

File No. 160645

Committee Item No. 9

Board Item No. \_\_\_\_\_

### COMMITTEE/BOARD OF SUPERVISORS

#### AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance

Date June 16, 2016

Board of Supervisors Meeting

Date \_\_\_\_\_

#### Cmte Board

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| <input type="checkbox"/>            | <input type="checkbox"/> | Legislative Digest                           |
| <input type="checkbox"/>            | <input type="checkbox"/> | Budget and Legislative Analyst Report        |
| <input type="checkbox"/>            | <input type="checkbox"/> | Youth Commission Report                      |
| <input type="checkbox"/>            | <input type="checkbox"/> | Introduction Form                            |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/>            | <input type="checkbox"/> | MOU  |
| <input type="checkbox"/>            | <input type="checkbox"/> | Grant Information Form                       |
| <input type="checkbox"/>            | <input type="checkbox"/> | Grant Budget                                 |
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| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Contract/Agreement                           |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Form 126 – Ethics Commission                 |
| <input type="checkbox"/>            | <input type="checkbox"/> | Award Letter                                 |
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#### OTHER

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Completed by: Victor Young Date June 10, 2016

Completed by: \_\_\_\_\_ Date \_\_\_\_\_

1 [Real Property Purchase - 450 Sixth Street - Multiple Party Ownership - \$2,403,333]

2  
3 **Resolution authorizing the execution and acceptance of a Purchase and Sale**  
4 **Agreement by and between the City and Joan Spargo, in Trust, as Trustee of the "Stella**  
5 **Arnold 1987 Exempt Trust FBO Joan Spargo" dated April 4, 2001, as to an undivided**  
6 **3/8 interest; Walter A. Arnold, in Trust, as Trustee of the "Stella Arnold 1987 Exempt**  
7 **Trust FBO Walter A. Arnold" dated April 4, 2001, as to an undivided 3/8 interest;**  
8 **Kenneth Musso, as to an undivided 1/12 interest; David Musso, as to an undivided 1/12**  
9 **interest; and Arlene Ripley, as to an undivided 1/12 interest ("Seller"), for the real**  
10 **property located at 450 Sixth Street (Assessor's Parcel Block No. 3750, Lot No. 043) for**  
11 **\$2,403,333; and finding the proposed transactions are in conformance with the City's**  
12 **General Plan, and the eight priority policies of Planning Code, Section 101.1.**

13  
14 WHEREAS, The Capital Planning Committee and Board of Supervisors have  
15 previously approved a Hall of Justice replacement project known as the Justice Facilities  
16 Improvement Project (JFIP); and

17 WHEREAS, The Board of Supervisors directed City staff in December of 2015 to  
18 pursue property acquisitions within Assessor's Parcel Block No. 3759 for purposes consistent  
19 with the JFIP; and

20 WHEREAS, 450 Sixth Street is Assessor's Parcel Block No.3759, Lot No. 43; and

21 WHEREAS, The acquisition of this property is key to the potential development of any  
22 project adjacent to existing Hall of Justice facilities consistent with the JFIP; and

23 WHEREAS, The Planning Department, through General Plan Referral letter dated May  
24 26, 2016, ("Planning Letter"), which is on file with the Clerk of the Board of Supervisors under  
25 File No. 160645, has verified that the City's acquisition of 450 Sixth Street is consistent with

1 the General Plan, and the eight priority policies under Planning Code, Section 101.1, and the  
2 acquisition was fully evaluated in the 850 Bryant Street – Hall of Justice Mitigated Negative  
3 Declaration, Planning Case No. 2014.0198E, upheld by the Board of Supervisors on July 21,  
4 2015, Motion No. 150702; and

5 WHEREAS, The Director of Property, in consultation with the Office of the City  
6 Attorney, negotiated the proposed Purchase and Sale Agreement for 450 Sixth Street  
7 (Assessor's Parcel Block No. 3759, Lot No. 43), which is on file with the Clerk of the Board of  
8 Supervisors under File No. 160645 (the "Agreement"), with a purchase price of \$2,403,333  
9 (the "Purchase Price"); and

10 WHEREAS, The property is currently leased to Beauty Systems Group Inc., a  
11 Delaware Corporation ("Tenant") through April 30, 2026 (the "Lease", a copy of which is on file  
12 with the Clerk of the Board of Supervisors under File No. 160645) at a industrial gross rent of  
13 \$9,250 per month which will provide income to the City during the JFIP design and permitting  
14 process; and

15 WHEREAS, An independent MAI appraisal of 450 Sixth Street, by Carneghi and  
16 Partners Inc. in October 2015, determined that fair market value for the property to be  
17 acquired at \$2,750,000; now, therefore, be it

18 RESOLVED, That the Board of Supervisors hereby finds that the acquisition of 450  
19 Sixth Street is consistent with the City's General Plan and Eight Priority Policies of Planning  
20 Code Section 101.1 and hereby incorporates such findings by reference as though fully set  
21 forth in this Resolution; and, be it

22 FURTHER RESOLVED, That the Board of Supervisors hereby finds that the purchase  
23 of the Property, as contemplated by the Purchase Agreement is consistent with the General  
24 Plan, and with the eight Priority Policies of Planning Code Section 101.1 and has been fully  
25 evaluated in the 850 Bryant Street – Hall of Justice Mitigated Negative Declaration for the

1 same reasons as set forth in the letter of the Department of City Planning, dated May 26,  
2 2016, and hereby incorporates such findings by reference as though fully set forth in this  
3 Resolution; and, be it

4 FURTHER RESOLVED, That in accordance with the recommendation of the Director  
5 of Property and Mayor, the jurisdiction of the Acquisition Site will be assigned upon close of  
6 escrow to Real Estate; and, be it

7 FURTHER RESOLVED, That the execution, delivery and performance of the  
8 Agreement is hereby approved and the Director of Property (or his designee) are hereby  
9 authorized to execute the Agreement, in substantially the form of Agreement referenced  
10 herein, on behalf of the City and any such other documents that are necessary or advisable to  
11 complete the transaction contemplated by the Agreement and effectuate the purpose and  
12 intent of this Resolution; and, be it

13 FURTHER RESOLVED, That the Board of Supervisors authorizes the Director of  
14 Property (or his designee), in consultation with the City Attorney, to enter into any additions,  
15 amendments or other modifications to the Agreement and any other documents or  
16 instruments, including but not limited to an Assignment of Lease, necessary in connection  
17 therewith, that the Director of Property determines are in the best interests of the City, do not  
18 materially decrease the benefits to the City with respect to the Property, do not materially  
19 increase the obligations or liabilities of the City, and are necessary or advisable to complete  
20 the transaction contemplated in the Agreement and that effectuate the purpose and intent of  
21 this Resolution, such determination to be conclusively evidenced by the execution and  
22 delivery by the Director of Property (or his designee) of any such additions, amendments, or  
23 other modifications; and, be it

1 FURTHER RESOLVED, That the Board of Supervisors authorizes the  
2 assignment of the Lease; and, be it

3 FURTHER RESOLVED, That all actions authorized and directed by this  
4 Resolution and heretofore taken are hereby ratified, approved and confirmed by this  
5 Board of Supervisors; and, be it

6 FURTHER RESOLVED, That the Director of Property shall provide the Clerk  
7 of the Board of Supervisors a fully executed copy of the Purchase and Sale  
8 Agreement within thirty (30) days of signature of same.

9  
10  
11 \$2,403,333 Available

12 *Peg Stevenson for Ben Rosenfeld*

13 \_\_\_\_\_  
14 Controller

15 Availability of funds for future fiscal years is  
16 subject to the enactment of the annual  
17 appropriation ordinance.

18 RECOMMENDED:

19 \_\_\_\_\_  
20 Director of Property

AGREEMENT OF PURCHASE AND SALE FOR REAL ESTATE

by and between

Joan Spargo, in Trust, as Trustee of the "Stella Arnold 1987 Exempt Trust FBO Joan Spargo" dated April 4, 2001, as to an undivided 3/8 interest; Walter A. Arnold, in Trust, as Trustee of the "Stella Arnold 1987 Exempt Trust FBO Walter A. Arnold" dated April 4, 2001, as to an undivided 3/8 interest; Kenneth Musso, as to an undivided 1/12 interest; David Musso, as to an undivided 1/12 interest; and Arlene Ripley, as to an undivided 1/12 interest  
as Seller

and

CITY AND COUNTY OF SAN FRANCISCO,  
as Buyer

For the purchase and sale of

Assessor's Block 3759, Lot 43 and also known as  
450 Sixth Street  
San Francisco, California

March 14, 2016

**TABLE OF CONTENTS**

**Requires Updating!**

	<u>Page</u>
1. PURCHASE AND SALE .....	1
1.1 Property Included in Sale .....	1
2. PURCHASE PRICE .....	1
2.1 Purchase Price .....	1
2.2 Payment .....	2
2.3 Funds .....	2
3. TITLE TO THE PROPERTY .....	2
3.1 Conveyance of Title to the Property .....	2
3.2 Title Insurance .....	2
3.3 Assignment of Leases .....	2
4. BUYER'S DUE DILIGENCE INVESTIGATIONS .....	3
4.1 Due Diligence and Time for Satisfaction of Conditions .....	3
4.2 Energy Consumption .....	3
5. ENTRY .....	3
5.1 City's Conditions to Closing .....	3
5.2 Cooperation with City .....	7
5.3 Property Exchange .....	7
6. ESCROW AND CLOSING .....	7
6.1 Opening of Escrow .....	7
6.2 Closing Date .....	7
6.3 Seller's Delivery of Documents .....	8
6.4 City's Delivery of Documents and Funds .....	8
6.5 Other Documents .....	9
7. EXPENSES AND TAXES .....	9
7.1 Rent and Other Apportionments .....	9
7.2 Closing Costs .....	10
7.3 Real Estate Taxes and Special Assessments .....	10
7.4 Preliminary Closing Adjustment .....	10
7.5 Post-Closing Reconciliation .....	10

7.6	Survival .....	11
8.	REPRESENTATIONS AND WARRANTIES .....	11
8.1	As Is Sale .....	11
8.2	Representations and Warranties of Seller .....	11
9.	RISK OF LOSS AND POSSESSION .....	14
9.1	Risk of Loss .....	14
9.2	Insurance .....	15
9.3	Possession .....	15
10.	MAINTENANCE; CONSENT TO NEW CONTRACTS .....	15
10.1	Maintenance of the Property by Seller .....	15
10.2	City's Consent to New Contracts Affecting the Property; Termination of Existing Contracts .....	15
11.	GENERAL PROVISIONS .....	16
11.1	Notices .....	16
11.2	Brokers and Finders .....	16
11.3	Successors and Assigns.....	17
11.4	Amendments .....	17
11.5	Continuation and Survival of Representations and Warranties .....	17
11.6	Governing Law .....	17
11.7	Merger of Prior Agreements .....	17
11.8	Parties and Their Agents; Approvals .....	17
11.9	Interpretation of Agreement.....	18
11.10	Attorneys' Fees.....	18
11.11	Sunshine Ordinance .....	18
11.12	Conflicts of Interest.....	18
11.13	Notification of Limitations on Contributions .....	19
11.14	Non-Liability of City Officials, Employees and Agents .....	19
11.15	Counterparts.....	19
11.16	Effective Date .....	19
11.17	Severability .....	19
11.18	Agreement Not to Market Prior to Effective Date.....	20
11.19	Acceptance of Agreement by Seller .....	20
11.20	Cooperative Drafting .....	20



11.21 Time is of the Essence. ....20

LIST OF EXHIBITS

- EXHIBIT A – Real Property Description
- EXHIBIT B – Preliminary Title Report
- EXHIBIT C – Grant Deed
- EXHIBIT D – The Lease
- EXHIBIT E – Intentionally Omitted
- EXHIBIT F – Assignment of Leases
- EXHIBIT G – Tenant's Estoppel Certificate
- EXHIBIT H – Certificate of Transferor Other Than An Individual (FIRPTA Affidavit)
- EXHIBIT I – Designation Agreement

**AGREEMENT OF PURCHASE AND SALE FOR REAL ESTATE**  
(450 Sixth Street, San Francisco)

THIS AGREEMENT OF PURCHASE AND SALE FOR REAL ESTATE (this "Agreement") dated for reference purposes only as of March 14, 2016 is by and between Joan Spargo, in Trust, as Trustee of the "Stella Arnold 1987 Exempt Trust FBO Joan Spargo" dated April 4, 2001, as to an undivided 3/8 interest; Walter A. Arnold, in Trust, as Trustee of the "Stella Arnold 1987 Exempt Trust FBO Walter A. Arnold" dated April 4, 2001, as to an undivided 3/8 interest; Kenneth Musso, as to an undivided 1/12 interest; David Musso, as to an undivided 1/12 interest; and Arlene Ripley, as to an undivided 1/12 interest ("Seller"), and the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("Buyer" or "City").

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, Seller and City agree as follows:

**1. PURCHASE AND SALE**

**1.1 Property Included in Sale**

Seller agrees to sell and convey to City, and City agrees to purchase from Seller, subject to the terms, covenants and conditions hereinafter set forth, the following:

(a) the real property consisting of approximately six thousand (6,000) square feet of land, located in the City and County of San Francisco, commonly known as Block 3759, lot 43 Sheet and more particularly described in Exhibit A attached h hereto (the "Land");

(b) all improvements and fixtures located on the Land, including, without limitation, that certain one story building containing approximately forty five hundred (4,500) square feet of net rentable area and known as 450 Sixth Street, as well as all any and all rights, privileges, and easements incidental or appurtenant to the Land or Improvements, including, without limitation, any and all minerals, oil, gas and other hydrocarbon substances on and under the Land, as well as any and all development rights, air rights, water, water rights, riparian rights and water stock relating to the Land, and any and all easements, rights-of-way or other appurtenances used in connection with the beneficial use and enjoyment of the Land or Improvements, and any and all of Seller's right, title and interest in and to all roads and alleys adjoining or servicing the Land or Improvements (collectively, the "Appurtenances");

All of the items referred to in Subsections (a), and (b) above are collectively referred to as the "Property."

**2. PURCHASE PRICE**

**2.1 Purchase Price**

The total purchase price for the Property is Two Million Four Hundred Three Thousand Three Hundred Thirty Three Dollars (\$2,403,333) (the "Purchase Price").

## **2.2 Payment**

On the Closing Date (as defined in Section 6.2 [Closing Date]), City shall pay the Purchase Price, adjusted pursuant to the provisions of Article 7 [Expenses and Taxes], and reduced by any credits due City hereunder.

Seller acknowledges and agrees that if Seller fails at Closing to deliver to City the documents required under Sections 6.3(h) and 6.3(i) [Seller's Delivery of Documents], the Title Company may be required to withhold a portion of the Purchase Price pursuant to Section 1445 of the United States Internal Revenue Code of 1986, as amended (the "Federal Tax Code"), or Section 18662 of the California Revenue and Taxation Code (the "State Tax Code"). Any amount properly so withheld by the Title Company shall be deemed to have been paid by City as part of the Purchase Price, and Seller's obligation to consummate the transaction contemplated herein shall not be excused or otherwise affected thereby.

## **2.3 Funds**

All payments made by any party hereto shall be in legal tender of the United States of America, paid by Controller's warrant or in cash or by wire transfer of immediately available funds to Title Company (as defined below), as escrow agent.

## **3. TITLE TO THE PROPERTY**

### **3.1 Conveyance of Title to the Property**

At the Closing Seller shall convey to City, or its nominee, marketable and insurable fee simple title to the Land, the Improvements and the Appurtenances, by duly executed and acknowledged grant deed in the form attached hereto as Exhibit C (the "Deed"), subject to the Accepted Conditions of Title (as defined in Section 3.2 [Title Insurance]).

### **3.2 Title Insurance**

Delivery of title in accordance with the preceding Section shall be evidenced by the commitment of Chicago Title Company (the "Title Company") to issue to City, or its nominee, a CLTA extended coverage owner's policy of title insurance (in a Form acceptable to City, in its sole discretion) (the "Title Policy") in the amount of the Purchase Price, insuring fee simple title to the Land, the Appurtenances and the Improvements in City, or its nominee, free of the liens of any and all deeds of trust, mortgages, assignments of rents, financing statements, creditors' claims, rights of tenants or other occupants (except for the existing lease to Beauty Systems Group, Inc., dated as of May 1, 1996 (the "Lease") and as subsequently amended, and all other exceptions, liens and encumbrances except solely for the Accepted Conditions of Title pursuant to Section 5.1(a) below. The Title Policy shall provide full coverage against mechanics' and materialmen's liens arising out of the construction, repair or alteration of any of the Property, shall not contain any exclusion from coverage for creditor's rights or bankruptcy, and shall contain an affirmative endorsement that there are no violations of restrictive covenants, if any, affecting the Property such special endorsements as City may reasonably request. The Title Policy shall also provide for reinsurance with direct access with such companies and in such amounts as City may reasonably request.

### **3.3 Assignment of Leases**

Seller represents that a true, correct and complete copy of the Lease is attached as Exhibit D. At the Closing Seller shall transfer its title to the Lease by an assignment of lease in the form attached hereto as Exhibit F (the "Assignment of Lease"), such title to be free of any

liens, encumbrances or interests, except for the Accepted Conditions of Title. There are no maintenance or other contracts affecting the Property as of the Closing Date. If any such contracts exist on the Effective Date, Seller shall terminate the contracts before the Closing Date.

#### **4. BUYER'S DUE DILIGENCE INVESTIGATIONS**

##### **4.1 Due Diligence and Time for Satisfaction of Conditions**

City has been given or will be given before the end of the Due Diligence Period (as defined below), a full opportunity to investigate the Property, either independently or through agents of City's own choosing, including, without limitation, the opportunity to conduct such appraisals, inspections, tests, audits, verifications, inventories, investigations and other due diligence regarding the economic, physical, environmental, title and legal conditions of the Property as City deems fit, as well as the suitability of the Property for City's intended uses. City and its Agents may commence due diligence investigations on the Property on or after the date this Agreement is executed by both parties hereto. The period for completion of all such investigations shall expire on September 1, 2016 (the "Due Diligence Period"), subject to the terms and conditions provided hereinbelow. Seller agrees to deliver to City all of the Documents and other items described in Sections 5.1(d), 5.1(e) and 5.1(f) within five (5) business days after the date of mutual execution hereof, provided that if Seller fails to do so, then the expiration of the Due Diligence Period shall be extended by the number of days after the end of such five-day delivery period that Seller delivers all such items to City. Notwithstanding anything to the contrary in this Agreement, City shall have the right to terminate this Agreement without cost at any time before the end of the Due Diligence Period.

##### **4.2 Energy Consumption**

City acknowledges and agrees that Seller delivered the Disclosure Summary Sheet, Statement of Energy Performance, Data Checklist, and Facility Summary (all as defined in the California Code of Regulations, Title 20, Division 2, Chapter 4, Article 9, Section 1680) for the Property, copies of which are attached as Schedule 1 to this Agreement, no less than 24 hours prior to City's execution of this Agreement.

#### **5. ENTRY**

During the Due Diligence Period and at all times prior to the Closing Date but with any notice as required by the Lease, Seller shall afford City and its Agents reasonable access to the Property for the purposes of satisfying City with respect to the representations, warranties and covenants of Seller contained herein and the satisfaction of the Conditions Precedent including, without limitation, the drilling of test wells and the taking of soil borings. City hereby agrees to indemnify and hold Seller harmless from any damage or injury to persons or property caused by City or its Agents during any such entries onto the Property prior to the Closing, except to the extent such damage or injury is caused by the acts or omissions of Seller or any of its Agents. The foregoing Indemnity shall not include any claims resulting from the discovery or disclosure of pre-existing environmental conditions or the non-negligent aggravation of pre-existing environmental conditions on, in, under or about the Property, including the Improvements. In the event this Agreement is terminated for any reason, City shall restore the Property to substantially the condition it was found subject to applicable laws. This indemnity shall survive the termination of this Agreement or the Closing, as applicable.

##### **5.1 City's Conditions to Closing**

The following are conditions precedent to City's obligation to purchase the Property (collectively, "Conditions Precedent"):

(a) City shall have reviewed and approved title to the Property, as follows:

(i) Within five (5) business days after the date City and Seller execute this Agreement, Seller shall deliver to Buyer to the extent Seller knows of such documents copies of any existing or proposed easements, covenants, restrictions, agreements or other documents that affect the Property, and are not disclosed by the Preliminary Report attached as Exhibit B, or, if Seller knows of no such documents, a written certification of Seller to that effect; and

(ii) City may, at its option, arrange for an "as-built" survey of the Real Property and Improvements prepared by a licensed surveyor (the "Survey"). Such survey shall be acceptable to, and certified to, City and Title Company and in sufficient detail to provide the basis for and the Title Policy without boundary, encroachment or survey exceptions.

City shall advise Seller, prior to the end of the Due Diligence period, what exceptions to title, if any, City is willing to accept (the "Accepted Conditions of Title"). City's failure to so advise Seller within such period shall be deemed disapproval of title. Seller shall have ten (10) days after receipt of City's notice of any objections to title to give City: (A) evidence satisfactory to City of the removal of all objectionable exceptions from title or that such exceptions will be removed or cured on or before the Closing; or (B) notice that Seller elects not to cause such exceptions to be removed. If Seller gives notice under clause (B), City shall have ten (10) business days to elect to proceed with the purchase or terminate this Agreement. If City shall fail to give Seller notice of its election within such ten (10) days, City shall be deemed to have elected to terminate this Agreement. If Seller gives notice pursuant to clause (A) and fails to remove any such objectionable exceptions from title prior to the Closing Date, and City is unwilling to take title subject thereto, Seller shall be in default hereunder and City shall have the rights and remedies provided herein or at law or in equity.

(b) City's review and approval, within the Due Diligence Period, of the physical and environmental conditions of the Property, including, without limitation, structural, mechanical, electrical and other physical conditions of the Property. Such review may include an examination for the presence or absence of any Hazardous Material (as defined in Section 8.1(j)) City shall be responsible for performing or arranging any such reviews at City's expense, provided that if City's consultants reasonably determine that, based upon their Phase I examination, a Phase II examination is necessary with respect to all or a part of the Real Property, City may elect to perform a Phase II examination

If any of City's investigations reveal any contamination of the Property with any Hazardous Material, then City may, at its sole election, by written notice to Seller on or before the end of the Due Diligence Period: (i) request that Seller, at Seller's sole cost, complete before the Closing through duly licensed contractors approved by City such activities as are necessary to cleanup, remove, contain, treat, stabilize, monitor or otherwise control Hazardous Material located on or under the Property in compliance with all governmental laws, rules, regulations and requirements and in accordance with a written remediation plan approved by City in its sole discretion and by all regulatory agencies with jurisdiction; (ii) terminate this Agreement; or (iii) request that Seller provide City with a credit against the Purchase Price for the a negotiated cost including testing and consultants to remediate the Hazardous Materials. If City notifies Seller of its election to request that Seller remediate the contamination as provided in clause (i) above or provide a credit as provided in clause, (iii) Seller shall in its sole discretion have fifteen (15) days after receipt of City's notice (the "Negotiation Period"), to agree to remediate the contamination, provide a negotiated credit in an amount agreed to by Seller and City or to elect not to remediate or provide any credit to City. If Seller notifies City within that fifteen day period of its election not to remediate the contamination or provide a negotiated credit, then City shall have the right to terminate this Agreement upon ten (10) days' notice to Seller. If Seller

fails to respond in writing to Buyer within fifteen days, then Seller shall be deemed to have elected not to remediate or provide any credit to City. If Seller chooses to remediate the contamination as provided in clause (i) above the Closing may be extended for a reasonable time to enable Seller to complete such remediation, provided any such extension shall be subject to City's prior written approval, which City may give or withhold in its sole discretion. If Seller does not complete the remediation within the agreed upon period, then City may terminate this Agreement or proceed with the purchase without the remediation or the credit.

