CITY OF LAGUNA HILLS
CITY COUNCIL/PLANNING AGENCY
REGULAR MEETING AGENDA
SEPTEMBER 23, 2014

Closed Session at 6:00 PM *(when scheduled)*
General Business Session at 7:00 PM

Andrew Blount, Mayor
Dore J. Gilbert, M.D., Mayor Pro Tempore — **Melody Carruth, Council Member**
Randal Bressette, Council Member — **Barbara Kogerman, Council Member**

Location: City Council Chamber, 24035 El Toro Road, Laguna Hills, California 92653

Any person wishing to address the City Council/Planning Agency on any matter, whether or not it appears on this Agenda, is asked to complete a pink “Request to Speak” form available on the table at the back of the Chamber. The completed form is to be submitted to the City Clerk prior to an individual being heard by the City Council/Planning Agency. Completion of the form is voluntary. All persons may attend the meeting regardless of whether this form is completed.

Members of the public wishing to address the City Council can do so during the Public Comments portion of the Agenda with a time limitation of three minutes per person, an overall time limit of ten minutes for any one subject, and a total time limit of thirty minutes for Public Comments. If you are commenting on an Agenda item, your comments will be heard at the time that item is scheduled on the Agenda. If you are addressing the City Council on an item not listed on the Agenda, the City Council is prohibited by law from discussing or taking any action on that item.

GENERAL BUSINESS - CONVENING AT 7:00 PM

CALL TO ORDER

Resolution No. 96-04-09-1 established rules of decorum for public meetings held by the City of Laguna Hills. Resolution No. 96-04-09-1 is available on the table at the back of the City Council Chamber.

PLEDGE OF ALLEGIANCE: COUNCIL MEMBER BRESSETTE

ROLL CALL OF CITY COUNCIL MEMBERS

CLOSED SESSION REPORT

1. PRESENTATIONS AND PROCLAMATIONS

1.1 SPOTLIGHT ON LOCAL BUSINESS

RECOMMENDATION: THAT THE CITY COUNCIL RECEIVE AN ORAL REPORT FROM JEFF EARL, STORE MANAGER FOR FRESH MARKET.

1.2 LAGUNA HILLS HIGH SCHOOL STUDENT LIAISON

RECOMMENDATION: THAT THE CITY COUNCIL RECEIVE AN ORAL REPORT FROM LAGUNA HILLS HIGH SCHOOL STUDENT LIAISON DANIEL BUSHNER.

1.3 PROCLAMATION, FIRE PREVENTION WEEK, OCTOBER 5, 2014 - OCTOBER 11, 2014

RECOMMENDATION: THAT MAYOR BLOUNT PRESENT A PROCLAMATION TO BATTALION CHIEF MICHAEL CONTRERAS FROM THE ORANGE COUNTY FIRE AUTHORITY, PROCLAIMING OCTOBER 5, 2014, THROUGH OCTOBER 11, 2014, AS FIRE PREVENTION WEEK.

2. PUBLIC COMMENTS

This is the time to address the City Council on any matter not listed on this Agenda that is within the subject matter jurisdiction of the City Council. Public Comments are limited to three minutes per person, an overall time limit of ten minutes for any one subject, and a total time limit of thirty minutes.

3. CONSENT CALENDAR

All matters listed under "CONSENT CALENDAR" are considered to be routine and will be enacted by one motion approving the recommendation listed on the Agenda. There will be no separate discussion unless Members of the City Council or Staff request specific items be removed from the Consent Calendar.

3.1 WAIVE READING IN FULL OF ALL ORDINANCES AND RESOLUTIONS ON THE AGENDA

RECOMMENDATION: THAT THE CITY COUNCIL WAIVE READING IN FULL OF ALL ORDINANCES AND RESOLUTIONS ON THE AGENDA AND DECLARE THAT SAID TITLES WHICH APPEAR ON THE PUBLIC AGENDA SHALL BE DETERMINED TO HAVE BEEN READ BY TITLE AND FURTHER READING WAIVED.

3.2 APPROVAL OF MINUTES FOR SEPTEMBER 9, 2014

RECOMMENDATION: THAT THE CITY COUNCIL APPROVE THE MINUTES OF THE SEPTEMBER 9, 2014, REGULAR MEETING.

3.3 APPROVAL OF WARRANT REGISTER FOR PERIOD ENDED SEPTEMBER 23, 2014

RECOMMENDATION: THAT THE CITY COUNCIL APPROVE THE WARRANT REGISTER IN THE AMOUNT OF $1,632,620.90.

3.4 PROPOSED LEASE RENEWAL WITH CAROL BEHRENS FOR 24031 EL TORO ROAD, SUITE 304, LAGUNA HILLS, CALIFORNIA

RECOMMENDATION: THAT THE CITY COUNCIL APPROVE THE LEASE WITH CAROL BEHRENS FOR 24031 EL TORO ROAD, SUITE 304, LAGUNA HILLS, CALIFORNIA, AND AUTHORIZE THE CITY MANAGER TO EXECUTE THE LEASE.

3.5 PROPOSED LEASE RENEWAL WITH DAYLE MCINTOSH CENTER FOR THE DISABLED, INC., FOR 24031 EL TORO ROAD, SUITE 300, LAGUNA HILLS, CALIFORNIA

RECOMMENDATION: THAT THE CITY COUNCIL APPROVE THE LEASE WITH DAYLE MCINTOSH CENTER FOR THE DISABLED, INC., FOR 24031 EL TORO ROAD, SUITE 300, LAGUNA HILLS, CALIFORNIA, AND AUTHORIZE THE CITY MANAGER TO EXECUTE THE LEASE.

3.6 PROPOSED LEASE RENEWAL WITH WINDSTONE BEHAVIORAL HEALTH, A CALIFORNIA CORPORATION, FOR 24031 EL TORO ROAD, SUITE 250, LAGUNA HILLS, CALIFORINA

RECOMMENDATION: THAT THE CITY COUNCIL APPROVE THE LEASE WITH WINDSTONE BEHAVIORAL HEALTH, A CALIFORNIA CORPORATION, FOR 24031 EL TORO ROAD, SUITE 250, LAGUNA HILLS, CALIFORNIA, AND AUTHORIZE THE CITY MANAGER TO EXECUTE THE LEASE.

3.7 PROGRESS PAYMENT NO. 9 FOR LA PAZ OPEN SPACE PROJECT, CIP NO. 615A

RECOMMENDATION: THAT THE CITY COUNCIL APPROVE PROGRESS PAYMENT NO. 9, IN THE NET AMOUNT OF $1,140.00, TO ENVIRONMENTAL CONSTRUCTION, INC., FOR LA PAZ OPEN SPACE IMPROVEMENTS, CIP NO. 615A.

3.8 APPLICATION TO THE ORANGE COUNTY TRANSPORTATION AUTHORITY FOR FUNDS FOR THE ARTERIAL PAVEMENT MANAGEMENT PROGRAM FOR THE ARTERIAL HIGHWAY PAVEMENT REHABILITATION – VARIOUS LOCATIONS PROJECT

RECOMMENDATION: THAT THE CITY COUNCIL ADOPT A RESOLUTION ENTITLED: "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA HILLS, CALIFORNIA, AUTHORIZING APPLICATION FOR FUNDS FOR THE ARTERIAL PAVEMENT MANAGEMENT PROGRAM FUNDED WITH REGIONAL SURFACE TRANSPORTATION PROGRAM FUNDING UNDER THE MOVING AHEAD FOR PROGRESS IN THE 21ST CENTURY FEDERAL TRANSPORTATION ACT FOR THE ARTERIAL HIGHWAY PAVEMENT REHABILITATION - VARIOUS LOCATIONS PROJECT."

3.9 GOVERNMENT CODE SECTION 66006 - DEVELOPMENT IMPACT FEES ANNUAL REPORT

RECOMMENDATION: THAT THE CITY COUNCIL APPROVE THE DEVELOPMENT IMPACT FEES ANNUAL REPORT PURSUANT TO GOVERNMENT CODE SECTION 66006.

3.10 PROGRESS PAYMENT NO. 1 FOR CITYWIDE PAVEMENT REHABILITATION PROJECT, CIP NO. 101-I

RECOMMENDATION: THAT THE CITY COUNCIL APPROVE PROGRESS PAYMENT NO. 1, IN THE NET AMOUNT OF $231,550.49, TO ALL AMERICAN ASPHALT, FOR CITYWIDE PAVEMENT REHABILITATION PROJECT, CIP NO. 101-I.

ITEMS REMOVED FROM THE CONSENT CALENDAR

4. PLANNING AGENCY

4.1 ROLL CALL OF PLANNING AGENCY MEMBERS

4.2 PUBLIC COMMENTS

This is the time to address the Planning Agency on any matter not listed on this Agenda that is within the subject matter jurisdiction of the Planning Agency. Public Comments are limited to three minutes per person, an overall time limit of ten minutes for any one subject, and a total time limit of thirty minutes.

4.3 APPROVAL OF MINUTES FOR SEPTEMBER 9, 2014

RECOMMENDATION: THAT THE PLANNING AGENCY APPROVE THE MINUTES OF THE SEPTEMBER 9, 2014, REGULAR MEETING.

4.4 ADMINISTRATIVE REPORTS

4.5 PLANNING AGENCY PUBLIC HEARINGS

4.5.1 CONDITIONAL USE PERMIT/PARKING USE PERMIT (CUP/PUP) NO. 7-14-2924, A REQUEST BY ADVANCE BEAUTY COLLEGE TO ESTABLISH A BEAUTY COLLEGE IN THE FORMER CLAIM JUMPER BUILDING IN THE COURTYARD AT LA PAZ SHOPPING CENTER AT 25332 MCINTYRE STREET IN THE COMMUNITY COMMERCIAL ZONE

RECOMMENDATION: THAT THE PLANNING AGENCY: (1) CONDUCT A PUBLIC HEARING FOR CUP/PUP NO. 7-14-2924; AND (2) ADOPT A RESOLUTION ENTITLED: "A RESOLUTION OF THE PLANNING AGENCY OF THE CITY OF LAGUNA HILLS, CALIFORNIA, APPROVING CONDITIONAL USE PERMIT/PARKING USE PERMIT (CUP/PUP) NO. 7-14-2924, A REQUEST BY ADVANCE BEAUTY COLLEGE TO ESTABLISH A BEAUTY COLLEGE IN THE FORMER CLAIM JUMPER BUILDING IN THE COURTYARD AT LA PAZ SHOPPING CENTER AT 25332 MCINTYRE STREET IN THE COMMUNITY COMMERCIAL (CC) ZONE."

PLANNING AGENCY ADJOURNMENT

5. CITY COUNCIL PUBLIC HEARINGS

6. ADMINISTRATIVE REPORTS

6.1 City Manager

7. MATTERS AGENDIZED AND PRESENTED BY CITY COUNCIL MEMBERS AND MAYOR

8. CITY COUNCIL MEMBER COMMENTS

ADJOURNMENT

The next Regular Meeting of the City Council will be October 14, 2014, in the City Council Chamber, located at 24035 El Toro Road, Laguna Hills, California.

CERTIFICATION

I, PEGGY J. JOHNS, City Clerk of the City of Laguna Hills, do hereby certify that a copy of the foregoing Agenda was posted at Laguna Hills City Hall, Laguna Hills Community Center, and the Courtyard at La Paz Center by September 19, 2014, at 5:00 PM.

Peggy J. Johns

PEGGY J. JOHNS, CITY CLERK

September 19, 2014

DATE

***In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, you should contact the office of the City Clerk at (949) 707-2635. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to assure accessibility to this meeting*.**

Materials related to an item on this Agenda submitted to the City Council after distribution of the agenda packet are available for public inspection in the City Clerk's Office at 24035 El Toro Road, Laguna Hills, California, during normal business hours.

City Council Members receive no additional compensation or stipend as a result of simultaneously convening meetings of the Laguna Hills Planning Agency.

City of Laguna Hills
City Council Meeting Agenda
Staff Report

DATE: SEPTEMBER 23, 2014

TO: MAYOR AND COUNCIL MEMBERS

FROM: PEGGY J. JOHNS
CITY CLERK

ISSUE: PROCLAMATION, FIRE PREVENTION WEEK, OCTOBER 5, 2014 - OCTOBER 11, 2014

RECOMMENDATION: THAT MAYOR BLOUNT PRESENT A PROCLAMATION TO BATTALION CHIEF MICHAEL CONTRERAS FROM THE ORANGE COUNTY FIRE AUTHORITY, PROCLAIMING OCTOBER 5, 2014, THROUGH OCTOBER 11, 2014, AS FIRE PREVENTION WEEK.

SUMMARY:

The Orange County Fire Authority (OCFA) would greatly appreciate the support of the City of Laguna Hills in proclaiming October 5-11, 2014, as “Fire Prevention Week.” This year’s theme focuses on public attention that working smoke alarms save lives and recommends that homeowners test theirs every month.

An Open House will be held at the OCFA Fire Station 22 on October 4, 2014, from 9 AM to 2 PM to kick off Fire Prevention Week. To wrap up the week, their Regional Fire Operations & Training Center (RFOTC) will also host an Open House on October 11, 2014, from 10 AM to 3 PM, which is located at 1 Fire Authority Road, in the City of Irvine.

Battalion Chief Michael Contreras from the Orange County Fire Authority will be present at the meeting to receive the Proclamation.

ATTACHMENTS:

- Proclamation

PROCLAMATION

FIRE PREVENTION WEEK

OCTOBER 5, 2014, THROUGH OCTOBER 11, 2014

WHEREAS, fire is a serious public safety concern both locally and nationally, and homes are the locations where people are at greatest risk from fire; and

WHEREAS, three out of five home fire deaths result from fires in properties without working smoke alarms, and working smoke alarms cut the risk of dying in reported home fires in half; and

WHEREAS, in one-fifth of all homes with smoke alarms, none were working because the smoke alarm batteries were missing, disconnected, or dead; and

WHEREAS, Orange County residents should install smoke alarms in every sleeping room, outside each separate sleeping area, and on every level of the home; and

WHEREAS, Orange County residents should install smoke alarms and alert devices that meet the needs of people who are deaf or hard of hearing; and

WHEREAS, the 2014 Fire Prevention Week theme, "Working Smoke Alarms Save Lives: Test Yours Every Month!" effectively serves to remind us that we need working smoke alarms to give us the time to get out safely.

NOW, THEREFORE, I, Andrew Blount, Mayor, on behalf of the City Council of the City of Laguna Hills, California, do hereby proclaim the week of October 5 - October 11, 2014, as "Fire Prevention Week" throughout the City, urge everyone to test their smoke alarms once a month, and to support the many public safety activities and efforts of the Orange County Fire Authority's fire and emergency services.

Dated this 23rd day of September 2014.

ANDREW BLOUNT, MAYOR

CITY OF LAGUNA HILLS, CALIFORNIA
CITY COUNCIL/PLANNING AGENCY
REGULAR MEETING
MINUTES
SEPTEMBER 09, 2014

GENERAL BUSINESS - CONVENING AT 7:00 PM

CALL TO ORDER

Mayor Blount called the Regular Meeting of the City Council of the City of Laguna Hills, California, to order at 7:00 PM in the Laguna Hills City Council Chamber.

PLEDGE OF ALLEGIANCE: Council Member Kogerman

ROLL CALL OF CITY COUNCIL MEMBERS

Present: Mayor Blount, Council Member Carruth, and Council Member Kogerman

Absent: Council Member Bressette and Mayor Pro Tempore Gilbert

CLOSED SESSION REPORT

There was no Closed Session scheduled.

1. PRESENTATIONS AND PROCLAMATIONS

1.1 RECOGNITION OF WORLD WAR II NAVY VETERAN, AL LEAPLEY

MAYOR BLOUNT PRESENTED WWII NAVY VETERAN, AL LEAPLEY, WITH A CERTIFICATE RECOGNIZING HIS MILITARY SERVICE AND HONORING HIM FOR HIS PARTICIPATION IN THE NORMANDY D-DAY LANDING.

1.2 CERTIFICATES OF RECOGNITION FOR MARISSA BARTELLO, EDEN BUTTLAR, AND MCKENNA RINKE, LAGUNA HILLS HIGH SCHOOL STUDENTS, 2,000 METER STEEPLECHASE ATHLETES

MAYOR BLOUNT PRESENTED CERTIFICATES TO MARISSA BARTELLO, EDEN BUTTLAR, AND MCKENNA RINKE, RECOGNIZING THEIR RECENT 2,000 METER STEEPLECHASE ACCOMPLISHMENTS.

1.3 APPOINTMENT OF LAGUNA HILLS HIGH SCHOOL STUDENT LIAISON DANIEL BUSHNER AND STUDENT LIAISON ALTERNATE MATTHEW SHULMAN FOR THE 2014 FALL SEMESTER

MAYOR BLOUNT PRESENTED CERTIFICATES OF APPOINTMENT TO STUDENT LIAISON DANIEL BUSHNER AND ALTERNATE MATTHEW SHULMAN.

1.4 LAGUNA HILLS HIGH SCHOOL STUDENT LIAISON

THE CITY COUNCIL RECEIVED AN ORAL REPORT FROM LAGUNA HILLS HIGH SCHOOL STUDENT LIAISON DANIEL BUSHNER.

1.5 LAGUNA HILLS 3/5 MARINE SUPPORT COMMITTEE

THE CITY COUNCIL RECEIVED AN UPDATE FROM CHAIR ROBBINS ON THE 3/5 DARK HORSE COMMITTEE.

2. PUBLIC COMMENTS

There were no Public Comments.

3. CONSENT CALENDAR

MOTION TO APPROVE THE CONSENT CALENDAR, WITH MAYOR BLOUNT REMOVING ITEM NO. 3.7, BY M/COUNCIL MEMBER KOGERMAN, S/COUNCIL MEMBER CARRUTH.
APPROVED BY A VOTE OF 3-0-2, (COUNCIL MEMBER BRESSETTE, AND MAYOR PRO TEMPORE GILBERT ABSENT).

3.1 WAIVE READING IN FULL OF ALL ORDINANCES AND RESOLUTIONS ON THE AGENDA

THE CITY COUNCIL WAIVED READING IN FULL OF ALL ORDINANCES AND RESOLUTIONS ON THE AGENDA AND DECLARED THAT SAID TITLES WHICH APPEAR ON THE PUBLIC AGENDA SHALL BE DETERMINED TO HAVE BEEN READ BY TITLE AND FURTHER READING WAIVED.

3.2 APPROVAL OF MINUTES FOR AUGUST 26, 2014

THE CITY COUNCIL APPROVED THE MINUTES OF THE AUGUST 26, 2014, REGULAR MEETING.

3.3 APPROVAL OF WARRANT REGISTER FOR PERIOD ENDED SEPTEMBER 9, 2014

THE CITY COUNCIL APPROVED THE WARRANT REGISTER IN THE AMOUNT OF $263,019.56.

3.4 RECORDS RETENTION MANAGEMENT

THE CITY COUNCIL ADOPTED RESOLUTION NO. 2014-09-09-1, A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA HILLS, CALIFORNIA, AUTHORIZING AND DIRECTING THE CITY CLERK TO NO LONGER RETAIN CERTAIN CITY RECORDS AND DOCUMENTS WITH A DISPOSAL DATE OF SEPTEMBER 10, 2014, PURSUANT TO THE GOVERNMENT CODE OF THE STATE OF CALIFORNIA."

3.5 PROGRESS PAYMENT NO. 8 FOR LA PAZ OPEN SPACE PROJECT, CIP NO. 615A

THE CITY COUNCIL APPROVED PROGRESS PAYMENT NO. 8, IN THE NET AMOUNT OF $1,140.00, TO ENVIRONMENTAL CONSTRUCTION, INC., FOR LA PAZ OPEN SPACE IMPROVEMENTS, CIP NO. 615A.

3.6 SECOND READING AND ADOPTION OF ORDINANCE APPROVING AND ADOPTING ZONING TEXT AMENDMENT NO. 5-14-2865, A DEVELOPMENT CODE AMENDMENT REVISING SECTION 9-74.020 OF TITLE 9 OF THE LAGUNA HILLS MUNICIPAL CODE (ZONING AND SUBDIVISIONS) TO INCLUDE A PROVISION TO ALLOW OPERABLE PASSENGER VEHICLES TO BE LEGALLY PARKED ON THE DRIVEWAY OF A DETACHED SINGLE-FAMILY DWELLING FOR TIME PERIODS EXCEEDING 72 HOURS

THE CITY COUNCIL ADOPTED ORDINANCE NO. 2014-4, AN ORDINANCE OF THE CITY OF LAGUNA HILLS, CALIFORNIA, AMENDING TITLE 9 OF THE LAGUNA HILLS MUNICIPAL CODE (ZONING AND SUBDIVISIONS) BY REVISING SECTION 9-74.020 ("OUTDOOR STORAGE" DEFINITION) OF CHAPTER 9-74 (PROPERTY MAINTENANCE) TO INCLUDE A CLARIFYING PROVISION TO ALLOW OPERABLE PASSENGER VEHICLES TO BE LEGALLY PARKED ON THE DRIVEWAY OF A DETACHED SINGLE-FAMILY DWELLING FOR TIME PERIODS EXCEEDING 72 HOURS."

3.8 CANCELLATION OF NOVEMBER 11, 2014, CITY COUNCIL MEETING

THE CITY COUNCIL CANCELLED THE NOVEMBER 11, 2014, CITY COUNCIL MEETING FALLING ON VETERANS DAY, A CITY HOLIDAY; DIRECTED THAT ON OCTOBER 28, 2014, THE CITY COUNCIL ADJOURN THE MEETING TO THE NEXT REGULAR MEETING ON NOVEMBER 25, 2014; AND DIRECTED THE CITY CLERK TO POST THE NOTICE OF MEETING CANCELLATION AT THE APPROPRIATE TIME.

