quadrant, which includes some of the last remaining farmland in Santa Clara County. At the time, the subject properties were part of a major urban service area amendment application from the City of Morgan Hill that was under review by LAFCO staff and was scheduled to be considered by LAFCO in March 2016. As you may know, LAFCO at its March 11, 2016 Public Hearing denied the City's application and these lands remain unincorporated, located outside of the City's Urban Service Area and planned for non-urban, agricultural, and rural uses.

Based on the District's recent Board Meeting Agendas and our phone conversation, we understand that the District continues to have plans to purchase some of these properties and potentially others within the unincorporated area to locate future District facilities such as a middle school or high school. LAFCO would like to reiterate its continued concern about such an approach to planning for future school sites and facilities. Cities, including Morgan Hill, should plan for urban services/facilities, such as schools, to be located within their existing boundaries to serve the city's population. Locating schools within the existing urban core will help curb urban sprawl, preserve agricultural lands, and reduce greenhouse gas emissions.

As you and the District's Board are aware, LAFCO is a state mandated independent local agency with countywide jurisdiction. Its primary goals are to discourage urban sprawl, preserve agricultural and open space lands, and encourage efficient delivery of services. LAFCO regulates the boundaries of cities and special districts; and the extension of

services outside an agency's boundaries. State law and LAFCO policies encourage the development of vacant lands within existing city limits and require that urban development be steered away from existing agricultural lands. Therefore we encourage the District to explore opportunities within the Morgan Hill city limits for future school sites or other facilities.

As you and the District's Board are also aware, Santa Clara County does not allow urban development to occur in the unincorporated area and does not provide urban services such as sewer and water service in the unincorporated area, consistent with the longstanding countywide urban development policies which state that urban development should occur only on lands annexed to cities and not within unincorporated areas; and that the cities should be responsible for planning, annexing and providing services to urban development within their urban service areas in an orderly, planned manner. Additionally, State law does not allow a city to provide services outside of its boundaries without LAFCO's approval and LAFCO policies discourage such extension of services outside jurisdictional boundaries.

Furthermore, there is a growing concern at the State level about the use of pesticides near school sites which is very likely to result in greater restrictions on local agricultural operators in the upcoming years. Accordingly, it is prudent to plan for new schools and facilities to be sited away from agricultural areas in order to avoid adversely impacting current or future agricultural operations on surrounding lands.

Therefore, we respectfully request that the District and the City of Morgan Hill work collaboratively to proactively plan for and site schools within the existing city limits in order to prevent the conversion of valuable farmland, make use of existing services/infrastructure, and help reduce greenhouse gas emissions. Please distribute this letter to the District's Board of Directors for their consideration.

If you have any questions regarding the information presented in this letter, please contact me at (408) 993-4713.

Sincerely,



Neelima Palacherla
LAFCO Executive Officer

Cc:

LAFCO Members
Steve Rymer, City Manager, City of Morgan Hill
Kirk Girard, Director, County Planning and Development Department

LAFCO MEETING: February 1, 2017
TO: LAFCO
FROM: Neelima Palacherla, Executive Officer
Dunia Noel, Analyst
SUBJECT: CALAFCO RELATED ACTIVITIES

14.1 2017 CALAFCO STAFF WORKSHOP

Recommendation

Authorize staff to attend the 2017 CALAFCO Staff Workshop and authorize travel expenses funded by the LAFCO budget.

Discussion

The CALAFCO Annual Staff Workshop is scheduled for April 5 – April 7 in Fresno at the DoubleTree by Hilton. Fresno LAFCO is hosting the Workshop. The workshop provides an opportunity for staff to gain and share knowledge about some of the best practices used by LAFCOs to address various issues facing local agencies across the state. See The LAFCO Budget for Fiscal Year 2017 includes funds for staff to attend the Workshop.

14.2 REPORT ON THE CALAFCO LEGISLATIVE COMMITTEE MEETING

For Information Only.

Executive Officer Palacherla is a member of the CALAFCO Legislative Committee and participated in the Committee's December 16, 2016 meeting by phone. The Committee received a report on the CALAFCO Board's discussion regarding the 2017 Legislative Program. The Board directed that the Legislative Committee focus resources on fulfilling commitments already made and on issues that put LAFCOs at risk. Based on this criteria, the Committee decided to add only one item to the Omnibus bill in 2017. The Omnibus bill is the annual vehicle that CALAFCO uses to make non-substantive, technical corrections to the Cortese-Knox-Hertzberg Act.

The Committee also decided to sponsor revisions to Government Code Section 56653 and to co-sponsor with CSDA (as lead), a bill to streamline the seating of special districts

on LAFCO. The Omnibus bill is the annual vehicle that CALAFCO uses to make non-substantive, technical corrections to the Cortese-Knox-Hertzberg Act.

The next meeting of the Legislative Committee is scheduled as a conference call for January 27th.