(c) City's review and approval, within the Due Diligence Period, of the compliance of the Property with all applicable laws, regulations, permits and approvals.

(d) City's review and approval, within the Due Diligence Period, of (i) the following documents, all to the extent such documents exist and are either in the possession or control of Seller or its affiliates: structural calculations for the Improvements; site plans; certified copies of the as-built plans and specifications for the Improvements; recent inspection reports by Seller's engineers; service contracts; utility contracts; maintenance contracts; employment contracts, management contracts; brokerage and leasing commission agreements which may continue after Closing; certificates of occupancy; presently effective warranties or guaranties received by Seller from any contractors, subcontractors, suppliers or materialmen in connection with any construction, repair or alteration of the Improvements or any tenant improvements; insurance policies, insurance certificates of tenants, and reports of insurance carriers insuring the Property and each portion thereof respecting the claims history of the Property; environmental reports, studies, surveys, tests and assessments; soils and geotechnical reports; and any other contracts or documents of significance to the Property (collectively, the "Documents"); and (ii) such other information relating to the Property that is specifically requested by City of Seller in writing during the Due Diligence Period and which is either in the possession or control of Seller or its affiliates (collectively, the "Other Information").

(e) City's review and approval, within the Due Diligence Period, of a certified rent roll showing rent payment history for the three (3) most recent calendar years before the Effective Date.

(f) City's review and approval, within the Due Diligence Period, of Seller's Tax Return income and expense statements for the Property for the three (3) most recent calendar years before the Effective Date.

(g) City's review and approval, within the Due Diligence Period, of: (i) the Lease, (ii) tenant correspondence files, and (iii) a current rent roll for the Property, prepared by Seller and listing for each tenant the name, location of leased premises, rent, obligation for reimbursement of expenses, amount of security deposit and rent paid more than thirty (30) days in advance, lease commencement date, lease termination date, lease expansion or extension options, option rent, and cost of living or other rent escalation clauses, any free rent, operating expense abatements or other unexpired concessions, and a description of any uncured defaults.

(h) Seller's obtaining and delivering to City, at least five (5) business days before the Closing Date, a tenant estoppel certificate in form and substance satisfactory to City from the tenant under the Lease. Such certificate shall be in the form attached hereto as Exhibit G and shall be dated no earlier than thirty (30) days prior to the Closing Date. Seller shall use reasonable commercial efforts to obtain such a tenant estoppel certificate, but the failure of Seller to obtain such an estoppel shall not be a default hereunder and in such instance, Buyer's sole remedies shall be either to terminate this Agreement with no further liability of the Seller or close the transaction without the tenant estoppel certificate.

(i) Seller shall not be in default in the performance of any covenant or agreement to be performed by Seller under this Agreement, and all of Seller's representations and warranties contained in or made pursuant to this Agreement shall have been true and correct when made and shall be true and correct as of the Closing Date. At the Closing Seller shall deliver to City a certificate certifying that each of Seller's representations and warranties contained in Section 8.1 [Representations and Warranties of Seller] below are true and correct as of the Closing Date.

(j) The physical condition of the Property shall be substantially the same on the Closing Date as on the date of City's execution of this Agreement, reasonable wear and tear and loss by casualty excepted (subject to the provisions of Section 9.1 [Risk of Loss]), and, as of the Closing Date, there shall be no litigation or administrative agency or other governmental proceeding, pending or threatened, which after the Closing would materially adversely affect the value of the Property or the ability of City to operate the Property for its intended use, and no proceedings shall be pending or threatened which could or would cause the change, redesignation or other modification of the zoning classification of, or of any building or environmental code requirements applicable to, any of the Property.

(k) Title Company shall be committed at the Closing to issue to City, or its nominee, the Title Policy as provided in Section 3.2 [Title Insurance] , subject only to the Accepted Conditions of Title together with the same endorsements as the Title Policy

(l) Seller shall have delivered the items described in Section 6.3 below [Seller's Delivery of Documents] on or before the Closing.

(m) The City's Board of Supervisors shall, in its sole discretion, enact a resolution approving this Agreement and the City's purchase of the Property, and the Mayor shall have signed or not vetoed the same.

The Conditions Precedent contained in the foregoing Subsections (a) through (m) are solely for the benefit of City. If any Condition Precedent is not satisfied, City shall have the right in its sole discretion either to waive in writing the Condition Precedent in question and proceed with the purchase or, in the alternative, terminate this Agreement, provided that the Conditions Precedent described in item (m) above may not be waived. The waiver of any Condition Precedent shall not relieve Seller of any liability or obligation with respect to any representation, warranty, covenant or agreement of Seller. If City shall not have approved or waived in writing all of the due diligence conditions by the end of the Due Diligence Period, then this Agreement shall automatically terminate; provided, the City may alternatively extend the Due Diligence Period and the Closing Date for a period of no more than forty-five (45) days to allow such Conditions Precedent to be satisfied, subject to City's further right to terminate this Agreement upon the expiration of the period of any such extension if all such Conditions Precedent have not been satisfied.

In the event the sale of the Property is not consummated because of a default under this Agreement on the part of Seller or if a Condition Precedent cannot be fulfilled because Seller frustrated such fulfillment by some affirmative act or negligent omission, City may, at its sole election, either (1) terminate this Agreement by delivery of notice of termination to Seller, whereupon Seller shall pay to City any title or escrow fees incurred by City, and neither party shall have any further rights or obligations hereunder, or (2) bring a legal action for specific performance.

## **5.2 Cooperation with City**

Seller shall cooperate with City and do all acts as may be reasonably requested by City at no cost to Seller with regard to the fulfillment of any Conditions Precedent including, without limitation, execution of any documents, applications or permits, but Seller's representations and warranties to City shall not be affected or released by City's waiver or fulfillment of any Condition Precedent. Seller hereby irrevocably authorizes City and its Agents to make all inquiries with and applications to any person or entity, including, without limitation, any regulatory authority with jurisdiction as City may reasonably require to complete its due diligence investigations.

## **5.3 Property Exchange.**

Because the City is empowered to initiate proceedings under its power of eminent domain, Seller intends to treat any gain or loss realized from the sale of the Property as sold under imminent threat of condemnation pursuant to Section 1033 of Internal Revenue Code of 1986 (the "Code"). If for any reason, Seller elects to do a 1031 exchange then City agrees to cooperate with Seller and any escrow holder or exchange facilitator selected by Seller in facilitating a tax-deferred exchange pursuant to the Code, undertaken by Seller with respect to the Property, provided that Seller shall Indemnify the City against all costs and liabilities incurred by the City in connection with any such exchange, and provided further that: (a) consummation or accomplishment of such an exchange shall not be a condition precedent or a condition subsequent to either party's obligations under this Agreement; (b) Seller shall effect the exchange through an assignment of this Agreement, or its rights under this Agreement, to a qualified intermediary without release of Seller from any liability hereunder; (c) Seller shall pay any additional costs that would not otherwise have been incurred by Seller or the City had Seller not undertaken such exchange; and (d) the City shall not be required to take an assignment of the purchase for purposes of consummating the exchange. Neither party by this agreement or acquiescence to an exchange shall have its rights under this Agreement affected or diminished in any manner or be responsible for compliance with or be deemed to have warranted to the other party that the exchange in fact complies with Section 1031 of the Code. Nothing in this section shall create any liability for Seller or the City if the Closing does not occur for any reason, and neither party shall have the right to assert that this section creates the basis for a claim against the other party.

## **6. ESCROW AND CLOSING**

### **6.1 Opening of Escrow**

On or before the Effective Date (as defined in Article 11 [General Provisions]), the parties shall open escrow by depositing an executed counterpart of this Agreement with Title Company, and this Agreement shall serve as instructions to Title Company as the escrow holder for consummation of the purchase and sale contemplated hereby. Seller and City agree to execute such additional or supplementary instructions as may be appropriate to enable the escrow holder to comply with the terms of this Agreement and close the transaction; provided, however, that in the event of any conflict between the provisions of this Agreement and any additional supplementary instructions, the terms of this Agreement shall control.

### **6.2 Closing Date**

The consummation of the purchase and sale contemplated hereby (the "Closing") shall be held and delivery of all items to be made at the Closing under the terms of this Agreement shall be made at the offices of Title Company located at 455 Market Street #2100, San Francisco,



California 94105, on the later of October 1, 2016 or the date that is ninety (90) days from Seller's notification to Buyer of a scheduled closing date (the "Closing Date Notice"), or on such earlier or later date as City and Seller may mutually agree (the "Closing Date"), subject to the provisions of Article 5 [Conditions Precedent]. If Seller does not deliver the Closing Date Notice on or before September 30, 2018, then Buyer shall have the right, at any time thereafter so long as this Agreement remains in effect, to deliver the Closing Date Notice to Seller. Upon Seller's or Buyer's delivery of the Closing Date Notice as set forth above, the Closing Date shall be the day that is 90 days after delivery of the notice, provided if the 90th day falls on a Saturday, Sunday or holiday, then it shall be the first business day thereafter.

### **6.3 Seller's Delivery of Documents**

At or before the Closing, Seller shall deliver to City, or the Nominee, through escrow, the following:

- (a) a duly executed and acknowledged Deed;
- (b) four (4) duly executed counterparts of the Assignment of Lease;
- (c) duly executed tenant estoppel certificates as required pursuant to Section 5.1(g) hereof;
- (d) originals of the Documents, the Lease and any other items relating to the ownership or operation of the Property not previously delivered to City;
- (e) a properly executed affidavit pursuant to Section 1445(b)(2) of the Federal Tax Code in the form attached hereto as Exhibit H, and on which City is entitled to rely, that Seller is not a "foreign person" within the meaning of Section 1445(f)(3) of the Federal Tax Code;
- (f) a properly executed California Franchise Tax Board Form 590 certifying that Seller is a California resident if Seller is an individual or Seller has a permanent place of business in California or is qualified to do business in California if Seller is a corporation or other evidence satisfactory to City that Seller is exempt from the withholding requirements of Section 18662 of the State Tax Code;
- (g) such resolutions, authorizations, or other partnership documents or agreements relating to Seller and its partners as City or the Title Company may reasonably require to demonstrate the authority of Seller to enter into this Agreement and consummate the transactions contemplated hereby, and such proof of the power and authority of the individuals executing any documents or other instruments on behalf of Seller to act for and bind Seller;
- (h) closing statement in form and content satisfactory to City and Seller; and
- (i) the duly executed certificate regarding the continued accuracy of Seller's representations and warranties as required by Section 5.1(i) hereof.

### **6.4 City's Delivery of Documents and Funds**

At or before the Closing, City, or its nominee, shall deliver to Seller through escrow the following:

- (a) an acceptance of the Deed executed by City's Director of Property;

- (b) four (4) duly executed counterparts of the Assignment of Lease;
- (c) a closing statement in form and content satisfactory to City and Seller; and
- (d) the Purchase Price, as provided in Article 2 hereof.

## **6.5 Other Documents**

Seller and City shall each deposit such other instruments as are reasonably required by Title Company as escrow holder or otherwise required to close the escrow and consummate the purchase of the Property in accordance with the terms hereof, including, without limitation, an agreement (the "Designation Agreement") designating Title Company as the "Reporting Person" for the transaction pursuant to Section 6045(e) of the Federal Tax Code and the regulations promulgated thereunder, and executed by Seller, City and Title Company. The Designation Agreement shall be substantially in the form attached hereto as Exhibit I and, in any event, shall comply with the requirements of Section 6045(e) of the Federal Tax Code and the regulations promulgated thereunder.

## **7. EXPENSES AND TAXES**

### **7.1 Rent and Other Apportionments**

The following are to be apportioned through escrow as of the Closing Date:

#### **(a) Rent**

Rent under the Leases shall be apportioned as of the Closing Date, regardless of whether or not such rent has been paid to Seller. With respect to any rent arrearage arising under the Leases, after the Closing, City shall pay to Seller any rent actually collected which is applicable to the period preceding the Closing Date; provided, however, that all rent collected by City shall be applied first to all unpaid rent accruing on and after the Closing Date, and then to unpaid rent accruing prior to the Closing Date. City shall not be obligated to take any steps to recover any rent arrearage. Seller shall be permitted to do so through a legal action directly against the tenant for breach of contract, and without City involvement, but shall have no right to bring an unlawful detainer action against the tenant. Seller shall indemnify City and defend City any tenant claim resulting from Seller's action against tenant.

#### **(b) Leasing Costs**

Seller shall pay all leasing commissions and tenant improvement costs accrued in connection with any Lease executed on or before the Closing [(including, without limitation, leasing commissions attributable to expansion or extension options which are not exercised until after the Closing)]. City shall be entitled to a credit against the Purchase Price for the total sum of all security deposits paid to Seller by tenants under any Leases, as well as for any free rent, operating expense abatements, or other unexpired concessions under any Leases to the extent they apply to any period after the Closing.

#### **(c) Other Tenant Charges**

Where the Leases contain tenant obligations for taxes, common area expenses, operating expenses or additional charges of any other nature, and where Seller shall have collected any portion thereof in excess of amounts owed by Seller for such items for the period prior to the Closing Date, there shall be an adjustment and credit given to City on the Closing Date for such excess amounts collected. City shall apply all such excess amounts to the charges

owed by City for such items for the period after the Closing Date and, if required by the Leases, shall rebate or credit tenants with any remainder. If it is determined that the amount collected during Seller's ownership period exceeded expenses incurred during the same period by more than the amount previously credited to City at Closing, then Seller shall promptly pay the deficiency to City.

#### **(d) Utility Charges**

Seller shall use commercially reasonable efforts to cause all the utility meters to be read on the Closing Date, and will be responsible for the cost of all utilities used prior to the Closing Date. All utility deposits paid by Seller shall remain the property of Seller and City shall reasonably cooperate to cause such deposits to be returned to Seller to the extent Seller is entitled thereto.

#### **(e) Other Apportionments**

Amounts payable under any contracts assumed pursuant hereto, annual or periodic permit or inspection fees (calculated on the basis of the period covered), and liability for other normal Property operation and maintenance expenses and other recurring costs shall be apportioned as of the Closing Date.

### **7.2 Closing Costs**

City shall pay the cost of the Survey, the premium for the Title Policy and the cost of the endorsements thereto, and escrow and recording fees. Seller shall pay the cost of any transfer taxes applicable to the sale. Seller shall be responsible for all costs incurred in connection with the prepayment or satisfaction of any loan, bond or other indebtedness secured by the Property including, without limitation, any prepayment fees, penalties or charges. Any other costs and charges of the escrow for the sale not otherwise provided for in this Section or elsewhere in this Agreement shall be allocated in accordance with the closing customs for San Francisco County, as determined by Title Company.

### **7.3 Real Estate Taxes and Special Assessments**

General real estate taxes payable for the tax year prior to year of Closing and all prior years shall be paid by Seller at or before the Closing. General real estate taxes payable for the tax year of the Closing shall be prorated through escrow by Seller and City as of the Closing Date. At or before the Closing, Seller shall pay the full amount of any special assessments against the Property, including, without limitation, interest payable thereon, applicable to the period prior the Closing Date.

### **7.4 Preliminary Closing Adjustment**

Seller and City shall jointly prepare a preliminary Closing adjustment on the basis of the Leases and other sources of income and expenses, and shall deliver such computation to Title Company prior to Closing.

### **7.5 Post-Closing Reconciliation**

If any of the foregoing prorations cannot be calculated accurately on the Closing Date, then they shall be calculated as soon after the Closing Date as feasible. Either party owing the other party a sum of money based on such subsequent prorations shall promptly pay such sum to the other party.

## **7.6 Survival**

The provisions of this Section shall survive the Closing.

## **8. REPRESENTATIONS AND WARRANTIES**

### **8.1 As Is Sale**

BUYER ACKNOWLEDGES AND AGREES THAT (i) THE PROPERTY IS TO BE PURCHASED BY BUYER "AS IS" IN ITS THEN-EXISTING PHYSICAL CONDITION AS OF THE CLOSE OF ESCROW, WITHOUT ANY IMPLIED OR EXPRESS WARRANTY OR REPRESENTATION WHATSOEVER BY SELLER, EXCEPT AS EXPLICITLY SET FORTH IN THIS AGREEMENT, (ii) THE CLOSE OF ESCROW HEREUNDER WILL BE DEEMED ACCEPTANCE BY BUYER OF THE PROPERTY IN ITS THEN EXISTING "AS IS" CONDITION, EXCEPT AS EXPLICITLY SET FORTH IN THIS AGREEMENT, (iii) NEITHER SELLER NOR ANY OF SELLER'S EMPLOYEES, AGENTS OR REPRESENTATIVES HAS MADE ANY WARRANTIES, REPRESENTATIONS OR AGREEMENTS BY OR ON BEHALF OF SELLER NOT EXPRESSLY SET FORTH IN THIS AGREEMENT AS TO ANY MATTERS CONCERNING THE PROPERTY, INCLUDING WITHOUT LIMITATION THE PRESENT USE OR CONDITION OF THE PROPERTY, AND THE SUITABILITY OF THE PROPERTY FOR BUYER'S INTENDED USE THEREOF; AND (iv) AS OF THE CLOSING DATE, BUYER SHALL HAVE HAD AN ADEQUATE OPPORTUNITY TO REVIEW BOUNDARIES OF THE PROPERTY; ALL EASEMENTS, RESTRICTIVE COVENANTS AND CONDITIONS, AND OTHER MATTERS AFFECTING TITLE TO THE PROPERTY; THE COMPACTION AND COMPOSITION OF SOILS UNDER THE PROPERTY; THE PHYSICAL CONDITION OF STRUCTURES AND OTHER IMPROVEMENTS ON THE PROPERTY; THE ZONING, LAND USE, AND OTHER LAWS APPLICABLE TO ITS INTENDED DEVELOPMENT AND/OR USE AND OPERATION OF THE PROPERTY; THE PRESENCE OF HAZARDOUS MATERIALS IN, ON OR ABOUT THE PROPERTY OR WITHIN THE SOILS OR GROUNDWATER UNDERNEATH THE SURFACE OF THE PROPERTY; BUYER SPECIFICALLY ACKNOWLEDGES THAT SELLER DOES NOT WARRANT THE ACCURACY OF ANY INFORMATION OF CONCLUSIONS CONTAINED IN ANY THIRD PARTY REPORTS THAT MAY BE DISCLOSED BY OR DELIVERED BY SELLER TO BUYER.

### **8.2 Representations and Warranties of Seller**

Seller represents and warrants to and covenants with City as follows:

(a) To the best of Seller's knowledge, it has received no notice that it is in violation of any laws, rules or regulations applicable to the Property, including, without limitation, any earthquake, life safety and handicap laws (including, but not limited to, the Americans with Disabilities Act). If it receives any such notice prior to the Closing, it will immediately forward same to Buyer.

(b) The Lease, Documents and Other Information furnished to City are all of the relevant documents and information pertaining to the condition and operation of the Property to the extent available to Seller, and are and at the time of Closing will be true, correct and complete copies of such documents and the Lease is and at the time of Closing will be in full force and effect. Seller is not in default of its obligations under the Lease, and Seller is not aware of any defaults by the tenant and has not received any default notices from the tenant. If Seller becomes aware of any tenant defaults or if tenant sends notice to Seller of any default under the Lease prior to the time of Closing, Seller shall promptly advise Buyer of same and provide a copy of any notice of default. The existence of any such default by Seller or tenant will allow Buyer to determine that a closing condition has not been satisfied under Section 5.1.

(c) Seller does not have knowledge of any condemnation, either instituted or planned to be instituted by any governmental or quasi-governmental agency other than City, which could detrimentally affect the use, operation or value of the Property.

(d) To the best of Seller's knowledge, there are no easements or rights of way which have been acquired by prescription or which are otherwise not of record with respect to the Property, and there are no easements, rights of way, permits, licenses or other forms of agreement which afford third parties the right to traverse any portion of the Property to gain access to other real property other than those disclosed in the Title Report. To the best of Seller's knowledge, there are no disputes with regard to the location of any fence or other monument of the Property's boundary nor any claims or actions involving the location of any fence or boundary.

(e) To the best of Seller's knowledge, there is no litigation pending or, after due and diligent inquiry, to the best of Seller's knowledge, threatened, against Seller or any basis therefor that arises out of the ownership of the Property or that might detrimentally affect the use or operation of the Property for its current use or the value of the Property or the ability of Seller to perform its obligations under this Agreement.

(f) Seller is the legal and equitable owner of the Property, with full right to convey the same, and without limiting the generality of the foregoing, Seller has not granted any option or right of first refusal or first opportunity to any third party to acquire any interest in any of the Property.

(g) This Agreement and all documents executed by Seller which are to be delivered to City at the Closing are, or at the Closing will be, duly authorized, executed and delivered by Seller, are, or at the Closing will be, legal, valid and binding obligations of Seller, enforceable against Seller in accordance with their respective terms, are, and at the Closing will be, sufficient to convey good and marketable title (if they purport to do so), and do not, and at the Closing will not, violate any provision of any agreement or judicial order to which Seller is a party or to which Seller or the Property is subject.

(h) Seller represents and warrants to City that it has not been suspended, disciplined or disbarred by, or prohibited from contracting with, any federal, state or local governmental agency. In the event Seller has been so suspended, disbarred, disciplined or prohibited from contracting with any governmental agency, it shall immediately notify the City of same and the reasons therefore together with any relevant facts or information requested by City. Any such suspension, debarment, discipline or prohibition may result in the termination or suspension of this Agreement.

(i) Seller knows of no facts nor has Seller failed to disclose any fact that would prevent City from operating the Property after Closing in the normal manner in which it is intended.

**(j)** Seller hereby represents and warrants to and covenants with City that, to the best of Seller's knowledge: (i) the Property is not in violation of any Environmental Laws; (ii) that the Property is not subject to any claim by any governmental regulatory agency or third party related to the release or threatened release of any Hazardous Material; (iii) that there is no inquiry by any governmental agency (including, without limitation, the California Department of Toxic Substances Control or the Regional Water Quality Control Board) with respect to the presence of Hazardous Material in, on, under or about the Property, or the migration of Hazardous Material from or to other property; and (iv) that there has been no release of any Hazardous Material in or on the Property, and there are no underground storage tanks in or on the Property. As used herein, the following terms shall have the meanings below:

**(i)** "Environmental Laws" shall mean any present or future federal, state or local laws, ordinances, regulations or policies relating to Hazardous Material (including, without limitation, their use, handling, transportation, production, disposal, discharge or storage) or to health and safety, industrial hygiene or environmental conditions in, on, under or about the Property, including, without limitation, soil, air and groundwater conditions.