ITEMS REMOVED FROM THE CONSENT CALENDAR

3.7 AUTHORIZATION TO PURCHASE POLICE MOTORCYCLE

Mayor Blount removed this item from the Consent Calendar to inquire about the expected price of the purchase of the motorcycle.

THE CITY COUNCIL AUTHORIZED THE PURCHASE OF A POLICE MOTORCYCLE IN ACCORDANCE WITH SECTION 3-08.130 OF THE LAGUNA HILLS MUNICIPAL CODE, BY M/MAYOR BLOUNT, S/COUNCIL MEMBER CARRUTH.
APPROVED BY A VOTE OF 3-0-2 (COUNCIL MEMBER BRESETTE AND MAYOR PRO TEMPORE GILBERT ABSENT).

4. PLANNING AGENCY

Mayor Blount recessed the City Council meeting and acting in the capacity of Chair, called the meeting of the Planning Agency of the City of Laguna Hills, California, to order at 7:31 PM.

4.1 ROLL CALL OF PLANNING AGENCY MEMBERS

Present: Chair Blount, Agency Member Carruth, and Agency Member Kogerman

Absent: Vice Chair Gilbert and Agency Member Bressette

4.2 PUBLIC COMMENTS

There were no Public Comments.

4.3 APPROVAL OF MINUTES FOR AUGUST 26, 2014

THE PLANNING AGENCY APPROVED THE MINUTES OF THE AUGUST 26, 2014, REGULAR MEETING, BY M/AGENCY MEMBER CARRUTH, S/AGENCY MEMBER KOGERMAN.
APPROVED BY A VOTE OF 3-0-2, (AGENCY MEMBER BRESSETTE AND VICE CHAIR GILBERT ABSENT).

4.4 ADMINISTRATIVE REPORTS

There were no Administrative Reports.

4.5 PLANNING AGENCY PUBLIC HEARINGS

4.5.1 CONDITIONAL USE PERMIT NO. 07-14-2912, A REQUEST BY CLAUDIU ILIE TO ESTABLISH A 5,614 SQUARE FOOT MUSIC SCHOOL AND RECORDING STUDIO AT 25255 CABOT ROAD, SUITE 100, IN THE (OP) OFFICE PROFESSIONAL ZONING DISTRICT.

Chair Blount opened the Public Hearing.

Claudiu Ilie, Applicant, spoke on the project and answered questions from City Council and indicated he agreed to all of the Conditions of Approval.

Adrian Suta, Applicant, spoke on the project and answered questions from City Council.

Chair Blount closed the Public Hearing.

THE PLANNING AGENCY ADOPTED RESOLUTION NO. PA2014-09-09-1, A RESOLUTION OF THE PLANNING AGENCY OF THE CITY OF LAGUNA HILLS, CALIFORNIA, APPROVING CONDITIONAL USE PERMIT NO. 07-14-2912, A REQUEST BY CLAUDIU ILIE TO ESTABLISH A 5,614 SQUARE FOOT MUSIC

SCHOOL AND RECORDING STUDIO AT 25255 CABOT ROAD, SUITE 100, IN THE (OP) OFFICE PROFESSIONAL ZONING DISTRICT, BY M/AGENCY MEMBER KOGERMAN, S/AGENCY MEMBER CARRUTH.
APPROVED BY A VOTE OF 3-0-2 (AGENCY MEMBER BRESSETTE AND VICE CHAIR GILBERT ABSENT).

PLANNING AGENCY ADJOURNMENT

Mayor Blount reconvened the City Council Meeting at 7:53 PM. All Council Members were present, with the exception of Council Member Bressette and Mayor Pro Tempore Gilbert.

5. CITY COUNCIL PUBLIC HEARINGS

There were no City Council Public Hearings.

6. ADMINISTRATIVE REPORTS

6.1 City Manager

The City Manager gave no reports.

6.2 Assistant City Manager

6.2.1 RESPONSE TO ORANGE COUNTY GRAND JURY REPORT ENTITLED "ORANGE COUNTY CITY PENSION LIABILITIES - BUDGET TRANSPARENCY CRITICALLY NEEDED"

THE CITY COUNCIL AUTHORIZED THE MAYOR TO SIGN THE LETTER OF RESPONSE TO THE ORANGE COUNTY GRAND JURY'S JUNE 18, 2014, REPORT ENTITLED "ORANGE COUNTY CITY PENSION LIABILITIES-BUDGET TRANSPARENCY CRITICALLY NEEDED," TO INCLUDE A MINOR MODIFICATION TO RECOMMENDATION NUMBER 7, BY M/COUNCIL MEMBER KOGERMAN, S/COUNCIL MEMBER CARRUTH.
APPROVED BY A VOTE OF 3-0-2, (COUNCIL MEMBER BRESSETTE AND MAYOR PRO TEMPORE GILBERT ABSENT).

6.2.2 2013-15 BIENNIAL BUDGET REVIEW

THE CITY COUNCIL RECIEVED AND FILED THE REPORT, BY M/COUNCIL MEMBER KOGERMAN, S/COUNCIL MEMBER CARRUTH.
APPROVED BY A VOTE OF 3-0-2 (COUNCIL MEMBER BRESSETTE AND MAYOR PRO TEMPORE GILBERT ABSENT).

7. MATTERS AGENDIZED AND PRESENTED BY CITY COUNCIL MEMBERS AND MAYOR

There were no matters agendized and presented by City Council Members and Mayor.

8. CITY COUNCIL MEMBER COMMENTS

COUNCIL MEMBER CARRUTH

Council Member Carruth commented on the September 5, 2014, Laguna Hills High School football game and the recognition of long-time Coach, Faculty Member, and Athletic Director, Steve Bresnahan.

COUNCIL MEMBER KOGERMAN

Council Member Kogerman reported that she and Mayor Blount attended the League of California Cities Annual Conference, September 2-5, 2014, held in Los Angeles, and highlighted the workshops that they attended.

ADJOURNMENT

There being no further business before the City Council at this session, Mayor Blount declared the meeting adjourned 8:49 PM.

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PEGGY J. JOHNS, CITY CLERK

ATTEST:

____
ANDREW BLOUNT, MAYOR

APPROVED AT MEETING OF _________________________

City of Laguna Hills
City Council Meeting Agenda
Staff Report

DATE: SEPTEMBER 23, 2014

TO: MAYOR AND COUNCIL MEMBERS

FROM: DONALD J. WHITE, ASSISTANT CITY MANAGER

ISSUE: APPROVAL OF WARRANT REGISTER FOR PERIOD ENDED SEPTEMBER 23, 2014.

RECOMMENDATION: THAT THE CITY COUNCIL APPROVE THE WARRANT REGISTER IN THE AMOUNT OF $1,632,620.90.

SUMMARY:

In accordance with Government Code Section 37202, the attached Warrant Register reflects the disbursements of the City of Laguna Hills for the period reported thereon. The Assistant City Manager certifies and attests to its accuracy and the availability of funds for the payment thereof. These warrants are hereby submitted to the City Council for approval of payment.

Prepared by:

JANICE MATEO REYES
Finance Manager

Certified:

DONALD J. WHITE
Assistant City Manager

9-16-14
DATE

FISCAL IMPACT:

The warrant register total is $1,632,620.90.

ATTACHMENTS:

1. **Warrant Register**

Check Register Report

Warrant Register 09/23/14

Date: 09/15/2014
Time: 2:02 pm
Page: 1

CITY OF LAGUNA HILLS

BANK: UNION BANK- GENERAL

Check Number	Check Date	Status	Void/Stop Date	Vendor Number	Vendor Name	Check Description	Amount
UNION BANK- GENERAL Checks							
8807906	09/04/2014	Printed		A-0309	AT&T- CALNET 2	Ridge Route Signal, Aug '14	1,248.83
8807907	09/04/2014	Printed		E-0504	EL TORO WATER DISTRICT	Water Usage, Parks, Jul '14	17,028.06
8807908	09/04/2014	Printed		R-1964	REFUND, COMMUNITY DEV FEES	Refund, Pool Bond, CR# 48130	500.00
8807909	09/04/2014	Printed		R-1964	REFUND, COMMUNITY DEV FEES	Refund, Pool Bond, CR# 48544	500.00
8807910	09/04/2014	Printed		R-1841	ROSENFIELD, KEN	Travel Reimb, Eng, Aug '14	1,128.22
8807911	09/04/2014	Printed		S-1904	SOUTHERN CALIFORNIA EDISON	ST Lites, Traffic Control, Aug	2,079.40
8807912	09/04/2014	Printed		R-1939	REYES, JANICE MATEO	Petty Cash Replenish, Aug-Sep	486.50
8807913	09/11/2014	Printed		A-0254	A. C. LANDSCAPE, INC.	Irrigation Repairs, Sept '14	2,011.72
8807914	09/11/2014	Printed		A-0184	ALL AMERICAN ASPHALT	Progress Payment #1 CIP #101 I	231,550.49
8807915	09/11/2014	Printed		A-0331	AT&T MOBILITY	Wireless Service, Aug '14	62.54
8807916	09/11/2014	Printed		B-0276	BANK OF AMERICA	Departmental Expenditure Aug	5,963.33
8807917	09/11/2014	Printed		B-0423	BLOUNT, ANDREW	Travel Reimb., Sept '14	497.34
8807918	09/11/2014	Printed		B-0422	BLUEPRINT TECHNOLOGIES	Maint, Comm Sys, CC, Aug '14	287.50
8807919	09/11/2014	Printed		B-0332	BRAME, MARILYN	Contract Inst Svcs, Drawing	294.00
8807920	09/11/2014	Printed		C-0412	C&D ELECTRIC, INC.	Lighting Repairs, Parks, Sept	65.00
8807921	09/11/2014	Printed		C-0353	CALIFORNIA MUN STATISTICS,INC.	Debt Statement 6/30/14,Finance	475.00
8807922	09/11/2014	Printed		C-1133	CALIFORNIA YELLOW CAB	Senior Mobility Program, Aug	1,584.00
8807923	09/11/2014	Printed		C-1168	CAPITAL ONE COMMERCIAL	Program Supplies, CS, Aug '14	226.49
8807924	09/11/2014	Printed		C-1144	CHARLES ABBOTT ASSOCIATES, INC	Plan Chk, Bldg & Safety, Aug	36,471.52
8807925	09/11/2014	Printed		C-0447	COMMUNITY BANK	AllAmericanAsphaltEscrow#2253	12,186.87
8807926	09/11/2014	Printed		C-1139	COMPLETE OFFICE OF CALIFORNIA	Operating Supplies, CS, Sep	273.84
8807927	09/11/2014	Printed		C-1176	COMPUTER SERVICE CO.	Traffic Sig. Maint, Aug., '14	4,667.75
8807928	09/11/2014	Printed		C-0023	COX COMMUNICATION	WiFi Svcs, CC Sep '14	130.00
8807929	09/11/2014	Printed		D-0530	DIRECT DOCUMENT SYSTEMS	Printing Expense, Finance Form	180.08
8807930	09/11/2014	Printed		D-0561	DOCU-TRUST	Offsite Data Storage, Aug '14	55.00
8807931	09/11/2014	Printed		D-0552	DUNBAR ARMORED, INC.	Courier Fee, Armored Trans,Sep	226.38
8807932	09/11/2014	Printed		E-0595	ECLIPSE MESSENGER SERVICE, INC	Delivery Service, Aug '14	23.92
8807933	09/11/2014	Printed		E-0544	ECONOLITE CONTROL PRODUCTS,INC	Professional Svcs, CIP # 168	3,239.99
8807934	09/11/2014	Printed		E-0593	EISENBERG, DALE	Contract Inst Svcs., Aikido	560.00
8807935	09/11/2014	Printed		E-0553	ELKINS, CHRISTINA	Contract Inst Svcs., Dance	34.30
8807936	09/11/2014	Printed		E-0596	ENVIRONMENTAL CONSTRUCTION,INC	Progress Payment #9, CIP # 615	1,140.00
8807937	09/11/2014	Printed		G-0844	GREEN MART, INC.	Operating Supplies, Parks, Sep	1,026.00
8807938	09/11/2014	Printed		H-0805	HARRINGTON GEOTECH ENGINEERING	Professional Fees, CIP # 101	4,168.00
8807939	09/11/2014	Printed		H-0829	HARTZOG & CRABILL, INC.	Traf Sig Mgmt Svs, Jul	4,803.40
8807940	09/11/2014	Printed		H-0944	HEART OF GOLD FOUNDATION, INC.	Contract Inst Svcs, Cooking	157.50
8807941	09/11/2014	Printed		I-0960	IRV SEAVER MOTORCYCLES	Motorcycle Maint, PS, Jul '14	1,015.33
8807942	09/11/2014	Printed		J-1057	JAMEY CLARK, INC.	Janitorial Services, Parks,Aug	7,783.92
8807943	09/11/2014	Printed		K-1185	KOGERMAN, BARBARA	Travel Reimb., Sept '14	413.74
8807944	09/11/2014	Printed		C-1007	LAW ENFORCEMENT	Law Enforcement Svcs, Sep '14	594,869.15
8807945	09/11/2014	Printed		M-1552	MARTIN-RUSK, DINA	Contract Instr Svcs, Zumba	537.60
8807946	09/11/2014	Printed		M-1396	MONOGRAM MAGIC	Uniforms, Police Svcs, Jul '14	208.92
8807947	09/11/2014	Printed		M-1302	MOULTON NIGUEL WATER DISTRICT	Water Usage, Parks, Aug '14	41,512.72
8807948	09/11/2014	Printed		N-1474	NIEVES LANDSCAPE, INC.	Other Assorted Landscape, Aug	82,248.05
8807949	09/11/2014	Printed		C-1008	NPDES	Professional Svcs, CIP # 410	469.00
8807950	09/11/2014	Printed		O-1546	OFFICE SOLUTIONS	Office Supplies, Aug '14	48.45
8807951	09/11/2014	Printed		O-1552	ORANGE COUNTY FIRE AUTHORITY	Remit, Fire Fees Collected,Aug	3,262.00
8807952	09/11/2014	Printed		P-1823	PSB INTEGRATED MARKETING	Prof Fees, Comb. Issue, Fall	7,395.00
8807953	09/11/2014	Printed		R-1881	R.E.S.S.	Flag Replacement, Civic Center	426.60
8807954	09/11/2014	Printed		R-1964	REFUND, COMMUNITY DEV FEES	Refund, CX Permit, CR#48967	67.50
8807955	09/11/2014	Printed		R-1964	REFUND, COMMUNITY DEV FEES	Refund, Fire Fees, CR# 46967	193.60

9/23/2014 ITEM NO. 3.3

Check Number	Check Date	Status	Void/Stop Date	Vendor Number	Vendor Name	Check Description	Amount
UNION BANK- GENERAL Checks							
8807956	09/11/2014	Printed		R-1964	REFUND, COMMUNITY DEV FEES	Refund, Fire Fees, CR# 47358	518.10
8807957	09/11/2014	Printed		R-1889	REFUND,FACILITY RENTAL DEPOSIT	M. Diaz, V#2003251.002	500.00
8807958	09/11/2014	Printed		R-1934	RENEGADE RACING	Event Mgmt Svcs, 1/2 Marathon	5,000.00
8807959	09/11/2014	Printed		S-2037	SADDLEBACK FAMILY &URGENT CARE	Pre-employ Phys, Jul-Aug 14	65.00
8807960	09/11/2014	Printed		S-1902	SAN DIEGO GAS & ELECTRIC	ST Lites, Aug '14	13,699.46
8807961	09/11/2014	Printed		S-2194	SECURE LIVE SCAN	Pre-employment Fingerprinting	20.00
8807962	09/11/2014	Printed		S-2229	SEMA CONSTRUCTION, INC.	Retention Release, CIP # 159	481,924.21
8807963	09/11/2014	Printed		S-2214	SIGN A RAMA	Program Supplies, Pol Svcs	265.03
8807964	09/11/2014	Printed		S-2253	SOCAL OFFICE TECHNOLOGIES-LEAS	Lease-Copier, CC,Jul & Aug '14	1,197.38
8807965	09/11/2014	Printed		S-2216	SOUTH COAST WATERS	Fac Maint, Water Feature, Sept	475.00
8807966	09/11/2014	Printed		S-1944	SOUTHERN CALIF MUN ATHLETIC	Program Class Insurance, CS	696.50
8807967	09/11/2014	Printed		S-1904	SOUTHERN CALIFORNIA EDISON	ST Lites, Traffic Control, Aug	910.31
8807968	09/11/2014	Printed		S-2250	SPARKLETTS	Operating Supplies, CS, Aug'14	62.10
8807969	09/11/2014	Printed		S-1980	STATE DEPARTMENT OF JUSTICE	Pre-employment Fingerprinting	64.00
8807970	09/11/2014	Printed		S-2201	SUNSET PROPERTY SERVICES	Street Sweeping, Aug '14	10,534.33
8807971	09/11/2014	Printed		T-2692	TUSTIN PUBLIC SCHOOLS	1/2 Marathon Advertising	250.00
8807972	09/11/2014	Printed		T-2656	TYLER TECHNOLOGIES, INC.	Maint,Fundbalance, 10/14-9/15	3,674.30
8807973	09/11/2014	Printed		U-2164	UNITED SITE SERVICES OF CA.	Program Expense, BAF	223.09
8807974	09/11/2014	Printed		V-2249	US BANK VOYAGER FLEET SYS	Vehicle Fuel, Aug '14	2,947.16
8807975	09/11/2014	Printed		V-2224	VERIZON WIRELESS	Communication Expense, Aug '14	753.07
8807976	09/11/2014	Printed		W-2422	WELLS FARGO FINANCIAL LEASING	Lease-Copier, CC, Oct '14	572.92
8807977	09/11/2014	Printed		W-2337	WEST COAST ARBORISTS, INC.	Tree Trimming, Aug '14	23,336.00
8807978	09/11/2014	Printed		X-2400	XEROX CORPORATION	Copier Usage, Aug '14	840.45
8807979	09/11/2014	Printed		B-0276	BANK OF AMERICA	Departmental Expenditure Aug	8,307.94

Total Checks: 74	**Checks Total (excluding void checks):**	**1,632,620.90**
Total Payments: 74	**Bank Total (excluding void checks):**	**1,632,620.90**
Total Payments: 74	**Grand Total (excluding void checks):**	**1,632,620.90**

City of Laguna Hills
City Council Meeting Agenda
Staff Report

DATE: SEPTEMBER 23, 2014

TO: MAYOR AND COUNCIL MEMBERS

FROM: DONALD J. WHITE
ASSISTANT CITY MANAGER

ISSUE: PROPOSED LEASE RENEWAL WITH CAROL BEHRENS FOR 24031 EL TORO ROAD, SUITE 304, LAGUNA HILLS, CALIFORNIA

RECOMMENDATION: THAT THE CITY COUNCIL APPROVE THE LEASE WITH CAROL BEHRENS FOR 24031 EL TORO ROAD, SUITE 304, LAGUNA HILLS, CALIFORNIA, AND AUTHORIZE THE CITY MANAGER TO EXECUTE THE LEASE.

SUMMARY:

Staff has negotiated a lease renewal with Carol Behrens, Mortgage Broker, for Suite 304. The following are the key lease terms and fiscal analysis:

Commencement Date: November 1, 2014

Term: 5 years (Options – none)

Rentable Square Feet: 607

Upfront Capital: $2,067

Rate: Year 1 – $2.10
Year 2 – $2.18
Year 3 – $2.27
Year 4 – $2.35
Year 5 – $2.45

Total Rent Payments: $82,673

Net Present Value: $46,303 (12% Discount Rate)

The City Attorney has reviewed and approved the lease document. Staff is recommending approval of the lease.

FISCAL IMPACT:

This five year lease is profitable for the City with a minimal upfront capital requirement.

ATTACHMENTS:

- Lease document

STANDARD MULTI-TENANT OFFICE LEASE - GROSS

AIR COMMERCIAL REAL ESTATE ASSOCIATION

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

1.1 **Parties**: This Lease ("**Lease**"), dated for reference purposes only August 27,2014, is made by and between The City of Laguna Hills, a municipal corporation organized and existing under the laws of the State of California ("**Lessor**") and Carolyn Behrens, an individual ("**Lessee**"), (collectively the "**Parties**", or individually a "**Party**").

1.2(a) **Premises**: That certain portion of the Project (as defined below), known as Suite Numbers(s) 304, 3rd floor(s), consisting of approximately 607 rentable square feet and approximately 513 useable square feet("**Premises")**. The Premises are located at: 24031 El Toro Road, in the City of Laguna Hills, County of Orange, State of California, with zip code 92654. In addition to Lessee's rights to use and occupy the Premises as hereinafter specified, Lessee shall have non-exclusive rights to the Common Areas (as defined in Paragraph 2.7 below) as hereinafter specified, but shall not have any rights to the roof, the exterior walls, the area above the dropped ceilings, or the utility raceways of the building containing the Premises ("**Building**") or to any other buildings in the Project. The Premises, the Building, the Common Areas, the land upon which they are located, along with all other buildings and improvements thereon, are herein collectively referred to as the "**Project**." The Project consists of approximately 51,943 rentable square feet. (See also Paragraph 2)

1.2(b) **Parking**: 4/1000 unreserved and N/A reserved vehicle parking spaces at a monthly cost of $N/A per unreserved space and $N/A per reserved space. (See Paragraph 2.6)

1.3 **Term**: 5 years and 0 months ("**Original Term**") commencing November 1,2014 ("**Commencement Date**") and ending October 31, 2019 ("**Expiration Date**"). (See also Paragraph 3)

1.4 **Early Possession**: If the Premises are available Lessee may have non-exclusive possession of the Premises commencing N/A ("**Early Possession Date**"). (See also Paragraphs 3.2 and 3.3)

1.5 **Base Rent**: $1,274.70 per month ("**Base Rent**)", payable on the First day of each month commencing November 1, 2014. (See also Paragraph 4 *below*)

☑ If this box is checked, there are provisions in this Lease for the Base Rent to be adjusted. See Paragraph 4.4 *(See Addendum Paragraph 1)*

1.6 **Lessee's Share of Operating Expense Increase**: 1.17 percent (1.17%) ("**Lessee's Share**"). In the event that that size of the Premises and/or the Project are modified during the term of this Lease, Lessor shall recalculate Lessee's Share to reflect such modification.