CALAFCO Board and Staff Meet in Biennial Strategic Planning Retreat

On January 11, 2017, the CALAFCO Board held their biennial strategic planning retreat in San Jose. During the day-long retreat they reviewed Association accomplishments for 2016, completing the annual dashboard review in the process, reaffirmed CALAFCO's mission as an educational 501(c)3 non-profit Association, and worked extensively in the review of the current strategic plan priority areas.

The group comprehensively discussed the idea of transitioning to a lobbying organization and after carefully and thoroughly reviewing all options and their pros and cons, the Board unanimously reaffirmed the educational mission of the organization.

An in-depth discussion regarding roles and responsibilities of the Board, Staff and the organization's Committees yielded several policy changes including a change in the name and scope of work for the Board's Nomination Committee (now called the Election Committee), effective immediately, and a change in the membership structure of the Legislative Committee, effective 2018. The Legislative Committee will be comprised of five (5) total voting and five (5) total alternate Board members (one less than current), and two (2) voting members from each region with one (1) alternate per region. There will also now be an Advisory Committee which will be a resource to the Legislative Committee to work on specific bills or legislative projects.

A great deal of time was spent considering how CALAFCO can expend its limited resources in the area of member development.

All of the work done during the retreat will be presented back to the Board in the form of a 2-year strategic plan for consideration and adoption at their May 5 meeting.

Additional CALAFCO Board Actions

Following their strategic planning retreat, the Board met in a regular Board meeting on January 12. During the meeting the Board addressed several administrative issues including:

- ◆ The quarterly financial reports were reviewed. The budget is on track for the year with no changes anticipated.
- ◆ The Board considered the 2017-18 dues. CALAFCO Bylaws call for the dues to automatically increase annually by the state CPI, unless the Board takes action otherwise. Given the decision two years ago to raise LAFCo member dues by seven (7) percent each year for two years, the Board took action to not increase the dues by the CPI and reaffirmed the 7% increase. This is the second and final year of that



approved increase. All Executive Officers received the approved dues for FY 2017-18.

- ◆ The Legislative Policies for 2017 were adopted.
- ◆ The 2017-2018 Primary Strategic Areas were adopted as follows:
 - ◆ Educational resource for internal and external stakeholders
 - ◆ Member development and communication
 - ◆ Act as a resource

The Board narrowed the scope of the Strategic Plan to be better equipped at using existing resources in a way that brings greater value to the Association, its members and stakeholders. The Board will adopt a full two-year Strategic Plan at their May 5 meeting. That Plan will detail objectives for the three strategy areas.

Conferences and Workshops Update

2017 STAFF WORKSHOP

The 2017 Staff Workshop is set for *April 5-7* at the Doubletree by Hilton in downtown Fresno. Our host for this workshop is *Fresno LAFCo*. The Program Planning Committee is busy planning a great program. There is a long list of interesting topics being considered by the program team and a draft program will be made available by mid-February. Look for registration to open at that time as well. Registration rates for the Workshop will remain at the 2016 rates.

2017 ANNUAL CONFERENCE

Mark your calendars for the 2017 Annual Conference on *October 25-27*. We will be in Mission Bay, San Diego at the Bahia Hotel. Watch for preliminary program announcements in the spring. This is the first year for a *CALAFCO* hosted Conference and we are looking at lots of new and interesting ideas, so you will not want to miss out on this exciting and valuable educational and networking event!

CALAFCO White Papers and Other Publications

We are pleased to start the year with the release of the White Paper on the *Sustainable Groundwater Management Act (SGMA) and LAFCos*. The purpose of this paper is to summarize how SGMA will impact LAFCos across the state. You can find this paper on the CALAFCO website.



In partnership with the American Farmland Trust (AFT), we are currently working on a White Paper on *Ag Policies*. Work on this project is anticipated to be completed this July.



CALAFCO is undertaking a White Paper and mapping project on *Disadvantaged Unincorporated Communities* throughout the state. This is one of our main projects for 2017 and work will begin very shortly on this project.

CALAFCO Website

We are pleased to report the migration to the new and improved website was conducted seamlessly the last week of December. If you have not already checked it out, take a visit at www.calafco.org and see for yourself. Remember that in order to access the Members Only section you must request a new user name and password, unless you were previously using your own unique user name and password. To make that request, from the homepage select the orange Login button at the top right. Select Create New Account, enter your desired user name and your email address, and then click on the Create New Account button. CALAFCO staff will be notified of your request and upon verification of your affiliation with a LAFCo or Associate Member, your request will be approved. No requests will be approved unless the person is directly associated as staff or commissioner of a LAFCo or directly affiliated with the Associate Member's business (an employee).

CALAFCO Administration Update

2016 CKH Guide Update Now Available

The 2016 CKH Guide Update is now available. You can download the new Guide from the CALAFCO website, or place your order with CALAFCO for printed versions. The order form is also located on the CALAFCO website.



2017 Calendar of Events Published

The 2017 Calendar of Events is available online at the CALAFCO website and has also been distributed to the membership via the list serves.

2017-2018 Membership Directories

Watch for the new printed directories coming this spring. They will be distributed at the Staff Workshop and will also be available online.