**(ii)** "Hazardous Material" shall mean any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to the environment. Hazardous Material includes, without limitation, any material or substance defined as a "hazardous substance," or "pollutant" or "contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA", also commonly known as the "Superfund" law), as amended, (42 U.S.C. Section 9601 et seq.) or pursuant to Section 25281 of the California Health & Safety Code; any "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the structure of the Improvements or are naturally occurring substances on or about the Property; petroleum, including crude oil or any fraction thereof, natural gas or natural gas liquids; and "source," "special nuclear" and "by-product" material as defined in the Atomic Energy Act of 1985, 42 U.S.C. Section 3011 et seq.

**(iii)** "Release" or "threatened release" when used with respect to Hazardous Material shall include any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into or inside any of the improvements, or in, on, under or about the Property. Release shall include, without limitation, "release" as defined in Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9601).

**(k)** At the time of Closing there will be no outstanding written or oral contracts made by Seller for any of the Improvements that have not been fully paid for and Seller shall cause to be discharged all mechanics' or materialmen's liens arising from any labor or materials furnished to the Property prior to the time of Closing. There are no obligations in connection with the Property which will be binding upon City after Closing except for (i) matters which are set forth in the Preliminary Report and (ii) the Lease.

**(l)** Seller is not a "foreign person" within the meaning of Section 1445(f)(3) of the Federal Tax Code.

**(m)** There are no free rent, operating expense abatements, incomplete tenant improvements, rebates, allowances, or other unexpired concessions (collectively referred to as "Offsets") or any termination, extension, cancellation or expansion rights under the Lease. Seller has paid in full any of landlord's leasing costs incurred by Seller in connection with any tenant improvements.

(n) No brokerage or similar fee is due or unpaid by Seller with respect to the Lease or the extension option. No brokerage or similar fee shall be due or payable on account of the exercise of, without limitation, any renewal, extension or expansion options arising under any Lease.

(o) The copies of the Lease delivered by Seller to City on or before the commencement of the Due Diligence Period contain all of the information pertaining to any rights of any parties to occupy the Property, including, without limitation, all information regarding any rent concessions, over-standard tenant improvement allowances or other inducements to lease. None of the tenants of the Property has indicated to Seller either orally or in writing its intent to terminate its respective Lease prior to expiration of the respective term of such Lease.

(p) Except as otherwise expressly set forth herein, the Property is sold as-is with no warranties by Seller.

## 9. RISK OF LOSS AND POSSESSION

### 9.1 Risk of Loss

If any of the Property is damaged or destroyed prior to the Closing Date, or if condemnation proceedings are commenced against any of the Property, then the rights and obligations of Seller and City hereunder shall be as follows:

(a) If such damage or destruction is fully covered by Seller's insurance except for the deductible amount thereunder, and the insurer agrees to timely pay for the entire cost of such repair, and such damage or destruction would cost less than Purchase Price (the "Threshold Damage Amount") to repair or restore, then this Agreement shall remain in full force and effect and City shall acquire the Property upon the terms and conditions set forth herein. In such event, City shall receive a credit against the Purchase Price equal to such deductible amount, and Seller shall assign to City at Closing all of Seller's right, title and interest in and to all proceeds of insurance on account of such damage or destruction pursuant to an instrument satisfactory to City.

(b) If such damage or destruction is not fully covered by Seller's insurance, other than the deductible amount, and would cost less than the Threshold Damage Amount to repair or restore, then the transaction contemplated by this Agreement shall be consummated with City receiving a credit against the Purchase Price at the Closing in an amount reasonably determined by Seller and City (after consultation with unaffiliated experts) to be the cost of repairing such damage or destruction. If the parties are unable to agree to an amount to be the cost of repairing such damage or destruction despite good faith efforts to do so, then either party hereto may terminate the Agreement on ten (10) days' notice to the other party, with no further liability.

(c) If the cost of such damage or destruction would exceed the Threshold Damage Amount, then, City shall have the right, at its election, to (i) terminate this Agreement in its entirety or (ii) proceed with the transaction contemplated by this Agreement with City receiving a credit against the Purchase Price equal to Seller's deductible amount under existing insurance applicable to the loss, and Seller shall assign to City at Closing all of Seller's right, title and interest in and to all proceeds of insurance on account of such damage or destruction pursuant to an instrument satisfactory to City. City shall have thirty (30) days after Seller notifies City that an event described in this Subsection (c) has occurred to make such election by delivery to Seller of an election notice. City's failure to deliver such notice within such thirty (30)-day period shall be deemed City's election to terminate this Agreement in its

entirety. If this Agreement is terminated in its entirety or in part pursuant to this Subsection (c) by City's delivery of notice of termination to Seller, then City and Seller shall each be released from all obligations hereunder pertaining to that portion of the Property affected by such termination. If City elects not to terminate this Agreement, Seller shall give City a credit against the Purchase Price at the Closing in the amount the Insurance Proceeds.

(d) If part but not all of the Property is the subject of a condemnation action, then City may elect to terminate this Agreement or it may elect to proceed and assume Seller's rights in the condemnation action. Seller shall not accept a condemnation award during this Agreement without prior notice to City. If Seller accepts a condemnation award and City elects to proceed with the Closing, City shall receive a credit against the Purchase Price in the amount of the condemnation award.

## **9.2 Insurance**

Through the Closing Date, Seller shall maintain or cause to be maintained, at Seller's sole cost and expense, a policy or policies of property insurance in amounts equal to the full replacement value of the Improvements, insuring against all insurable risks, including, without limitation, fire, vandalism, malicious mischief, lightning, windstorm, and other perils customarily covered by casualty insurance and the costs of demolition and debris removal. Seller shall furnish City with evidence of such insurance upon request by City.

## **9.3 Possession**

Subject to provisions of the Lease, possession of the Property shall be delivered to City on the Closing Date.

# **10. MAINTENANCE; CONSENT TO NEW CONTRACTS**

## **10.1 Maintenance of the Property by Seller**

Between the date of Seller's execution of this Agreement and the Closing, Seller shall maintain the Property in its current order, condition and repair, reasonable wear and tear excepted, and shall perform all work required to be done by the landlord under the terms of any Lease and shall make all repairs, maintenance and replacements of the Improvements and otherwise operate the Property in the same manner as before the making of this Agreement, as if Seller were retaining the Property.

## **10.2 City's Consent to New Contracts Affecting the Property; Termination of Existing Contracts**

Seller shall not enter into any lease or contract, or any amendment thereof, or permit any tenant of the Property to enter into any sublease, assignment or agreement pertaining to the Property to the extent Seller has the right of approval under the terms of the Lease, or waive any rights of Seller under the Lease, without in each instance obtaining City's prior written consent thereto. During the term of this Agreement, Seller shall notify Buyer of any such sublease, assignment or agreement of which Seller becomes aware, and provide a copy of same if Seller obtains a copy, even if Seller does not have approval rights over the sublease, assignment or agreement. Seller shall terminate prior to the Closing, at no cost or expense to City, any and all management or other agreements affecting the Property other than the current leases unless City agrees in writing to assume the contract before the Closing.



## 11. GENERAL PROVISIONS

### 11.1 Notices

Any notice, consent or approval required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been given upon (i) hand delivery, against receipt, (ii) one (1) day after being deposited with a reliable overnight courier service, or (iii) two (2) days after being deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, and addressed as follows:

City: Real Estate Division  
City and County of San Francisco  
25 Van Ness Avenue, Suite 400  
San Francisco, California 94102  
Attn: Director of Property  
Re: 450 Sixth Street Acquisition  
Facsimile No.: (415) 552-9216

with copy to: Charles Sullivan  
Deputy City Attorney  
Office of the City Attorney  
City Hall, Room 234  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4682  
Re: 450 Sixth Street Acquisition

Seller: Walter Arnold  
45475 Pueblo Road  
Indian Wells, CA 92210  
email: waltwal@yahoo.com

With a copy to: Bradley Matteoni  
Matteoni, O'Laughlin & Hechtman  
848 The Alameda  
San Jose, CA 95126  
Facsimile No.: (408 ) 293-4004

or to such other address as either party may from time to time specify in writing to the other upon five (5) days prior written notice in the manner provided above. For convenience of the parties, copies of notices may also be given by telefacsimile, to the telephone number listed above or by email, or such other numbers as may be provided from time to time. However, neither party may give official or binding notice by facsimile or by email. The effective time of a notice shall not be affected by the receipt, prior to receipt of the original, of a telefacsimile copy of the notice.

### 11.2 Brokers and Finders

Neither party has had any contact or dealings regarding the Property, or any communication in connection with the subject matter of this transaction, through any licensed real estate broker or other person who could claim a right to a commission or finder's fee in connection with the purchase and sale contemplated herein. In the event that any broker or finder perfects a claim for a commission or finder's fee based upon any such contact, dealings or communication, the party through whom the broker or finder makes his or her claim shall be

responsible for such commission or fee and shall indemnify and hold harmless the other party from all claims, costs, and expenses (including, without limitation, reasonable attorneys' fees and disbursements) incurred by the indemnified party in defending against the same. The provisions of this Section shall survive the Closing.

### **11.3 Successors and Assigns**

This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors, heirs, administrators and assigns. City shall have the right, upon notice to Seller, to assign its right, title and interest in and to this Agreement to the Nominee or one (1) or more assignees at any time before the Closing Date.

### **11.4 Amendments**

Except as otherwise provided herein, this Agreement may be amended or modified only by a written instrument executed by City and Seller.

### **11.5 Continuation and Survival of Representations and Warranties**

All representations and warranties by the respective parties contained herein or made in writing pursuant to this Agreement are intended to be, and shall remain, true and correct as of the Closing, shall be deemed to be material, and, together with all conditions, covenants and indemnities made by the respective parties contained herein or made in writing pursuant to this Agreement (except as otherwise expressly limited or expanded by the terms of this Agreement), shall survive the execution and delivery of this Agreement and the Closing for a period of twelve (12) months. All statements contained in any certificate or other instrument delivered at any time by or on behalf of Seller in conjunction with the transaction contemplated hereby shall constitute representations and warranties hereunder.

### **11.6 Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the State of California.

### **11.7 Merger of Prior Agreements**

The parties intend that this Agreement (including all of the attached exhibits and schedules, which are incorporated into this Agreement by reference) shall be the final expression of their agreement with respect to the subject matter hereof and may not be contradicted by evidence of any prior or contemporaneous oral or written agreements or understandings. The parties further intend that this Agreement shall constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever (including, without limitation, prior drafts or changes therefrom) may be introduced in any judicial, administrative or other legal proceeding involving this Agreement.

### **11.8 Parties and Their Agents; Approvals**

The term "Seller" as used herein shall include the plural as well as the singular. If there is more than one (1) Seller, then the obligations under this Agreement imposed on Seller shall be joint and several. As used herein, the term "Agents" when used with respect to either party shall include the agents, employees, officers, contractors and representatives of such party. All approvals, consents or other determinations permitted or required by City hereunder shall be made by or through City's Director of Property unless otherwise provided herein, subject to applicable law.

## **11.9 Interpretation of Agreement**

The article, section and other headings of this Agreement and the table of contents are for convenience of reference only and shall not affect the meaning or interpretation of any provision contained herein. Whenever the context so requires, the use of the singular shall be deemed to include the plural and vice versa, and each gender reference shall be deemed to include the other and the neuter. This Agreement has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein. In addition, each party has been represented by experienced and knowledgeable legal counsel. Accordingly, any rule of law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Agreement against the party that has drafted it is not applicable and is waived. The provisions of this Agreement shall be interpreted in a reasonable manner to effect the purposes of the parties and this Agreement.

## **11.10 Attorneys' Fees**

In the event that either party hereto fails to perform any of its obligations under this Agreement or in the event a dispute arises concerning the meaning or interpretation of any provision of this Agreement, the defaulting party or the non-prevailing party in such dispute, as the case may be, shall have such remedies as are available at law or in equity and shall pay the prevailing party reasonable attorneys' and experts' fees and costs, and all court costs and other costs of action incurred by the prevailing party in connection with the prosecution or defense of such action and enforcing or establishing its rights hereunder (whether or not such action is prosecuted to a judgment). For purposes of this Agreement, reasonable attorneys' fees of the City's Office of the City Attorney shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney. The term "attorneys' fees" shall also include, without limitation, all such fees incurred with respect to appeals, mediations, arbitrations, and bankruptcy proceedings, and whether or not any action is brought with respect to the matter for which such fees were incurred. The term "costs" shall mean the costs and expenses of counsel to the parties, which may include printing, duplicating and other expenses, air freight charges, hiring of experts, and fees billed for law clerks, paralegals, and others not admitted to the bar but performing services under the supervision of an attorney.

## **11.11 Sunshine Ordinance**

Seller understands and agrees that under the City's Sunshine Ordinance (San Francisco Administrative Code, Chapter 67) and the State Public Records Law (Gov. Code Section 6250 et seq.), this Agreement and any and all records, information, and materials submitted to the City hereunder public records subject to public disclosure. Seller hereby acknowledges that the City may disclose any records, information and materials submitted to the City in connection with this Agreement.

## **11.12 Conflicts of Interest**

Through its execution of this Agreement, Seller acknowledges that it is familiar with the provisions of Section 15.103 of the San Francisco Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which would constitute a violation of said provision, and agrees that if Seller becomes aware of any such fact during the term of this Agreement, Seller shall immediately notify the City.

### **11.13 Notification of Limitations on Contributions**

Through its execution of this Agreement, Seller acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing of any land or building to or from the City whenever such transaction would require the approval by a City elective officer, the board on which that City elective officer serves, or a board on which an appointee of that individual serves, from making any campaign contribution to (1) the City elective officer, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual or candidate, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Seller acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Seller further acknowledges that the prohibition on contributions applies to each Seller; each member of Seller's board of directors, and Seller's chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than twenty percent (20%) in Seller; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Seller. Additionally, Seller acknowledges that Seller must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Seller further agrees to provide to City the names of each person, entity or committee described above.

### **11.14 Non-Liability of City Officials, Employees and Agents**

Notwithstanding anything to the contrary in this Agreement, no elective or appointive board, commission, member, officer, employee or agent of City shall be personally liable to Seller, its successors and assigns, in the event of any default or breach by City or for any amount which may become due to Seller, its successors and assigns, or for any obligation of City under this Agreement.

### **11.15 Counterparts**

This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

### **11.16 Effective Date**

As used herein, the term "Effective Date" shall mean the date on which the City's Board of Supervisors and Mayor enact a resolution approving and authorizing this Agreement and the transactions contemplated hereby, following execution of this Agreement by both parties.

### **11.17 Severability**

If any provision of this Agreement or the application thereof to any person, entity or circumstance shall be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each other provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law, except to the extent that enforcement of this Agreement without the invalidated provision would be unreasonable or inequitable under all the circumstances or would frustrate a fundamental purpose of this Agreement.

**11.18 Agreement Not to Market Prior to Effective Date**

Seller agrees that unless and until this Agreement terminates pursuant to its terms, Seller shall not negotiate with any other parties pertaining to the sale of the Property and shall not market the Property to third parties.

**11.19 Acceptance of Agreement by Seller**

This Agreement shall be null and void unless Seller accepts it and returns to City four (4) fully executed counterparts hereof on or before 5:00 p.m. San Francisco Time on \_\_\_\_\_, 20\_\_\_\_.

**11.20 Cooperative Drafting.**

This Agreement has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

**11.21 Time is of the Essence.**

Time is of the essence with respect to the performance of all terms, covenants, conditions and provisions of this Agreement.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, SELLER ACKNOWLEDGES AND AGREES THAT NO OFFICER OR EMPLOYEE OF CITY HAS AUTHORITY TO COMMIT CITY TO THIS AGREEMENT UNLESS AND UNTIL APPROPRIATE LEGISLATION OF CITY'S BOARD OF SUPERVISORS SHALL HAVE BEEN DULY ENACTED APPROVING THIS AGREEMENT AND AUTHORIZING THE TRANSACTIONS CONTEMPLATED HEREBY. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY HEREUNDER ARE CONTINGENT UPON THE DUE ENACTMENT OF SUCH LEGISLATION, AND THIS AGREEMENT SHALL BE NULL AND VOID IF CITY'S BOARD OF SUPERVISORS AND MAYOR DO NOT APPROVE THIS AGREEMENT, IN THEIR RESPECTIVE SOLE DISCRETION. APPROVAL OF ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY BY ANY DEPARTMENT, COMMISSION OR AGENCY OF CITY SHALL NOT BE DEEMED TO IMPLY THAT SUCH LEGISLATION WILL BE ENACTED NOR WILL ANY SUCH APPROVAL CREATE ANY BINDING OBLIGATIONS ON CITY.

*[SIGNATURES ON FOLLOWING PAGES]*

The parties have duly executed this Agreement as of the respective dates written below.

SELLER:

Joan Spargo, in Trust, as Trustee of the "Stella Arnold 1987 Exempt Trust FBO Joan Spargo" dated April 4, 2001, as to an undivided 3/8 interest

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

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

Walter A. Arnold, in Trust, as Trustee of the "Stella Arnold 1987 Exempt Trust FBO Walter A. Arnold" dated April 4, 2001, as to an undivided 3/8 interest

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

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

Kenneth Musso, as to an undivided 1/12 interest;  
David Musso, as to an undivided 1/12 interest

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

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

Arlene Ripley, as to an undivided 1/12 interest

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

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

CITY:

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

By: \_\_\_\_\_  
JOHN UPDIKE  
Director of Property

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

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: \_\_\_\_\_  
Charles Sullivan  
Deputy City Attorney

Title Company agrees to act as escrow holder in accordance with the terms of this Agreement and to execute the Designation Agreement and act as the Reporting Person (as such term is defined in the Designation Agreement). Title Company's failure to execute below shall not invalidate the Agreement between City and Seller.

TITLE COMPANY:

CHICAGO TITLE INSURANCE COMPANY

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

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



**EXHIBIT A**

**REAL PROPERTY DESCRIPTION**

For APN/Parcel ID(s): LOT 043, BLOCK 3759

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

**PARCEL ONE:**

BEGINNING AT A POINT ON THE SOUTHWESTERLY LINE OF SIXTH STREET,  
DISTANT THEREON 200

FEET NORTHWESTERLY FROM THE NORTHWESTERLY LINE OF BRYANT STREET;  
RUNNING THENCE

NORTHWESTERLY ALONG THE SOUTHWESTERLY LINE OF SIXTH STREET 50 FEET;  
THENCE AT A

RIGHT ANGLE SOUTHWESTERLY 90 FEET; THENCE AT A RIGHT ANGLE  
SOUTHEASTERLY 50 FEET;

THENCE AT A RIGHT ANGLE NORTHEASTERLY 90 FEET TO THE POINT OF  
BEGINNING.

BEING PORTION OF 100 VARA BLOCK NO. 397.

**PARCEL TWO:**

BEGINNING AT A POINT ON THE NORTHEASTERLY LINE OF HARRIET STREET,  
DISTANT THEREON 300

FEET SOUTHEASTERLY FROM THE SOUTHEASTERLY LINE OF HARRISON STREET;  
RUNNING THENCE

SOUTHEASTERLY ALONG SAID NORTHEASTERLY LINE OF HARRIET STREET 20  
FEET; THENCE AT A

RIGHT ANGLE NORTHEASTERLY 75 FEET; THENCE AT A RIGHT ANGLE  
NORTHWESTERLY 20 FEET;

THENCE AT A RIGHT ANGLE SOUTHWESTERLY 75 FEET TO THE POINT OF  
BEGINNING.

BEING A PORTION OF 100 VARA BLOCK NO. 397.

**EXHIBIT B**

**PRELIMINARY TITLE REPORT**

**EXHIBIT C**

**GRANT DEED**

RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

Director of Property  
Real Estate Division  
City and County of San Francisco  
25 Van Ness Avenue, Suite 400  
San Francisco, California 94102

The undersigned hereby declares this instrument to be  
exempt from Recording Fees (CA Govt. Code § 27383)  
and Documentary Transfer Tax (CA Rev. & Tax Code  
§ 11922 and S.F. Bus. & Tax Reg. Code § 1105)

(Space above this line reserved for Recorder's use only)

**GRANT DEED**

(Assessor's Parcel No. \_\_\_\_\_)

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,  
\_\_\_\_\_, a \_\_\_\_\_, hereby grants to  
the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, the real property  
located in the City and County of San Francisco, State of California, described on Exhibit A  
attached hereto and made a part hereof (the "Property").

TOGETHER WITH any and all rights, privileges and easements incidental or  
appurtenant to the Property, including, without limitation, any and all minerals, oil, gas and other  
hydrocarbon substances on and under the Property, as well as any and all development rights, air  
rights, water, water rights, riparian rights and water stock relating to the Property, and any and all  
easements, rights-of-way or other appurtenances used in connection with the beneficial use and  
enjoyment of the Land and all of Grantor's right, title and interest in and to any and all roads and  
alleys adjoining or servicing the Property.

*[SIGNATURES ON FOLLOWING PAGE]*

Executed as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_, a \_\_\_\_\_

NAME

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

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

NAME

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

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

State of California            )  
  ) ss  
County of San Francisco    )

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

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

---

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by the foregoing Grant Deed to the City and County of San Francisco, a municipal corporation, is hereby accepted pursuant to Board of Supervisors' Resolution No. \_\_\_\_\_, approved \_\_\_\_\_, and the grantee consents to recordation thereof by its duly authorized officer.

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
John Updike  
Director of Property

**EXHIBIT D**

**THE LEASE**

**EXHIBIT E**

**INTENTIONALLY OMITTED**



## EXHIBIT F

### ASSIGNMENT OF LEASE

THIS ASSIGNMENT is made and entered into as of this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by and between \_\_\_\_\_, a \_\_\_\_\_ ("Assignor"), and the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("Assignee").

FOR GOOD AND VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged, effective as of the Effective Date (as defined below), Assignor hereby assigns and transfers to Assignee all of Assignor's right, title, claim and interest in and under that certain Lease executed with respect to that certain real property commonly known as 450 Sixth Street, San Francisco (the "Property"), a copy of which is attached as Schedule 1 (the "Lease").

ASSIGNOR AND ASSIGNEE FURTHER HEREBY AGREE AND COVENANT AS FOLLOWS:

1. Assignor represents and warrants that as of the Effective Date (i) the Lease attached Schedule 1 is a true, correct and complete copy of the Lease, and (ii) there are no other leases or occupancy agreements affecting any of the Property. As of the Effective Date, there are no assignments of or agreements to assign the Lease to any other party.

2. Assignor agrees to indemnify Assignee against and hold Assignee harmless from any and all costs, liabilities, losses, damages or expenses (including, without limitation, reasonable attorneys' fees), resulting from landlord's obligations under the Lease arising before the Effective Date.

3. Except as otherwise set forth in the Purchase Agreement (as defined below), Assignee assumes all of the landlord's obligations under the Leases arising from and after the Effective Date, and agrees to indemnify Assignor against and hold Assignor harmless from any and all costs, liabilities, losses, damages or expenses (including, without limitation, reasonable attorneys' fees), resulting from the landlord's obligations under the Lease arising on and after the Effective Date.

4. Any rental and other payments under the Leases shall be prorated between the parties as provided in the Purchase Agreement between Assignor, as Seller, and Assignee, as City, dated as of \_\_\_\_\_ (the "Purchase Agreement").