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

(a) **Base Rent**: $1,274.70 for the period November 1-30, 2014.

(b) **Security Deposit**: $1,604.56 on file ("**Security Deposit**"). (See also Paragraph 5)

(c) **Parking**: $N/A for the period N/A.

(d) **Other**: $N/A for N/A.

(e) **Total Due Upon Execution of this Lease**: $1,274.70.

1.8 **Agreed Use**: Mortage Broker. (See also Paragraph 6)

1.9 **Base Year; Insuring Party**. The Base Year is 2010. Lessor is the "**Insuring Party**". (See also Paragraphs 4.2 and 8)

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

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

☑ Essex Realty Management Inc. represents Lessor exclusively ("**Lessor's Broker**");

☐ N/A represents Lessee exclusively ("**Lessee's Broker**"); or

☐ N/A represents both Lessor and Lessee ("**Dual Agency**").

(b) **Payment to Brokers**: Upon execution and delivery of this Lease by both Parties, Lessor shall pay to the Brokers for the brokerage services rendered by the Brokers the fee agreed to ~~in the attached~~ *under a* separate written agreement. ~~or if no such agreement is attached, the sum of ______ or ______% of the total Base Rent payable for the Original Term, the sum of ______ or ______ of the total Base Rent payable during any period of time that the Lessee occupies the Premises subsequent to the Original Term, and/or the sum of ______ or ______% of the purchase price in the event that the Lessee or anyone affiliated with Lessee acquires from Lessor any rights to the Premises.~~

1.11 **Guarantor**. The obligations of the Lessee under this Lease shall be guaranteed by Carolyn Behrens ,Personally ("**Guarantor**"). (See also Paragraph 37)

1.12 **Business Hours for the Building:** 7:00 a.m. to 6:00 p.m., Mondays through Fridays (except Building Holidays) and 8:00 a.m. to 2:00 p.m. on Saturdays (except Building Holidays). "**Building Holidays**" shall mean the dates of observation of New

Year's Day, President's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day, and N/A .

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

☐ Janitorial services

☐ Electricity

☐ Other (specify): N/A

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

☑ an Addendum consisting of Paragraphs 1 through 6;

☑ a plot plan depicting the Premises; Exhibit "A"

☑ a current set of the Rules and Regulations; Exhibit "B"

☑ a Work Letter; / Requirements for improvements or alterations by Lessee (Exhibit "D")

☐ a janitorial schedule;

☑ other (specify): Exhibit "C" Waiver and Release, Guaranty of Lease

2. **Premises**.

2.1 **Letting**. Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Premises, for the term, at the rental, and upon all of the terms, covenants and conditions set forth in this Lease. While the approximate square footage of the Premises may have been used in the marketing of the Premises for purposes of comparison, the Base Rent stated herein is NOT tied to square footage and is not subject to adjustment should the actual size be determined to be different. **Note: Lessee is advised to verify the actual size prior to executing this Lease.**

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

2.3 **Compliance**. Lessor warrants to the best of its knowledge that the improvements comprising the Premises and the Common Areas comply with the building codes that were in effect at the time that each such improvement, or portion thereof, was constructed, and also with all applicable laws, covenants or restrictions of record, regulations, and ordinances ("**Applicable Requirements**") in effect on the Start Date. Said warranty does not apply to the use to which Lessee will put the Premises, modifications which may be required by the Americans with Disabilities Act or any similar laws as a result of Lessee's use (see Paragraph 49), or to any Alterations or Utility Installations (as defined in Paragraph 7.3(a)) made or to be made by Lessee. **NOTE: Lessee is responsible for determining whether or not the zoning and other Applicable Requirements are appropriate for Lessee's intended use, and acknowledges that past uses of the Premises may no longer be allowed.** If the Premises do not comply with said warranty, Lessor shall, except as otherwise provided, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, rectify the same. If the Applicable Requirements are hereafter changed so as to require during the term of this Lease the construction of an addition to or an alteration of the Premises, the remediation of any Hazardous Substance, or the reinforcement or other physical modification of the Premises ("**Capital Expenditure**"), Lessor and Lessee shall allocate the cost of such work as follows:

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

(b) If such Capital Expenditure is not the result of the specific and unique use of the Premises by Lessee (such as, governmentally mandated seismic modifications), then Lessor shall pay for such Capital Expenditure and Lessee shall only be obligated to pay, each month during the remainder of the term of this Lease or any extension thereof, on the date that on which the Base Rent is due, an amount equal to 1/144th of the portion of such costs reasonably attributable to the Premises. Lessee shall pay Interest on the balance but may prepay its obligation at any time. If, however, such Capital Expenditure is required during the last 2 years of this Lease or if Lessor reasonably determines that it is not economically feasible to pay its share thereof, Lessor shall have the option to terminate this Lease upon 90 days prior written notice to Lessee unless Lessee notifies Lessor, in writing, within 10 days after receipt of Lessor's termination notice that Lessee will pay for such Capital Expenditure. If Lessor does not elect to terminate, and fails to tender its share of any such Capital Expenditure, Lessee may advance such funds and deduct same, with Interest, from Rent until Lessor's share of such costs have been fully paid. If Lessee is unable to finance Lessor's share, or if the balance of the Rent due and payable for the remainder of this Lease is not sufficient to fully reimburse Lessee on an offset basis, Lessee shall have the right to terminate this Lease upon 30 days written notice to Lessor.

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

2.4 **Acknowledgements**. Lessee acknowledges that: (a) it has been given an opportunity to inspect and measure the Premises, (b) Lessee has been advised by Lessor and/or Brokers to satisfy itself with respect to the size and condition of the Premises (including but not limited to the electrical, HVAC and fire sprinkler systems, security, environmental aspects, and compliance with Applicable Requirements), and their suitability for Lessee's intended use, (c) Lessee has made such investigation as it deems necessary with reference to such matters and assumes all responsibility therefor as the same relate to its occupancy of the Premises, (d) it is not relying on any representation as to the size of the Premises made by Brokers or Lessor, (e) the square footage of the Premises was not material to Lessee's decision to lease the Premises and pay the Rent stated herein, and (f) neither Lessor, Lessor's agents, nor Brokers have made any oral or written representations or warranties with respect to said matters other than as set forth in this Lease. In addition, Lessor acknowledges that: (i) Brokers have made no representations, promises or warranties concerning Lessee's ability to honor the Lease or suitability to occupy the Premises, and (ii) it is Lessor's sole responsibility to investigate the financial capability and/or suitability of all proposed tenants.

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

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

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

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

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

2.8 **Common Areas - Lessee's Rights**. Lessor grants to Lessee, for the benefit of Lessee and its employees, suppliers, shippers, contractors, customers and invitees, during the term of this Lease, the nonexclusive right to use, in common with others entitled to such use, the

Common Areas as they exist from time to time, subject to any rights, powers, and privileges reserved by Lessor under the terms hereof or under the terms of any rules and regulations or restrictions governing the use of the Project. Under no circumstances shall the right herein granted to use the Common Areas be deemed to include the right to store any property, temporarily or permanently, in the Common Areas. Any such storage shall be permitted only by the prior written consent of Lessor or Lessor's designated agent, which consent may be revoked at any time. In the event that any unauthorized storage shall occur then Lessor shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove the property and charge the cost to Lessee, which cost shall be immediately payable upon demand by Lessor.

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

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

(a) To make changes to the Common Areas, including, without limitation, changes in the location, size, shape and number of the lobbies, windows, stairways, air shafts, elevators, escalators, restrooms, driveways, entrances, parking spaces, parking areas, loading and unloading areas, ingress, egress, direction of traffic, landscaped areas, walkways and utility raceways;

(b) To close temporarily any of the Common Areas for maintenance purposes so long as reasonable access to the Premises remains available;

(c) To designate other land outside the boundaries of the Project to be a part of the Common Areas;

(d) To add additional buildings and improvements to the Common Areas;

(e) To use the Common Areas while engaged in making additional improvements, repairs or alterations to the Project, or any portion thereof; and

(f) To do and perform such other acts and make such other changes in, to or with respect to the Common Areas and Project as Lessor may, in the exercise of sound business judgment, deem to be appropriate.

3. **Term**.

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

3.2 **Early Possession**. Any provision herein granting Lessee Early Possession of the Premises is subject to and conditioned upon the Premises being available for such possession prior to the Commencement Date. Any grant of Early Possession only conveys a non-exclusive right to occupy the Premises. If Lessee totally or partially occupies the Premises prior to the Commencement Date, the obligation to pay Base Rent shall be abated for the period of such Early Possession. All other terms of this Lease (including but not limited to the obligations to pay Lessee's Share of the Operating Expense Increase) shall be in effect during such period. Any such Early Possession shall not affect the Expiration Date.

3.3 **Delay In Possession**. Lessor agrees to use its best commercially reasonable efforts to deliver possession of the Premises to Lessee by the Commencement Date. If, despite said efforts, Lessor is unable to deliver possession by such date, Lessor shall not be subject to any liability therefor, nor shall such failure affect the validity of this Lease or change the Expiration Date. Lessee shall not, however, be obligated to pay Rent or perform its other obligations until Lessor delivers possession of the Premises and any period of rent abatement that Lessee would otherwise have enjoyed shall run from the date of delivery of possession and continue for a period equal to what Lessee would otherwise have enjoyed under the terms hereof, but minus any days of delay caused by the acts or omissions of Lessee. If possession is not delivered within 60 days after the Commencement Date, as the same may be extended under the terms of any Work Letter executed by Parties, Lessee may, at its option, by notice in writing within 10 days after the end of such 60 day period, cancel this Lease, in which event the Parties shall be discharged from all obligations hereunder. If such written notice is not received by Lessor within said 10 day period, Lessee's right to cancel shall terminate. If possession of the Premises is not delivered within 120 days after the Commencement Date, this Lease shall terminate unless other agreements are reached between Lessor and Lessee, in writing.

3.4 **Lessee Compliance**. Lessor shall not be required to deliver possession of the Premises to Lessee until Lessee complies with its obligation to provide evidence of insurance (~~Paragraph 8.5)~~ Paragraph 8.2 & 8.3 of this Lease (See Addendum Paragraph 3). Pending delivery of such evidence, Lessee shall be required to perform all of its obligations under this Lease from and after the Start Date, including the payment of Rent, notwithstanding Lessor's election to withhold possession pending receipt of such evidence of insurance. Further, if Lessee is required to perform any other conditions prior to or concurrent with the Start Date, the Start Date shall occur but Lessor may elect to withhold possession until such conditions are satisfied.

4. **Rent**.

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

4.2 **Operating Expense Increase.** Lessee shall pay to Lessor during the term hereof, in addition to the Base Rent, Lessee's Share of the amount by which all Operating Expenses for each Comparison Year exceeds the amount of all Operating Expenses for the Base Year, such excess being hereinafter referred to as the **"Operating Expense Increase"**, in accordance with the following provisions:

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

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

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

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

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

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

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

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

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

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

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

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

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

(viii) The cost of any capital improvement to the Building or the Project not covered under the provisions of Paragraph 2.3 provided; however, that Lessor shall allocate the cost of any such capital improvement over a 12 year period and Lessee shall not be required to pay more than Lessee's Share of 1/144th of the cost of such Capital Expenditure in any given month;

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

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

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

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

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

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

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

4.3 **Payment**. Lessee shall cause payment of Rent to be received by Lessor in lawful money of the United States on or before the day on which it is due, without offset or deduction (except as specifically permitted in this Lease). All monetary amounts shall be rounded to the nearest whole dollar. In the event that any invoice prepared by Lessor is inaccurate such inaccuracy shall not constitute a waiver and Lessee shall be obligated to pay the amount set forth in this Lease. Rent for any period during the term hereof which is for less than one full calendar month shall be prorated based upon the actual number of days of said month. Payment of Rent shall be made to Lessor at its address stated herein or to such other persons or place as Lessor may from time to time designate in writing. Acceptance of a payment which is less than the amount then due shall not be a waiver of Lessor's rights to the balance of such Rent, regardless of Lessor's endorsement of any check so stating. In the event that any check, draft, or other instrument of payment given by Lessee to Lessor is dishonored for any reason, Lessee agrees to pay to Lessor the sum of ~~$25~~ 75 in addition to any Late Charge and Lessor, at its option, may require all future Rent be paid by cashier's check. Payments will be applied first to accrued late charges and attorney's fees, second to accrued interest, then to Base Rent and Common Area Operating Expenses, and any remaining amount to any other outstanding charges or costs.

5. **Security Deposit**. Lessee shall deposit with Lessor upon execution hereof the Security Deposit as security for Lessee's faithful performance of its obligations under this Lease. If Lessee fails to pay Rent, or otherwise Defaults under this Lease, Lessor may use, apply or retain all or any portion of said Security Deposit for the payment of any amount already due Lessor, for Rents which will be due in the future, and/ or to reimburse or compensate Lessor for any liability, expense, loss or damage which Lessor may suffer or incur by reason thereof. If Lessor uses or applies all or any portion of the Security Deposit, Lessee shall within 10 days after written request therefor deposit monies with Lessor sufficient to restore said Security Deposit to the full amount required by this Lease. If the Base Rent increases during the term of this Lease, Lessee shall, upon written request from Lessor, deposit additional monies with Lessor so that the total amount of the Security Deposit shall at all times bear the same proportion to the increased Base Rent as the initial Security Deposit bore to the initial Base Rent. Should the Agreed Use be amended to accommodate a material change in the business of Lessee or to accommodate a sublessee or assignee, Lessor shall have the right to increase the Security Deposit to the extent necessary, in Lessor's reasonable judgment, to account for any increased wear and tear that the Premises may suffer as a result thereof. If a change in control of Lessee occurs during this Lease and following such change the financial condition of Lessee is, in Lessor's reasonable judgment, significantly reduced, Lessee shall deposit such additional monies with Lessor as shall be sufficient to cause the Security Deposit to be at a commercially reasonable level based on such change in financial condition. Lessor shall not be required to keep the Security Deposit separate from its general accounts. Within 90 days after the expiration or termination of this Lease, Lessor shall return that portion of the Security Deposit not used or applied by Lessor. No part of the Security Deposit shall be considered to be held in trust, to bear interest or to be prepayment for any monies to be paid by Lessee under this Lease.

6. **Use**. (See Addendum "Paragraph 2".)

6.1 ~~**Use**. Lessee shall use and occupy the Premises only for the Agreed Use, or any other legal use which is reasonably comparable thereto, and for no other purpose. Lessee shall not use or permit the use of the Premises in a manner that is unlawful, creates damage, waste or a nuisance, or that disturbs occupants of or causes damage to neighboring premises or properties. Other than guide, signal and seeing eye dogs, Lessee shall not keep or allow in the Premises any pets, animals, birds, fish, or reptiles. Lessor shall not unreasonably withhold or delay its consent to any written request for a modification of the Agreed Use, so long as the same will not impair the structural integrity of the improvements of the Building, will not adversely affect the mechanical, electrical, HVAC, and other systems of the Building, and/or will not affect the exterior appearance of the Building. If Lessor elects to withhold consent, Lessor shall within 7 days after such request give written notification of same, which notice shall include an explanation of Lessor's objections to the change in the Agreed Use.~~

6.2 **Hazardous Substances**.

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

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

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

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

(e) **Lessor Indemnification**. Except as otherwise provided in paragraph 8.7, Lessor and its successors and assigns shall indemnify, defend, reimburse and hold Lessee, its employees and lenders, harmless from and against any and all environmental damages, including the cost of remediation, which result from Hazardous Substances which existed on the Premises prior to Lessee's occupancy or which are caused by the gross negligence or willful misconduct of Lessor, its agents or employees. Lessor's obligations, as and when required by the Applicable Requirements, shall include, but not be limited to, the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease.

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

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

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

6.4 **Inspection; Compliance**. Lessor and Lessor's "**Lender**" (as defined in Paragraph 30) and consultants shall have the right to enter into Premises at any time, in the case of an emergency, and otherwise at reasonable times, after reasonable notice, for the purpose of inspecting the condition of the Premises and for verifying compliance by Lessee with this Lease. The cost of any such inspections shall be paid by Lessor, unless a violation of Applicable Requirements, or a Hazardous Substance Condition (see paragraph 9.1e) is found to exist or be imminent, or the inspection is requested or ordered by a governmental authority. In such case, Lessee shall upon request reimburse Lessor for the cost of such inspection, so long as such inspection is reasonably related to the violation or contamination. In addition, Lessee shall provide copies of all relevant material safety data sheets (**MSDS**) to Lessor within 10 days of the receipt of written request therefor.

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

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

7.2 **Lessor's Obligations**. Subject to the provisions of Paragraphs 2.2 (Condition), 2.3 (Compliance), 4.2 (Operating Expenses), 6 (Use), 7.1 (Lessee's Obligations), 9 (Damage or Destruction) and 14 (Condemnation), Lessor, subject to reimbursement pursuant to Paragraph 4.2, shall keep in good order, condition and repair the foundations, exterior walls, structural condition of interior bearing walls, exterior roof, fire sprinkler system, fire alarm and/or smoke detection systems, fire hydrants, and the Common Areas. Lessee expressly waives the benefit of any statute now or hereafter in effect to the extent it is inconsistent with the terms of this Lease.

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

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

(b) **Consent**. Lessee shall not make any Alterations or Utility Installations to the Premises without Lessor's prior written consent. Lessee may, however, make non-structural Alterations or Utility Installations to the interior of the Premises (excluding the roof) without such consent but upon notice to Lessor, as long as they are not visible from the outside, do not involve puncturing, relocating or removing the roof, ceilings, floors or any existing walls, will not affect the electrical, plumbing, HVAC, and/or life safety systems, and the cumulative cost thereof during this Lease as extended does not exceed $2,000. Notwithstanding the foregoing, Lessee shall not make or permit any roof penetrations and/or install anything on the roof without the prior written approval of Lessor. Lessor may, as a precondition to granting such approval, require Lessee to utilize a contractor chosen and/or approved by Lessor. Any Alterations or Utility Installations that Lessee shall desire to make and which require the consent of the Lessor shall be presented to Lessor in written form with detailed plans. Consent shall be deemed conditioned upon Lessee's: (i) acquiring all applicable governmental permits, (ii) furnishing Lessor with copies of both the permits and the plans and specifications prior to commencement of the work, and (iii) compliance with all conditions of said permits and other Applicable Requirements in a prompt and expeditious manner. Any Alterations or Utility Installations shall be performed in a workmanlike manner with good and sufficient materials. Lessee shall promptly upon completion furnish Lessor with asbuilt plans and specifications. For work which costs an amount in excess of one month's Base Rent, Lessor may condition its consent upon Lessee providing a lien and completion bond in an amount equal to 150% of the estimated cost of such Alteration or Utility Installation and/or upon Lessee's posting an additional Security Deposit with Lessor. In addition to. and without limitng the other requirements of this Paragraph 7.3 all utilities, installations, and alterations made by Lessee shall also be subject to the provisions of Exhibit "D" attached to this Lease.

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

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

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

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

(c) **Surrender; Restoration**. Lessee shall surrender the Premises by the Expiration Date or any earlier termination date, with all of the improvements, parts and surfaces thereof clean and free of debris, and in good operating order, condition and state of repair, ordinary wear and tear excepted. "Ordinary wear and tear" shall not include any damage or deterioration that would have been prevented by good maintenance practice. Notwithstanding the foregoing, if this Lease is for 12 months or less, then Lessee shall surrender the Premises in the same condition as delivered to Lessee on the Start Date with NO allowance for ordinary wear and tear. Lessee shall repair any damage occasioned by the installation, maintenance or removal of Trade Fixtures, Lessee owned Alterations and/or Utility Installations, furnishings, and equipment as well as the removal of any storage tank installed by or for Lessee. Lessee shall also completely remove from the Premises any and all Hazardous Substances brought onto the Premises by or for Lessee, or any third party (except Hazardous Substances which were deposited via underground migration from areas outside of the Premises) even if such removal would require Lessee to perform or pay for work that exceeds statutory requirements. Trade Fixtures shall remain the property of Lessee and shall be removed by Lessee. Any personal property of Lessee not removed on or before the Expiration Date or any earlier termination date shall be deemed to have been abandoned by Lessee and may be disposed of or retained by Lessor as Lessor may desire. The failure by Lessee to timely vacate the Premises pursuant to this Paragraph 7.4(c) without the express written consent of Lessor shall constitute a holdover under the provisions of Paragraph 26 below.

8. (See Addendum Paragraph 3.) **Insurance; Indemnity**.