CALAFCO Legislative Update

This is the first year of the new two-year legislative cycle. Not surprisingly, it's a slow start for bill introductions with only 396 bills introduced so far in both houses. The deadline to submit bill language to Leg Counsel was January 20, and the last day for bill introductions is February 17. It is expected that over the next several weeks the blitz of bill introductions will occur. This year, the Assembly has the authority to introduce ten additional bills per Legislator per year than before, bringing the total to 50 for each Assembly



Member. This could mean as many as 800 more bills introduced this year than in previous years.

The Senate has made their Committee appointments and the Senate Governance & Finance Committee (SGFC) has a new Chair – Senator Mike McGuire. Former Chair Senator Hertzberg is now a member of the Committee. Other than Senator McGuire, there are no new members on this committee. The long-time staff consultant to the committee (Brian Weinberger) was replaced with Jimmy MacDonald, former legislative advocate for CSDA.

The Assembly has made their Committee Chair appointments, and just recently made their membership appointments. The Assembly Local Government Committee (ALGC) has a new Chair - Assm. Cecilia Aguiar-Curry. She is a former Mayor and Yolo LAFCo Commissioner. In total, 8 of the 9 committee members are new to the committee.

CALAFCO is working to secure an author for our sponsored bill amending GCS 56653, as previously approved by the Board. In addition, we are working with CSDA as they take the lead to secure an author for our co-sponsored bill to streamline the addition of special districts on LAFCo.



CALAFCO Associate Members' Corner

This section highlights our Associate Members. The information below is provided to CALAFCO by the Associate member upon joining the Association. All Associate member information can be found in the CALAFCO Member Directory.

E Mulberg & Associates

E Mulberg & Associates has been a Silver Associate Member since March 2011. Services offered include Municipal Service Reviews, Sphere of Influence updates, changes in organization, staff reports, CEQA analysis, and assistance with applications to LAFCo. For more information, contact **Elliot Mulberg** at elliott@emulberg.com or visit their website at www.emulberg.com.

Goleta West Sanitary District

A Silver Associate Member since August 2011, **Goleta West Sanitary District** provides wastewater collection and treatment as well as street sweeping services. Formed in 1954, the district serves over 35,000 people. For more information, visit their website at





www.goletawest.com, or email their **General Manager Mark Nation**, at info@goletawest.com.

LACO Associates

LACO Associates has been a Silver Associate Member since February 2012. **LACO** provides integrated solutions for development, infrastructure and geo-environmental projects. Their services include planning, design, engineering and geo-environmental as well as CEQA compliance, GIS, MSRs and economic studies. For more information visit their website at www.lacoassociates.com, or email their **President Mike Nelson** at nelsonm@lacoassociates.com.



Griffith & Masuda

Griffith & Masuda has been a Silver Associate Member since March 2012. Founded in 1920, they specialize in water, energy, environmental and public law matters. They focus on serving public agencies and serve as general counsel or special water counsel to various agencies in the Central Valley. For more information, visit their website at www.calwaterlaw.com or email **David Hobbs** at dhobbs@calwaterlaw.com.

HdL Coren & Cone

HdL Coren & Cone has been a Silver Associate Member since July 2013. They provide property tax services to cities, counties and special districts. They are very familiar with county property allocation systems and redevelopment (and its dissolution). They have property tax data in 40 California counties going back as far as 25 years. For more information, visit them at www.hdlcompanies.com, or email **Paula Cone** at pcone@hdlccpropertytax.com.

Planwest Partners, Inc.

Planwest Partners Inc. has been a Silver Associate Member since August 2014. They provide contract LAFCo staffing services to multiple LAFCos. This includes preparing and conducting MSRs and SOI updates, public noticing, environmental documents, GIS, fiscal and economic studies, website management, application processing, facilitation and training. For more information, visit them at www.planwestpartners.com, or email **George Williamson** at georgew@planwestpartners.com.



Mark Your Calendars For These Upcoming CALAFCO Events

- ◆ CALAFCO Legislative Committee meeting, January 27, Sacramento
- ◆ CALAFCO Legislative Committee meeting, February 24, Irvine
- ◆ CALAFCO Legislative Committee meeting, March 24, Sacramento
- ◆ CALAFCO Staff Workshop, April 5-7, Fresno
- ◆ CALAFCO Board of Directors meeting, May 5, Sacramento

Upcoming CALAFCO Conferences and Workshops

2017 STAFF WORKSHOP

April 5 – 7
DoubleTree by Hilton Fresno Convention Center
Fresno, CA
Hosted by Fresno LAFCo

2017 ANNUAL CONFERENCE

October 25 – 27
Bahia Mission Bay
San Diego, CA
Hosted by CALAFCO

2018 STAFF WORKSHOP

April 11 – 13
Four Points Sheraton
San Rafael, CA
Hosted by Marin LAFCo

2018 ANNUAL CONFERENCE

October 3-5
Tenaya Lodge
Yosemite, CA
Hosted by CALAFCO