5. In the event of any litigation between Assignor and Assignee arising out of this Assignment, the losing party shall pay the prevailing party's costs and expenses of such litigation, including, without limitation, attorneys' fees, as set forth in the Purchase Agreement.

6. This Assignment shall be binding on and inure to the benefit of the parties hereto, their heirs, executors, administrators, successors in interest and assigns.

7. This Assignment shall be governed by and construed in accordance with the laws of the State of California.

8. For purposes of this Assignment, the "Effective Date" shall be the date of the Closing (as defined in the Purchase Agreement).

9. This Assignment may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

*[SIGNATURES ON FOLLOWING PAGE]*

Assignor and Assignee have executed this Assignment as of the day and year first written above.

ASSIGNOR:

a \_\_\_\_\_

By: \_\_\_\_\_  
[NAME]

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

By: \_\_\_\_\_  
[NAME]

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

ASSIGNEE:

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

By: \_\_\_\_\_  
JOHN UPDIKE  
Director of Property

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: \_\_\_\_\_  
[DEPUTY'S NAME]  
Deputy City Attorney

**EXHIBIT G**

**TENANT'S ESTOPPEL CERTIFICATE**

*Requires seller information*

DATE: JANUARY \_\_\_\_, 2016

TENANT: Beauty Systems Group, Inc., a Delaware corporation

PREMISES: Approximately 4,500 sq. ft. located at 450 Sixth Street, San Francisco

LEASE DATE: March 6, 1996 and amended by the First, Second, Third and Fourth Amendments

COMMENCEMENT DATE: May 1, 1996

EXPIRATION DATE: April 30, 2026

OPTIONS: One (1) further Extension Option for sixty (60) months (May 1, 2026 through April 30, 2026) at \$11,200.00 per month with 1996 Base Year Expenses

BASE MONTHLY RENT: To April 30, 2016: \$ 8,000.00  
May 1, 2016 to April 30, 2021: \$ 9,250.00  
May 1, 2011 to April 30, 2026: \$10,000.00

DATE RENT AND OPERATING EXPENSE PAYMENTS ARE DUE: First of the month

BASE YEAR TAXES: Requires seller information

BASE YEAR INSURANCE Requires seller information

BASE YEAR LANDLORD MAINTENANCE:

OPERATING EXPENSES:

Requires seller information

SECURITY DEPOSIT:

Requires seller information

---

PURCHASE OPTION:

None

THE UNDERSIGNED, AS TENANT OF THE ABOVE REFERENCED PREMISES ("PREMISES") UNDER THE LEASE DATED AS OF THE ABOVE-REFERENCED LEASE DATE, BETWEEN \_\_\_\_\_ ("LANDLORD") AND TENANT, HEREBY CERTIFIES, REPRESENTS AND WARRANTS TO THE CITY AND COUNTY OF SAN FRANCISCO ("CITY"), AND ITS ASSIGNEES, AS FOLLOWS:

1. Accuracy. All of the information specified above and elsewhere in this Certificate is accurate as of the date hereof.
2. Lease. The copy of the Lease including the four (4) Addendums to Lease attached hereto as Exhibit A is a true and correct copy of the Lease. The Lease is valid and in full force and effect. The Lease contains all of the understandings and agreements between Landlord and Tenant and has not been amended, supplemented or changed by letter agreement or otherwise, except as follows (if none, indicate so by writing "NONE" below): \_\_\_\_\_
3. Premises. The Premises consist of approximately 4,500 sq. ft. , and Tenant does not have any options to expand the Premises.
4. Acceptance of Premises. Tenant has accepted possession of the Premises and is currently occupying the Premises. There are no unreimbursed expenses due Tenant including, but not limited to, capital expense reimbursements.
5. Lease Term. The term of the Lease commenced and will expire on the dates specified above, subject to the above option to renew.

6. Base Year Expenses

Requires seller information

7. Rental Escalations. The current monthly base rental specified above is subject to the following escalation adjustments (if none, indicate so by writing "NONE" below):

8. No Defaults/Claims. Neither Tenant nor Landlord under the Lease is in default under any terms of the Lease nor has any event occurred which with the passage of time (after notice, if any, required under the Lease) would become an event of default under the Lease. Tenant has no claims, counterclaims, defenses or setoffs against Landlord arising from the Lease,

nor is Tenant entitled to any concession, rebate, allowance or free rent for any period after this certification. Tenant has no complaints or disputes with Landlord regarding the overall operation and maintenance of the property within which the Premises are located (the "Property"), or otherwise.

9. No Advance Payments. No rent has been paid in advance by Tenant except for the current month's rent.

10. No Purchase Rights. Tenant has no option to purchase, or right of first refusal to purchase, the Premises, the Property or any interest therein.

11. Notification by Tenant. From the date of this Certificate and continuing until, Tenant agrees to notify City immediately of the occurrence of any event or the discovery of any fact that would make any representation contained in this Certificate inaccurate as of the date hereof or as of any future date.

12. No Sublease/Assignment. Tenant has not entered into any sublease, assignment or any other agreement transferring any of its interest in the Lease or the Premises.

13. No Notice. Tenant has not received notice of any assignment, hypothecation, mortgage, or pledge of Landlord's interest in the Lease or the rents or other payments payable thereunder, except those listed below (if none, indicate so by writing "NONE" below):

14. Hazardous Materials. Tenant has not used, treated, stored, disposed of or released any Hazardous Materials on or about the Premises or the Property. Tenant does not have any permits, registrations or identification numbers issued by the United States Environmental Protection Agency or by any state, county, municipal or administrative agencies with respect to its operation on the Premises, except for any stated below, and except as stated below no such governmental permits, registrations or identification numbers are required with respect to Tenant's operations on the Premises. For the purposes hereof, the term "Hazardous Material" shall mean any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to the environment. Hazardous Material includes, without limitation, any material or substance defined as a "hazardous substance," or "pollutant" or "contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA", also commonly known as the "Superfund" law), as amended, (42 U.S.C. Section 9601 et seq.) or pursuant to Section 25316 of the California Health & Safety Code; any "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; and petroleum, including crude oil or any fraction thereof, natural gas or natural gas liquids, and "source," "special nuclear" and "by-product" material as defined in the Atomic Energy Act of 1985, 42 U.S.C. Section 3011 et seq.

15. Reliance. Tenant recognizes and acknowledges it is making these representations to City with the intent that City, and any of its assigns, will fully rely on Tenant's representations.

16. Binding. The provisions hereof shall be binding upon and inure to the benefit of the successors, assigns, personal representatives and heirs of Tenant and City.

17. Due Execution and Authorization. The undersigned, and the person(s) executing this Certificate on behalf of the undersigned, represent and warrant that they are duly authorized to execute this Certificate on behalf of Tenant and to bind Tenant hereto.

EXECUTED BY TENANT ON THE DATE FIRST WRITTEN ABOVE.

By:

\_\_\_\_\_  
[NAME]

\_\_\_\_\_  
[TITLE]

By:

\_\_\_\_\_  
[NAME]

\_\_\_\_\_  
[TITLE]

**EXHIBIT H**

**CERTIFICATE OF TRANSFEROR  
OTHER THAN AN INDIVIDUAL  
(FIRPTA Affidavit)**

Section 1445 of the Internal Revenue Code provides that a transferee of a United States real property interest must withhold tax if the transferor is a foreign person. To inform the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, the transferee of certain real property located in the City and County of San Francisco, California, that withholding of tax is not required upon the disposition of such U.S. real property interest by \_\_\_\_\_

\_\_\_\_\_, a \_\_\_\_\_  
("Transferor"), the undersigned hereby certifies the following on behalf of Transferor:

1. Transferor is not a foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations);

2. Transferor's U.S. employer identification number is \_\_\_\_\_; and

3. Transferor's office address is \_\_\_\_\_

Transferor understands that this certification may be disclosed to the Internal Revenue Service by the transferee and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalty of perjury, I declare that I have examined this certificate and to the best of my knowledge and belief it is true, correct and complete, and I further declare that I have authority to sign this document on behalf of Transferor.

Dated: \_\_\_\_\_, 20\_\_.

On behalf of:

\_\_\_\_\_  
[NAME]

a \_\_\_\_\_

By: \_\_\_\_\_  
[NAME]

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



## EXHIBIT I

### DESIGNATION AGREEMENT

This DESIGNATION AGREEMENT (the "Agreement") dated as of \_\_\_\_\_, 20\_\_\_\_, is by and between \_\_\_\_\_, a \_\_\_\_\_ ("Seller"), the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("City"), and \_\_\_\_\_ TITLE INSURANCE COMPANY ("Title Company").

A. Pursuant to that certain Purchase Agreement entered into by and between Seller and City, dated \_\_\_\_\_, 20\_\_\_\_ (the "Purchase Agreement"), Seller has agreed to sell to City, and City has agreed to purchase from Seller, certain real property located in City and County of San Francisco, California, more particularly described in Exhibit A attached hereto (the "Property"). The purchase and sale of the Property is sometimes hereinbelow referred to below as the "Transaction").

B. Section 6045(e) of the United States Internal Revenue Code of 1986 and the regulations promulgated thereunder (collectively, the "Reporting Requirements") require an information return to be made to the United States Internal Revenue Service, and a statement to be furnished to Seller, in connection with the Transaction.

C. Pursuant to Subsection 2(b)(i) of the Purchase Agreement, an escrow has been opened with Title Company, Escrow No. \_\_\_\_\_, through which the Transaction will be or is being accomplished. Title Company is either (i) the person responsible for closing the Transaction (as described in the Reporting Requirements) or (ii) the disbursing title or escrow company that is most significant in terms of gross proceeds disbursed in connection with the Transaction (as described in the Reporting Requirements).

D. Seller, City and Title Company desire to designate Title Company as the "Reporting Person" (as defined in the "Reporting Requirements") with respect to the Transactions.

ACCORDINGLY, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Seller, City and Title Company agree as follows:

1. Title Company is hereby designated as the Reporting Person for the Transaction. Title Company shall perform all duties that are required by the Reporting Requirements to be performed by the Reporting Person for the Transaction.

2. Seller and City shall furnish to Title Company, in a timely manner, any information requested by Title Company and necessary for Title Company to perform its duties as Reporting Person for the transaction.

3. Title Company hereby requests Seller to furnish to Title Company Seller's correct taxpayer identification number. Seller acknowledges that any failure by Seller to provide Title Company with Seller's correct taxpayer identification number may subject Seller to civil or criminal penalties imposed by law. Accordingly, Seller hereby certifies to Title Company, under penalties of perjury, that Seller's correct taxpayer identification number is \_\_\_\_\_.

4. The names and addresses of the parties hereto are as follows:

SELLER:

\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
Facsimile No.: ( ) \_\_\_\_\_

CITY:

Director of Property  
25 Van Ness Avenue, Suite 400  
San Francisco, California 94102  
Facsimile No.: (415) 552-9216

TITLE COMPANY:

\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
Facsimile No.: ( ) \_\_\_\_\_

5. Each of the parties hereto shall retain this Agreement for a period of four (4) years following the calendar year during which the date of closing of the Transaction occurs.

*[SIGNATURES ON FOLLOWING PAGE]*

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

SELLER:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
Facsimile No.: ( ) \_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

CITY:

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

By: \_\_\_\_\_  
JOHN UPDIKE  
Director of Property  
Date: \_\_\_\_\_

Title Company:

\_\_\_\_\_ TITLE INSURANCE  
COMPANY  
Date: \_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_



# SAN FRANCISCO PLANNING DEPARTMENT

## General Plan Referral

*Date:* May, 26 2016

*Case No.* Case No. 2016.003177GPR  
450 06<sup>th</sup> Street Acquisition

*Block/Lot No.:* 3759/043

*Project Sponsor:* John Updike – (415) 554-9860  
[john.updike@sfgov.org](mailto:john.updike@sfgov.org)  
Office of the Director of Real Estate  
25 Van Ness Avenue, Suite 400  
San Francisco, CA 94102

*Staff Contact:* Audrey Harris– (415) 575-9136  
[audrey.harris@sfgov.org](mailto:audrey.harris@sfgov.org)

*Recommendation:* Finding the proposed acquisition of land and building at 450 06<sup>th</sup> Street, on balance, in conformity with the General Plan.

*Recommended*  
*By:*  John Rahaim, Director of Planning

1650 Mission St.  
Suite 400  
San Francisco,  
CA 94103-2479

Reception:  
415.558.6378

Fac:  
415.558.6409

Planning  
Information:  
415.558.6377

### PROJECT DESCRIPTION

The Real Estate Division, directed and discussed by the Board of Supervisors at the December 15, 2015 meeting, is proposing to acquire the land and building located at 450 06<sup>th</sup> Street (the "Property"). The Property consists of approximately 5,100 sq. ft. in a single story masonry building on 5,998 sf. ft. of land. The Property's current land use is industrial – warehouse/wholesale distribution; is within the Service/Arts/Light Industrial (SALI) zoning district. The existing tenant is a national beauty supply company that occupies the building under a lease which the City will assume.

The property would be acquired to provide space for the Justice Facilities Improvement Program. This program is intended to provide programs and services that address the challenges of diversion from incarceration, alternatives to incarceration and re-entry transition of former offenders. The Property would not be modified in any way without obtaining the required approvals from the Planning Department. These approvals may include a new General Plan Referral and additional environmental review.

GENERAL PLAN REFERRAL

*The Project would have no adverse effect on neighborhood serving retail uses or opportunities for employment in or ownership of such businesses.*

2. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhood.

*The Project would not have an adverse effect on the City's housing stock or on neighborhood character.*

3. That the City's supply of affordable housing be preserved and enhanced.

*The Project would have no adverse effect on the City's supply of affordable housing.*

4. That commuter traffic not impede MUNI transit service or overburden our streets or neighborhood parking.

*The Project would not result in commuter traffic impeding MUNI transit service or overburdening the streets or neighborhood parking.*

5. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for residential employment and ownership in these sectors be enhanced.

*The Project would not adversely affect our industrial and service sectors or future opportunities for residential employment and ownership in these sectors.*

6. That the City achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake.

*The Project would have no adverse effect on the City's preparedness against injury and loss of life in an earthquake.*

7. That landmarks and historic buildings be preserved.

*This Project would have no adverse effect on landmarks or historic buildings.*

8. That our parks and open space and their access to sunlight and vistas be protected from development.

*The Project would have no adverse effect on parks and open space or their access to sunlight and vistas.*

**RECOMMENDATION:**

**The acquisition of 450 06<sup>th</sup> Street, on balance, in-conformity with the General Plan**



Edwin M. Lee, Mayor  
Naomi M. Kelly, City Administrator



John Updike  
Director of Real Estate

March 7, 2016

John Rahaim  
Director of Planning  
Planning Department  
1650 Mission Street, Suite 400  
San Francisco, CA 94103-2414

450 6<sup>th</sup> Street  
Block 3759, Lot 43  
#7033

Attention: Maria Oropeza-Smith  
General Plan Referrals

Dear Mr. Rahaim:

The Real Estate Division seeks a General Plan Referral for the acquisition of land and building at 450 6<sup>th</sup> Street (Assessor's Block 3759, Lot 43).

The acquisition of the property, along with 5 other adjacent parcels, was included in the Final Mitigated Negative Declaration in Planning File No. 2014.0198E.

The property consists of approximately 4,500 sq. ft. in a single story masonry building on approximately 6,000 sq. ft. of land. The property is now being acquired for a yet to be determined project, consistent with the Justice Facilities Improvement Program, and the building will not be modified in any way without obtaining any required Planning Department approvals.

Please review and determine if the purchase of 450 6<sup>th</sup> Street is consistent with the General Plan and the Eight Priority Policies of Planning Code Section 101.1. Planning Department fees are on deposit with your Department through work order.

Should you have any questions or need additional information, do not hesitate to call Charlie Dunn of our office at 554-9861.

Respectfully

John Updike  
Director of Real Estate

Planning Department  
City and County of San Francisco

1660 Mission Street  
San Francisco, CA 94103

**General Plan Referral Application**  
(See attached)

**1. Site Information**

Street Address(es) of Project: 560 6th Street

Cross Streets: Between Bryant and Harrison Streets

Assessor's Block(s) / Lot(s): Block 3759, Lot 43  
[If project is in street right-of-way, list blocks & lots fronting proposed project.]

**2. Project Title, Description: (Please use additional pages if necessary.)**

Project Title: 560 6th St Acquisition

Project Description: City acquisition of property

Present or Previous Use: Warehouse/ Wholesale Distribution

Building Permit Application No. N/A Date Filed: \_\_\_\_\_

What Other Approvals Does Project Require? Board of Supervisors and Mayor

**3. Owner/Applicant Information**

Property Owner's Name: N/A Telephone: \_\_\_\_\_

Address: \_\_\_\_\_ Zip: \_\_\_\_\_

Applicant's Name: John Updike, Director Telephone: (415) 554-9860  
[if different from above]

Agency with jurisdiction over property or project: Real Estate Division

Address: 25 Van Ness Avenue, Suite 400, San Francisco, CA Zip: 94102

Contact for Project Information: \_\_\_\_\_ Telephone: \_\_\_\_\_  
[if different from above]

Address: \_\_\_\_\_ Zip: \_\_\_\_\_

## 5. EIGHT PRIORITY POLICIES

Section 101.1 of the San Francisco Planning Code requires findings that demonstrate consistency of the proposal with the eight priority policies of Section 101.1. These findings must be presented to the Planning Department before your project application can be reviewed for general conformity with San Francisco's General Plan.

1. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses enhanced;

*The project would have no adverse effect on neighborhood serving retail uses or opportunities for employment in or ownership of such businesses.*

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2. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhood;

*The project would not have an adverse effect on the City's housing stock or on neighborhood character.*

---

3. That the City's supply of affordable housing be preserved and enhanced;

*The project would have no adverse effect on the City's supply of affordable housing.*

---

4. That commuter traffic would not impede Muni transit service or overburden our streets or neighborhood parking;

*The project would not result in commuter traffic impeding Muni transit service or overburdening the streets or neighborhood parking*

---

5. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for residential employment and ownership in these sectors be enhanced;

*The project would not adversely affect our industrial and service sectors or future opportunities for residential employment and ownership in these sectors*

---

6. That the City achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake;

*The project would have no adverse effect on the City's preparedness against injury and loss of life in an earthquake.*

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450 6<sup>th</sup> Street  
Block 3759, Lot 43

AERIAL MAP





Edwin M. Lee, Mayor  
Naomi M. Kelly, City Administrator



John Updike  
Director of Real Estate

May 27, 2016

Through Naomi Kelly,  
City Administrator

450 6<sup>th</sup> Street  
Real Property Acquisition  
Assignment # 7033

Honorable Board of Supervisors  
City and County of San Francisco  
City Hall, 1 Dr. Carlton B. Goodlett Place  
San Francisco, California 94102

Dear Board Members:

Attached for your consideration is a Resolution authorizing the acquisition of real property at 450 Sixth St., San Francisco (Block 3759 Lot 43).

In late 2015, Real Estate Division submitted legislation (file 15-1184) for the acquisition of Block 3759 Lots 09, 12, 14, and 43 for a proposed Hall of Justice replacement project known as the Justice Facilities Improvement Project (JFIP). The Board of Supervisors directed City staff to 1) redesign a potential project to exclude the rehabilitation and detention facilities; 2) to explore space needs for prevention, mental health, re-entry and other programs and services; and 3) continue to pursue the acquisition of the above referenced parcels. Such alternatives to incarceration are the topic of a working group co-chaired by Sheriff Hennessey and DPH Director Garcia. The subject property is one of the parcels included in Board file 15-1184.

450 6<sup>th</sup> Street consists of approximately 4,500 sq. ft. in a single story masonry building on approximately 6,000 sq. ft. of land. The property was appraised on October 28, 2015 by Carneghi and Partners for \$2,750,000.

The proposed purchase price is \$2,403,333 and the Seller will pay or the City will receive a credit for the Transfer Taxes due on sale (estimated to be \$18,022.50). At close of escrow, the City will be assuming an existing lease of the property to Beauty Systems Group Inc., a Delaware Corporation ("Tenant"). The lease expires April 30, 2026 and would produce gross income to the City of \$9,250 per month which equates to an approximately 4.5% return on the purchase price (see Attachment #1). When the JFIP design process has further matured and has been approved by the Board, and permitted through all relevant regulatory agencies, only then would the City then seek to terminate the lease.

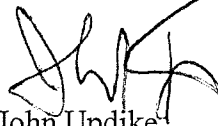
The Planning Department, through General Plan Referral letter dated May 26, 2016 has found that the City's acquisition of 450 Sixth Street is consistent with the General Plan, and the eight

priority policies under Planning Code, Section 101.1 and has been fully evaluated in the 850 Bryant Street – Hall of Justice Mitigated Negative Declaration.

The acquisition of 450 Sixth Street will likely be essential to the potential development of any project adjacent to the existing Hall of Justice facilities, as recommended in the JFIP.

The Real Estate Division recommends approval of the proposed purchase. If you have any questions, please contact Charlie Dunn at 554-9861 of my office.

Respectfully,

A handwritten signature in black ink, appearing to read "J. Updike", with a long, sweeping horizontal line extending to the right across the top of the signature block.

John Updike  
Director of Property

Attachments

**Attachment #1**

Income (as of 5/1/2016)	\$111,000
Landlord Expenses	\$2,850
Net Income	\$108,150
Capitalization Rate	4.50%
Purchase Price	\$2,403,333



STANDARD INDUSTRIAL/COMMERCIAL SINGLE-TENANT LEASE—GROSS

(Do not use this form for Multi-Tenant Property)

Basic Provisions ("Basic Provisions")

Parties: This Lease ("Lease"), dated for reference purposes only, March 6, 1996, is made between Stella Arnold & Albert Musso

West Coast Beauty Supply Company Co., a California Corporation

Parties, or individually a "Party".

Premises: That certain real property, including all improvements therein or to be provided by Lessor under the terms of this Lease, and commonly known by the street address of 450 6th Street, San Francisco, California, approximately 4,500 square feet, single story concrete block warehouse with approximately 1,800 square feet of rear parking/loading area.

Term: ten (10) years and 0 months ("Original Term") commencing May 1, 1996

Early Possession: March 15, 1996 On Execution of Lease

Base Rent: \$ 3,250.00 per month ("Base Rent"), payable on the 1st day of each month commencing May 1, 1996 - April 30, 2005

Base Rent Paid Up: \$ 9,750.00

Security Deposit: \$ 9,750.00

Permitted Use: Distribution and sales of beauty supplies and equipment and related uses.

Insuring Party: Lessor is the "Insuring Party." N/A is the "Base Premium."

Real Estate Brokers: The following real estate brokers (collectively, the "Brokers") and brokerage relationships exist in this action and are consented to by the Parties (check applicable boxes): HC&M Commercial Properties, Inc.

Levy & Company

Guarantor: The obligations of the Lessee under this Lease are to be guaranteed by N/A

Addenda: Attached hereto is an Addendum or Addenda consisting of Paragraphs 49 through 54 and Exhibits

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.

2 Condition. Lessor shall deliver the Premises to Lessee clean and free of debris on the Commencement Date and warrants to Lessee that the plumbing, fire sprinkler system, lighting, air conditioning, heating, and loading doors, if any, in the Premises, other than those constructed by Lessee, shall be in good operating condition on the Commencement Date.