~~8.1 **Insurance Premiums**. The cost of the premiums for the insurance policies maintained by Lessor pursuant to paragraph 8 are included as Operating Expenses (see paragraph 4.2 (c)(iv)). Said costs shall include increases in the premiums resulting from additional coverage related to requirements of the holder of a mortgage or deed of trust covering the Premises, Building and/or Project, increased valuation of the Premises, Building and/or Project, and/or a general premium rate increase. Said costs shall not, however, include any premium increases resulting from the nature of the occupancy of any other tenant of the Building. If the Project was not insured for the entirety of the Base Year, then the base premium shall be the lowest annual premium reasonably obtainable for the required insurance as of the Start Date, assuming the most nominal use possible of the Building and/or Project. In no event, however, shall Lessee be responsible for any portion of the premium cost attributable to liability insurance coverage in excess of $2,000,000 procured under Paragraph 8.2(b).~~

~~8.2 **Liability Insurance**.~~

~~(a) **Carried by Lessee**. Lessee shall obtain and keep in force a Commercial General Liability policy of insurance protecting Lessee and Lessor as an additional insured against claims for bodily injury, personal injury and property damage based upon or arising out of the ownership, use, occupancy or maintenance of the Premises and all areas appurtenant thereto. Such insurance shall be on an occurrence basis providing single limit coverage in an amount not less than $1,000,000 per occurrence with an annual aggregate of not less than $2,000,000. Lessee shall add Lessor as an additional insured by means of an endorsement at least as broad as the Insurance Service Organization's "Additional Insured-Managers or Lessors of Premises" Endorsement and coverage shall also be extended to include damage caused by heat, smoke or fumes from a hostile fire. The policy shall not contain any intra-insured exclusions as between insured persons or organizations, but shall include coverage for liability assumed under this Lease as an "**insured contract**" for the performance of Lessee's indemnity obligations under this Lease. The limits of said insurance shall not, however, limit the liability of Lessee nor relieve Lessee of any obligation hereunder. Lessee shall provide an endorsement on its liability policy(ies) which provides that its insurance shall be primary to and not contributory with any similar insurance carried by Lessor, whose insurance shall be considered excess insurance only.~~

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

~~8.3 **Property Insurance - Building, Improvements and Rental Value**.~~

~~(a) **Building and Improvements**. Lessor shall obtain and keep in force a policy or policies of insurance in the name of Lessor, with loss payable to Lessor, any ground-lessor, and to any Lender insuring loss or damage to the Building and/or Project. The amount of such insurance shall be equal to the full insurable replacement cost of the Building and/or Project, as the same shall exist from time to time, or the amount required by any Lender, but in no event more than the commercially reasonable and available insurable value thereof. Lessee Owned Alterations and Utility Installations, Trade Fixtures, and Lessee's personal property shall be insured by Lessee not by Lessor. If the coverage is available and commercially appropriate, such policy or policies shall insure against all risks of direct physical loss or damage (except the perils of flood and/or earthquake unless required by a Lender), including coverage for debris removal and the enforcement of any Applicable Requirements requiring the upgrading, demolition, reconstruction or replacement of any portion of the Premises as the result of a covered loss. Said policy or policies shall also contain an agreed valuation provision in lieu of any coinsurance clause, waiver of subrogation, and inflation guard protection causing an increase in the annual property insurance coverage amount by a factor of not less than the adjusted U.S. Department of Labor Consumer Price Index for All Urban Consumers for the city nearest to where the Premises are located. If such insurance coverage has a deductible clause, the deductible amount shall not exceed $5,000 per occurrence.~~

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

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

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

~~8.4 **Lessee's Property; Business Interruption Insurance; Worker's Compensation Insurance.**~~

~~(a) **Property Damage**. Lessee shall obtain and maintain insurance coverage on all of Lessee's personal property, Trade Fixtures, and Lessee Owned Alterations and Utility Installations. Such insurance shall be full replacement cost coverage with a deductible of not to exceed $1,000 per occurrence. The proceeds from any such insurance shall be used by Lessee for the replacement of personal property, Trade Fixtures and Lessee Owned Alterations and Utility Installations.~~

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

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

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

~~8.5 **Insurance Policies**. Insurance required herein shall be by companies maintaining during the policy term a "General Policyholders Rating" of at least A-, VII, as set forth in the most current issue of "Best's Insurance Guide", or such other rating as may be required by a Lender. Lessee shall not do or permit to be done anything which invalidates the required insurance policies. Lessee shall, prior to the Start Date, deliver to Lessor certified copies of policies of such insurance or certificates with copies of the required endorsements evidencing the existence and amounts of the required insurance. No such policy shall be cancelable or subject to modification except after 10 days prior written notice to Lessor. Lessee shall, at least 30 days prior to the expiration of such policies, furnish Lessor with evidence of renewals or "insurance binders" evidencing renewal thereof, or Lessor may order such insurance and charge the cost thereof to Lessee, which amount shall be payable by Lessee to Lessor upon demand. Such policies shall be for a term of at least one year, or the length of the remaining term of this Lease, whichever is less. If either Party shall fail to procure and maintain the insurance required to be carried by it, the other Party may, but shall not be required to, procure and maintain the same.~~

~~8.6 **Waiver of Subrogation**. Without affecting any other rights or remedies, Lessee and Lessor each hereby release and relieve the other, and waive their entire right to recover damages against the other, for loss of or damage to its property arising out of or incident to the perils required to be insured against herein. The effect of such releases and waivers is not limited by the amount of insurance carried or required, or by any deductibles applicable hereto. The Parties agree to have their respective property damage insurance carriers waive any right to subrogation that such companies may have against Lessor or Lessee, as the case may be, so long as the insurance is not invalidated thereby.~~

8.7 **Indemnity**. Except for Lessor's gross negligence or willful misconduct, Lessee shall indemnify, protect, defend and hold harmless the Premises, Lessor and its agents, Lessor's master or ground lessor, partners and Lenders, from and against any and all claims, loss of rents and/or damages, liens, judgments, penalties, attorneys' and consultants' fees, expenses and/or liabilities arising out of, involving, or in connection with, the use and/or occupancy of the Premises by Lessee. If any action or proceeding is brought against Lessor by reason of any of the foregoing matters, Lessee shall upon notice defend the same at Lessee's expense by counsel reasonably satisfactory to Lessor and Lessor shall cooperate with Lessee in such defense. Lessor need not have first paid any such claim in order to be defended or indemnified.

8.8 **Exemption of Lessor and its Agents from Liability**. Notwithstanding the negligence or breach of this Lease by Lessor or its agents, neither Lessor nor its agents shall be liable under any circumstances for: (i) injury or damage to the person or goods, wares, merchandise or other property of Lessee, Lessee's employees, contractors, invitees, customers, or any other person in or about the Premises, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, indoor air quality, the presence of mold or from the breakage, leakage, obstruction or other defects of pipes, fire sprinklers, wires, appliances, plumbing, HVAC or lighting fixtures, or from any other cause, whether the said injury or damage results from conditions arising upon the Premises or upon other portions of the Building, or from other sources or places, (ii) any damages arising from any act or neglect of any other tenant of Lessor or from the failure of Lessor or its agents to enforce the provisions of any other lease in the Project, or (iii) injury to Lessee's business or for any loss of income or profit therefrom. Instead, it is intended that Lessee's sole recourse in the event of such damages or injury be to file a claim on the insurance policy(ies) that Lessee is required to maintain pursuant to the provisions of paragraph 8.

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

9. **Damage or Destruction**.

9.1 **Definitions**.

(a) "**Premises Partial Damage**" shall mean damage or destruction to the improvements on the Premises, other than Lessee Owned Alterations and Utility Installations, which can reasonably be repaired in 3 months or less from the date of the damage or destruction, and the cost thereof does not exceed a sum equal to 6 month's Base Rent. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

(b) "**Premises Total Destruction**" shall mean damage or destruction to the improvements on the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which cannot reasonably be repaired in 3 months or less from the date of the damage or destruction and/or the cost thereof exceeds a sum equal to 6 month's Base Rent. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

(c) "**Insured Loss**" shall mean damage or destruction to improvements on the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which was caused by an event required to be covered by the insurance described in Paragraphs 8.1 &8.2 of this Lease (See Addendum Paragraph 3) ~~Paragraph 8.3(a)~~, irrespective of any deductible amounts or coverage limits involved.

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

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

9.2 **Partial Damage - Insured Loss**. If a Premises Partial Damage that is an Insured Loss occurs, then Lessor shall, at Lessor's expense, repair such damage (but not Lessee's Trade Fixtures or Lessee Owned Alterations and Utility Installations) as soon as reasonably possible and this Lease shall continue in full force and effect; provided, however, that Lessee shall, at Lessor's election, make the repair of any damage or destruction the total cost to repair of which is $5,000 or less, and, in such event, Lessor shall make any applicable insurance proceeds available to Lessee on a reasonable basis for that purpose. Notwithstanding the foregoing, if the required insurance was not in force or the insurance proceeds are not sufficient to effect such repair, the Insuring Party shall promptly contribute the shortage in proceeds as and when required to complete said repairs. In the event, however, such shortage was due to the fact that, by reason of the unique nature of the improvements, full replacement cost insurance coverage was not commercially reasonable and available, Lessor shall have no obligation to pay for the shortage in insurance proceeds or to fully restore the unique aspects of the Premises unless Lessee provides Lessor with the funds to cover same, or adequate assurance thereof, within 10 days following receipt of written notice of such shortage and request therefor. If Lessor receives said funds or adequate assurance thereof within said 10 day period, the party responsible for making the repairs shall complete them as soon as reasonably possible and this Lease shall remain in full force and effect. If such funds or assurance are not received, Lessor may nevertheless elect by written notice to Lessee within 10 days thereafter to: (i) make such restoration and repair as is commercially reasonable with Lessor paying any shortage in proceeds, in which case this Lease shall remain in full force and effect, or (ii) have this Lease terminate 30 days thereafter. Lessee shall not be entitled to reimbursement of any funds contributed by Lessee to repair any such damage or destruction. Premises Partial Damage due to flood or earthquake shall be subject to Paragraph 9.3, notwithstanding that there may be some insurance coverage, but the net proceeds of any such insurance shall be made available for the repairs if made by either Party.

9.3 **Partial Damage - Uninsured Loss**. If a Premises Partial Damage that is not an Insured Loss occurs, unless caused by a negligent or willful act of Lessee (in which event Lessee shall make the repairs at Lessee's expense), Lessor may either: (i) repair such damage as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) terminate this Lease by giving written notice to Lessee within 30 days after receipt by Lessor of knowledge of the occurrence of such damage. Such termination shall be effective 60 days following the date of such notice. In the event Lessor elects to terminate this Lease, Lessee shall have the right within 10 days after receipt of the termination notice to give written notice to Lessor of Lessee's commitment to pay for the repair of such damage without reimbursement from Lessor. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within 30 days after making such commitment. In such event this Lease shall continue in full force and effect, and Lessor shall proceed to make such repairs as soon as reasonably possible after the required funds are available. If Lessee does not make the required commitment, this Lease shall terminate as of the date specified in the termination notice.

9.4 **Total Destruction**. Notwithstanding any other provision hereof, if a Premises Total Destruction occurs, this Lease shall terminate 60 days following such Destruction. If the damage or destruction was caused by the gross negligence or willful misconduct of Lessee, Lessor shall have the right to recover Lessor's damages from Lessee, except as provided in Paragraph 8.3 (e) of this Lease (see Addendum Paragraph 3) ~~Paragraph 8.6~~.

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

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

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

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

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

10. **Real Property Taxes**.

10.1 **Definitions**. As used herein, the term "**Real Property Taxes**" shall include any form of assessment; real estate, general, special, ordinary or extraordinary, or rental levy or tax (other than inheritance, personal income or estate taxes); improvement bond; and/or license fee imposed upon or levied against any legal or equitable interest of Lessor in the Project, Lessor's right to other income therefrom, and/or Lessor's business of leasing, by any authority having the direct or indirect power to tax and where the funds are generated with reference to the Project address and where the proceeds so generated are to be applied by the city, county or other local taxing authority of a jurisdiction within which the Project is located. **"Real**

Property Taxes" shall also include any tax, fee, levy, assessment or charge, or any increase therein: (i) imposed by reason of events occurring during the term of this Lease, including but not limited to, a change in the ownership of the Project, (ii) a change in the improvements thereon, and/or (iii) levied or assessed on machinery or equipment provided by Lessor to Lessee pursuant to this Lease.

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

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

10.4 **Joint Assessment**. If the Building is not separately assessed, Real Property Taxes allocated to the Building shall be an equitable proportion of the Real Property Taxes for all of the land and improvements included within the tax parcel assessed, such proportion to be determined by Lessor from the respective valuations assigned in the assessor's work sheets or such other information as may be reasonably available. Lessor's reasonable determination thereof, in good faith, shall be conclusive.

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

11. **Utilities and Services**.

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

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

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

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

11.5 **Interruptions.** There shall be no abatement of rent and Lessor shall not be liable in any respect whatsoever for the inadequacy, stoppage, interruption or discontinuance of any utility or service due to riot, strike, labor dispute, breakdown, accident, repair or other cause beyond Lessor's reasonable control or in cooperation with governmental request or directions.

12. **Assignment and Subletting**.

12.1 **Lessor's Consent Required**.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Lessee hereby assigns and transfers to Lessor all of Lessee's interest in all Rent payable on any sublease, and Lessor may collect such Rent and apply same toward Lessee's obligations under this Lease; provided, however, that until a Breach shall occur in the performance of Lessee's obligations, Lessee may collect said Rent. In the event that the amount collected by Lessor exceeds Lessee's then outstanding obligations any such excess shall be refunded to Lessee. Lessor shall not, by reason of the foregoing or any assignment of such sublease, nor by reason of the collection of Rent, be deemed liable to the sublessee for any failure of Lessee to perform and comply with any of Lessee's obligations to such sublessee. Lessee hereby irrevocably authorizes and directs any such sublessee, upon receipt of a written notice from Lessor stating that a Breach exists in the performance of Lessee's obligations under this Lease, to pay to Lessor all Rent due and to become due under the sublease. Sublessee shall rely upon any such notice from Lessor and shall pay all Rents to Lessor without any obligation or right to inquire as to whether such Breach exists, notwithstanding any claim from Lessee to the contrary.

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

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

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

(e) Lessor shall deliver a copy of any notice of Default or Breach by Lessee to the sublessee, who shall have the right to cure the Default of Lessee within the grace period, if any, specified in such notice. The sublessee shall have a right of reimbursement and offset from and against Lessee for any such Defaults cured by the sublessee.

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

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

(a) The abandonment of the Premises; or the vacating of the Premises without providing a commercially reasonable level of security, or where the coverage of the property insurance described in Paragraphs 8.1 & 8.2 of this Lease (See Addendum Paragraph 3) ~~Paragraph 8.3~~ is jeopardized as a result thereof, or without providing reasonable assurances to minimize potential vandalism.

(b) The failure of Lessee to make any payment of Rent or any Security Deposit required to be made by Lessee hereunder, whether to Lessor or to a third party, when due, to provide reasonable evidence of insurance or surety bond, or to fulfill any obligation under this Lease which endangers or threatens life or property, where such failure continues for a period of 3 business days following written notice to Lessee. THE ACCEPTANCE BY LESSOR OF A PARTIAL PAYMENT OF RENT OR SECURITY DEPOSIT SHALL NOT CONSTITUTE A WAIVER OF ANY OF LESSOR'S RIGHTS, INCLUDING LESSOR'S RIGHT TO RECOVER POSSESSION OF THE PREMISES.

(c) The failure of Lessee to allow Lessor and/or its agents access to the Premises or the commission of waste, act or acts constituting public or private nuisance, and/or an illegal activity on the Premises by Lessee, where such actions continue for a period of 3 business days following written notice to Lessee.

(d) The failure by Lessee to provide (i) reasonable written evidence of compliance with Applicable Requirements, (ii) the service contracts, (iii) the rescission of an unauthorized assignment or subletting, (iv) an Estoppel Certificate or financial statements, (v) a requested subordination, (vi) evidence concerning any guaranty and/or Guarantor, (vii) any document requested under Paragraph 41, (viii) material data safety sheets (MSDS), or (ix) any other documentation or information which Lessor may reasonably require of Lessee under the terms of this Lease, where any such failure continues for a period of 10 days following written notice to Lessee.

(e) A Default by Lessee as to the terms, covenants, conditions or provisions of this Lease, or of the rules adopted under Paragraph 2.9 hereof, other than those described in subparagraphs 13.1(a), (b) or (c), above, where such Default continues for a period of 30 days after written notice; provided, however, that if the nature of Lessee's Default is such that more than 30 days are reasonably required for its cure, then it shall not be deemed to be a Breach if Lessee commences such cure within said 30 day period and thereafter diligently prosecutes such cure to completion.

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

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

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

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

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

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

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

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

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

13.5 **Interest**. Any monetary payment due Lessor hereunder, other than late charges, not received by Lessor, when due shall bear interest from the 31st day after it was due. The interest ("**Interest**") charged shall be computed at the rate of 10% per annum but shall not exceed the maximum rate allowed by law. Interest is payable in addition to the potential late charge provided for in Paragraph 13.4.

13.6 **Breach by Lessor**. (see Addendum)

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

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

14. **Condemnation**. If the Premises or any portion thereof are taken under the power of eminent domain or sold under the threat of the exercise of said power (collectively "**Condemnation**"), this Lease shall terminate as to the part taken as of the date the condemning authority takes title or possession, whichever first occurs. If more than 10% of the rentable floor area of the Premises, or more than 25% of Lessee's Reserved Parking Spaces, if any, are taken by Condemnation, Lessee may, at Lessee's option, to be exercised in writing within 10 days after Lessor shall have given Lessee written notice of such taking (or in the absence of such notice, within 10 days after the condemning authority shall have taken possession) terminate this Lease as of the date the condemning authority takes such possession. If Lessee does not terminate this Lease in accordance with the foregoing, this Lease shall remain in full force and effect as to the portion of the Premises remaining, except that the Base Rent shall be reduced in proportion to the reduction in utility of the Premises caused by such Condemnation. Condemnation awards and/or payments shall be the property of Lessor, whether such award shall be made as compensation for diminution in value of the leasehold, the value of the part taken, or for severance damages; provided, however, that Lessee shall be entitled to any compensation paid by the condemnor for Lessee's relocation expenses, loss of business goodwill and/or Trade Fixtures, without regard to whether or not this Lease is terminated pursuant to the provisions of this Paragraph. All Alterations and Utility Installations made to the Premises by Lessee, for purposes of Condemnation only, shall be considered the property of the Lessee and Lessee shall be entitled to any and all compensation which is payable therefor. In the event that this Lease is not terminated by reason of the Condemnation, Lessor shall repair any damage to the Premises caused by such Condemnation.

15. **Brokerage Fees**.

15.1 ~~**Additional Commission**. In addition to the payments owed pursuant to Paragraph 1.10 above, and unless Lessor and the Brokers otherwise agree in writing, Lessor agrees that: (a) if Lessee exercises any Option, (b) if Lessee or anyone affiliated with Lessee acquires from Lessor any rights to the Premises or other premises owned by Lessor and located within the Project, (c) if Lessee remains in possession of the Premises, with the consent of Lessor, after the expiration of this Lease, or (d) if Base Rent is increased, whether by agreement or operation of an escalation clause herein, then, Lessor shall pay Brokers a fee in accordance with the fee schedule of the Brokers in effect at the time the Lease was executed.~~

~~15.2 **Assumption of Obligations**. Any buyer or transferee of Lessor's interest in this Lease shall be deemed to have assumed Lessor's obligation hereunder. Brokers shall be third party beneficiaries of the provisions of Paragraphs 1.10, 15, 22 and 31. If Lessor fails to pay to Brokers any amounts due as and for brokerage fees pertaining to this Lease when due, then such amounts shall accrue Interest. In addition, if Lessor fails to pay any amounts to Lessee's Broker when due, Lessee's Broker may send written notice to Lessor and Lessee of such failure and if Lessor fails to pay such amounts within 10 days after said notice, Lessee shall pay said monies to its Broker and offset such amounts against Rent. In addition, Lessee's Broker shall be deemed to be a third party beneficiary of any commission agreement entered into by and/or between Lessor and Lessor's Broker for the limited purpose of collecting any brokerage fee owed.~~

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

16. **Estoppel Certificates**.

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

(b) If the Responding Party shall fail to execute or deliver the Estoppel Certificate within such 10 day period, the Requesting Party may execute an Estoppel Certificate stating that: (i) the Lease is in full force and effect without modification except as may be represented by the Requesting Party, (ii) there are no uncured defaults in the Requesting Party's performance, and (iii) if Lessor is the Requesting Party, not more than one month's rent has been paid in advance. Prospective purchasers and encumbrancers may rely upon the Requesting Party's Estoppel Certificate, and the Responding Party shall be estopped from denying the truth of the facts contained in said Certificate. In addition, Lessee acknowledges that any failure on its part to provide such an Estoppel Certificate will expose Lessor to risks and potentially cause Lessor to incur costs not contemplated by this Lease, the extent of which will be extremely difficult to ascertain. Accordingly, should the Lessee fail to execute and/or deliver a requested Estoppel Certificate in a timely fashion the monthly Base Rent shall be automatically increased, without any requirement for notice to Lessee, by an amount equal to 10% of the then existing Base Rent or $100, whichever is greater for remainder of the Lease. The Parties agree that such increase in Base Rent represents fair and reasonable compensation for the additional risk/costs that Lessor will incur by reason of Lessee's failure to provide the Estoppel Certificate. Such increase in Base Rent shall in no event constitute a waiver of Lessee's Default or Breach with respect to the failure to provide the Estoppel Certificate nor prevent the exercise of any of the other rights and remedies granted hereunder.