3 Compliance with Covenants, Restrictions and Building Code. Lessor warrants to Lessee that the improvements on the Premises comply with all applicable covenants or restrictions of record and applicable building codes, regulations and ordinances in effect on the Commencement Date.

4 Acceptance of Premises. Lessee hereby acknowledges: (a) that it has been advised by the Brokers to satisfy itself with respect to the condition of the Premises (including but not limited to the electrical and fire sprinkler systems, security, environmental aspects, compliance with Applicable Law, and the present and future suitability of the Premises for Lessee's intended use, (b) that Lessee has made such investigation as seems necessary with reference to such matters and assumes all responsibility therefor as the same relate to Lessee's occupancy of the Premises for the term of this Lease, and (c) that neither Lessor, nor any of Lessor's agents, has made any oral or written representations or warranties with respect to the said matters other than as set forth in this Lease.

5 Lessee Prior Owner/Occupant. The warranties made by Lessor in this Paragraph 2 shall be of no force or effect if immediately prior to the date of this Lease Lessee was the owner or occupant of the Premises. In such event, Lessee shall, at Lessee's sole cost and expense, correct any non-compliance of the Premises with said warranties.

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

2 Early Possession. If Lessee totally or partially occupies the Premises prior to the Commencement Date, the obligation to pay Base Rent shall be for the period of such early possession. All other terms of this Lease, however, shall be in effect during such period. Any such early possession shall not in any way advance the Expiration Date of the Original Term.

Initials [Handwritten initials]

...shall such failure affect the validity of this Lease, or the obligations of Lessee hereunder, or extend the term hereof, but in such case, Lessee shall not, except as otherwise provided hereunder, be obligated to pay Base Rent or perform any other obligations of Lessee under the terms of this Lease until Lessor delivers possession of the Premises to Lessee. If possession of the Premises is not delivered to Lessee within sixty (60) days after the commencement of the Lease, Lessee may, at its option, by notice in writing to Lessor within ten (10) days thereafter, cancel this Lease, in which event the Parties shall be discharged from all obligations hereunder; provided, however, that if such written notice by Lessee is not received by Lessor within said ten (10) day period, Lessee's right to cancel this Lease shall terminate and be of no further force or effect. Except as may be otherwise provided, and regardless of when the term of this Lease commences, if possession is not tendered to Lessee when required by this Lease and Lessee does not terminate this Lease, as aforesaid, the period free of the obligation to pay Base Rent. If any, 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, omissions or delays of Lessee.

**Rent.**  
4.1 **Base Rent.** Lessee shall cause payment of Base Rent and other rent or charges, as the same may be adjusted from time to time, to be received by Lessor in lawful money of the United States, without offset or deduction, on or before the day on which it is due under the terms of this Lease. Base Rent and all other rent and charges for any period during the term hereof which is for less than one (1) full calendar month shall be prorated based upon an actual number of days of the calendar month involved. Payment of Base Rent and other charges shall be made to Lessor at its address stated herein or to such other persons or at such other addresses as Lessor may from time to time designate in writing to Lessee.

**Security Deposit.** Lessee shall deposit with Lessor upon execution hereof the Security Deposit set forth in Paragraph 1.7 as security for Lessee's faithful performance of Lessee's obligations under this Lease. If Lessee fails to pay Base Rent or other rent or charges due hereunder or otherwise defaults under this Lease (as defined in Paragraph 13.1), Lessor may use, apply or retain all or any portion of said Security Deposit for the payment of any amount due Lessor or to reimburse or compensate Lessor for any liability, cost, expense, loss or damage (including attorneys' fees) which Lessor may suffer or incur by reason thereof. If Lessor uses or applies all or any portion of said Security Deposit, Lessee shall within ten (10) days after written request therefor deposit moneys with Lessor sufficient to restore said Security Deposit to the full amount required by this Lease. Any time the Base Rent increases during the term of this Lease, Lessee shall, upon written request from Lessor, deposit additional moneys with Lessor sufficient to maintain the same ratio between the Security Deposit and the Base Rent as those amounts are specified in the Basic Provisions. Lessor shall not be required to keep all or any part of the Security Deposit separate from its general accounts. Lessor shall, at the expiration or earlier termination of the term hereof and after Lessee has vacated the Premises, return to Lessee (or, at Lessor's option, to the last assignee, if any, of Lessee's interest herein), that portion of the Security Deposit not used or applied by Lessor. Unless otherwise expressly agreed in writing by Lessor, no part of the Security Deposit shall be considered to be held in trust, to bear interest or other increment for its use, or to be prepayment for any moneys to be paid by Lessee under this Lease.

**Use.**  
6.1 **Use.** Lessee shall use and occupy the Premises only for the purposes set forth in Paragraph 1.8, or any other use which is comparable thereto, and for no other purpose. Lessee shall not use or permit the use of the Premises in a manner that creates waste or a nuisance, or that disturbs owners and/or occupants of, or causes damage to, neighboring premises or properties. Lessor hereby agrees to not unreasonably withhold or delay its consent to any written request by Lessee, Lessee's assignees or subtenants, and by prospective assignees and subtenants of the Lessee, its assignees and subtenants, for a modification of said permitted purpose for which the premises may be used or occupied, so long as the same will not impair the structural integrity of the improvements on the Premises, the mechanical or electrical systems therein, is not significantly more burdensome to the Premises and the improvements thereon, and is otherwise permissible pursuant to this Paragraph 6. If Lessor elects to withhold such consent, Lessor shall within five (5) business days give a written notification of same, which notice shall include an explanation of Lessor's reasonable objections to the change in use.

**6.2 Hazardous Substances.**  
(a) **Reportable Uses Require Consent.** The term "Hazardous Substance" as used in this Lease shall mean any product, substance, chemical, material or waste whose presence, nature, quantity and/or intensity of existence, use, manufacture, disposal, transportation, spill, release or effect, 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 liability of Lessor to any governmental agency or third party under any applicable statute or common law theory. Hazardous Substance shall include, but not be limited to, hydrocarbons, petroleum, gasoline, crude oil or any products, by-products or fractions thereof. Lessee shall not engage in any activity in, on or about the Premises which constitutes Reportable Use (as hereinafter defined) of Hazardous Substances without the express prior written consent of Lessor and compliance in a timely manner at Lessee's sole cost and expense) with all Applicable Law (as defined in Paragraph 6.3). "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. Reportable Use shall also include Lessee's being responsible for the presence in, on or about the Premises of a Hazardous Substance with respect to which any Applicable Law requires that a notice be given to persons entering or occupying the Premises or neighboring properties. Notwithstanding the foregoing, Lessee may, without Lessor's prior consent, but in compliance with all Applicable Law, use any ordinary and customary materials reasonably required to be used by Lessee in the normal course of Lessee's business permitted on the Premises, so long as such use is not a Reportable Use and does not expose the Premises or neighboring properties to any meaningful risk of contamination or damage or expose Lessor to any liability therefor. In addition, Lessor may (but without any obligation to do so) condition its consent to the use or presence of any Hazardous Substance, activity or storage tank by Lessee upon Lessee's giving Lessor such additional assurances as Lessor, in its reasonable discretion, deems necessary to protect itself, the public, the Premises and the environment against damage, contamination or injury and/or liability therefrom or therefor, including, but not limited to, the installation (and removal on or before Lease expiration or earlier termination) of reasonably necessary protective modifications to the Premises (such as concrete encasements) and/or the deposit of an additional Security Deposit under Paragraph 5 hereof.

(b) **Duty to Inform Lessor.** If Lessee knows, or has reasonable cause to believe, that a Hazardous Substance, or a condition involving or resulting from same, 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. Lessee shall also immediately give Lessor a copy of any statement, report, notice, registration, application, permit, business plan, license, claim, action or proceeding given to, or received from, any governmental authority or private party, or persons entering or occupying the Premises, concerning the presence, spill, release, discharge of, or exposure to, any Hazardous Substance or contamination in, on, or about the Premises, including but not limited to all such documents as may be involved in any Reportable Uses involving the Premises.

(c) **Indemnification.** Lessee shall indemnify, protect, defend and hold Lessor, its agents, employees, lenders and ground lessor, if any, and the Premises, harmless from and against any and all loss of rents and/or damages, liabilities, judgments, costs, claims, liens, expenses, penalties, permits and attorney's and consultant's fees arising out of or involving any Hazardous Substance or storage tank brought onto the Premises by or for Lessee or under Lessee's control. Lessee's obligations under this Paragraph 6 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 (including consultant's and attorney's fees and testing), removal, remediation, restoration and/or abatement thereof, or of any contamination therein involved, and shall survive the expiration or earlier 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 or storage tanks, unless specifically so agreed by Lessor in writing at the time of such agreement.

**6.3 Lessee's Compliance with Law.** Except as otherwise provided in this Lease, Lessee shall, at Lessee's sole cost and expense, fully, diligently and in a timely manner, comply with all "Applicable Law," which term is used in this Lease to include all laws, rules, regulations, ordinances, directives, covenants, easements and restrictions of record, permits, the requirements of any applicable fire insurance underwriter or rating bureau, and the recommendations of Lessor's engineers and/or consultants, relating in any manner to the Premises (including but not limited to matters pertaining to (i) industrial hygiene, (ii) environmental conditions on, in, under or about the Premises, including soil and groundwater conditions, and (iii) the use, generation, manufacture, production, installation, maintenance, removal, transportation, storage, spill or release of any Hazardous Substance or storage tank), now in effect which may hereafter come into effect, and whether or not reflecting a change in policy from any previously existing policy. Lessee shall, within five (5) days after receipt of Lessor's written request, provide Lessor with copies of all documents and information, including, but not limited to, permits, registrations, manifests, applications, reports and certificates, evidencing Lessee's compliance with any Applicable Law 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 failure by Lessee or the Premises to comply with any Applicable Law.

**6.4 Inspection; Compliance.** Lessor and Lessor's Lender(s) (as defined in Paragraph 8.3(a)) shall have the right to enter the Premises at any time, in the case of an emergency, and otherwise at reasonable times, for the purpose of inspecting the condition of the Premises and for verifying compliance with Lessee with this Lease and all Applicable Laws (as defined in Paragraph 8.3), and to employ experts and/or consultants in connection therewith and/or advise Lessor with respect to Lessee's activities. Including but not limited to the installation, operation, use, monitoring, maintenance, or removal of any Hazardous Substance or storage tank on or from the Premises. The costs and expenses of any such inspections shall be paid by the party requesting same, unless a Default or Breach of this Lease, violation of Applicable Law, or a contamination, caused or materially contributed to by Lessee is found to exist or be imminent, or unless the inspection is requested or ordered by a governmental authority as the result of any such existing or imminent contamination or contamination. In any such case, Lessee shall upon request reimburse Lessor or Lessor's Lender, as the case may be, for the costs and expenses of such inspections.

**Maintenance; Repairs; Utility Installations; Trade Fixtures and Alterations.**  
**7.1 Lessee's Obligations.**  
(a) Subject to the provisions of Paragraphs 2.2 (Lessor's warranty as to condition), 2.3 (Lessor's warranty as to compliance with covenants, etc),

7.2 (Lessor's obligations to repair), 8 (damage and destruction), and 14 (condemnation), Lessee shall, at Lessee's sole cost and expense and at all times, keep the Premises and every part thereof in good order, condition and repair, (whether or not such portion of the Premises requiring repair, or the means of repair, the same, are reasonably or readily accessible to Lessee, and whether or not the need for such repairs occurs as a result of Lessee's use, or any prior use, the elements or the age of such portion of the Premises), including, without limiting the generality of the foregoing, all equipment or facilities serving the Premises, such as plumbing, heating, air conditioning, ventilating, electrical, lighting facilities, boilers, fired or unfired pressure vessels, fire sprinkler and/or standpipe and hose or other automatic fire extinguishing system, including fire alarm and/or smoke detection systems and equipment, fire hydrants, fixtures, walls (interior and exterior), ceilings, floors, windows, doors, plate glass, skylights, landscaping, driveways, parking lots, fences, retaining walls, signs, sidewalks and parkways located in, on, about, or adjacent to the Premises, but excluding foundations, the exterior roof and the structural aspects of the Premises. 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, 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, the elements surrounding same, or neighboring properties, that was caused or materially contributed to by Lessee, or pertaining to or involving any Hazardous Substance and/or storage tank brought onto the Premises by or for Lessee or under its control. Lessee, in keeping the Premises in good order, condition and repair, shall exercise and perform good maintenance practices. Lessee's obligations shall include restorations, replacements or renewals when necessary to keep the Premises and all improvements thereon or a part thereof in good order, condition and state of repair.

(b) Lessee shall, at Lessee's sole cost and expense, procure and maintain contracts, with copies to Lessor, in customary form and substance for, and with contractors specializing and experienced in, the inspection, maintenance and service of the following equipment and improvements, if any, located on the Premises: (i) heating, air conditioning and ventilation equipment, (ii) boiler, fired or unfired pressure vessels, (iii) fire sprinkler and/or standpipe and hose or other automatic fire extinguishing systems, including fire alarm and/or smoke detection, (iv) landscaping and irrigation systems, (v) roof covering and drain maintenance and (vi) asphalt and parking lot maintenance.

7.2 Lessor's Obligations. Upon receipt of written notice of the need for such repairs and subject to Paragraph 13.5, Lessor shall, at Lessor's expense, keep the foundations, exterior roof and structural aspects of the Premises in good order, condition and repair. Lessor shall not, however, be obligated to paint the exterior surface of the exterior walls or to maintain the windows, doors or plate glass or the interior surface of exterior walls. Lessor shall not, in any event, have any obligation to make any repairs until Lessor receives written notice of the need for such repairs. It is the intention of the Parties that the terms of this Lease govern the respective obligations of the Parties as to maintenance and repair of the Premises. Lessee and Lessor expressly waive the benefit of any statute now or hereafter in effect to the extent it is inconsistent with the terms of this Lease with respect to, or which affords Lessee the right to make repairs at the expense of Lessor or to terminate this Lease by reason of, any needed repairs.

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

(a) Definitions; Consent Required. The term "Utility Installations" is used in this Lease to refer to all carpeting, window coverings, air lines, power panels, electrical distribution, security, fire protection systems, communication systems, lighting fixtures, heating, ventilating, and air conditioning equipment, plumbing, and fencing in, on or about 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 on the Premises from that which are provided by Lessor under the terms of this Lease, 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 as defined in Paragraph 7.4(a). Lessee shall not make any Alterations or Utility Installations in, on, under or about the Premises without Lessor's prior written consent. Lessee may, however, make non-structural Utility Installations to the interior of the Premises (excluding the roof), as long as they are not visible from the outside; do not involve puncturing, relocating or removing the roof or any existing walls, and the cumulative cost thereof during the term of this Lease as extended does not exceed \$25,000.

(b) Consent. 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 proposed detailed plans. All consents given by Lessor, whether by virtue of Paragraph 7.3(a) or by subsequent specific consent, shall be deemed conditioned upon: (i) Lessee's acquiring all applicable permits required by governmental authorities, (ii) the furnishing of copies of such permits together with a copy of the plans and specifications for the Alteration or Utility Installation to Lessor prior to commencement of the work thereon, and (iii) the compliance by Lessee with all conditions of said permits in a prompt and expeditious manner. Any Alterations or Utility Installations by Lessee during the term of this Lease shall be done in a good and workmanlike manner, with good and sufficient materials, and in compliance with all Applicable Law. Lessee shall promptly upon completion thereof furnish Lessor with as-built plans and specifications therefor. Lessor may (but without obligation to do so) condition its consent to any requested Alteration or Utility Installation that costs \$10,000 or more upon Lessee's providing Lessor with a lien and completion bond in an amount equal to one and one-half times the estimated cost of such Alteration or Utility Installation and/or upon Lessee's posting an additional Security Deposit with Lessor under Paragraph 38 hereof.

(c) Indemnification. 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 mechanics' or materialmen's lien against the Premises or any interest therein. Lessee shall give Lessor not less than ten (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 in or on the Premises as provided by law. If Lessee shall, in good faith, 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 against the Lessor or the Premises. If Lessor shall require, Lessee shall furnish to Lessor a surety bond satisfactory to Lessor in an amount equal to one and one-half times the amount of such contested lien claim or demand, indemnifying Lessor against liability for the same, as required by law for the holding of the Premises free from the effect of such lien or claim. In addition, Lessor may require Lessee to pay Lessor's attorney's fees and costs in participating in such action if Lessor shall decide it is to its best interest to do so.

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

(a) Ownership. Subject to Lessor's right to require their removal or become the owner thereof as hereinafter provided in this Paragraph 7.4, all Alterations and Utility Additions made to the Premises by Lessee shall be the property of and owned by Lessee, but considered a part of the Premises. Lessor may, at any time and at its option, elect in writing to Lessee to be the owner of all or any specified part of the Lessee Owned Alterations and Utility Installations. Unless otherwise instructed per subparagraph 7.4(b) hereof, all Lessee Owned Alterations and Utility Installations shall, at the expiration or earlier termination of this Lease, become the property of Lessor and remain upon and be surrendered by Lessee with the Premises.

(b) Removal. Unless otherwise agreed in writing, Lessor may require that any or all Lessee Owned Alterations or Utility Installations be removed by the expiration or earlier termination of this Lease, notwithstanding their installation may have been consented to by Lessor. 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 of Lessor.

(c) Surrender/Restoration. Lessee shall surrender the Premises by the end of the last day of the Lease term 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 or by Lessee performing all of its obligations under this Lease. Except as otherwise agreed or specified in writing by Lessor, the Premises, as surrendered, shall include the Utility Installations. The obligation of Lessee shall include the repair of any damage occasioned by the installation, maintenance or removal of Lessee's Trade Fixtures, furnishings, equipment, and Alterations and/or Utility Installations, as well as the removal of any storage tank installed by or for Lessee, and the removal, replacement, or remediation of any soil, material or ground water contaminated by Lessee, all as may then be required by Applicable Law and/or good service practice. Lessee's Trade Fixtures shall remain the property of Lessee and shall be removed by Lessee subject to its obligation to repair and restore the Premises per this Lease.

## B. Insurance; Indemnity.

### 8.1 Payment of Premium Increases.

(a) Lessee shall pay to Lessor any insurance cost increase ("Insurance Cost Increase") occurring during the term of this Lease. "Insurance Cost Increase" is defined as any increase in the actual cost of the insurance required under Paragraphs 8.2(b), 8.3(a) and 8.3(b). ("Required Insurance"), over and above the Base Premium, as hereinafter defined, calculated on an annual basis. "Insurance Cost Increase" shall include, but not be limited to, increases resulting from the nature of Lessee's occupancy, any act or omission of Lessee, requirements of the holder of a mortgage or deed of trust covering the Premises, increased valuation of the Premises, and/or a premium rate increase. If the parties insert a dollar amount in Paragraph 1.9, such amount shall be considered the "Base Premium." In lieu thereof, if the Premises have been previously occupied, the "Base Premium" shall be the annual premium applicable to the most recent occupancy. If the Premises have never been occupied, the "Base Premium" shall be the lowest annual premium reasonably obtainable or the Required Insurance as of the commencement of the Original Term, assuming the most nominal use possible of the Premises. In no event, however, shall Lessee be responsible for any portion of the premium cost attributable to liability insurance coverage in excess of \$1,000,000 procured under Paragraph 8.2(b) (Liability Insurance Carried By Lessor).

(b) Lessee shall pay any such Insurance Cost Increase to Lessor within thirty (30) days after receipt by Lessee of a copy of the premium statement or other reasonable evidence of the amount due. If the insurance policies maintained hereunder cover other property besides the Premises, Lessor shall also deliver to Lessee a statement of the amount of such Insurance Cost Increase attributable only to the Premises showing in reasonable detail the manner in which such amount was computed. Premiums for policy periods commencing prior to, or extending beyond, the term of this Lease shall be prorated to coincide with the corresponding Commencement or Expiration of the Lease term.

### 8.2 Liability Insurance.

(a) Carried by Lessee. Lessee shall obtain and keep in force during the term of this Lease 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, involving 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 "Additional Insured-Managers or Lessors of Premises"

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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 obligations under this Lease. Limits of said insurance required by this Lease or as carried by Lessee shall not, however, limit or relieve Lessee of any obligations hereunder. All insurance to be carried by Lessee shall be primary to and not contributory with any similar insurance carried by Lessor, whose insurance shall be considered excess insurance only.

(b) Carried By Lessor. In the event Lessor is the Insuring Party, Lessor shall also maintain liability insurance described in Paragraph 8.2(a), above, in addition to, and not in lieu of, the insurance required to be maintained by Lessee. Lessee shall not be named as an additional insured therein.

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

(a) Building and Improvements. The Insuring Party shall obtain and keep in force during the term of this Lease a policy or policies in the name of Lessor, with loss payable to Lessor and to the holders of any mortgages, deeds of trust or ground leases on the Premises ("Lender(s)"), insuring loss or damage to the Premises. The amount of such insurance shall be equal to the full replacement cost of the Premises, as the same shall exist from time to time, or the amount required by Lenders, but in no event more than the commercially reasonable and available insurable value thereof if, by reason of the unique nature or age of the improvements involved, such latter amount is less than full replacement cost. Lessee Owned Alterations and Utility Installations shall be insured by Lessee under Paragraph 8.4. 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 any additional costs resulting from debris removal and reasonable amounts of coverage for the enforcement of any ordinance or law regulating the reconstruction or replacement of any undamaged sections of the Premises required to be demolished or removed by reason of the enforcement of any building, zoning, safety or land use laws as the result of a covered cause of loss, but not including plate glass insurance. 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.

(b) Rental Value. Lessor shall, in addition, obtain and keep in force during the term of this Lease a policy or policies in the name of Lessor, with loss payable to Lessor and Lender(s), insuring the loss of the full rental and other charges payable by Lessee to Lessor under this Lease for one (1) year (including all real estate taxes, insurance costs, and any scheduled rental increases). Said insurance shall provide that in the event the Lease is terminated by reason of an insured loss, the period of indemnity for such coverage shall be extended beyond the date of the completion of repairs or replacement of the Premises, to provide for one full year's loss of rental revenues from the date of any such loss. 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 rental income, property taxes, insurance premium costs and other expenses, if any, otherwise payable by Lessee, for the next twelve (12) month period.

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

(d) Tenant's Improvements. Since Lessor is the Insuring Party, the 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 Insurance. Subject to the requirements of Paragraph 8.5, Lessee at its cost shall either by separate policy or, at Lessor's option, by endorsement to a policy already carried, maintain insurance coverage on all of Lessee's personal property, Lessee Owned Alterations and Utility Installations in, on, or about the Premises similar in coverage to that carried by the Insuring Party under Paragraph 8.3. 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 or the restoration of Lessee Owned Alterations and Utility Installations. Lessee shall be the Insuring Party with respect to the insurance required by this Paragraph 8.4 and shall provide Lessor with written evidence that such insurance is in force.

8.5 Insurance Policies. Insurance required hereunder shall be in companies duly licensed to transact business in the state where the Premises are located, and maintaining during the policy term a "General Policyholders Rating" of at least B+, V, or such other rating as may be required by a Lender having a lien on the Premises, as set forth in the most current issue of "Best's Insurance Guide." Lessee shall not do or permit to be done anything which shall invalidate the insurance policies referred to in this Paragraph 8. Lessee shall cause to be delivered to Lessor certified copies of, or certificates evidencing the existence and amounts of, the insurance, and with the additional insureds, required under Paragraph 8.2(a) and 8.4. No such policy shall be cancelable or subject to modification except after thirty (30) days prior written notice to Lessor. Lessee shall at least thirty (30) days prior to the expiration of such policies, furnish Lessor with evidence of renewals or "insurance binders" evidencing renewal thereof, or Lessor may order such insurance and charge the cost thereof to Lessee, which amount shall be payable by Lessee to Lessor upon demand.

8.6 Waiver of Subrogation. Without affecting any other rights or remedies, Lessee and Lessor ("Waiving Party") each hereby release and relieve the other, and waive their entire right to recover damages (whether in contract or in tort) against the other, for loss of or damage to the Waiving Party's property arising out of or incident to the perils required to be insured against under Paragraph 8. The effect of such releases and waivers of the right to recover damages shall not be limited by the amount of insurance carried or required, or by any deductibles applicable thereto.

8.7 Indemnity. Except for Lessor's negligence and/or breach of express warranties, 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, costs, liens, judgments, penalties, permits, attorney's and consultant's fees, expenses and/or liabilities arising out of, involving, or in dealing with, the occupancy of the Premises by Lessee, the conduct of Lessee's business, any act, omission or neglect of Lessee, its agents, contractors, employees or invitees, and out of any Default or Breach by Lessee in the performance in a timely manner of any obligation on Lessee's part to be performed under his Lease. The foregoing shall include, but not be limited to, the defense or pursuit of any claim or any action or proceeding involved therein, and whether or not (in the case of claims made against Lessor) litigated and/or reduced to judgment, and whether well founded or not. In case any action or proceeding be brought against Lessor by reason of any of the foregoing matters, Lessee upon notice from Lessor shall 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 so indemnified.

8.8 Exemption of Lessor from Liability. Lessor shall not be liable for injury or damage to the person or goods, wares, merchandise or other property of Lessee, Lessee's employees, contractors, invitees, customers, or any other person in or about the Premises, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, or from the breakage, leakage, obstruction or other defects of pipes, fire sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures, or from any other cause, whether the said injury or damage results from conditions arising upon the Premises or upon other portions of the building of which the Premises are a part, or from other sources or places, and regardless of whether the cause of such damage or injury or the means of repairing the same is accessible or not. Lessor shall not be liable for any damages arising from any act or neglect of any other tenant of Lessor. Notwithstanding Lessor's negligence or breach of this Lease, Lessor shall under no circumstances be liable for injury to Lessee's business or for any loss of income or profit therefrom.

## I. Damage or Destruction.

### 8.1 Definitions.

(a) "Premises Partial Damage" shall mean damage or destruction to the improvements on the Premises, other than Lessee Owned Alterations and Utility Installations, the repair cost of which damage or destruction is less than 50% of the then Replacement Cost of the Premises immediately prior to such damage or destruction, excluding from such calculation the value of the land and Lessee Owned Alterations and Utility Installations.

(b) "Premises Total Destruction" shall mean damage or destruction to the Premises, other than Lessee Owned Alterations and Utility Installations the repair cost of which damage or destruction is 50% or more of the then Replacement Cost of the Premises immediately prior to such damage or destruction, excluding from such calculation the value of the land and Lessee Owned Alterations and Utility Installations.

(c) "Insured Loss" shall mean damage or destruction to improvements on the Premises, other than Lessee Owned Alterations and Utility Installations, 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 building codes, ordinances, laws, 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, Hazardous Substance as defined in Paragraph 6.2(a), in, on, or under the Premises.

8.2 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. 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, the shortage in proceeds was due to the fact that, by reason of the unique nature of the improvements, full replacement cost insurance coverage is 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 ten (10) days following receipt written notice of such shortage and request therefor. If Lessor receives said funds or adequate assurance thereof within said ten (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 Lessor does not receive such funds or assurance within said period, Lessor may nevertheless elect by written notice to Lessee within ten (10) days thereafter to 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. If in such case Lessor does not so elect, then this Lease shall terminate sixty (60) days following the occurrence of the damage or destruction. Unless otherwise agreed, Lessee shall in no event have any right to reimbursement from Lessor for any funds contributed by Lessee to repair

any destruction or destruction of Premises and damage due to flood or earthquake shall be subject to Paragraph 9.3 rather than Paragraph 9.2, notwithstanding that there may be some insurance coverage, but the net proceeds of any such insurance shall be made available for 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 and this Lease shall continue in full force and effect, but subject to Lessor's rights under Paragraph 13), Lessor may at Lessor's option, either: (i) repair such damage as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) give written notice to Lessee within thirty (30) days after receipt by Lessor of knowledge of the occurrence of such damage of Lessor's desire to terminate this Lease as of the date sixty (60) days following the giving of such notice. In the event Lessor elects to give such notice of Lessor's intention to terminate this Lease, Lessee shall have the right within ten (10) days after the receipt of such notice to give written notice to Lessor of Lessee's commitment to pay for the repair of such damage totally at Lessee's expense and without reimbursement from Lessor. Lessee shall provide Lessor with the required funds or satisfactory assurance thereof within thirty (30) days following Lessee's said commitment. In such event this Lease shall continue in full force and effect, and Lessor shall proceed to make such repairs as soon as reasonably possible and the required funds are available. If Lessee does not give such notice and provide the funds or assurance thereof within the times specified above, this Lease shall terminate as of the date specified in Lessor's notice of termination.

**9.4 Total Destruction.** Notwithstanding any other provision hereof, if a Premises Total Destruction occurs (including any destruction required by any authorized public authority), this Lease shall terminate sixty (60) days following the date of such Premises Total Destruction; whether or not the damage or destruction is an Insured Loss or was caused by a negligent or willful act of Lessee. In the event, however, that the damage or destruction was caused by Lessee, Lessor shall have the right to recover Lessor's damages from Lessee except as released and waived in Paragraph 8.6.

**9.5 Damage Near End of Term.** If at any time during the last six (6) months of the term of this Lease there is damage for which the cost to repair exceeds one (1) month's Base Rent, whether or not an Insured Loss, Lessor may, at Lessor's option, terminate this Lease effective sixty (60) days following the date of occurrence of such damage by giving written notice to Lessee of Lessor's election to do so within thirty (30) days after the date of occurrence of such damage. Provided, however, 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, within twenty (20) days following the occurrence of the damage, or before the expiration of the time provided in such option for its exercise, whichever is earlier ("Exercise Period"), (i) exercising such option and (ii) providing Lessor with any shortage in insurance proceeds (or adequate assurance thereof) needed to make the repairs. If Lessee duly exercises such option during said Exercise Period and provides Lessor with funds (or adequate assurance thereof) to cover any shortage in insurance proceeds, Lessor shall, at Lessor's 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 said Exercise Period, then Lessor may at Lessor's option terminate this Lease as of the expiration of said sixty (60) day period following the occurrence of such damage by giving written notice to Lessee of Lessor's election to do so within ten (10) days after the expiration of the Exercise Period, notwithstanding any term or provision in the grant of option to the contrary.

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

(a) In the event of damage described in Paragraph 9.2 (Partial Damage—Insured), whether or not Lessor or Lessee repairs or restores the Premises, the Base Rent, Real Property Taxes, insurance premiums, and other charges, if any, payable by Lessee hereunder for the period during which such damage, its repair or the restoration continues (not to exceed the period for which rental value insurance is required under Paragraph 8.3(b)), shall be abated in proportion to the degree to which Lessee's use of the Premises is impaired. Except for abatement of Base Rent, Real Property Taxes, insurance premiums, and other charges, if any, as aforesaid, all other obligations of Lessee hereunder shall be performed by Lessee, and Lessee shall have no claim against Lessor for any damage suffered by reason of any such repair or restoration.

(b) If Lessor shall be obligated to repair or restore the Premises under the provisions of this Paragraph 9 and shall not commence, in a substantial and meaningful way, the repair or restoration of the Premises within ninety (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 sixty (60) days following the giving of such notice, if Lessee gives such notice to Lessor and such Lenders and such repair or restoration is not commenced within thirty (30) days after receipt of such notice, this Lease shall terminate as of the date specified in said notice. If Lessor or a Lender commences the repair or restoration of the Premises within thirty (30) days after receipt of such notice, this Lease shall continue in full force and effect. "Commence" as used in this Paragraph 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 Hazardous Substance Conditions.** If a Hazardous Substance Condition occurs, unless Lessee is legally responsible therefor (in which case Lessee shall make the investigation and remediation thereof required by Applicable Law and this Lease shall continue in full force and effect, but subject to Lessor's rights under 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 investigate and remediate such condition exceeds twelve (12) times the then monthly Base Rent or \$100,000, whichever is greater, give written notice to Lessee within thirty (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 sixty (60) days following the giving of such notice. In the event Lessor elects to give such notice of Lessor's intention to terminate this Lease, Lessee shall have the right within ten (10) days after the receipt of such notice to give written notice to Lessor of Lessee's commitment to pay for the investigation and remediation of such Hazardous Substance Condition totally at Lessee's expense and without reimbursement from Lessor except to the extent of an amount equal to twelve (12) times the then monthly Base Rent or \$100,000, whichever is greater. Lessee shall provide Lessor with the funds required of Lessee or satisfactory assurance thereof within thirty (30) days following Lessee's said commitment. In such event this Lease shall continue in full force and effect, and Lessor shall proceed to make such investigation and remediation as soon as reasonably possible and the required funds are available. If Lessee does not give such notice and provide the required funds or assurance thereof within the times specified above, this Lease shall terminate as of the date specified in Lessor's notice of termination. If a Hazardous Substance Condition occurs for which Lessee is not legally responsible, there shall be abatement of Lessee's obligations under this Lease to the same extent as provided in Paragraph 9.6(a) for a period of not to exceed twelve (12) months.

**9.8 Termination—Advance Payments.** Upon termination of this Lease pursuant to this 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 under the terms of this Lease.

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

**10. Real Property Taxes.**

**10.1 (a) Payment of Taxes.** Lessor shall pay the Real Property Taxes, as defined in Paragraph 10.2, applicable to the Premises; provided, however, that Lessee shall pay, in addition to rent, the amount, if any, by which Real Property Taxes applicable to the Premises increase over the fiscal tax year during which the Commencement Date occurs ("Tax Increase"). Subject to Paragraph 10.1(b), payment of any such Tax Increase shall be made by Lessee within thirty (30) days after receipt of Lessor's written statement setting forth the amount due and the computation thereof. Lessee shall promptly furnish Lessor with satisfactory evidence that such taxes have been paid. If any such taxes to be paid by Lessee shall cover any period of time prior to or after the expiration or earlier termination of the term hereof, Lessee's share of such taxes shall be equitably prorated to cover only the period of time within the tax fiscal year this Lease is in effect, and Lessor shall reimburse Lessee for any overpayment after such proration.

(b) **Advance Payment.** In order to insure payment when due and before delinquency of any or all Real Property Taxes, Lessor reserves the right, at Lessor's option, to estimate the current Real Property Taxes applicable to the Premises, and to require such current year's Tax Increase to be paid in advance to Lessor by Lessee, either: (i) in a lump sum amount equal to the amount due, at least twenty (20) days prior to the applicable delinquency date, or (ii) monthly in advance with the payment of the Base Rent. If Lessor elects to require payment monthly in advance, the monthly payment shall be that equal monthly amount which, over the number of months remaining before the month in which the applicable tax installment would become delinquent and without interest thereon, would provide a fund large enough to fully discharge before delinquency the estimated Tax Increase to be paid. When the actual amount of the applicable Tax Increase is known, the amount of such equal monthly advance payment shall be adjusted as required to provide the fund needed to pay the applicable Tax Increase before delinquency. If the amounts paid to Lessor by Lessee under the provisions of this Paragraph are sufficient to discharge the obligations of Lessee to pay such Tax Increase as the same becomes due, Lessee shall pay to Lessor, upon Lessor's demand, such additional sums as are necessary to pay such obligation. All moneys paid to Lessor under this Paragraph may be intermingled with other moneys of Lessor and shall not bear interest. In the event of a Breach by Lessee in the performance of the obligations of Lessee under this Lease, then any balance of funds paid to Lessor under the provisions of this Paragraph may, subject to proration as provided in Paragraph 10.1(a), at the option of Lessor, be treated as an additional Security Deposit under Paragraph 5.

(c) **Additional Improvements.** Notwithstanding Paragraph 10.1(a) hereof, Lessee shall pay to Lessor upon demand therefor the entirety of any increase in Real Property Taxes assessed by reason of Alterations or Utility Installations placed upon the Premises by Lessee or at Lessee's request.

**10.2 Definition of "Real Property Taxes."** As used herein, the term "Real Property Taxes" shall include any form of real estate tax or assessment, general, local, ordinary or extraordinary, and any license fee, commercial rental tax, improvement bond or bonds, levy or tax (other than inheritance, personal income or estate taxes) imposed upon the Premises by any authority having the direct or indirect power to tax, including any city, state or federal government, or any school, agricultural, sanitary, fire, street, drainage or other improvement district thereof, levied against any legal or equitable interest of Lessor in the Premises or in the real property of which the Premises are a part, Lessor's right to rent or other income therefrom, and/or Lessor's business of leasing the Premises. The term "Real Property Taxes" shall also include any tax, fee, levy, assessment or charge, or any increase therein, imposed by reason of events occurring, or changes in applicable law taking effect, during the term of this Lease, including but not limited to a change in the ownership of the Premises or in the improvements thereon, the execution of this Lease, or any modification, amendment or transfer thereof, and neither or not contemplated by the Parties.

**10.3 Joint Assessment.** If the Premises are not separately assessed, Lessee's liability shall be an equitable proportion of the Real Property Taxes for all of the land and improvements included within the tax parcel assessed, such proportion to be determined by Lessor from the relative valuations assigned in the assessor's work sheets or other information which may be reasonably available. Lessor's reasonable determination hereof, in good faith, shall be conclusive.

**10.4 Personal Property Taxes.** Lessee shall pay prior to delinquency all taxes assessed against and levied upon Lessee Owned Alterations, Utility Installations, Trade Fixtures, furnishings, equipment and all personal property of Lessee contained in the Premises or elsewhere. When possible, Lessee shall cause its 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 personal property shall be assessed with Lessor's real property, Lessee shall pay Lessor the taxes attributable to Lessee within ten (10) days after receipt of a written statement setting forth the taxes applicable to Lessee's property or, at Lessor's option, as provided in Paragraph 10.1(b).

**11. Utilities.** Lessee shall pay for all water, gas, heat, light, power, telephone, trash disposal and other utilities and services supplied to the Premises, together with any taxes thereon. If any such services are not separately metered to Lessee, Lessee shall pay a reasonable proportion, to be determined by Lessor, of all charges jointly metered with other premises.

## **12. Assignment and Subletting.**

### **12.1 Lessor's Consent Required.**

(a) Lessee shall not voluntarily or by operation of law assign, transfer, mortgage or otherwise transfer or encumber (collectively, "assignment") or sublet all or any part of Lessee's interest in this Lease or in the Premises without Lessor's prior written consent given under and subject to the terms of Paragraph 36.

(b) A change in the control of Lessee shall constitute an assignment requiring Lessor's consent. The transfer, on a cumulative basis, of twenty-five percent (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, refinancing, transfer, leveraged buy-out 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, as hereinafter defined, by an amount equal to or greater than twenty-five percent (25%) of such Net Worth of Lessee as it was represented to Lessor at the time of the execution by Lessor 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, at whichever time said Net Worth of Lessee was or is greater, shall be considered an assignment of this Lease by Lessee to which Lessor may reasonably withhold its consent. "Net Worth of Lessee" for purposes of this Lease shall be the net worth of Lessee (excluding any guarantors) established under generally accepted accounting principles consistently applied.

(d) An assignment or subletting of Lessee's interest in this Lease without Lessor's specific prior written consent shall, at Lessor's option, be a Default curable after notice per Paragraph 13.1(c), or a noncurable Breach without the necessity of any notice and grace period. If Lessor elects to treat such unconsented to assignment or subletting as a noncurable Breach, Lessor shall have the right to either: (i) terminate this Lease, or (ii) upon thirty (30) days written notice ("Lessor's Notice"), increase the monthly Base Rent to fair market rental value or one hundred ten percent (110%) of the Base Rent then in effect, whichever is greater. Pending determination of the new fair market rental value, if disputed by Lessee, Lessee shall pay the amount set forth in Lessor's Notice, with any overpayment credited against the next installment(s) of Base Rent coming due, and any underpayment for the period retroactively to the effective date of the adjustment being due and payable immediately upon the determination thereof. Further, in the event of such Breach and market value adjustment, (i) the purchase price of any option to purchase the Premises held by Lessee shall be subject to similar adjustment to the then fair market value (without the Lease being considered an encumbrance or any deduction for depreciation or obsolescence, and considering the Premises at its highest and best use and in good condition), or one hundred ten percent (110%) of the price previously in effect, whichever is greater, (ii) any index-oriented rental or price adjustment formulas contained in this Lease shall be adjusted to require that the base index be determined with reference to the index applicable to the time of such adjustment, and (iii) any fixed rental adjustments scheduled during the remainder of the Lease term shall be increased in the same ratio as the new market rental bears to the Base Rent in effect immediately prior to the market value adjustment.

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

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

(a) Regardless of Lessor's consent, any assignment or subletting shall not: (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 Base Rent and other sums due Lessor hereunder or for the performance of any other obligations to be performed by Lessee under this Lease.

(b) Lessor may accept any 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 any rent or performance shall constitute a waiver or estoppel of Lessor's right to exercise its remedies for the Default or Breach by Lessee of any of the terms, covenants or conditions of this Lease.

(c) The consent of Lessor to any assignment or subletting shall not constitute a consent to any subsequent assignment or subletting by Lessee or to any subsequent or successive assignment or subletting by the sublessee. However, Lessor may consent to subsequent sublettings and assignments of the sublease or any amendments or modifications thereto without notifying Lessee or anyone else liable on the Lease or sublease and without obtaining their consent, and such action shall not relieve such persons from liability under this Lease or sublease.

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

(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 non-refundable deposit of \$1,000 or ten percent (10%) of the current monthly Base Rent, whichever is greater, as reasonable consideration for Lessor's considering and processing the request for consent. Lessee agrees to provide Lessor with such other or additional information and/or documentation as may be reasonably requested by Lessor.

(f) Any assignee of, or sublessee under, this Lease shall, by reason of accepting such assignment or entering into such sublease, be deemed, for the benefit of Lessor, 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 in writing.

(g) The occurrence of a transaction described in Paragraph 12.1(c) shall give Lessor the right (but not the obligation) to require that the Security Deposit be increased to an amount equal to six (6) times the then monthly Base Rent, and Lessor may make the actual receipt by Lessor of the amount required to establish such Security Deposit a condition to Lessor's consent to such transaction.

(h) Lessor, as a condition to giving its consent to any assignment or subletting, may require that the amount and adjustment structure of the rent payable under this Lease be adjusted to what is then the market value and/or adjustment structure for property similar to the Premises as then constituted.

**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 rentals and income arising from any sublease of all or a portion of the Premises heretofore or hereafter made by Lessee, and Lessor may collect such rent and income and apply same toward Lessee's obligations under this Lease; provided, however, that until a Breach (as defined in Paragraph 13.1) shall occur in the performance of Lessee's obligations under this Lease, Lessee may, except as otherwise provided in this Lease, receive, collect and enjoy the rents accruing under such sublease. Lessor shall not, by reason of this or any other assignment of such sublease to Lessor, nor by reason of the collection of the rents from a sublessee, be deemed liable to the sublessee or any failure of Lessee to perform and comply with any of Lessee's obligations to such sublessee under such sublease. 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 the rents and other charges due and to become due under the sublease. Sublessee shall rely upon any such statement and request from Lessor and shall pay such rents and other charges to Lessor without any obligation or right to inquire as to whether such Breach exists and notwithstanding any notice from or claim from Lessee to the contrary. Lessee shall have no right or claim against said sublessee, or, until the Breach has been cured, against Lessor, for any such rents and other charges so paid by said sublessee to Lessor.

(b) In the event of a Breach by Lessee in the performance of its obligations under this Lease, Lessor, at its option and without any obligation to do so, may require any sublessee to atorn 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 other prior Defaults or Breaches of such sublessor under such sublease.

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

(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.

## **3. Default; Breach; Remedies.**

**13.1 Default; Breach.** Lessor and Lessee agree that if an attorney is consulted by Lessor in connection with a Lessee Default or Breach (as hereinafter defined), \$350.00 is a reasonable minimum sum per such occurrence for legal services and costs in the preparation and service of a notice of Default,

13.1 Default. A "Default" is defined as the occurrence of any one or more of the following: (i) the failure to pay Base Rent or any other monetary payment when due, (ii) the failure to provide Lessor with reasonable evidence of insurance or surety bond required under this Lease, or the failure of Lessee to fulfill any obligation under this Lease which endangers or threatens life or property, where such failure continues for a period of three (3) days following written notice thereof by or on behalf of Lessor to Lessee, (iii) Except as expressly otherwise provided in this Lease, the failure by Lessee to provide Lessor with reasonable written evidence (in duly executed original form, if applicable) of (I) compliance with applicable law per Paragraph 6.3, (II) the inspection, maintenance and service contracts required under Paragraph 7.1(b), (III) the rejection of an unauthorized assignment or subletting per Paragraph 12.1(b), (IV) a Tenancy Statement per Paragraphs 16 or 37, (V) the subordination or non-subordination of this Lease per Paragraph 30, (vi) the guaranty of the performance of Lessee's obligations under this Lease if required under Paragraphs 1.11 and 37, (vii) the execution of any document requested under Paragraph 42 (easements), or (viii) 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 ten (10) days following written notice by or on behalf of Lessor to Lessee.

13.2 Remedies. If Lessee fails to perform any affirmative duty or obligation of Lessee under this Lease, within ten (10) days after written notice to Lessee or in case of an emergency, without notice, Lessor may at its option (but without obligation to do so), 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. The costs and expenses of any such performance by Lessor shall be due and payable by Lessee to Lessor upon invoice therefor. If any check given to Lessor by Lessee shall not be honored by the bank upon which it is drawn, Lessor, at its option, may require all future payments to be made under this Lease by Lessee to be made only by cashier's check. In the event of a Breach of this Lease by Lessee, as defined in Paragraph 13.1, 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, Lessor may:

(a) The vacating of the Premises without the intention to reoccupy same, or the abandonment of the Premises.  
(b) Except as expressly otherwise provided in this Lease, the failure by Lessee to make any payment of Base Rent or any other monetary payment required to be made by Lessee hereunder, whether to Lessor or to a third party, as and when due, the failure by Lessee to provide Lessor with reasonable evidence of insurance or surety bond required under this Lease, or the failure of Lessee to fulfill any obligation under this Lease which endangers or threatens life or property, where such failure continues for a period of three (3) days following written notice thereof by or on behalf of Lessor to Lessee.  
(c) Except as expressly otherwise provided in this Lease, the failure by Lessee to provide Lessor with reasonable written evidence (in duly executed original form, if applicable) of (I) compliance with applicable law per Paragraph 6.3, (II) the inspection, maintenance and service contracts required under Paragraph 7.1(b), (III) the rejection of an unauthorized assignment or subletting per Paragraph 12.1(b), (IV) a Tenancy Statement per Paragraphs 16 or 37, (V) the subordination or non-subordination of this Lease per Paragraph 30, (vi) the guaranty of the performance of Lessee's obligations under this Lease if required under Paragraphs 1.11 and 37, (vii) the execution of any document requested under Paragraph 42 (easements), or (viii) 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 ten (10) days following written notice by or on behalf of Lessor to Lessee.