(c) If Lessor desires to finance, refinance, or sell the Premises, or any part thereof, Lessee and all Guarantors shall within 10 days after written notice from Lessor deliver to any potential lender or purchaser designated by Lessor such financial statements as may be reasonably required by such lender or purchaser, including but not limited to Lessee's financial statements for the past 3 years. All such financial statements shall be received by Lessor and such lender or purchaser in confidence and shall be used only for the purposes herein set forth.

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

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

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

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

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

22. **No Prior or Other Agreements; Broker Disclaimer**. This Lease contains all agreements between the Parties with respect to any matter mentioned herein, and no other prior or contemporaneous agreement or understanding shall be effective. Lessor and Lessee each represents and warrants to the Brokers that it has made, and is relying solely upon, its own investigation as to the nature, quality, character and financial responsibility of the other Party to this Lease and as to the use, nature, quality and character of the Premises. Brokers have no responsibility with respect thereto or with respect to any default or breach hereof by either Party.

23. **Notices**.

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

23.2 **Date of Notice**. Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, the postmark thereon. If sent by regular mail the notice shall be deemed given 72 hours after the same is addressed as required herein and mailed with postage prepaid. Notices delivered by United States Express Mail or overnight courier that guarantees next day delivery shall be deemed given 24 hours after delivery of the same to the Postal Service or courier. Notices transmitted by facsimile transmission or similar means shall be deemed delivered upon telephone confirmation of receipt (confirmation report from fax machine is sufficient), provided a copy is also delivered via delivery or mail. If notice is received on a Saturday, Sunday or legal holiday, it shall be deemed received on the next business day.

24. **Waivers**.

(a) No waiver by Lessor of the Default or Breach of any term, covenant or condition hereof by Lessee, shall be deemed a waiver of any other term, covenant or condition hereof, or of any subsequent Default or Breach by Lessee of the same or of any other term, covenant or condition hereof. Lessor's consent to, or approval of, any act shall not be deemed to render unnecessary the obtaining of Lessor's consent to, or approval of, any subsequent or similar act by Lessee, or be construed as the basis of an estoppel to enforce the provision or provisions of this Lease requiring such consent.

(b) The acceptance of Rent by Lessor shall not be a waiver of any Default or Breach by Lessee. Any payment by Lessee may be accepted by Lessor on account of moneys or damages due Lessor, notwithstanding any qualifying statements or conditions made by Lessee in connection therewith, which such statements and/or conditions shall be of no force or effect whatsoever unless specifically agreed to in writing by Lessor at or before the time of deposit of such payment.

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

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

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

(i) <u>Lessor's Agent.</u> A Lessor's agent under a listing agreement with the Lessor acts as the agent for the Lessor only. A Lessor's agent or subagent has the following affirmative obligations: <u>To the Lessor:</u> A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Lessor. <u>To the Lessee and the Lessor:</u> a. Diligent exercise of reasonable skills and care in performance of the agent's duties. b. A duty of honest and fair dealing and good faith. c. A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

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

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

(b) Brokers have no responsibility with respect to any default or breach hereof by either Party. The Parties agree that no lawsuit or other legal proceeding involving any breach of duty, error or omission relating to this Lease may be brought against Broker more than one year after the Start Date and that the liability (including court costs and attorneys' fees), of any Broker with respect to any such lawsuit and/or legal proceeding shall not exceed the fee received by such Broker pursuant to this Lease; provided, however, that the foregoing limitation on each Broker's liability shall not be applicable to any gross negligence or willful misconduct of such Broker.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35. **Termination; Merger**. Unless specifically stated otherwise in writing by Lessor, the voluntary or other surrender of this Lease by Lessee, the mutual termination or cancellation hereof, or a termination hereof by Lessor for Breach by Lessee, shall automatically terminate any sublease or lesser estate in the Premises; provided, however, that Lessor may elect to continue any one or all existing subtenancies. Lessor's failure within 10 days following any such event to elect to the contrary by written notice to the holder of any such lesser interest, shall constitute Lessor's election to have such event constitute the termination of such interest.

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

37. **Guarantor**.

37.1 **Execution**. The Guarantors, if any, shall each execute a guaranty in the form most recently published by the AIR Commercial Real Estate Association.

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

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

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

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

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

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

39.4 **Effect of Default on Options**.

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

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

(c) An Option shall terminate and be of no further force or effect, notwithstanding Lessee's due and timely exercise of the Option, if, after such exercise and prior to the commencement of the extended term or completion of the purchase, (i) Lessee fails to pay Rent for a period of 30 days after such Rent becomes due (without any necessity of Lessor to give notice thereof), or (ii) if Lessee commits a Breach of this Lease.

40. **Security Measures**. Lessee hereby acknowledges that the Rent payable to Lessor hereunder does not include the cost of guard service or other security measures, and that Lessor shall have no obligation whatsoever to provide same. Lessee assumes all responsibility for the protection of the Premises, Lessee, its agents and invitees and their property from the acts of third parties. In the event, however, that Lessor should elect to provide security services, then the cost thereof shall be an Operating Expense.

41. **Reservations**.

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

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

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

42. **Performance Under Protest**. If at any time a dispute shall arise as to any amount or sum of money to be paid by one Party to the other under the provisions hereof, the Party against whom the obligation to pay the money is asserted shall have the right to make payment "under protest" and such payment shall not be regarded as a voluntary payment and there shall survive the right on the part of said Party to institute suit for recovery of such sum. If it shall be adjudged that there was no legal obligation on the part of said Party to pay such sum or any part thereof, said Party shall be entitled to recover such sum or so much thereof as it was not legally required to pay. A Party who does not initiate suit for the recovery of sums paid "under protest" within 6 months shall be deemed to have waived its right to protest such payment.

43. **Authority; Multiple Parties; Execution**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Executed at: 24031 El Toro Road, Suite 100	Executed at:
On:	On:
By LESSOR:	**By LESSEE:**
The City of Laguna Hills	Carolyn Behrens, an individual
By:	By:
Name Printed: Bruce E. Channing	Name Printed: Carolyn Behrens
Title: City Manager	Title:
By:	By:
Name Printed: Peggy Johns	Name Printed:
Title: City Clerk	Title:
Address: 24031 El Toro Road, Suite 100	Address:
Laguna Hills, CA 92654	
Telephone:(____)	Telephone:(____)
Facsimile:(____)	Facsimile:(____)
Email:	Email:
Email:	Emai:
Federal ID No.	Federal ID No.

LESSOR'S BROKER:

Essex Realty Management, Inc.

Attn: Sandi Montez

Address: 111 Corporate Drive, Suite 110

Ladera Ranch, CA 92694

Telephone:(949) 218-3801

Facsimile:(____)

Email:

Broker/Agent DRE License #: 00965485

LESSEE'S BROKER:

Attn:

Address:

Telephone:(____)

Facsimile:(____)

Email:

Broker/Agent DRE License #:

NOTICE: These forms are often modified to meet changing requirements of law and industry needs. Always write or call to make sure you are utilizing the most current form: AIR Commercial Real Estate Association, 500 N Brand Blvd, Suite 900, Glendale, CA 91203. Telephone No. (213) 687-8777. Fax No.: (213) 687-8616.

AIR COMMERCIAL REAL ESTATE ASSOCIATION
GUARANTY OF LEASE

WHEREAS, The City of Laguna Hills a municipal corporation organized and existing under the laws of the state of California, hereinafter "Lessor", and Carolyn Behrens, hereinafter "Lessee", are about to execute a document entitled "Lease" dated August 27, 2014 concerning the premises commonly known as 24031 El Toro Road, Suite 304 wherein Lessor will lease the premises to Lessee, and

WHEREAS, Carolyn Behrens hereinafter "Guarantors" have a financial interest in Lessee, and

WHEREAS, Lessor would not execute the Lease if Guarantors did not execute and deliver to Lessor this Guaranty of Lease.

NOW THEREFORE, in consideration of the execution of said Lease by Lessor and as a material inducement to Lessor to execute said Lease, Guarantors hereby jointly, severally, unconditionally and irrevocably guarantee the prompt payment by Lessee of all rents and all other sums payable by Lessee under said Lease and the faithful and prompt performance by Lessee of each and every one of the terms, conditions and covenants of said Lease to be kept and performed by Lessee.

It is specifically agreed by Lessor and Guarantors that: (i) the terms of the foregoing Lease may be modified by agreement between Lessor and Lessee, or by a course of conduct, and (ii) said Lease may be assigned by Lessor or any assignee of Lessor without consent or notice to Guarantors and that this Guaranty shall guarantee the performance of said Lease as so modified.

This Guaranty shall not be released, modified or affected by the failure or delay on the part of Lessor to enforce any of the rights or remedies of the Lessor under said Lease.

No notice of default by Lessee under the Lease need be given by Lessor to Guarantors, it being specifically agreed that the guarantee of the undersigned is a continuing guarantee under which Lessor may proceed immediately against Lessee and/or against Guarantors following any breach or default by Lessee or for the enforcement of any rights which Lessor may have as against Lessee under the terms of the Lease or at law or in equity.

Lessor shall have the right to proceed against Guarantors following any breach or default by Lessee under the Lease without first proceeding against Lessee and without previous notice to or demand upon either Lessee or Guarantors.

Guarantors hereby waive (a) notice of acceptance of this Guaranty. (b) demand of payment, presentation and protest, (c) all right to assert or plead any statute of limitations relating to this Guaranty or the Lease, (d) any right to require the Lessor to proceed against the Lessee or any other Guarantor or any other person or entity liable to Lessor, (e) any right to require Lessor to apply to any default any security deposit or other security it may hold under the Lease, (f) any right to require Lessor to proceed under any other remedy Lessor may have before proceeding against Guarantors, (g) any right of subrogation that Guarantors may have against Lessee.

Guarantors do hereby subordinate all existing or future indebtedness of Lessee to Guarantors to the obligations owed to Lessor under the Lease and this Guaranty.

If a Guarantor is married, such Guarantor expressly agrees that recourse may be had against his or her separate property for all of the obligations hereunder.

The obligations of Lessee under the Lease to execute and deliver estoppel statements and financial statements, as therein provided, shall be deemed to also require the Guarantors to do and provide the same to Lessor. The failure of the Guarantors to provide the same to Lessor shall constitute a default under the Lease.

The term "Lessor" refers to and means the Lessor named in the Lease and also Lessor's successors and assigns. So long as Lessor's interest in the Lease, the leased premises or the rents, issues and profits therefrom, are subject to any mortgage or deed of trust or assignment for security, no acquisition by Guarantors of the Lessor's interest shall affect the continuing obligation of Guarantors under this Guaranty which shall nevertheless continue in full force and effect for the benefit of the mortgagee, beneficiary, trustee or assignee under such mortgage, deed of trust or assignment and their successors and assigns.

The term "Lessee" refers to and means the Lessee named in the Lease and also Lessee's successors and assigns.

Any recovery by Lessor from any other guarantor or insurer shall first be credited to the portion of Lessee's indebtedness to Lessor which exceeds the maximum liability of Guarantors under this Guaranty.

No provision of this Guaranty or right of the Lessor can be waived, nor can the Guarantors be released from their obligations except in writing signed by the Lessor.

Any litigation concerning this Guaranty shall be initiated in a state court of competent jurisdiction in the county in which the leased premises are located and the Guarantors consent to the jurisdiction of such court. This Guaranty shall be governed by the laws of the State in which the leased premises are located and for the purposes of any rules regarding conflicts of law the parties shall be treated as if they were all residents or domiciles of such State.

In the event any action be brought by said Lessor against Guarantors hereunder to enforce the obligation of Guarantors hereunder, the unsuccessful party in such action shall pay to the prevailing party therein a reasonable attorney's fee. The attorney's fee award shall not be computed in accordance with any court fee schedule, but shall be such as to full reimburse all attorney's fees reasonably incurred.

If any Guarantor is a corporation, partnership, or limited liability company, each individual executing this Guaranty on said entity's behalf represents and warrants that he or she is duly authorized to execute this Guaranty on behalf of such entity.

If this Form has been filled in, it has been prepared for submission to your attorney for his approval. No representation or recommendation is made by the AIR Commercial Real Estate Association, the real estate broker or its agents or employees as to the legal sufficiency, legal effect, or tax consequences of this Form or the transaction relating thereto.

Executed at: ______________________ Carolyn Behrens
On: ______________________ ______________________
Address: ______________________ ______________________
______________________ "GUARANTORS"

ADDENDUM TO LEASE

THIS ADDENDUM TO LEASE (this "Addendum") shall constitute part of that certain STANDARD MULTI-TENANT OFFICE LEASE – GROSS ("Lease"), dated as of August 27, 2014, between The City of Laguna Hills ("Lessor"), and Carolyn Behrens, an individual ("Lessee"). The terms of this Addendum shall be incorporated into the Lease for all purposes. In the event of any conflict between the terms of the Lease and the terms of this Addendum, the terms of this Addendum shall control.

1. Base Rent Increase. Paragraph 4.4. is hereby added to the Lease to read as follows:

4.4.1 The monthly Base Rent payable as set forth Paragraph 1.5 and as set forth in Paragraph 1.7 (a) of the Lease shall be adjusted annually on the Commencement Date of the Lease, and on such other dates stated, to the amounts set forth below:

11/1/14 – 10/31/15	$1,274.70 ($2.10psf)
11/1/15 – 10/31/16	$1,323.26 ($2.18psf)
11/1/16 – 10/31/17	$1,377.89 ($2.27psf)
11/1/17 – 10/31/18	$1,426.45 ($2.35psf)
11/1/18 – 10/31/19	$1,487.15 ($2.45psf)

2. Use. Paragraph 6.1 of the Lease is hereby deleted in its entirety and replaced by the following:

"6.1. Use. The Premises shall be used only for the Agreed Use and for no other use. Lessee's use of the Premises shall be in compliance with and subject to all Applicable Requirements relating to or affecting the Project, the Premises or the Building or the use or operation thereof, whether now existing or hereafter enacted, including, without limitation, the Americans with Disabilities Act of 1990, 42 USC 12111 et seq. (the "ADA") as the same may be amended from time to time, any and all federal, state or local environmental, health and/or safety-related laws, regulations, standards, decisions of courts, ordinances, rules, codes, orders, decrees, directives, guidelines, permits or permit conditions, currently existing and as amended, enacted, issued or adopted in the future which are or become applicable to Lessee, the Premises, the Building, or the Project ("Environmental Laws"), any transportation or traffic management plan in satisfaction of any requirement imposed on the Project by a governmental agency with jurisdiction over the Project, and any CC&Rs or any supplement thereto recorded in any official or public records with respect to the Project or any portion thereof (collectively, "Applicable Laws"). Lessee shall be responsible for obtaining any permit, business license, or other permits or licenses required by any governmental agency permitting Lessee's use or occupancy of the Premises. Lessee shall not commit waste, overload the floors or structure of the Building, subject the Premises, the Building, the Common Area or the Project to any use which would damage the same or increase the risk of loss or violate any insurance coverage, permit any unreasonable odors, smoke, dust, gas, substances, noise or vibrations to emanate from the Premises, take any action which would constitute a nuisance or would disturb, obstruct or endanger any other tenants, take any action which would abrogate any warranties, or use or allow the Premises to be used for any unlawful purpose. Lessor shall not be responsible for non-compliance by any other tenant or occupant of the Project with, or Lessor's failure to enforce, any of the rules or regulations or CC&Rs or any other terms or provisions of such tenant's or occupant's lease. Lessee shall promptly comply with the reasonable requirements of any board of fire insurance underwriters or other similar body now or hereafter constituted. Lessee shall not do any act which shall in any way encumber the title of Lessor in and to the Premises, the Building or the Project.

3. Insurance; Indemnity. Paragraph 8.1 through 8.6 of the Lease are hereby deleted in their entirety and replaced by the following:

"8.1 Lessor's Insurance. Lessor shall maintain insurance through individual or blanket policies insuring the Building against fire and extended coverage (including, if Lessor elects, "all risk" coverage, earthquake/volcanic action, flood and/or surface water insurance) for the full replacement cost of the Building, with deductibles and the form and endorsements of such coverage as selected by Lessor, together with rental abatement insurance against loss of Rent in an amount equal to the amount of Rent for a period of at least twelve (12) months commencing on the date of loss. Lessor may also carry such other insurance as Lessor may deem prudent or advisable, including, without limitation, liability insurance in such amounts and on such terms as Lessor shall determine. Lessee shall pay to Lessor, as a portion of the Operating Expenses, the costs of the insurance coverages described herein, including, without limitation, Lessor's cost of any self-insurance deductible or retention.

8.2 Lessee's Insurance. Lessee shall, at Lessee's expense, obtain and keep in force at all times the following insurance:

(a) Commercial General Liability Insurance (Occurrence Form). A policy of commercial general liability insurance (occurrence form) having a combined single limit of not less than Two Million Dollars ($2,000,000) per occurrence and Two Million Dollars ($2,000,000) aggregate per location if Lessee has multiple locations, providing coverage for, among other things, blanket contractual liability, premises, products/completed operations with an "Additional Insured Managers or Lessors of Premises Endorsement" and personal and advertising injury coverage, with deletion of the exclusion for explosion, collapse or underground hazard, if applicable, and, if necessary, Lessee shall provide for restoration of the aggregate limit, and provided that the policy shall not contain any intra insured exclusions as between insured persons or organizations, but shall include coverage for liability assumed under the Lease as an "insured contract" for the performance of Lessee's indemnity obligations under the Lease;

(b) Automobile Liability Insurance. Comprehensive automobile liability insurance having a combined single limit of not less than Two Million Dollars ($1,000,000) per occurrence and insuring Lessee against liability for claims arising out of ownership, maintenance, or use of any owned, hired or non-owned automobiles;

(c) Workers' Compensation and Employer's Liability Insurance. Workers' compensation insurance having limits not less than those required by state statute and federal statute, if applicable, and covering all persons employed by Lessee in the conduct of its operations on the Premises (including the all states endorsement and, if applicable, the volunteers endorsement), together with employer's liability insurance coverage in the amount of at least One Million Dollars ($1,000,000);

(d) Property Insurance. "Special Form" property insurance including boiler and machinery comprehensive form, if applicable, covering damage to or loss of any of Lessee's personal property, fixtures, equipment and alterations, including electronic data processing equipment (collectively "Lessee's Property") (and coverage for the full replacement cost thereof including business interruption of the Lessee), together with, if the property of Lessee's invitees is to be kept in the Premises, warehouseman's legal liability or bailee customers insurance for the full replacement cost of the property belonging to invitees and located on the Premises.

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

8.3 General.

(a) Insurance Companies. Insurance required to be maintained by Lessee shall be written by companies licensed to do business in the state in which the Premises are located and having a "General Policyholders Rating" of at least "A-" (or such higher rating as may be required by a lender having a lien on the Premises) and a financial rating of no less than VII as set forth in the most current issue of "Best's Insurance Guide."

(b) Certificates of Insurance. Lessee shall deliver to Lessor certificates of insurance and endorsements for all insurance required to be maintained by Lessee in the form acceptable to Lessor no later than seven (7) days prior to the date of possession of the Premises. Lessee shall, at least ten (10) days prior to expiration of the policy, furnish Lessor with certificates of renewal or "binders" thereof. If Lessee fails to maintain any insurance required in the Lease, Lessee shall be liable for all losses and costs suffered or incurred by Lessor (including litigation costs and attorneys' fees and expenses) resulting from said failure.

(c) Additional Insureds. Lessor, Lessor's lender, and any property management company of Lessor for the Premises shall be named as additional insureds (utilizing ISO Form CG2010 (11/85) or its equivalent) under all of the policies required by section 8.2(a). The policies required under Section 8.2(a) shall provide for severability of interest.

(d) Primary Coverage. All insurance to be maintained by Lessee shall, except for workers' compensation and employer's liability insurance, be primary, without right of contribution from insurance of Lessor. Any umbrella liability policy or excess liability policy (which shall be in "following form") shall provide that if the underlying aggregate is exhausted, the excess coverage will drop down as primary insurance. The limits of insurance maintained by Lessee shall not limit Lessee's liability under the Lease.

(e) Waiver of Subrogation. Notwithstanding any other provisions of the Lease, Lessee and Lessor each waive all rights to recover damages against the other, for loss or damage caused by fire and other perils and any other risk to the extent covered by policies of insurance or required to be covered by policies of insurance which are required to be carried in accordance with this Lease. This provision is intended to waive fully, any rights and/or claims which might give rise to a right of subrogation in favor of any insurance carrier. The coverages obtained by each of Lessee and Lessor pursuant to the Lease shall include, without limitation, a waiver of subrogation endorsement attached to the certificate of insurance.

(f) Notification of Incidents. Lessee shall notify Lessor within twenty-four (24) hours after the occurrence of any accidents or incidents in the Premises, the Building, Common Areas or the Project which could give rise to a claim under any of the insurance policies required under this Paragraph 8.