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

(e) The occurrence of any of the following events: (i) The making by Lessee of any general arrangement or assignment for the benefit of creditors; (ii) Lessee's 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 sixty (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 thirty (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 thirty (30) days; provided, however, in the event that any provision of this subparagraph (e) is contrary to any applicable law, such provision shall be of no force or effect, and not affect the validity of the remaining provisions.

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

(g) If the performance of Lessee's obligations under this Lease is guaranteed: (i) the death of a guarantor, (ii) the termination of a guarantor's liability with respect to this Lease other than in accordance with the terms of such guaranty, (iii) a guarantor's becoming insolvent or the subject of a bankruptcy filing, (iv) a guarantor's refusal to honor the guaranty, or (v) a guarantor's breach of its guaranty obligation on an anticipatory breach basis, and Lessee's failure, within sixty (60) days following written notice by or on behalf of Lessor to Lessee of any such event, to provide Lessor with 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 affirmative duty or obligation of Lessee under this Lease, within ten (10) days after written notice to Lessee or in case of an emergency, without notice, Lessor may at its option (but without obligation to do so), 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. The costs and expenses of any such performance by Lessor shall be due and payable by Lessee to Lessor upon invoice therefor. If any check given to Lessor by Lessee shall not be honored by the bank upon which it is drawn, Lessor, at its option, may require all future payments to be made under this Lease by Lessee to be made only by cashier's check. In the event of a Breach of this Lease by Lessee, as defined in Paragraph 13.1, 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, Lessor may:

(a) Terminate Lessee's right to possession of the Premises by any lawful means, in which case this Lease and the term hereof shall terminate and Lessee shall immediately surrender possession of the Premises to Lessor. In such event Lessor shall be entitled to recover from Lessee: (i) the worth at the time of the award of 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 could be likely to result therefrom, including but not limited to the cost of recovering possession of the Premises, expenses of reletting, including necessary innovation and alteration of the Premises, reasonable attorneys' fees, and that portion of the leasing commission paid by Lessor 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 prior sentence shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%). Efforts by Lessor to mitigate damages caused by Lessee's Default or Breach of this Lease shall not waive Lessor's right to recover damages under this Paragraph. If termination of this Lease obtained through the provisional remedy of unlawful detainer, Lessor shall have the right to recover in such proceeding the unpaid rent and damages as recoverable therein, or Lessor may reserve therein the right to recover all or any part thereof in a separate suit for such rent and/or damages. If a notice of grace period required under subparagraphs 13.1(b), (c) or (d) was not previously given, a notice to pay rent or quit, or to perform or quit, as the case may be, given to Lessee under any statute authorizing the forfeiture of leases for unlawful detainer shall also constitute the applicable notice for grace period purposes required by subparagraphs 13.1(b), (c) or (d). In such case, the applicable grace period under subparagraphs 13.1(b), (c) or (d) and under the unlawful detainer statute shall run concurrently after the one such statutory notice, 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 in effect (in California under California Civil Code Section 1951.4) after Lessee's Breach and abandonment and recover the rent as it becomes due, provided Lessee has the right to sublet or assign, subject only to reasonable limitations. See Paragraphs 12 and 38 for the limitations on assignment and subletting which limitations Lessee and Lessor agree are reasonable. Acts of maintenance, preservation, efforts to retake the Premises, or the appointment of a receiver to protect the Lessor's interest under the Lease, shall not constitute a termination of the Lessee's right to possession.

(c) Pursue any other remedy now or hereafter available to Lessor under the laws or judicial decisions of the state wherein the Premises are located.

(d) The expiration or termination of this Lease and/or the termination of Lessee's right to possession shall not relieve Lessee from liability under the 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 In Event Of Breach. Any agreement by Lessor for free or abated rent or other charges applicable to the Premises, or for 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 to be performed or observed by Lessee during the term hereof as the same may be extended. Upon the occurrence of a Breach of this Lease by Lessee, as defined in Paragraph 13.1, 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 for such an Inducement Provision shall be immediately due and payable by Lessee to Lessor, and recoverable by Lessor as additional rent due under this Lease, notwithstanding any subsequent cure of said Breach by Lessee. The acceptance by Lessor of rent or the cure of the Breach which initiated 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 to Lessor of rent and other sums due hereunder 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, leasing and accounting charges, and late charges which may be imposed upon Lessor by the terms of any ground lease, mortgage or trust deed covering the Premises. Accordingly, if any installment of rent or any other sum due from Lessee shall not be received by Lessor or Lessor's designee in five (5) days after such amount shall be due, then, without any requirement for notice to Lessee, Lessee shall pay to Lessor a late charge equal to ten percent (10%) of such overdue amount. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Lessor incur by reason of late payment by Lessee. 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 Lessor from exercising any of the other rights and remedies granted hereunder. In the event a late charge is payable hereunder, whether or not collected, for three (3) consecutive installments of Base Rent, then notwithstanding Paragraph 4.1 or any other provision of this Lease to the contrary, Base Rent shall, at Lessor's option, become due and payable quarterly in advance.

13.5 Breach by Lessor. 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 13.5, a reasonable time shall in no event be less than thirty (30) days after receipt by Lessor, and by the holders of any ground lease, mortgage or deed of trust covering the Premises whose name and address shall have been furnished to Lessor in writing for such purpose, of written notice specifying wherein such obligation of Lessor has not been performed; provided, however, that if the failure of Lessor's obligation is such that more than thirty (30) days after such notice are reasonably required for its performance, then Lessor shall not be deemed in breach of this Lease if performance is commenced within such thirty (30) day period and thereafter diligently pursued to completion.

power (all of which are herein called "condemnation"), this Lease shall terminate as of the date the condemning authority takes title or possession, whichever first occurs, if more than ten percent (10%) of the floor area of the Premises, or more than twenty-five percent (25%) of the land area not occupied by any building, is taken by condemnation. Lessee may, at Lessee's option, to be exercised in writing within (10) days after Lessor shall have given Lessee written notice of such taking (or, in the absence of such notice, within ten (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 the same proportion as the rentable floor area of the Premises taken bears to the total rentable floor area of the building located on the Premises. No reduction of Base Rent shall occur if the only portion of the Premises taken is land on which there is no building. Any award for the taking of all or any part of the Premises under the power of eminent domain or any payment made under threat of the exercise of such power shall be the property of Lessor, whether such award shall be made as compensation for diminution in value of the leasehold or for the taking of the fee, or as severance damages; provided, however, that Lessee shall be entitled to any compensation separately awarded to Lessee for Lessee's relocation expenses and/or loss of Lessee's Trade Fixtures. In the event that this Lease is not terminated by reason of such condemnation, Lessor shall to the extent of its net severance damages received, over and above the legal and other expenses incurred by Lessor in the condemnation matter, repair any damage to the Premises caused by such condemnation, except to the extent that Lessee has been reimbursed therefor by the condemning authority. Lessee shall be responsible for the payment of any amount in excess of such net severance damages required to complete such repair.

#### 15. Broker's Fee.

15.1 The Brokers named in Paragraph 1.10 are the procuring causes of this Lease.

15.2 Upon execution of this Lease by both Parties, Lessor shall pay to said Brokers jointly, or in such separate shares as they may mutually designate in writing, a fee as set forth in a separate written agreement between Lessor and said Brokers (or in the event there is no separate written agreement between Lessor and said Brokers, the sum of \$ \_\_\_\_\_) for brokerage services rendered by said Brokers to Lessor in this transaction.

15.3 Unless Lessor and Brokers have otherwise agreed in writing, Lessor further agrees that: (a) if Lessee exercises any Option (as defined in Paragraph 39.1) or any Option subsequently granted which is substantially similar to an Option granted to Lessee in this Lease, or (b) if Lessee acquires any rights to the Premises or other premises described in this Lease which are substantially similar to what Lessee would have acquired had an Option herein granted to Lessee been exercised, or (c) if Lessee remains in possession of the Premises, with the consent of Lessor, after the expiration of the term of this Lease after having failed to exercise an Option, or (d) if said Brokers are the procuring cause of any other lease or sale entered into between the Parties pertaining to the Premises and/or any adjacent property in which Lessor has an interest, or (e) if Base Rent is increased, whether by agreement or operation of an escalation clause herein, then as to any of said transactions, Lessor shall pay said Brokers a fee in accordance with the schedule of said Brokers in effect at the time of the execution of this Lease.

15.4 Any buyer or transferee of Lessor's interest in this Lease, whether such transfer is by agreement or by operation of law, shall be deemed to have assumed Lessor's obligation under this Paragraph 15. Each Broker shall be a third party beneficiary of the provisions of this Paragraph 15 to the extent of its interest in any commission arising from this Lease and may enforce that right directly against Lessor and its successors.

15.5 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 named in Paragraph 1.10) in connection with the negotiation of this Lease and/or the consummation of the transaction contemplated hereby, and that no broker or other person, firm or entity other than said named Brokers is entitled to any commission or finder's fee in connection with said transaction. 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.

15.6 Lessor and Lessee hereby consent to and approve all agency relationships, including any dual agencies, indicated in Paragraph 1.10.

#### 16. Tenancy Statement.

16.1 Each Party (as "Requesting Party") shall within ten (10) days after written notice from the other Party (the "Requesting Party") execute, acknowledge and deliver to the Requesting Party a statement in writing in form similar to the then most current "Tenancy Statement" form published by the American Industrial Real Estate Association, plus such additional information, confirmation and/or statements as may be reasonably requested by the Requesting Party.

16.2 If Lessor desires to finance, refinance, or sell the Premises, any part thereof, or the building of which the Premises are a part, Lessee and all Guarantors of Lessee's performance hereunder shall deliver to any potential lender or purchaser designated by Lessor such financial statements of Lessee and such Guarantors as may be reasonably required by such lender or purchaser, including but not limited to Lessee's financial statements for the past three (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. Lessor's Liability. 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 in this Lease, Lessor shall deliver to the transferee or assignee (in cash or by credit) any unused Security Deposit held by Lessor at the time of such transfer or assignment. Except as provided in Paragraph 15, upon such transfer or assignment and delivery of the Security Deposit, as aforesaid, the prior Lessor shall be relieved of all liability with respect to the obligations and/or covenants under this Lease thereafter to be performed by the Lessor. Subject to the foregoing, the obligations and/or covenants in this Lease to be performed by the Lessor shall be binding only upon the Lessor as hereinabove defined.

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

19. Interest on Past-Due Obligations. Any monetary payment due Lessor hereunder, other than late charges, not received by Lessor within thirty (30) days following the date on which it was due, shall bear interest from the thirty-first (31st) day after it was due at the rate of 12% per annum, but not exceeding the maximum rate allowed by law, in addition to the late charge provided for in Paragraph 13.4.

20. 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.

21. Rent Defined. All monetary obligations of Lessee to Lessor under the terms of this Lease are deemed to be rent.

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

23.2 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 forty-eight (48) hours after the same is addressed as required herein and mailed with postage prepaid. Notices delivered by United States Express Mail or overnight courier that guarantees next day delivery shall be deemed given twenty-four (24) hours after delivery of the same to the United States Postal Service or courier. If any notice is transmitted by facsimile transmission or similar means, the same shall be deemed served or delivered upon telephone confirmation of receipt of the transmission thereof, provided a copy is also delivered via delivery or mail. If notice is received on a Sunday or legal holiday, it shall be deemed received on the next business day.

24. Waivers. No waiver by Lessor of the Default or Breach of any term, covenant or condition hereof by Lessee, shall be deemed a waiver of any other term, covenant or condition hereof, or of any subsequent Default or Breach by Lessee of the same or of any other term, covenant or condition hereof. Lessor's consent to, or approval of, any act shall not be deemed to render unnecessary the obtaining of Lessor's consent to, or approval of, any subsequent 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. Regardless of Lessor's knowledge of a Default or Breach at the time of accepting rent, the acceptance of rent by Lessor shall not be a waiver of any preceding Default or Breach by Lessee of any provision hereof, other than the failure of Lessee to pay the particular rent so accepted. Any payment given Lessor by Lessee may be accepted by Lessor on account of moneys or damages due Lessor, notwithstanding any qualifying statements or conditions made by Lessee in connection therewith, which such statements and/or conditions shall be of no force or effect whatsoever unless specifically agreed to in writing by Lessor at or before the time of deposit of such payment.

25. Recording. Either Lessor or Lessee shall, upon request of the other, execute, acknowledge and deliver to the other a short form memorandum of this Lease for recording purposes. The Party requesting recordation shall be responsible for payment of any fees or taxes applicable thereto.

Initials



7. No right of recovery. Lessee has no right to retain possession of the Premises or any part thereof beyond the expiration or earlier termination of this lease.

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

8. **Covenants and Conditions.** All provisions of this Lease to be observed or performed by Lessee are both covenants and conditions.

9. **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.

10. **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 by Lessor upon the real property of which the Premises are a part, to any and all advances made on the security thereof, and to all renewals, modifications, consolidations, replacements and extensions thereof. Lessee agrees that the Lenders holding any such Security Device shall have no duty, liability or obligation to perform any of the obligations of Lessor under this Lease, but that in the event of Lessor's default with respect to any such obligation, Lessee will give any Lender whose name and address have been furnished Lessee in writing for such purpose notice of Lessor's default and allow such Lender thirty (30) days following receipt of such notice for the cure of said default before invoking any remedies Lessee may have by reason thereof. If any Lender shall elect to have this Lease and/or any Option granted hereby superior to the lien of its Security Device and shall give written notice thereof to Lessee, this Lease and such Options shall be deemed superior to such Security Device, notwithstanding the relative dates of the documentation or recordation thereof.

30.2 **Attornment.** Subject to the non-disturbance provisions of Paragraph 30.3, Lessee agrees to attorn to a Lender or any other party who acquires ownership of the Premises by reason of a foreclosure of a Security Device, and that in the event of such foreclosure, such new owner shall not: (i) be liable for any act or omission of any prior lessor or with respect to events occurring prior to acquisition of ownership, (ii) be subject to any offsets or defenses which Lessee might have against any prior lessor, or (iii) be bound by prepayment of more than one (1) month's rent.

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 assurance (a "non-disturbance agreement") from the Lender that Lessee's possession 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.

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 such subordination or non-subordination, attornment and/or non-disturbance agreement as is provided for herein.

1. **Attorney's Fees.** If any Party or Broker brings an action or proceeding to enforce the terms hereof or declare rights hereunder, the Prevailing Party is hereafter defined) or Broker in any such proceeding, action, or appeal thereon, shall be entitled to reasonable attorney's 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 attorney's fee award shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse all attorney's fees reasonably incurred. Lessor shall be entitled to attorney's 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.

2. **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 for the purpose of showing the same to prospective purchasers, lenders, or lessees, and making such alterations, repairs, improvements or additions to the Premises or to the building of which they are a part, as Lessor may reasonably deem necessary. Lessor may at any time place on or about the Premises or building any ordinary "For Sale" signs and Lessor may at any time during the last one hundred twenty (120) days of the term hereof place on or about the Premises any ordinary "For Lease" signs. All such activities of Lessor shall be without abatement of rent or liability to Lessee.

3. **Auctions.** Lessee shall not conduct, nor permit to be conducted, either voluntarily or involuntarily, any auction upon the Premises without first having obtained Lessor's prior written consent. Notwithstanding anything to the contrary in this Lease, Lessor shall not be obligated to exercise any standard of reasonableness in determining whether to grant such consent.

4. **Signs.** Lessee shall not place any sign upon the Premises, except that Lessee may, with Lessor's prior written consent, install (but not on the roof) such signs as are reasonably required to advertise Lessee's own business. The installation of any sign on the Premises by or for Lessee shall be subject to the provisions of Paragraph 7 (Maintenance, Repairs, Utility Installations, Trade Fixtures and Alterations). Unless otherwise expressly agreed herein, Lessor reserves all rights to the use of the roof and the right to install, and all revenues from the installation of, such advertising signs on the Premises, including the roof, as do not unreasonably interfere with the conduct of Lessee's business.

5. **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, Lessor shall, in the event of any such surrender, termination or cancellation, have the option to continue any one or all of any existing subtenancies. Lessor's failure within ten (10) days following any such event to make a written election 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.

6. **Consents.**

(a) Except for Paragraph 33 hereof (Auctions) or 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' or other consultants' fees) incurred in the consideration of, or response to, a request by Lessee for any Lessor consent pertaining to this Lease or the Premises, including but not limited to consents to an assignment, a subletting or the presence or use of a hazardous substance, practice or storage tank, shall be paid by Lessee to Lessor upon receipt of an invoice and supporting documentation therefor, subject to Paragraph 12.2(e) (applicable to assignment or subletting). Lessor may, as a condition to considering any such request by Lessee, require that Lessee deposit with Lessor an amount of money (in addition to the Security Deposit held under Paragraph 5) reasonably calculated by Lessor to represent the cost Lessor will incur in considering and responding to Lessee's request. Except as otherwise provided, any unused portion of said deposit shall be refunded to Lessee without interest. Lessor's consent to any act, assignment or subletting of this Lease or the Premises by Lessee shall not constitute an acknowledgement 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.

(b) All conditions to Lessor's consent authorized by this Lease are acknowledged by Lessee as being reasonable. 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.

7. **Guarantor.**

37.1 If there are to be any Guarantors of this Lease per Paragraph 1.11, the form of the guaranty to be executed by each such Guarantor shall be in a form most recently published by the American Industrial Real-Estate Association, and each said Guarantor shall have the same obligations as Lessee under this Lease, including but not limited to the obligation to provide the Tenancy Statement and Information called for by Paragraph 16.

37.2 It shall constitute a Default of the Lessee under this Lease if any such Guarantor fails or refuses, upon reasonable request by Lessor to give: (a) evidence of the due execution of the guaranty called for by this Lease, including the authority of the Guarantor (and of the party signing on Guarantor's behalf) to obligate such Guarantor on said guaranty, and including in the case of a corporate Guarantor, a certified copy of a resolution of its board of directors authorizing the making of such guaranty, together with a certificate of incumbency showing the signature of the persons authorized to sign on its behalf, (b) current financial statements of Guarantor as may from time to time be requested by Lessor, (c) a Tenancy Statement, or (d) written affirmation that the guaranty is still in effect.

1. **Quiet Possession.** Upon payment by Lessee of the rent for the Premises and the observance 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 of the Premises for the entire term hereof subject to all of the provisions of this Lease.

1. **Options.**

39.1 **Definition.** As used in this Paragraph 39 the word "Option" has the following meaning: (a) the right to extend the term of this Lease or to renew this Lease or to extend or renew any lease that Lessee has on other property of Lessor; (b) the right of first refusal to lease the Premises or the right of first refusal to lease the Premises or the right of first offer to lease other property of Lessor; (c) the right to purchase the Premises, or the right of first refusal to purchase the Premises, or the right of first offer to purchase the Premises, or the right to purchase other property of Lessor, or the right of first refusal to purchase other property of Lessor, or the right of first offer to purchase other property of Lessor.

39.2 **Options Personal To Original Lessee.** Each Option granted to Lessee in this Lease is personal to the original Lessee named in Paragraph 1.1 hereof, and cannot be voluntarily or involuntarily assigned or exercised by any person or entity other than said original Lessee while the original Lessee

are not assignable, either as a part of an assignment of this Lease or separately or apart therefrom and no Option may be separated from this Lease in any manner, by reservation or otherwise.

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 to extend or renew this Lease have been validly exercised.

39.4 Effect of Default on Options.

(a) Lessee shall have no right to exercise an Option, notwithstanding any provision in the grant of Option to the contrary: (i) during the period commencing with the giving of any notice of Default under Paragraph 13.1 and continuing until the noticed Default is cured, or (ii) during the period of time any monetary obligation due Lessor from Lessee is unpaid (without regard to whether notice thereof is given Lessee), or (iii) during the time Lessee is in Breach of this Lease, or (iv) in the event that Lessor has given to Lessee three (3) or more notices of Default under Paragraph 13.1, whether or not the Defaults are cured, during the twelve (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) All rights of Lessee under the provisions of 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 during the term of this Lease, (i) Lessee fails to pay to Lessor a monetary obligation of Lessee for a period of thirty (30) days after such obligation becomes due (without any necessity of Lessor to give notice thereof to Lessee), or (ii) Lessor gives to Lessee three (3) or more notices of Default under Paragraph 13.1 during any twelve (12) month period, whether or not the Defaults are cured, or (iii) if Lessee commits a Breach of this Lease.

40. Multiple Buildings. If the Premises are part of a group of buildings controlled by Lessor, Lessee agrees that it will abide by, keep and observe all reasonable rules and regulations which Lessor may make from time to time 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 such other buildings and their invitees, and that Lessee will pay its fair share of common expenses incurred in connection therewith.

41. Security Measures. Lessee hereby acknowledges that the rental 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.

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

43. 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 under the provisions of this Lease.

44. Authority. If either Party hereto is a corporation, trust, or general or limited partnership, 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. If Lessee is a corporation, trust or partnership, Lessee shall, within thirty (30) days after request by Lessor, deliver to Lessor evidence satisfactory to Lessor of such authority.

45. 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.

46. Offer. Preparation of this Lease by Lessor or Lessor's agent and submission of same to Lessee shall not be deemed an offer to lease to Lessee. This Lease is not intended to be binding until executed by all Parties hereto.

47. Amendments. This Lease may be modified only in writing, signed by the parties in interest at the time of the modification. The parties shall amend this Lease from time to time to reflect any adjustments that are made to the Base Rent or other rent payable under this Lease. As long as they do not materially change Lessee's obligations hereunder, Lessee agrees to make such reasonable non-monetary modifications to this Lease as may be reasonably required by an institutional, insurance company, or pension plan Lender in connection with the obtaining of normal financing or refinancing of the property of which the Premises are a part.

48. Multiple Parties. Except as otherwise expressly provided herein, if more than one person or entity is named herein as either Lessor or Lessee, the obligations of such Multiple Parties shall be the joint and several responsibility of all persons or entities named herein as such Lessor or Lessee.

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.

IF THIS LEASE HAS BEEN FILLED IN, IT HAS BEEN PREPARED FOR SUBMISSION TO YOUR ATTORNEY FOR HIS APPROVAL. FURTHER, EXPERTS SHOULD BE CONSULTED TO EVALUATE THE CONDITION OF THE PROPERTY AS TO THE POSSIBLE PRESENCE OF ASBESTOS, STORAGE TANKS OR HAZARDOUS SUBSTANCES. NO REPRESENTATION OR RECOMMENDATION IS MADE BY THE AMERICAN INDUSTRIAL REAL ESTATE ASSOCIATION OR BY THE REAL ESTATE BROKER(S) OR THEIR AGENTS OR EMPLOYEES AS TO THE LEGAL SUFFICIENCY, LEGAL EFFECT, OR TAX CONSEQUENCES OF THIS LEASE OR THE TRANSACTION TO WHICH IT RELATES; THE PARTIES SHALL RELY SOLELY UPON THE ADVICE OF THEIR OWN COUNSEL AS TO THE LEGAL AND TAX CONSEQUENCES OF THIS LEASE. IF THE SUBJECT PROPERTY IS LOCATED IN A STATE OTHER THAN CALIFORNIA, AN ATTORNEY FROM THE STATE WHERE THE PROPERTY IS LOCATED SHOULD BE CONSULTED.

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

Executed at \_\_\_\_\_  
on 3-20-96

Executed at BENICIA, CA  
on 3/18/96

by LESSOR:  
Richard J. Minos  
Debra L. Arnold

by LESSEE:  
WEST COAST RENTY SUPPLY CO.

By \_\_\_\_\_  
Name Printed: \_\_\_\_\_  
Title: \_\_\_\_\_

By W. Thomas Aiken  
Name Printed: W. THOMAS AIKEN  
Title: PRESIDENT / CEO

By \_\_\_\_\_  
Name Printed: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_

By \_\_\_\_\_  
Name Printed: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: 5001 INDUSTRIAL WAY, BENICIA, CA 94510

Tel. No. (\_\_\_\_) \_\_\_\_\_ Fax No. (\_\_\_\_) \_\_\_\_\_

Tel. No. (707) 948-4800 Fax No. (707) 746-4616

ADDENDUM TO SINGLE TENANT INDUSTRIAL LEASE (GROSS)  
DATED OF MARCH 6, 1996

LESSOR: Stella Arnold and Albert Musso  
LESSEE: West Coast Beauty Supply Company

In the event of any conflict between the printed portion of the Lease and this Addendum, this Addendum shall control.

49. Base Rent Schedule:

Base Rent shall be as follows:

5-1-96 through 4-30-97 Base Rent will be	\$3,250.00	Month 1-12
5-1-97 through 5-31-97 Free Rent	.00	Month 13
6-1-97 through 4-30-98 Base Rent will be	\$3,250.00	Month 14-24
5-1-98 through 5-31-98 Free Rent	.00	Month 25
6-1-98 through 4-30-99 Base Rent will be	\$3,380.00	Month 26-36
5-1-99 through 5-31-99 Free Rent	.00	Month 37
6-1-99 through 4-30-2000 Base Rent will be	\$3,510.00	Month 38-48
5-1-2000 through 4-30-2001 Base Rent will be	\$3,640.00	Month 49-60

Rent for months 61-120 shall commence at 90% of the then fair market value, but in no event less than the 60th month's rent (\$3,640.00). Thereafter, rent shall escalate annually at a fixed rate of 4% of the base rent of \$3,250.00.

CD  
A.M.S.A.

50. Security Deposit

Security deposit to be \$9,750.00. In the event Lessee is not under default of lease, Lessee may elect to (with sixty days written notice to Landlord) apply said security deposit toward rental payments in year four (4) and five (5) of said lease term.

DELETIONS PER OWNERS  
REQUEST SEM

51. Option to Renew:

Lessee to have one five (5) year option to renew Lease. This option shall be valid so long as Lessee is not in default under the provisions of this Lease. Rent for the option period to be as follows: Rent for the second five (5) year period (months 61-120) shall commence at 90% of the then Fair Market Value. Fair Market Value shall be mutually agreed upon between the parties ninety (90) days before the expiration of the first five (5) year term. If the parties are unable to agree upon the 90% of the then fair market value, then sixty (60) days before the expiration of the first five (5) year lease term, each party shall appoint a real estate appraiser who is a current member of the American Institute of Real Estate Appraisers with at least five (5) years of experience appraising building space comparable to the Premises in the city and county where the Premises is located. If either party fails to appoint an appraiser, then the one selected appraiser shall select another appraiser. If the two (2) appraisers are unable to agree on the fair market value within ten (10) days, they shall select a third appraiser meeting the qualifications stated herein. The third appraiser, however selected, shall be a person who has not previously acted in a capacity for either party. Within ten (10) days after selection of the third appraiser, a majority of appraisers shall set the fair market value. If a majority of the appraisers is unable to set the fair market value within the ten (10) day period, the two (2) closest appraisals shall be added together and the total divided by two (2). The resulting quotient shall be the fair market value. Each party shall be responsible for the costs, charges and fees of the appraiser appointed by that party plus one half of the cost of the third appraiser.

52. Right of First Refusal:

If at any time during the term hereof Lessor shall receive from any third party a bona fide offer to purchase or lease (to commence after expiration of this Lease) the property at a price and on terms acceptable to Lessor, Lessor shall give written notice of such price and terms to Lessee, and Lessee shall have twenty (20) days thereafter in which to execute a written agreement with Lessor for Lease or Purchase of the premises at such price and on such terms. If Lessor shall notify Lessee and Lessee shall fail to execute such agreement within such twenty (20) day period, Lessor shall thereafter be free to lease (to commence after expiration of this lease) the property to such third party, then all rights under this section shall forthwith terminate. If the property is not purchased or leased to such third party, then Lessor shall give lessee the same right to lease the property upon receiving any subsequent offer from any third party that is acceptable to Lessor.

CD  
A.M.S.A.

53. Improvements:

Lessor shall deliver the premises to Lessee in "as-is" condition. Lessor shall not be responsible for any upgrades to the subject premises as a result of Lessee's improvements or change of use.

54. Signage:

Except for the south wall facing the McDonald's parking area, Lessee may install or authorize signage on the premises as long as it is consistent with applicable law.



AGREED AND ACCEPTED:

West Coast Beauty Supply Co  
\_\_\_\_\_  
Lessee

\_\_\_\_\_  
Date

W. J. Thomas Am  
\_\_\_\_\_  
Lessor

3/18/96  
\_\_\_\_\_  
Date

actup Russo  
\_\_\_\_\_  
Lessor

5-20-'96  
\_\_\_\_\_  
Date

Stella Arnold

wcoast.add

LANDLORD

By: Albert J. Musso, AS TRUSTEES  
Albert J. Musso, as Trustees  
Under the Declaration of Trust  
Dated March 12, 1996.

By: DECEASED  
Bernice G. Musso, as Trustees  
Under the Declaration of Trust  
Date: \_\_\_\_\_

By: Walter A. Arnold in Trust  
Walter A. Arnold, in Trust,  
As Trustee of the Stella Arnold  
1987 Exempt Trust FBO Walter  
A. Arnold dated April 4, 2001

By: Joan Spargo in Trust  
Joan Spargo, in Trust,  
As Trustee of the Stella Arnold  
1987 Exempt Trust FBO Joan  
Spargo dated April 4, 2001

LEASE ADDENDUM #2

WHEREAS Stella Arnold (now deceased) and Albert Musso, entered into a lease dated March 5, 1996, for a term commencing May 1, 1996 and ending April 30, 2006, for the space commonly known as 450 Sixth Street, San Francisco, California, with West Coast Beauty Supply Co. hereinafter "Lessee", and

WHEREAS Walt Arnold and Joan Spargo are the successors in interest to Stella Arnold (Walt Arnold, Joan Spargo and Albert Musso being referred to herein as "Lessors").

Lessors and Lessee acknowledge that as instructed in Article 49 of the Addendum to Single-Tenant Industrial Lease, Lessor and Lessee have met and agreed that 90% of the fair market value for rental months 61-120 is \$1.00 per square foot. Thereafter, annual increases shall be fixed at 4% of the base rent of \$4500.00. Therefore, commencing May 1, 200, the effective rental schedule shall be as follows:

May 1, 2001 - April 30, 2002	\$4,500.00
May 1, 2002 - April 30, 2003	\$4,680.00
May 1, 2003 - April 30, 2004	\$4,860.00
May 1, 2004 - April 30, 2005	\$5,040.00
May 1, 2005 - April 30, 2006	\$5,220.00

All other terms and conditions of the aforementioned Lease will remain in full force and effect.

The parties hereto have executed this Addendum on the dates specified below by their respective signatures.

LESSOR:

By: Albert Musso  
Albert Musso

Date: 7/9/01  
By: Walt Arnold  
Walt Arnold

Date: 7/20/01  
By: Joan Spargo  
Joan Spargo  
Date: 7/20/01

LESSEE:

West Coast Beauty Supply Co.

By: W. Thomas Amen  
W. Thomas Amen

Date: July 9, 2001

Its: President and CEO

### LEASE ADDENDUM #3

THIS LEASE ADDENDUM #3 is entered into as of March 24, 2006 by and between Albert J. Musso and Bernice G. Musso, as Trustees Under the Declaration of Trust dated March 12, 1996 and Walter A. Arnold and Joan Spargo, in Trust, as Trustee of the Stella Arnold 1987 Exempt Trust dated May 28, 1987, ("Landlord"), and Beauty Systems Group, Inc., a Delaware corporation, ("Tenant").

#### RECITALS

WHEREAS Landlord and Tenant entered into that certain lease agreement dated March 6, 1996, herein referred to as ("Lease"), relating to the premises of approximately 4,500 square feet located at 450 Sixth Street, San Francisco, California; and

WHEREAS the Lease Term will expire on April 30, 2006; and

WHEREAS the Landlord and Tenant desire to extend the term of the Lease and amend the terms and conditions of the Lease as hereinafter set forth.

#### TERMS

NOW, THEREFORE, for good and valuable consideration the sufficiency and receipt of which are hereby acknowledged, Landlord and Tenant hereby agree as follows:

1. TERM. The Term of the Lease ("Lease Term") is hereby extended for the period beginning May 1, 2006 and ending on April 30, 2011.

2. RENT. Minimum Base Rent for the Lease Term is as follows: Annual Minimum Base Rent shall be \$89,100.00, to be paid in equal monthly installments of \$7,425.00.

3. OPTION TO RENEW. Landlord grants Tenant the right, privilege and option to extend this Lease for one (1) successive period of five (5) years under the same terms and conditions of this Lease in effect at the expiration of the initial term or extended term hereof except that the Minimum Annual Rent during the option term shall be a negotiated rate between Landlord and Tenant. Landlord and Tenant will mutually agree on the rental rate; provided however, that if the parties cannot agree, then average of the rate reasonably determined by the parties will be established as the negotiated rate. Tenant shall provide Landlord with a written notice of its exercise of such option at least one hundred eighty (180) days before the expiration of the initial term or any extended term as the case may be.

4. Lease Section 8.2, 8.4, 8.5 shall be deleted in their entirety and the following inserted: Tenant shall, during the Lease term, maintain in full force and effect the following insurance:

- (A) Comprehensive general liability insurance insuring against all claims, demands, actions, or liability for injury to or death of any persons, and for damage to property occurring in or on the Premises. This policy must contain coverage for Premises operations, products, and completed operations, blanket contractual, personal injury, operations, ownership, maintenance and use of owned, non-owned, or hired automobiles, bodily injury, and property damage. The policy must be written in an occurrence form and shall have limits in amounts not less than \$1,000,000 per occurrence and \$4,000,000 in the aggregate. This insurance must include a contractual coverage endorsement specifically insuring the performance by Tenant of its indemnity agreement contained herein. Tenant shall name Landlord as an additional insured on its comprehensive general liability insurance policy.

(B) All-risk fire insurance, including without limitation, vandalism and malicious mischief coverage, covering Tenant's furniture, fixtures and equipment owned by Tenant to the extent of their full replacement value. Provided, however, Tenant may, in lieu of carrying plate glass insurance, self insure or bear the risk for such plate glass.

(C) Tenant may comply with its insurance obligations hereunder by endorsement to any blanket policy of insurance.

(D) Tenant shall provide the Landlord with a certificate of insurance providing that the policies set out above can not be cancelled, amended or modified without at least thirty (30) days written notice to the certificate holder. The insurance shall be effective for not less than one (1) year, and thirty (30) days prior to the expiration of any policy of insurance; Tenant shall deliver to the Landlord a notice of any change or cancellation or a renewal or new policy to take the place of the policy expiring.

(E) All insurance policies required to be maintained hereunder shall be issued by an insurance company licensed to do business within the state in which the Premises are located.

(F) Tenant shall indemnify, defend, and save harmless Landlord from any claim or loss by reason of any accident or damage to any person or property happening in the Premises except for those claims and losses due to the sole negligence of Landlord. Likewise, Landlord agrees to indemnify, defend and save Tenant harmless from any claim or loss by reason of an accident or damage to any person or property happening in any of the Common Area, (including without limitation, parking area, sidewalks, ramps and service area) of the Shopping Center and other parts of the Shopping Center except for those claims and losses due to Tenant's sole negligence.

5. Except as modified herein, all terms and conditions of the Lease remain in full force and effect.

LANDLORD

By: Albert J. Musso  
Albert J. Musso, as Trustees  
Under the Declaration of Trust  
Dated March 12, 1996.

By: Bernice G. Musso  
Bernice G. Musso, as Trustees  
Under the Declaration of Trust  
Dated March 12, 1996.

By: Walter A. Arnold, Trustee  
Walter A. Arnold, in Trust,  
As Trustee of the Stella Arnold  
1987 Exempt Trust FBO Walter  
A. Arnold dated April 4, 2001

By: Joan Spargo, Trustee  
Joan Spargo, in Trust,  
As Trustee of the Stella Arnold  
1987 Exempt Trust FBO Joan  
Spargo dated April 4, 2001

TENANT  
BEAUTY SYSTEMS GROUP, INC.  
a Delaware corporation

By: Michael Renzulli  
Michael Renzulli  
Its: Chairman  
Date: March 24, 2006



April 13, 2010

VIA UPS

Mr. Walter Arnold  
45475 Pueblo Road  
Indian Wells, CA 92210

Re: Beauty Systems Group LLC - #8686 San Francisco/CA  
Lease dated March 6, 1996 by and between Albert J. Musso and Bernice G. Musso, as Trustee Under the Declaration of Trust dated March 12, 1996 and Walter A. Arnold and Joan Spargo, in Trust, as Trustee of the Stella Arnold 1987 Exempt Trust dated May 28, 1987, Landlord, and Beauty Systems Group LLC, Tenant, for the premises located at 450 Sixth Street, San Francisco, California.

Dear Mr. Arnold:

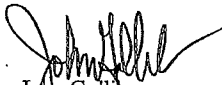
The above referenced Lease expires on April 30, 2011. Pursuant to the Lease addendum #3 dated March 24, 2006, Paragraph 3, Option to Renew, we have one (1) five (5) year option to extend this Lease, which is to be exercised by October 30, 2010. This letter shall serve as Tenant's exercise of its option.

The option term will commence on May 1, 2011 and shall expire on April 30, 2016. The Landlord and Tenant agree the Minimum Annual Base Rent for the extended term shall be \$89,100.00 payable in monthly installments of \$7,425.00 commencing on May 1, 2011 and ending on April 30, 2013. The Minimum Annual Base Rent for the extended term shall be \$96,000.00 payable in monthly installments of \$8,000.00 commencing on May 1, 2013 and ending on April 30, 2016.

Please acknowledge the deliverance of this option exercise letter by signing below and return one (1) original to Sheri Christensen for our records. Thank you for your cooperation in this matter.

Regards,

BEAUTY SYSTEMS GROUP LLC

  
John Gollner  
Its President

Acknowledged this \_\_\_\_\_ day of \_\_\_\_\_ of 2010.

WALTER A. ARNOLD

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

WORLDWIDE  
SUPPORT CENTER  
3001 Colorado Blvd.  
Denton, TX 76210-6802  
phone: 940.898.7500

Beauty Systems Group LLC

**FOR THE BUSINESS OF BEAUTY**



FOURTH AMENDMENT TO LEASE

THIS FOURTH AMENDMENT TO LEASE is entered into as of 3/20/15, 2015 by and between Albert J. Musso and Bernice G. Musso, as Trustees Under the Declaration of Trust dated March 12, 1996 and Walter A. Arnold and Joan Spargo, in Trust, as Trustee of the Stella Arnold 1987 Exempt Trust dated May 28, 1987, ("Landlord"), and Beauty Systems Group, Inc., a Delaware Corporation ("Tenant").

RECITALS

WHEREAS Landlord and Tenant, or their predecessors in interest, entered into that certain lease agreement dated March 6, 1996, herein referred to as ("Lease"), relating to the premises of 4,500 square feet located at 450 Sixth Street, San Francisco, California; and

WHEREAS the Lease Term will expire on April 30, 2016; and

WHEREAS the Landlord and Tenant desire to extend the term of the Lease; and amend the terms and conditions of the Lease as hereinafter set forth.

TERMS

NOW, THEREFORE, for good and valuable consideration the sufficiency and receipt of which are hereby acknowledged, Landlord and Tenant hereby agree as follows:

1. TERM. The Term of the Lease is hereby extended for the period beginning May 1, 2016 and ending on April 30, 2026.

2. RENT. Base Rent for the Extended Lease Term is as follows: Annual Base Rent shall be:

05/01/2016 - 04/30/2021: \$111,000.00 to be paid in equal monthly installments of \$9,250.00.  
05/01/2021 - 04/30/2026: \$120,000.00 to be paid in equal monthly installments of \$10,000.00.

3. GRANT OF ADDITIONAL OPTION. Tenant shall be entitled to one (1) option to extend the Term, for an additional term of sixty (60) months. All terms and conditions of the Lease shall apply to and during additional Option Term, except for the Minimum Monthly Rent shall increase to Eleven Thousand Two Hundred Dollars (\$11,200.00) month. Tenant shall provide landlord with written notice of its exercise of such option at least one hundred eighty (180) days before the expiration of the initial term or any extended term.

4. Except as modified herein, all terms and conditions of the Lease remain in full force and effect.

Signatures on next page

LANDLORD

TENANT  
BEAUTY SYSTEMS GROUP, INC.  
a Delaware Corporation

By: \_\_\_\_\_  
\_\_\_\_\_ as Trustees  
Under the Declaration of Trust  
Dated March 12, 1996  
Date: \_\_\_\_\_

By: Michael L. Flahaveri  
Name: Michael L. Flahaveri  
Title: Gen. Mgr. Store Operations  
Date: 2/12/2015

By: \_\_\_\_\_  
\_\_\_\_\_ as Trustees  
Under the Declaration of Trust  
Dated March 12, 1996  
Date: \_\_\_\_\_

By: Walter A. Arnold  
Walter A. Arnold, in Trust,  
As Trustee of the Stella Arnold  
1987 Exempt Trust FBO Walter A.  
Arnold dated April 4, 2001  
Date: 2/18/15

By: Joan Spargo  
Joan Spargo, in Trust,  
As Trustee of the Stella Arnold  
1987 Exempt Trust FBO Joan  
Spargo dated April 4, 2001  
Date: 3/15/15

By: Arlene Ripley  
Arlene Ripley  
Date: 3-19-2015

By: Kenneth Musso  
Kenneth Musso  
Date: 3/23/2015

By: David Musso  
David Musso  
Date: 3-20-15



OFFICE OF THE MAYOR  
SAN FRANCISCO



EDWIN M. LEE

TO: Angela Calvillo, Clerk of the Board of Supervisors  
FROM: Mayor Edwin M. Lee *mw*  
RE: Real Property Purchase – 450 Sixth Street – Multiple Party Ownership -  
\$2,403,333  
DATE: May 31, 2016

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Attached for introduction to the Board of Supervisors is a resolution authorizing the execution and acceptance of a Purchase and Sale Agreement by and between the City and Joan Spargo, in Trust, as Trustee of the "Stella Arnold 1987 Exempt Trust FBO Joan Spargo" dated April 4, 2001, as to an undivided 3/8 interest; Walter A. Arnold, in Trust, as Trustee of the "Stella Arnold 1987 Exempt Trust FBO Walter A. Arnold" dated April 4, 2001, as to an undivided 3/8 interest; Kenneth Musso, as to an undivided 1/12 interest; David Musso, as to an undivided 1/12 interest; and Arlene Ripley, as to an undivided 1/12 interest ("Seller"), for the real property located at 450 Sixth Street (Block 3750, Lot 043) for \$2,403,333; and finding the proposed transactions are in conformance with the City's General Plan, and the eight priority policies of Planning Code, Section 101.1.

I respectfully request that this item be calendared in Budget & Finance Committee on June 16, 2016.

Should you have any questions, please contact Nicole Elliott (415) 554-7940.

RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO  
2016 MAY 31 PM 1:38  
BY *RZ*

**FORM SFEC-126:  
NOTIFICATION OF CONTRACT APPROVAL**  
(S.F. Campaign and Governmental Conduct Code § 1.126)

<b>City Elective Officer Information</b> <i>(Please print clearly.)</i>	
Name of City elective officer(s):  Members, Board of Supervisors	City elective office(s) held:  Members, Board of Supervisors

<b>Contractor Information</b> <i>(Please print clearly.)</i>	
Name of contractor: Joan Spargo, in Trust, as Trustee of the "Stella Arnold 1987 Exempt Trust FBO Joan Spargo" dated April 4, 2001, as to an undivided 3/8 interest; Walter A. Arnold, in Trust, as Trustee of the "Stella Arnold 1987 Exempt Trust FBO Walter A. Arnold" dated April 4, 2001, as to an undivided 3/8 interest; Kenneth Musso, as to an undivided 1/12 interest; David Musso, as to an undivided 1/12 interest; and Arlene Ripley, as to an undivided 1/12 interest	
<i>Please list the names of (1) members of the contractor's board of directors; (2) the contractor's chief executive officer, chief financial officer and chief operating officer; (3) any person who has an ownership of 20 percent or more in the contractor; (4) any subcontractor listed in the bid or contract; and (5) any political committee sponsored or controlled by the contractor. Use additional pages as necessary.</i>	
(1) N/A (2) N/A (3) Joan Spargo, in Trust, as Trustee of the "Stella Arnold 1987 Exempt Trust FBO Joan Spargo" dated April 4, 2001, as to an undivided 3/8 interest; Walter A. Arnold, in Trust, as Trustee of the "Stella Arnold 1987 Exempt Trust FBO Walter A. Arnold" dated April 4, 2001, as to an undivided 3/8 interest (4) N/A (5) N/A	
Contractor address: Stella Arnold Exempt Trust Joan Spargo, 5627 Straw Flower Ln, San Jose, CA 95118	
Date that contract was approved:	Amount of contract: \$2,403,333
Describe the nature of the contract that was approved: Purchase of 450 6 <sup>th</sup> Street, San Francisco	
Comments:	

This contract was approved by (check applicable):

- the City elective officer(s) identified on this form (Mayor, Edwin Lee)
- a board on which the City elective officer(s) serves San Francisco Board of Supervisors  
Print Name of Board
- the board of a state agency (Health Authority, Housing Authority Commission, Industrial Development Authority Board, Parking Authority, Redevelopment Agency Commission, Relocation Appeals Board, Treasure Island Development Authority) on which an appointee of the City elective officer(s) identified on this form sits  
  
Print Name of Board

<b>Filer Information</b> <i>(Please print clearly.)</i>	
Name of filer: Angela Calvillo, Clerk of the Board	Contact telephone number: (415) 554-5184
Address: City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102	E-mail: Board.of.Supervisors@sfgov.org

\_\_\_\_\_  
Signature of City Elective Officer (if submitted by City elective officer)

\_\_\_\_\_  
Date Signed

\_\_\_\_\_  
Signature of Board Secretary or Clerk (if submitted by Board Secretary or Clerk)

\_\_\_\_\_  
Date Signed