4. Breach by Lessor; Performance by Lessee on Behalf of Lessor. Paragraph 13.6(b) of the Lease is hereby deleted in its entirety and replaced with the following:

"13.6(b). Lessee's Remedies**.** Lessee and all successors and assigns covenant and agree that, in the event of any actual or alleged default by Lessor, Lessee's sole and exclusive remedy shall be either to seek either specific performance or monetary damages, provided that Lessor shall not be liable for loss of business profits or consequential damages, and provided further, that any recourse for monetary damages by Lessee against Lessor shall be limited solely and exclusively to an amount which is equal to the amounts paid by Lessee to Lessor under the Lease (and Lessee hereby expressly waives and releases personal liability of Lessor in excess of such amount on behalf of itself and all persons claiming by through, or under the lease) Further, in no event shall the obligations of Lessor under the Lease constitute the personal obligations of Lessor or its elected or appointed officers and officials, employees, agents, and volunteers, and Lessee shall have no right to seek recourse against Lessor's elected or appointed officers and officials, employees, agents, and volunteers, or any of their personal assets for the satisfaction of any liability of Lessor with respect to the Lease. Lessee expressly waives all remedies except those specifically set forth in the Lease, including, without limitation, any right of offset or abatement except as specifically set forth in the Lease, any right to terminate the Lease under Civil Code Sections 1932(2), 1933(4) and 1941 or any other successor statute, or any statutory, legal or equitable self-help remedy including, without limitation, Civil Code Section 1942 or any other current or future law. Nothing contained in the Lease shall entitle Lessee to terminate the Lease as a result of Lessor's default nor excuse Lessee from paying Rent or Additional Rent due hereunder."

5. Estoppel Certificates. All references in the Lease to "Estoppel Certificate", including, but not limited to the definition in Paragraph 16(a), shall refer to Lessor's standard form certificate.

6. Recordation. Lessee shall not have any right to cause the Lease or any short form or memorandum thereof to be recorded.

IN WITNESS WHEREOF, the parties have executed this Addendum as of the date of the Lease.

"Lessor"

THE CITY OF LAGUNA HILLS

By: Bruce E. Channing

By:________________________________
Its: City Manager

By: Peggy Johns

By:________________________________
Its: City Clerk

APPROVED AS TO FORM:

By:______________________________
City Attorney

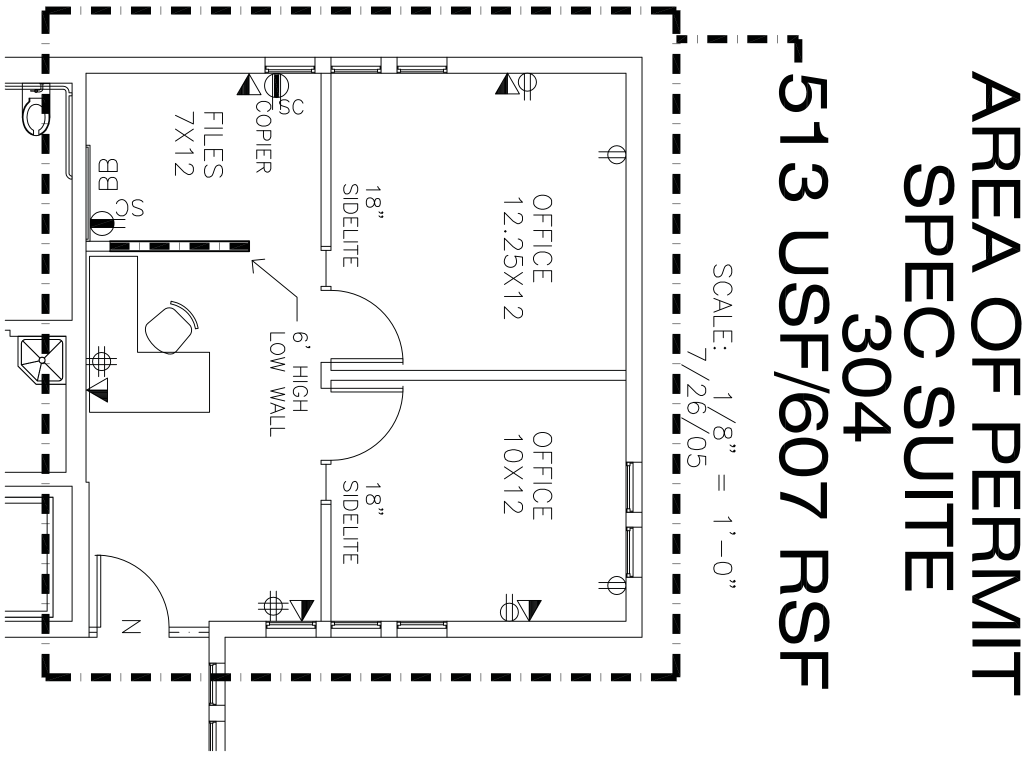
"Lessee"

Carolyn Behrens, an individual

By:________________________
Carolyn Behrens

Its:____________________________

Exhibit "A"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513 USF/607 RSF
SCALE: 1/8" = 1'-0"
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OFFICE
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COPIER
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LOW WALL
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EXHIBIT B

RULES AND REGULATIONS

ATTACHED TO AND MADE A PART OF STANDARD OFFICE LEASE

The following Rules and Regulations shall be in effect at the Office Building Project. Lessor reserves the right to adopt reasonable modifications and additions hereto. In the case of any conflict between these Rules and Regulations and the Lease, the Lease shall be controlling.

1. Except with the prior written consent of Lessor, no Lessee shall conduct any retail sales or any manufacturing of any kind in or from the Premises, or any business other than that specifically provided for in the Lease.

2. Lessor reserves the right to prohibit personal goods and services vendors from access to the Office Building Project except upon such reasonable terms and conditions, including but not limited to the payment of a reasonable fee and provision for insurance coverage, as are related to the safety, care and cleanliness of the Office Building Project, the preservation of good order thereon, and the relief of any financial or other burden on Lessor occasioned by the presence of such vendors or the sale by them of personal goods or services to the Lessee or its employees. If reasonably necessary for the accomplishment of these purposes, Lessor may exclude a particular vendor entirely or limit the number of vendors who may be present at any one time in the Office Building Project. The term "personal goods or services vendors" means persons who periodically enter the Office Building Project of which the Premises are a part for the purpose of selling goods or services to a Lessee, other than goods or services, which are used by a lessee only for the purpose of conducting its business on the Premises. "Personal goods or services" include, but are not limited to, drinking water and other beverages, food, barbering services, and shoe shining services. This Section 2 shall not apply to Lessee's vendors and suppliers in connection with Lessee's operation of its business.

3. The sidewalks, halls, passages, elevators and stairways shall not be obstructed by any Lessee or used by it for any purpose other than for ingress to and egress from their respective Premises. The halls, passages, entrances, elevators, stairways, balconies and roof are not for the use of the general public, and Lessor shall in all cases retain the right to control and prevent access thereto of all persons whose presence in the judgment of Lessor shall be prejudicial to the safety, character, reputation and interests of the Office Building Project and its lessees, provided that nothing herein contained shall be construed to prevent such access to persons with whom Lessee normally deals only for the purpose of conducting its business on the Premises (such as clients, customers, office suppliers and equipment vendors, and the like) unless such persons are engaged in illegal activities. No Lessee and no employees of any Lessee shall go upon the roof of the Building without the written consent of Lessor. This Section 3 shall not apply to Lessee's vendor's suppliers in connection with Lessee's operation of its business.

4. The sashes, sash doors, windows, glass lights, and any lights or skylights that reflect or admit light into the halls or other places of the Building shall not be covered or obstructed. The toilet rooms, water and wash closets and other water apparatus shall not be used for any purpose other than that or which they were constructed, and no foreign substance of any kind whatsoever shall be thrown therein, and the expense of any breakage, stoppage or damage, resulting from the violation of this rule shall be borne by the Lessee who, or whose clerks, agents, employees, or visitors, shall have caused it.

5. No sign, advertisement or notice visible from the exterior of the Premises or Building shall be inscribed, painted or affixed by Lessee on any part of the Office Building Project or the Premises without the prior written consent of Lessor. If Lessor shall have given such consent at any time, whether before or after the execution of this Lease, such consent shall in no way operate as a waiver or release of any of the

provisions hereof or of this Lease, and shall be deemed to relate only to the particular sign, advertisement or notice so consented to by Lessor and shall not be construed as dispensing with the necessity or obtaining the specific written consent of Lessor with respect to each and every such sign, advertisement or notice, as the case may be, so consented to by Lessor. Lessor shall have the right to remove any non-approved sign, advertisement or notice, without notice to and at the expense of Lessee, and Lessor shall not be liable in damages for such removal.

6. In order to maintain the outward professional appearance of the Office Building Project all window coverings to be installed at the Premises shall be subject to Lessor's prior approval. If Lessor, by a notice in writing to Lessee, shall object to any curtain, blind, shade or screen attached to or hung in, or used in connection with, any window door of the Premises, such use of such curtain, blind, shade or screen shall be forthwith discontinued by Lessee. No awnings shall be permitted on any part of the Premises.

7. Lessee shall not lay linoleum, tile, carpet or other similar floor covering so that the same shall be affixed to the floor of the Premises in any manner except as approved by Lessor.

8. Lessee shall not do or permit anything to be done in the Premises, or bring or keep anything therein, which shall in any way increase the rate of fire insurance on the Office Building Project, or on the property kept therein, or obstruct or interfere with the rights of other Lessees, or in any way injure or annoy them, or conflict with the regulations of the Fire Department or the fire laws, or with any insurance policy upon the Office Building Project, or any part thereof, or with any rules and ordinances established by the Board of Health or other governmental authority.

9. No Lessee shall sweep or throw or permit to be swept or thrown from the Premises any dirt or other substance into any of the corridors or halls or elevators, or out of the doors or windows or stairways of the Building. Lessee shall not use, keep or permit to be used any foul or noxious gas or substance in the Premises, or permit or suffer the Premises to be occupied or used in a manner offensive or objectionable to Lessor or other occupants of the Office Building Project by reason of noise, odors, fire hazards and/or vibrations, or interfere in any way with other Lessees or those having business therein, nor shall any animals or birds be kept in or about the Office Building Project.

10. Lessee and its employees, agents and invitees shall not smoke any tobacco products or any other smoking materials whatsoever in the Premises, Building, common areas or any other area of the Project except in such areas, if any, as shall be designated by Lessor for smoking, in Lessor's sole and absolute discretion.

11. No cooking shall be done or permitted by Lessee on the Premises, except for the use of a microwave oven for food or Underwriter's Laboratory approved equipment for brewing coffee, tea, and similar beverages shall be permitted, provided that such use is in compliance with law. Offices in the Office Building Project shall not be used for the storage of merchandise or for sleeping or lodging.

12. Lessee, upon the termination of its tenancy, shall deliver to Lessor all the keys of offices, rooms and toilet rooms which shall have been furnished Lessee or which Lessee shall have had made, and in the event of loss of any keys so furnished, shall pay Lessor therefore.

13. On Saturdays after 6:00pm., Sundays and legal holidays, and on other days between the hours of 9:00 p.m. and 7:00 a.m., access to the Office Building Project or to the halls, corridors, elevators or stairways in the Building, or to the Premises may be refused unless the person seeking access is known to the building watchman, if any, in charge and has a pass or is properly identified. Lessor shall in no case be liable for damages for the admission to or exclusion from the Office Building Project of any person whom Lessor has the right to exclude under Rule 3 above. In case of invasion, mob, riot, public excitement, or other commotion, Lessor reserves the right but shall not be

obligated to prevent access to the Office Building Project during the continuance of the same by closing the doors or otherwise, for the safety of the tenants and protection of property in the Office Building Project.

14. Lessee shall see that the windows and doors of the Premises are closed and securely locked before leaving the building and Lessee shall exercise extraordinary care and caution that all water faucets or water apparatus are entirely shut off before Lessee or Lessee's employees leave the Building, and that all electricity, gas or air shall likewise be carefully shut off, so as to prevent waste or damage, and for any default or carelessness Lessee shall make good all injuries sustained by other Lessees or occupants of the Building or Lessor.

15. Lessee shall not alter any lock or install a new or additional lock or any bolt on any door of the Premises without prior written consent of Lessor. If Lessor shall give its consent, Lessee shall in each case furnish Lessor with a key for any such lock.

16. Lessee shall not install equipment such as, but not limited to, electronic tabulating or computer equipment requiring electrical or air conditioning service in excess of those to be provided by Lessor under the Lease and any such equipment shall be placed in the Premises in settings approved by Lessor to adsorb or prevent any vibration, noise or annoyance.

17. No bicycle, or shopping cart, or other vehicle or any animal shall be brought into the Premises or the halls, corridors, elevators or any part of the Building by Lessee.

18. Lessor shall have the right to prohibit the use of the name of the Office Building Project or any other publicity by Lessee which in Landlord's opinion tends to impair the reputation of the Office Building Project, or their desirability for other Lessees, and upon written notice from Lessor, Lessee will refrain from or discontinue such publicity.

19. Lessee shall not erect any aerial or antenna on the roof or exterior walls of the Premises, the Building, or the Office Building Project.

20. Lessee shall not overload the floor of the Premises. In addition, Lessee shall not mark, drive nails, screw or drill into partitions, ceilings or floor of the Premises or deface the Premises.

21. No furniture, freight or equipment of any kind shall be brought into the Building or the Building's elevator without the consent of Lessor and all moving of the same into or out of the Building shall be done at such time and in such manner, as Lessor shall designate. Lessor shall have the right to prescribe the weight, size and position of all safes and other heavy equipment brought into the Building and also the times and manner of moving the same in and out of the Office Building Project. Safes or other heavy objects shall, if considered necessary by Lessor, stand on wood strips of such thickness as is necessary to properly distribute the weight. However, Lessor's consent to placement of Lessee's safes, heavy equipment or furniture shall not constitute a representation or warranty by Lessor that the safe, heavy equipment or furniture complies, with regard to distribution of weight and/or vibration, with the provisions of the Rule 21 nor relieve Lessee from responsibility for the consequences of noncompliance. Lessor will not be responsible for loss of or damage to any safe or property from any cause and all damage done to the Building by moving or maintaining any such safe or property from any cause and all damage done to the Building by moving or maintaining any such safe or other property shall be repaired at the expense of Lessee. There shall not be used in any space, or in the public halls of the Building, either by any Lessee or others, any hand trucks except those equipped with rubber tires and side guards.

22. Except with the written consent of Lessor, no person or persons other than those approved by Lessor shall be permitted to enter the Building for their purpose of cleaning the same. Lessee shall not cause any unnecessary labor by reason of Lessee's carelessness or indifference in the preservation of good order and cleanliness. Lessor shall in no way be responsible to any Lessee for any loss of property on the Premises, however occurring, or for any damage done to the effects of any lessee by the janitor or any other employee or any other person. Janitor service shall include ordinary dusting and cleaning by the janitor assigned to such work and shall not include cleaning of carpets or rugs, except normal vacuuming, or moving of furniture and other special services. Janitor service may not be furnished on nights when rooms are occupied after 9:00p.m.

23. Lessor will direct electricians as to where and how telephone and telegraph wires are to be introduced. No boring or cutting for wires will be allowed without the consent of Lessor. The location of telephones, call boxes and other office equipment affixed to the Premises shall be subject to the approval of Lessor.

24. No furniture, packages, supplies, equipment or merchandise will be received in the Building or carried up or down in the elevators, except between such hours and in such elevators as shall be designated by Lessor.

25. Lessor reserves the right to exclude or expel from the Office Building Project any person who in the judgment of Lessor, is intoxicated or under the influence of liquor or illegal, non-prescription drugs, or who shall in any manner do any act in violation of any of the Rules and Regulations of the Office Building Project.

26. The requirements of Lessee will be attended to only upon application to Lessor. Contractors, vendors and employees of Lessor shall not perform any work or do anything outside of their regular duties unless under special instructions from the Lessor or Lessor's agent.

27. No vending machine shall be installed, maintained or operated upon the Premises without the written consent of the Lessor.

28. Lessor shall have the right, exercisable without notice and without liability to Lessee, to change the name and the street address of the Building and/or Office Building Project of which the Premises are a part.

29. Lessee agrees that it shall comply with all fire and security regulations that may be issued from time-to-time by Lessor and Lessee also shall provide Lessor with the name of a designated responsible employee to represent Lessee in all matters pertaining to such fire or security regulations.

30. Lessor reserves the right by written notice to Lessee, to rescind, alter or waive any rule or regulation at any time prescribed for the Office Building Project when, in Lessor's judgment, it is necessary, desirable or proper for the best interest of the Office Building Project and its lessees.

31. Lessees shall not disturb, solicit, or canvas any occupant of the Office Building Project and shall cooperate to prevent same.

32. Lessor shall furnish heating and air conditioning during the hours of 7:00 a.m. to 6:00 p.m., Monday through Friday, and 8:00 a.m. to 12:00 p.m. on Saturday except for holidays. In the event Lessee requires heating and air conditioning during off hours, Sundays or Holidays, Lessor shall on notice provide such services at the then prevailing rate for such extra services.

33. Lessee shall cooperate with Lessor in obtaining maximum effectiveness of the cooling system by closing blinds when the sun's rays fall directly on windows of the premises. Lessee shall not obstruct, alter, or in any way impair the efficient operation of Lessor's heating, ventilating and air-conditioning system. Lessee shall not tamper with or change the setting of any thermostats or control valves.

34. Parking

(a) The parking lot shall be accessible twenty-four (24) hours per day, subject to parking card or other reasonable Identification or security restriction as may be reasonably established by Lessor from time-to-time. Lessee agrees to cooperate with Lessor in completing regular maintenance of the parking lot.

(b) Automobiles must be parked entirely within the stall lines.

(c) All directional signs and arrows must be observed and the speed limit shall be 5 miles per hour.

(d) Parking is prohibited in areas not striped for parking.

(e) Lessor may refuse to permit any person who violates the within rules to park in the parking lot, and any violation of the rules shall subject the automobile to removal from the parking lot at the parker's expense.

(f) Every parker is required to park and lock his or her own automobile. All responsibility for any loss or damage to automobile or any personal property therein is assumed by the parker.

(g) The parking lot is for the sole purpose of parking one automobile per space. Washing, waxing, cleaning or servicing of any vehicles by the parker or his agents is prohibited.

(h) Storage of vehicles in the parking facilities is prohibited. Lessee and Lessee's employees and visitors shall not leave vehicles in the parking lot overnight.

(I) Lessor reserves the right to restrict customer, Lessee and Lessee's employees parking to a limited designated area or areas.

35. Lessee agrees to comply and acquaint its employees with such reasonable rules and regulations in the use of such Common areas as Lessor may adopt from time to time for the orderly and proper operation of said Common Areas.

Lessor reserves the right to make such other and further rules and regulations as in its judgment may be for the safety, care and cleanliness of the Office Building Project and for the preservation of good order therein. Lessee agrees to abide by these Rules and Regulations herein above stated and any additional rules and regulations, which are adopted hereafter.

Date: ____________________ Date: ___________________

Lessor's Initials: ___________________ Lessee's Initials: ________________

EXHIBIT "C"

Waiver and Release.

It is the express and understood intent, purpose, desire, and agreement of the parties in the event of termination for cause or expiration of the Lease term, that Lessee, on behalf of itself, its officers, heirs, agents, shareholders, employees, subcontractors, executors, successors and assigns, shall and does hereby release and discharge Lessor, and its respective elected and appointed officials, officers, directors, employees, attorneys, accountants, consultants, other professionals, and agents, from and against the following: any claims, penalties, actions or causes of action, obligations, and demands of any kind including but not limited to, any claims arising under the California Eminent Domain Law (Title 7 (commending with Section 1230.010) of Part 3 of the California Code of Civil Procedure), the Relocation Statutes and Regulations set forth in Chapter 16 (commending with Section 7260) of Division 7 of the California Government Code and Subchapter 1 (commencing with Section 6000) Division 3 of Title 25 of the California Code of regulations, and claims for a "taking" or inverse condemnation arising under the United States or California Constitutions or under any federal, state, or local law, statute, ordinance, regulation, rule, official policy, court order, or common law (collectively, the "Released Claims").

The parties further acknowledge that the Released Claims include any claims for loss of business goodwill pursuant to Code of Civil Procedure §1263.510 et seq., for precondemnation damages and severance damages.

Date: ___________________

Lessee's Initials: ________________

EXHIBIT "D"

WORK LETTER/REQUIREMENTS FOR IMPROVEMENTS OR ALTERATIONS BY LESSEE

If Lessor shall permit Lessee to construct any interior improvements (subsequent to the initial improvements to be constructed by Lessor, if any) in the Premises or to have any work performed in the Premises at any time prior to or during the Lease term by a contractor retained by Lessee ("Lessee's Work"), then Lessee shall comply with the requirements set forth herein. If Lessee's Work has been properly authorized, Lessee will receive written approval and consent for alterations to the Premises. All alterations to the Premises, excepting movable furniture and trade fixtures, shall, at Lessor's option, become a part of the realty and belong to Lessor.

1. SUBMITTAL OF PLANS. Prior to commencing any work in the Premises, Lessee shall submit to Lessor for approval its proposed plans for the work. Without limiting the foregoing, Lessee shall provide:

(a) A separate scale drawing denoting all proposed construction and/or demolition, if necessary.

(b) A separate drawing for each trade proposing structural, electrical, mechanical, civil or landscaping modifications.

(c) Specify all dimensions and complete references to all work to be performed in the affected areas.

(d) If adding extra electrical or mechanical equipment, provide complete operating and maintenance specifications for each item.

2. CHECKLIST. With respect to each project, Lessor will provide Lessee with a checklist listing the items required to be furnished to Lessor in connection with the proposed work. Lessee shall furnish to Lessor prior to, during, or upon completion of Lessee's Work, as applicable, each of the items specified in the checklist attached hereto as Attachment 1.

3. CONTRACTORS PROVIDING INTERIOR IMPROVEMENT SERVICES.

(a) The contractor employed by Lessee and any subcontractors shall be (i) duly licensed in the state in which the Premises are located, and (ii) subject to Lessor's prior written approval, which approval shall not be unreasonably withheld. If more than one trade is employed on a single job, state law requires the services of a general contractor in addition to contractors for specialty work being performed.

(b) Each contractor shall provide proof of licensing as a general or specialty contractor in accordance with state law. Additionally, each contractor shall furnish proof of licensing in the city or municipality in which the construction related activity is to take place.

(c) Lessee shall use Lessor's subcontractor for mechanical, electrical, plumbing, roofing and roofing consultant if available at competitive rates.

(d) Lessee and Lessee's contractors shall comply with all Applicable Laws pertaining to the performance of Lessee's Work and the completed improvements and all applicable safety regulations established by Lessor or the general contractor.

(e) Prior to commencement of any work in the Premises, Lessee and Lessee's contractors (and any subcontractors) shall obtain and provide Lessor with certificates evidencing Workers' Compensation, public liability and property damage insurance in amounts and forms and with companies

satisfactory to Lessor. Each general contractor (and any subcontractor) employed on the Premises shall provide Lessor with a current certificate of insurance in effect for that contractor with a thirty day notice of cancellation or revocation clause. Insurance requirements are as follows:

(i) Comprehensive General Liability with a $1,000,000 Combined Single Limit covering the liability of Lessor and contractor for bodily injury and property damage arising as a result of the construction of the improvements and the services performed thereunder. Lessor and any Management Company shall be named as an additional insured.

(ii) Comprehensive Automobile Liability with a $1,000,000 Combined Single Limit covering Lessor and vehicles used by contractor (and any subcontractor) in connection with the construction of the improvements.

(iii) Workers' Compensation and Employer's Liability as required by law, for employees of the contractor (and any subcontractors) performing work on the Premises.

(f) The following requirements shall be incorporated as "Special Conditions" into the contract between Lessee and its contractors and a copy of the contract shall be furnished to Lessor prior to the commencement of Lessee's Work:

(i) Prior to start of Lessee's Work, Lessee's contractor shall provide Lessor with a construction schedule in "bar graph" form indicating the completion dates of all phases of Lessee's Work.

(ii) Lessee's contractor shall be responsible for the repair, replacement or clean-up of any damage done by it to other contractors' work which specifically includes accessways to the Premises which may be concurrently used by others.

(iii) Lessee's contractor shall accept the Premises prior to starting any trenching operations. Any rework of sub-base or compaction required after the contractor's initial acceptance of the Premises shall be done by Lessee's contractor, which shall include the removal from the Project of any excess dirt or debris.

(iv) Lessee's contractor shall contain its storage of materials and its operations within the Premises and such other space as it may be assigned by Lessor or Lessor's contractor. Should Lessee's contractor be assigned space outside the Premises, it shall move to such other space as Lessor or Lessor's contractor shall direct from time to time to avoid interference or delays with other work.

(v) Lessee's contractor shall clean up the construction area and surrounding exterior areas daily. All trash, demolition materials and surplus construction materials shall be stored within the Premises and promptly removed from the Premises and the Project and disposed of in an approved sanitation site.

(vi) Lessee's contractor shall provide temporary utilities, portable toilet facilities, and potable drinking water as required for its work within the Premises and shall pay to Lessor's contractor the cost of any temporary utilities and facilities provided by Lessor's contractor at Lessee's

contractor’s request.

(vii) Lessee’s contractor shall notify Lessor or Lessor’s project manager of any planned work to be done on weekends or other than normal job hours.

(viii) Lessee’s contractor or subcontractors shall not post signs on any part of the Project or on the Premises.

4. COSTS.

(a) Lessee shall promptly pay any and all costs and expenses in connection with or arising out of the performance of Lessee’s Work (including the costs of permits thereof) and shall furnish to Lessor evidence of such payment upon request.

(b) Except in the case of carpet replacement or repainting, Lessee shall pay Lessor an amount equal to five percent (5%) of the total hard costs of construction and installation of Lessee’s Work as compensation to Lessor for review of plans, use of facilities and other miscellaneous costs of Lessor incurred as a result of such work.

5. CONTRACTOR’S BONDS. At Lessor's sole discretion, Lessor may require Lessee to obtain performance and completion bonds to insure Interior Work

6. MECHANIC’S LIENS.

(a) Lessee shall not suffer or permit to be enforced against the Premises or any part of the Project any mechanic’s, materialman’s, contractor’s or subcontractor’s lien arising out of any work of improvement, however it may arise.

(b) Lessee shall notify Lessor at least ten (10) days prior to the commencement of construction of any Lessee’s Work and Lessor shall have the right to post and record a notice of no responsibility in conformity with applicable law. Within ten (10) days following completion of Lessee’s Work, Lessee shall file a Notice of Completion and deliver to Lessor an unconditional release and waiver of lien executed by each contractor, subcontractor and materialman involved in Lessee’s Work.

(c) In the event any lien is filed against the Project or any portion thereof or against Lessee’s leasehold interest therein as a result of Lessee’s work, Lessee shall obtain the release and/or discharge of said lien, within ten (10) days after the filing thereof. In the event Lessee fails to do so, Lessor may obtain the release and/or discharge of said lien and Lessee shall indemnify Lessor for the costs thereof, including reasonable attorney’s fees, together with interest at the Applicable Interest Rate from the date of demand. Nothing herein shall prohibit Lessee from contesting the validity of any such asserted claim, provided Lessee has furnished to Lessor a lien release bond freeing the Premises from the effect of the lien claim.

7. INDEMNITY. Lessee shall indemnify, defend (with counsel satisfactory to Lessor) and hold Lessor harmless from and against any and all suits, claims, actions, loss, cost or expense (including claims for workers’ compensation, attorney’s fees and costs) based on personal injury or property damage, or otherwise (including, without limitation, contract and breach of warranty claims) arising from the performance of Lessee’s Work. Lessee shall repair or replace (or, at Lessor’s election, reimburse Lessor for the cost of repairing or replacing) any portion of the Building or item of Lessor’s equipment or any of Lessor’s real or personal property damaged, lost or destroyed in the performance of Lessee’s Work.

8. BUILDING STANDARDS. All work shall conform to Lessor’s established building standards and specifications. Lessee is required to make these standards part of the construction documents.

9. ROOF PENETRATIONS. If improvements penetrate the roof membrane, the penetrations will be sealed per Lessor/IRC roofing specifications and inspected by IRC to maintain roof warranty. The cost of inspection and all corrective work shall be borne by Lessee. Lessee shall use Lessor's original roofing contractor.

10. BUILDING MODIFICATIONS. Work will only be approved within the confines of a given space. Lessee will not be allowed to modify building exterior or mechanical and electrical service as provided to the building in common with other tenants.

11. ELECTRICAL WORK. All electrical work shall be approved from the unit space electrical panel only. Additional service requirements shall be secured only by direction of Lessor. Lessee shall use Lessor's original electrical contractor if available at competitive rates.

12. SCHEDULE OF WORK. Lessee shall be required to provide a schedule of all work to be performed, subject to Lessor approval. All costs to produce such schedule shall be borne solely by Lessee.

13. CLEAN UP AND DISPOSAL OF CONSTRUCTION DEBRIS. Building trash containers are provided for office generated trash only and are not to be used for disposal of construction-related materials and debris. Unapproved usage will result in a penalty assessment to the Lessee equal to the cost of an extra pick-up service as provided under the current rate schedule of regular trash removal service.

14. INSPECTION BY LANDLORD. Lessor reserves the following rights: (i) the right of inspection prior to, during and at completion of all construction and/or demolition, (ii) the right to post and record a notice of nonresponsibility in conformity with California law, and (iii) the right to order, if reasonable, a total stop to all improvements underway for non-compliance with any of the requirements hereof.

15. GENERAL PROVISIONS.

(a) If Lessor has agreed to provide an allowance toward the cost of tenant improvements (other than the initial Lessee Improvement Allowance), Lessor shall retain from such funds an amount determined by Lessor until Lessee has fully complied with the requirements hereof.

(b) All materials, work, installations and decorations of any nature whatsoever brought on or installed in the Premises before the commencement of the Term or throughout the Term shall be at Lessee's risk, and neither Lessor nor any party acting on Lessor's behalf shall be responsible for any damage thereto or loss or destruction thereof due to any reason or cause whatsoever.

(c) Nothing contained herein shall make or constitute Lessee as the agent of Lessor.

<u>Attachment 1 to "Exhibit D"</u>

ITEMS TO BE FURNISHED TO LESSOR FOR EACH WORK OF IMPROVEMENT

1. Plan of Alterations for Lessor Approval.
2. Contractor(s), Address, Telephone Number, Contact Person.
3. Copy of Contractor's State and City Business License.
4. Copy of Building Permit.
5. Copy of Final Inspection and Signed Building Permit Cards.
6. Copy of Certificate of Insurance Naming The City of Laguna Hills and Essex Realty Management as Additional Insured. Insurance to include Comprehensive General Liability, Comprehensive Auto, Workers' Compensation, Employer's Liability and original Endorsement.
7. Signed Unconditional Lien Waiver in favor of Development Corporation.
8. Schedule of Work.
9. Copy of Completion and Payment Bond.
10. Architect's License and Expiration.
11. Copy of Permit Plans.
12. Copy of As-Builts.
13. Copy of Recorded Notice of Completion.
14. Certificate of Occupancy.
15. Evidence of Insurance for All-Risk/Builder's Risk Insurance to the Amount of Improvements.

City of Laguna Hills
City Council Meeting Agenda
Staff Report

DATE: SEPTEMBER 23, 2014

TO: MAYOR AND COUNCIL MEMBERS

FROM: DONALD J. WHITE
ASSISTANT CITY MANAGER

ISSUE: PROPOSED LEASE RENEWAL WITH DAYLE MCINTOSH CENTER FOR THE DISABLED, INC., FOR 24031 EL TORO ROAD, SUITE 300, LAGUNA HILLS, CALIFORNIA

RECOMMENDATION: THAT THE CITY COUNCIL APPROVE THE LEASE WITH DAYLE MCINTOSH CENTER FOR THE DISABLED, INC., FOR 24031 EL TORO ROAD, SUITE 300, LAGUNA HILLS, CALIFORNIA, AND AUTHORIZE THE CITY MANAGER TO EXECUTE THE LEASE.

SUMMARY:

Staff has negotiated a lease renewal with the Dayle McIntosh Center for the Disabled for Suite 300. The following are the key lease terms and fiscal analysis:

Effective Date: December 21, 2014

Term: 2 years

Rentable Square Feet: 664

Upfront Capital: $813

Rate: Year 1 – 2.00
Year 2 – 2.08

Total Rent Payments: $32,509

Net Present Value: $21,130 (12% Discount Rate)

The City Attorney has reviewed and approved the lease document. Staff is recommending approval of the lease.

FISCAL IMPACT:

Even though this is a two-year term, it is profitable for the City with a minimal upfront capital requirement.

ATTACHMENTS:

- Lease document

STANDARD MULTI-TENANT OFFICE LEASE - GROSS
AIR COMMERCIAL REAL ESTATE ASSOCIATION

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

1.1 **Parties**: This Lease ("**Lease**"), dated for reference purposes only August 27, 2014, is made by and between The City of Laguna Hills, a municipal corporation organized and existing under the laws of the State of California ("**Lessor**") and Dayle McIntosh Centr for the Disabled Inc., a California corporation ("**Lessee**"), (collectively the "**Parties**", or individually a "**Party**").

1.2(a) **Premises**: That certain portion of the Project (as defined below), known as Suite Numbers(s) 300, third floor(s), consisting of approximately 664 rentable square feet and approximately 561 useable square feet("**Premises**"). The Premises are located at: 24031 El Toro Road, in the City of Laguna Hills, County of Orange, State of California, with zip code 92654. In addition to Lessee's rights to use and occupy the Premises as hereinafter specified, Lessee shall have non-exclusive rights to the Common Areas (as defined in Paragraph 2.7 below) as hereinafter specified, but shall not have any rights to the roof, the exterior walls, the area above the dropped ceilings, or the utility raceways of the building containing the Premises ("**Building**") or to any other buildings in the Project. The Premises, the Building, the Common Areas, the land upon which they are located, along with all other buildings and improvements thereon, are herein collectively referred to as the "**Project**." The Project consists of approximately 51,943 rentable square feet. (See also Paragraph 2)

1.2(b) **Parking**: 4/1000 unreserved and N/A reserved vehicle parking spaces at a monthly cost of $N/A per unreserved space and $N/A per reserved space. (See Paragraph 2.6)

1.3 **Term**: Two years and 0 months ("**Original Term**") commencing December 21, 2014 ("**Commencement Date**") and ending December 20, 2016 ("**Expiration Date**"). (See also Paragraph 3)

1.4 **Early Possession**: If the Premises are available Lessee may have non-exclusive possession of the Premises commencing N/A ("**Early Possession Date**"). (See also Paragraphs 3.2 and 3.3)

1.5 **Base Rent**: $1,328.00 per month ("**Base Rent**)", payable on the First day of each month commencing December 21, 2014. (See also Paragraph 4*below*)

☑ If this box is checked, there are provisions in this Lease for the Base Rent to be adjusted. See Paragraph 4.4 *(See Addendum Paragraph 1)*

1.6 **Lessee's Share of Operating Expense Increase**: 1.28 percent (1.28%) ("**Lessee's Share**"). In the event that that size of the Premises and/or the Project are modified during the term of this Lease, Lessor shall recalculate Lessee's Share to reflect such modification.

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

(a) **Base Rent**: $1,328.00 for the period December 21, 2014-January 20, 2015.

(b) **Security Deposit**: $1,294.80 on file ("**Security Deposit**"). (See also Paragraph 5)

(c) **Parking**: $N/A for the period N/A.

(d) **Other**: $N/A for N/A.

(e) **Total Due Upon Execution of this Lease**: $1,328.00.

1.8 **Agreed Use**: General Office. (See also Paragraph 6)

1.9 **Base Year; Insuring Party**. The Base Year is 2013. Lessor is the "**Insuring Party**". (See also Paragraphs 4.2 and 8)

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

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

☑ Essex Realty Management Inc. represents Lessor exclusively ("**Lessor's Broker**");

☐ N/A represents Lessee exclusively ("**Lessee's Broker**"); or

☐ N/A represents both Lessor and Lessee ("**Dual Agency**").

(b) **Payment to Brokers**: Upon execution and delivery of this Lease by both Parties, Lessor shall pay to the Brokers for the brokerage services rendered by the Brokers the fee agreed to in ~~the attached~~ *a* separate written agreement. ~~or if no such agreement is attached, the sum of ____ or ____% of the total Base Rent payable for the Original Term, the sum of ____ or ____ of the total Base Rent payable during any period of time that the Lessee occupies the Premises subsequent to the Original Term, and/or the sum of ____ or ____% of the purchase price in the event that the Lessee or anyone affiliated with Lessee acquires from Lessor any rights to the Premises.~~

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

1.12 **Business Hours for the Building:** 7:00 a.m. to 6:00 p.m., Mondays through Fridays (except Building Holidays) and 8:00 a.m. to 2:00 p.m. on Saturdays (except Building Holidays). "**Building Holidays**" shall mean the dates of observation of New

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Year's Day, President's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day, and N/A .

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

☐ Janitorial services

☐ Electricity

☐ Other (specify): N/A

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

☑ an Addendum consisting of Paragraphs 1 through 6;

☑ a plot plan depicting the Premises; Exhibit "A"

☑ a current set of the Rules and Regulations; Exhibit "B"

☑ a Work Letter; / Requirements for improvements or alterations by Lessee (Exhibit "D")

☐ a janitorial schedule;

☑ other (specify): Exhibit "C" Waiver and Release

.

2. **Premises**.

2.1 **Letting**. Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Premises, for the term, at the rental, and upon all of the terms, covenants and conditions set forth in this Lease. While the approximate square footage of the Premises may have been used in the marketing of the Premises for purposes of comparison, the Base Rent stated herein is NOT tied to square footage and is not subject to adjustment should the actual size be determined to be different. **Note: Lessee is advised to verify the actual size prior to executing this Lease.**

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

2.3 **Compliance**. Lessor warrants to the best of its knowledge that the improvements comprising the Premises and the Common Areas comply with the building codes that were in effect at the time that each such improvement, or portion thereof, was constructed, and also with all applicable laws, covenants or restrictions of record, regulations, and ordinances ("**Applicable Requirements**") in effect on the Start Date. Said warranty does not apply to the use to which Lessee will put the Premises, modifications which may be required by the Americans with Disabilities Act or any similar laws as a result of Lessee's use (see Paragraph 49), or to any Alterations or Utility Installations (as defined in Paragraph 7.3(a)) made or to be made by Lessee. **NOTE: Lessee is responsible for determining whether or not the zoning and other Applicable Requirements are appropriate for Lessee's intended use, and acknowledges that past uses of the Premises may no longer be allowed.** If the Premises do not comply with said warranty, Lessor shall, except as otherwise provided, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, rectify the same. If the Applicable Requirements are hereafter changed so as to require during the term of this Lease the construction of an addition to or an alteration of the Premises, the remediation of any Hazardous Substance, or the reinforcement or other physical modification of the Premises ("**Capital Expenditure**"), Lessor and Lessee shall allocate the cost of such work as follows:

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

(b) If such Capital Expenditure is not the result of the specific and unique use of the Premises by Lessee (such as, governmentally mandated seismic modifications), then Lessor shall pay for such Capital Expenditure and Lessee shall only be obligated to pay, each month during the remainder of the term of this Lease or any extension thereof, on the date that on which the Base Rent is due, an amount equal to 1/144th of the portion of such costs reasonably attributable to the Premises. Lessee shall pay Interest on the balance but may prepay its obligation at any time. If, however, such Capital Expenditure is required during the last 2 years of this Lease or if Lessor reasonably determines that it is not economically feasible to pay its share thereof, Lessor shall have the option to terminate this Lease upon 90 days prior written notice to Lessee unless Lessee notifies Lessor, in writing, within 10 days after receipt of Lessor's termination notice that Lessee will pay for such Capital Expenditure. If Lessor does not elect to terminate, and fails to tender its share of any such Capital Expenditure, Lessee may advance such funds and deduct same, with Interest, from Rent until Lessor's share of such costs have been fully paid. If Lessee is unable to finance Lessor's share, or if the balance of the Rent due and payable for the remainder of this Lease is not sufficient to fully reimburse Lessee on an offset basis, Lessee shall have the right to terminate this Lease upon 30 days written notice to Lessor.

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

2.4 **Acknowledgements**. Lessee acknowledges that: (a) it has been given an opportunity to inspect and measure the Premises, (b) Lessee has been advised by Lessor and/or Brokers to satisfy itself with respect to the size and condition of the Premises (including but not limited to the electrical, HVAC and fire sprinkler systems, security, environmental aspects, and compliance with Applicable Requirements), and their suitability for Lessee's intended use, (c) Lessee has made such investigation as it deems necessary with reference to such matters and assumes all responsibility therefor as the same relate to its occupancy of the Premises, (d) it is not relying on any representation as to the size of the Premises made by Brokers or Lessor, (e) the square footage of the Premises was not material to Lessee's decision to lease the Premises and pay the Rent stated herein, and (f) neither Lessor, Lessor's agents, nor Brokers have made any oral or written representations or warranties with respect to said matters other than as set forth in this Lease. In addition, Lessor acknowledges that: (i) Brokers have made no representations, promises or warranties concerning Lessee's ability to honor the Lease or suitability to occupy the Premises, and (ii) it is Lessor's sole responsibility to investigate the financial capability and/or suitability of all proposed tenants.

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

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

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

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

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

2.8 **Common Areas - Lessee's Rights**. Lessor grants to Lessee, for the benefit of Lessee and its employees, suppliers, shippers, contractors, customers and invitees, during the term of this Lease, the nonexclusive right to use, in common with others entitled to such use, the

Common Areas as they exist from time to time, subject to any rights, powers, and privileges reserved by Lessor under the terms hereof or under the terms of any rules and regulations or restrictions governing the use of the Project. Under no circumstances shall the right herein granted to use the Common Areas be deemed to include the right to store any property, temporarily or permanently, in the Common Areas. Any such storage shall be permitted only by the prior written consent of Lessor or Lessor's designated agent, which consent may be revoked at any time. In the event that any unauthorized storage shall occur then Lessor shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove the property and charge the cost to Lessee, which cost shall be immediately payable upon demand by Lessor.

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

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

(a) To make changes to the Common Areas, including, without limitation, changes in the location, size, shape and number of the lobbies, windows, stairways, air shafts, elevators, escalators, restrooms, driveways, entrances, parking spaces, parking areas, loading and unloading areas, ingress, egress, direction of traffic, landscaped areas, walkways and utility raceways;

(b) To close temporarily any of the Common Areas for maintenance purposes so long as reasonable access to the Premises remains available;

(c) To designate other land outside the boundaries of the Project to be a part of the Common Areas;

(d) To add additional buildings and improvements to the Common Areas;

(e) To use the Common Areas while engaged in making additional improvements, repairs or alterations to the Project, or any portion thereof; and

(f) To do and perform such other acts and make such other changes in, to or with respect to the Common Areas and Project as Lessor may, in the exercise of sound business judgment, deem to be appropriate.

3. **Term**.

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

3.2 **Early Possession**. Any provision herein granting Lessee Early Possession of the Premises is subject to and conditioned upon the Premises being available for such possession prior to the Commencement Date. Any grant of Early Possession only conveys a non-exclusive right to occupy the Premises. If Lessee totally or partially occupies the Premises prior to the Commencement Date, the obligation to pay Base Rent shall be abated for the period of such Early Possession. All other terms of this Lease (including but not limited to the obligations to pay Lessee's Share of the Operating Expense Increase) shall be in effect during such period. Any such Early Possession shall not affect the Expiration Date.

3.3 **Delay In Possession**. Lessor agrees to use its best commercially reasonable efforts to deliver possession of the Premises to Lessee by the Commencement Date. If, despite said efforts, Lessor is unable to deliver possession by such date, Lessor shall not be subject to any liability therefor, nor shall such failure affect the validity of this Lease or change the Expiration Date. Lessee shall not, however, be obligated to pay Rent or perform its other obligations until Lessor delivers possession of the Premises and any period of rent abatement that Lessee would otherwise have enjoyed shall run from the date of delivery of possession and continue for a period equal to what Lessee would otherwise have enjoyed under the terms hereof, but minus any days of delay caused by the acts or omissions of Lessee. If possession is not delivered within 60 days after the Commencement Date, as the same may be extended under the terms of any Work Letter executed by Parties, Lessee may, at its option, by notice in writing within 10 days after the end of such 60 day period, cancel this Lease, in which event the Parties shall be discharged from all obligations hereunder. If such written notice is not received by Lessor within said 10 day period, Lessee's right to cancel shall terminate. If possession of the Premises is not delivered within 120 days after the Commencement Date, this Lease shall terminate unless other agreements are reached between Lessor and Lessee, in writing.

3.4 **Lessee Compliance**. Lessor shall not be required to deliver possession of the Premises to Lessee until Lessee complies with its obligation to provide evidence of insurance (~~Paragraph 8.5)~~ Paragraph 8.2 & 8.3 of this Lease see, Addendum Paragraph 3). Pending delivery of such evidence, Lessee shall be required to perform all of its obligations under this Lease from and after the Start Date, including the payment of Rent, notwithstanding Lessor's election to withhold possession pending receipt of such evidence of insurance. Further, if Lessee is required to perform any other conditions prior to or concurrent with the Start Date, the Start Date shall occur but Lessor may elect to withhold possession until such conditions are satisfied.

4. **Rent**.

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

4.2 **Operating Expense Increase.** Lessee shall pay to Lessor during the term hereof, in addition to the Base Rent, Lessee's Share of the amount by which all Operating Expenses for each Comparison Year exceeds the amount of all Operating Expenses for the Base Year, such excess being hereinafter referred to as the **"Operating Expense Increase"**, in accordance with the following provisions:

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

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

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

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

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

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

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

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

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

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

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

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

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

(viii) The cost of any capital improvement to the Building or the Project not covered under the provisions of Paragraph 2.3 provided; however, that Lessor shall allocate the cost of any such capital improvement over a 12 year period and Lessee shall not be required to pay more than Lessee's Share of 1/144th of the cost of such Capital Expenditure in any given month;

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

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

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

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

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

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

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

4.3 **Payment**. Lessee shall cause payment of Rent to be received by Lessor in lawful money of the United States on or before the day on which it is due, without offset or deduction (except as specifically permitted in this Lease). All monetary amounts shall be rounded to the nearest whole dollar. In the event that any invoice prepared by Lessor is inaccurate such inaccuracy shall not constitute a waiver and Lessee shall be obligated to pay the amount set forth in this Lease. Rent for any period during the term hereof which is for less than one full calendar month shall be prorated based upon the actual number of days of said month. Payment of Rent shall be made to Lessor at its address stated herein or to such other persons or place as Lessor may from time to time designate in writing. Acceptance of a payment which is less than the amount then due shall not be a waiver of Lessor's rights to the balance of such Rent, regardless of Lessor's endorsement of any check so stating. In the event that any check, draft, or other instrument of payment given by Lessee to Lessor is dishonored for any reason, Lessee agrees to pay to Lessor the sum of ~~$25~~ 75 in addition to any Late Charge and Lessor, at its option, may require all future Rent be paid by cashier's check. Payments will be applied first to accrued late charges and attorney's fees, second to accrued interest, then to Base Rent and Common Area Operating Expenses, and any remaining amount to any other outstanding charges or costs.

5. **Security Deposit**. Lessee shall deposit with Lessor upon execution hereof the Security Deposit as security for Lessee's faithful performance of its obligations under this Lease. If Lessee fails to pay Rent, or otherwise Defaults under this Lease, Lessor may use, apply or retain all or any portion of said Security Deposit for the payment of any amount already due Lessor, for Rents which will be due in the future, and/ or to reimburse or compensate Lessor for any liability, expense, loss or damage which Lessor may suffer or incur by reason thereof. If Lessor uses or applies all or any portion of the Security Deposit, Lessee shall within 10 days after written request therefor deposit monies with Lessor sufficient to restore said Security Deposit to the full amount required by this Lease. If the Base Rent increases during the term of this Lease, Lessee shall, upon written request from Lessor, deposit additional monies with Lessor so that the total amount of the Security Deposit shall at all times bear the same proportion to the increased Base Rent as the initial Security Deposit bore to the initial Base Rent. Should the Agreed Use be amended to accommodate a material change in the business of Lessee or to accommodate a sublessee or assignee, Lessor shall have the right to increase the Security Deposit to the extent necessary, in Lessor's reasonable judgment, to account for any increased wear and tear that the Premises may suffer as a result thereof. If a change in control of Lessee occurs during this Lease and following such change the financial condition of Lessee is, in Lessor's reasonable judgment, significantly reduced, Lessee shall deposit such additional monies with Lessor as shall be sufficient to cause the Security Deposit to be at a commercially reasonable level based on such change in financial condition. Lessor shall not be required to keep the Security Deposit separate from its general accounts. Within 90 days after the expiration or termination of this Lease, Lessor shall return that portion of the Security Deposit not used or applied by Lessor. No part of the Security Deposit shall be considered to be held in trust, to bear interest or to be prepayment for any monies to be paid by Lessee under this Lease.

6. **Use**. (See Addendum "Paragraph 2".)

6.1 ~~**Use**. Lessee shall use and occupy the Premises only for the Agreed Use, or any other legal use which is reasonably comparable thereto, and for no other purpose. Lessee shall not use or permit the use of the Premises in a manner that is unlawful, creates damage, waste or a nuisance, or that disturbs occupants of or causes damage to neighboring premises or properties. Other than guide, signal and seeing eye dogs, Lessee shall not keep or allow in the Premises any pets, animals, birds, fish, or reptiles. Lessor shall not unreasonably withhold or delay its consent to any written request for a modification of the Agreed Use, so long as the same will not impair the structural integrity of the improvements of the Building, will not adversely affect the mechanical, electrical, HVAC, and other systems of the Building, and/or will not affect the exterior appearance of the Building. If Lessor elects to withhold consent, Lessor shall within 7 days after such request give written notification of same, which notice shall include an explanation of Lessor's objections to the change in the Agreed Use.~~

6.2 **Hazardous Substances**.

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

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

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

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

(e) **Lessor Indemnification**. Except as otherwise provided in paragraph 8.7, Lessor and its successors and assigns shall indemnify, defend, reimburse and hold Lessee, its employees and lenders, harmless from and against any and all environmental damages, including the cost of remediation, which result from Hazardous Substances which existed on the Premises prior to Lessee's occupancy or which are caused by

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the gross negligence or willful misconduct of Lessor, its agents or employees. Lessor's obligations, as and when required by the Applicable Requirements, shall include, but not be limited to, the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease.

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

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

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

6.4 **Inspection; Compliance**. Lessor and Lessor's "**Lender**" (as defined in Paragraph 30) and consultants shall have the right to enter into Premises at any time, in the case of an emergency, and otherwise at reasonable times, after reasonable notice, for the purpose of inspecting the condition of the Premises and for verifying compliance by Lessee with this Lease. The cost of any such inspections shall be paid by Lessor, unless a violation of Applicable Requirements, or a Hazardous Substance Condition (see paragraph 9.1e) is found to exist or be imminent, or the inspection is requested or ordered by a governmental authority. In such case, Lessee shall upon request reimburse Lessor for the cost of such inspection, so long as such inspection is reasonably related to the violation or contamination. In addition, Lessee shall provide copies of all relevant material safety data sheets (**MSDS**) to Lessor within 10 days of the receipt of written request therefor.

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

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

7.2 **Lessor's Obligations**. Subject to the provisions of Paragraphs 2.2 (Condition), 2.3 (Compliance), 4.2 (Operating Expenses), 6 (Use), 7.1 (Lessee's Obligations), 9 (Damage or Destruction) and 14 (Condemnation), Lessor, subject to reimbursement pursuant to Paragraph 4.2, shall keep in good order, condition and repair the foundations, exterior walls, structural condition of interior bearing walls, exterior roof, fire sprinkler system, fire alarm and/or smoke detection systems, fire hydrants, and the Common Areas. Lessee expressly waives the benefit of any statute now or hereafter in effect to the extent it is inconsistent with the terms of this Lease.

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

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

(b) **Consent**. Lessee shall not make any Alterations or Utility Installations to the Premises without Lessor's prior written consent. Lessee may, however, make non-structural Alterations or Utility Installations to the interior of the Premises (excluding the roof) without such consent but upon notice to Lessor, as long as they are not visible from the outside, do not involve puncturing, relocating or removing the roof, ceilings, floors or any existing walls, will not affect the electrical, plumbing, HVAC, and/or life safety systems, and the cumulative cost thereof during this Lease as extended does not exceed $2,000. Notwithstanding the foregoing, Lessee shall not make or permit any roof penetrations and/or install anything on the roof without the prior written approval of Lessor. Lessor may, as a precondition to granting such approval, require Lessee to utilize a contractor chosen and/or approved by Lessor. Any Alterations or Utility Installations that Lessee shall desire to make and which require the consent of the Lessor shall be presented to Lessor in written form with detailed plans. Consent shall be deemed conditioned upon Lessee's: (i) acquiring all applicable governmental permits, (ii) furnishing Lessor with copies of both the permits and the plans and specifications prior to commencement of the work, and (iii) compliance with all conditions of said permits and other Applicable Requirements in a prompt and expeditious manner. Any Alterations or Utility Installations shall be performed in a workmanlike manner with good and sufficient materials. Lessee shall promptly upon completion furnish Lessor with asbuilt plans and specifications. For work which costs an amount in excess of one month's Base Rent, Lessor may condition its consent upon Lessee providing a lien and completion bond in an amount equal to 150% of the estimated cost of such Alteration or Utility Installation and/or upon Lessee's posting an additional Security Deposit with Lessor. In addition to. and without limitng the other requirements of this Paragraph 7.3 all utilities, installations, and alterations made by Lessee shall also be subject to the provisions of Exhibit "D" attached to this Lease.

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

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

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

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

(c) **Surrender; Restoration**. Lessee shall surrender the Premises by the Expiration Date or any earlier termination date, with all of the improvements, parts and surfaces thereof clean and free of debris, and in good operating order, condition and state of repair, ordinary wear and tear excepted. "Ordinary wear and tear" shall not include any damage or deterioration that would have been prevented by good maintenance practice. Notwithstanding the foregoing, if this Lease is for 12 months or less, then Lessee shall surrender the Premises in the same condition as delivered to Lessee on the Start Date with NO allowance for ordinary wear and tear. Lessee shall repair any damage occasioned by the installation, maintenance or removal of Trade Fixtures, Lessee owned Alterations and/or Utility Installations, furnishings, and equipment as well as the removal of any storage tank installed by or for Lessee. Lessee shall also completely remove from the Premises any and all Hazardous Substances brought onto the Premises by or for Lessee, or any third party (except Hazardous Substances which were deposited via underground migration from areas outside of the Premises) even if such removal would require Lessee to perform or pay for work that exceeds statutory requirements. Trade Fixtures shall remain the property of Lessee and shall be removed by Lessee. Any personal property of Lessee not removed on or before the Expiration Date or any earlier termination date shall be deemed to have been abandoned by Lessee and may be disposed of or retained by Lessor as Lessor may desire. The failure by Lessee to timely vacate the Premises pursuant to this Paragraph 7.4(c) without the express written consent of Lessor shall constitute a holdover under the provisions of Paragraph 26 below.

8. (See Addendum Paragraph 3.) **Insurance; Indemnity**.

~~8.1 **Insurance Premiums**. The cost of the premiums for the insurance policies maintained by Lessor pursuant to paragraph 8 are included as Operating Expenses (see paragraph 4.2 (c)(iv)). Said costs shall include increases in the premiums resulting from additional coverage related to requirements of the holder of a mortgage or deed of trust covering the Premises, Building and/or Project, increased valuation of the Premises, Building and/or Project, and/or a general premium rate increase. Said costs shall not, however, include any premium increases resulting from the nature of the occupancy of any other tenant of the Building. If the Project was not insured for the entirety of the Base Year, then the base premium shall be the lowest annual premium reasonably obtainable for the required insurance as of the Start Date, assuming the most nominal use possible of the Building and/or Project. In no event, however, shall Lessee be responsible for any portion of the premium cost attributable to liability insurance coverage in excess of $2,000,000 procured under Paragraph 8.2(b).~~

~~8.2 **Liability Insurance**.~~

~~(a) **Carried by Lessee**. Lessee shall obtain and keep in force a Commercial General Liability policy of insurance protecting Lessee and Lessor as an additional insured against claims for bodily injury, personal injury and property damage based upon or arising out of the ownership, use, occupancy or maintenance of the Premises and all areas appurtenant thereto. Such insurance shall be on an occurrence basis providing single limit coverage in an amount not less than $1,000,000 per occurrence with an annual aggregate of not less than $2,000,000. Lessee shall add Lessor as an additional insured by means of an endorsement at least as broad as the Insurance Service Organization's "Additional Insured-Managers or Lessors of Premises" Endorsement and coverage shall also be extended to include damage caused by heat, smoke or fumes from a hostile fire. The policy shall not contain any intra-insured exclusions as between insured persons or organizations, but shall include coverage for liability assumed under this Lease as an "**insured contract**" for the performance of Lessee's indemnity obligations under this Lease. The limits of said insurance shall not, however, limit the liability of Lessee nor relieve Lessee of any obligation hereunder. Lessee shall provide an endorsement on its liability policy(ies) which provides that its insurance shall be primary to and not contributory with any similar insurance carried by Lessor, whose insurance shall be considered excess insurance only.~~

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

~~8.3 **Property Insurance - Building, Improvements and Rental Value**.~~

~~(a) **Building and Improvements**. Lessor shall obtain and keep in force a policy or policies of insurance in the name of Lessor, with loss payable to Lessor, any ground-lessor, and to any Lender insuring loss or damage to the Building and/or Project. The amount of such insurance shall be equal to the full insurable replacement cost of the Building and/or Project, as the same shall exist from time to time, or the amount required by any Lender, but in no event more than the commercially reasonable and available insurable value thereof. Lessee Owned Alterations and Utility Installations, Trade Fixtures, and Lessee's personal property shall be insured by Lessee not by Lessor. If the coverage is available and commercially appropriate, such policy or policies shall insure against all risks of direct physical loss or damage (except the perils of flood and/or earthquake unless required by a Lender), including coverage for debris removal and the enforcement of any Applicable Requirements requiring the upgrading, demolition, reconstruction or replacement of any portion of the Premises as the result of a covered loss. Said policy or policies shall also contain an agreed valuation provision in lieu of any coinsurance clause, waiver of subrogation, and inflation guard protection causing an increase in the annual property insurance coverage amount by a factor of not less than the adjusted U.S. Department of Labor Consumer Price Index for All Urban Consumers for the city nearest to where the Premises are located. If such insurance coverage has a deductible clause, the deductible amount shall not exceed $5,000 per occurrence.~~

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

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

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

~~8.4 **Lessee's Property; Business Interruption Insurance; Worker's Compensation Insurance.**~~

~~(a) **Property Damage**. Lessee shall obtain and maintain insurance coverage on all of Lessee's personal property, Trade Fixtures, and Lessee Owned Alterations and Utility Installations. Such insurance shall be full replacement cost coverage with a deductible of not to exceed $1,000 per occurrence. The proceeds from any such insurance shall be used by Lessee for the replacement of personal property, Trade Fixtures and Lessee Owned Alterations and Utility Installations.~~ -

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

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

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

~~8.5 **Insurance Policies**. Insurance required herein shall be by companies maintaining during the policy term a "General Policyholders Rating" of at least A-, VII, as set forth in the most current issue of "Best's Insurance Guide", or such other rating as may be required by a Lender. Lessee shall not do or permit to be done anything which invalidates the required insurance policies. Lessee shall, prior to the Start Date, deliver to Lessor certified copies of policies of such insurance or certificates with copies of the required endorsements evidencing the existence and amounts of the required insurance. No such policy shall be cancelable or subject to modification except after 10 days prior written notice to Lessor. Lessee shall, at least 30 days prior to the expiration of such policies, furnish Lessor with evidence of renewals or "insurance binders" evidencing renewal thereof, or Lessor may order such insurance and charge the cost thereof to Lessee, which amount shall be payable by Lessee to Lessor upon demand. Such policies shall be for a term of at least one year, or the length of the remaining term of this Lease, whichever is less. If either Party shall fail to procure and maintain the insurance required to be carried by it, the other Party may, but shall not be required to, procure and maintain the same.~~

~~8.6 **Waiver of Subrogation**. Without affecting any other rights or remedies, Lessee and Lessor each hereby release and relieve the other, and waive their entire right to recover damages against the other, for loss of or damage to its property arising out of or incident to the perils required to be insured against herein. The effect of such releases and waivers is not limited by the amount of insurance carried or required, or by any deductibles applicable hereto. The Parties agree to have their respective property damage insurance carriers waive any right to subrogation that such companies may have against Lessor or Lessee, as the case may be, so long as the insurance is not invalidated thereby.~~

8.7 **Indemnity**. Except for Lessor's gross negligence or willful misconduct, Lessee shall indemnify, protect, defend and hold harmless the Premises, Lessor and its agents, Lessor's master or ground lessor, partners and Lenders, from and against any and all claims, loss of rents and/or damages, liens, judgments, penalties, attorneys' and consultants' fees, expenses and/or liabilities arising out of, involving, or in connection with, the use and/or occupancy of the Premises by Lessee. If any action or proceeding is brought against Lessor by reason of any of the foregoing matters, Lessee shall upon notice defend the same at Lessee's expense by counsel reasonably satisfactory to Lessor and Lessor shall cooperate with Lessee in such defense. Lessor need not have first paid any such claim in order to be defended or indemnified.

8.8 **Exemption of Lessor and its Agents from Liability**. Notwithstanding the negligence or breach of this Lease by Lessor or its agents, neither Lessor nor its agents shall be liable under any circumstances for: (i) injury or damage to the person or goods, wares, merchandise or other property of Lessee, Lessee's employees, contractors, invitees, customers, or any other person in or about the Premises, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, indoor air quality, the presence of mold or from the breakage, leakage, obstruction or other defects of pipes, fire sprinklers, wires, appliances, plumbing, HVAC or lighting fixtures, or from any other cause, whether the said injury or damage results from conditions arising upon the Premises or upon other portions of the Building, or from other sources or places, (ii) any

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damages arising from any act or neglect of any other tenant of Lessor or from the failure of Lessor or its agents to enforce the provisions of any other lease in the Project, or (iii) injury to Lessee's business or for any loss of income or profit therefrom. Instead, it is intended that Lessee's sole recourse in the event of such damages or injury be to file a claim on the insurance policy(ies) that Lessee is required to maintain pursuant to the provisions of paragraph 8.

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

9. **Damage or Destruction**.

9.1 **Definitions**.

(a) "**Premises Partial Damage**" shall mean damage or destruction to the improvements on the Premises, other than Lessee Owned Alterations and Utility Installations, which can reasonably be repaired in 3 months or less from the date of the damage or destruction, and the cost thereof does not exceed a sum equal to 6 month's Base Rent. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

(b) "**Premises Total Destruction**" shall mean damage or destruction to the improvements on the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which cannot reasonably be repaired in 3 months or less from the date of the damage or destruction and/or the cost thereof exceeds a sum equal to 6 month's Base Rent. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

(c) "**Insured Loss**" shall mean damage or destruction to improvements on the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which was caused by an event required to be covered by the insurance described in Paragraphs 8.1 &8.2 of this Lease (See Addendum Paragraph 3) ~~Paragraph 8.3(a)~~, irrespective of any deductible amounts or coverage limits involved.

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

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

9.2 **Partial Damage - Insured Loss**. If a Premises Partial Damage that is an Insured Loss occurs, then Lessor shall, at Lessor's expense, repair such damage (but not Lessee's Trade Fixtures or Lessee Owned Alterations and Utility Installations) as soon as reasonably possible and this Lease shall continue in full force and effect; provided, however, that Lessee shall, at Lessor's election, make the repair of any damage or destruction the total cost to repair of which is $5,000 or less, and, in such event, Lessor shall make any applicable insurance proceeds available to Lessee on a reasonable basis for that purpose. Notwithstanding the foregoing, if the required insurance was not in force or the insurance proceeds are not sufficient to effect such repair, the Insuring Party shall promptly contribute the shortage in proceeds as and when required to complete said repairs. In the event, however, such shortage was due to the fact that, by reason of the unique nature of the improvements, full replacement cost insurance coverage was not commercially reasonable and available, Lessor shall have no obligation to pay for the shortage in insurance proceeds or to fully restore the unique aspects of the Premises unless Lessee provides Lessor with the funds to cover same, or adequate assurance thereof, within 10 days following receipt of written notice of such shortage and request therefor. If Lessor receives said funds or adequate assurance thereof within said 10 day period, the party responsible for making the repairs shall complete them as soon as reasonably possible and this Lease shall remain in full force and effect. If such funds or assurance are not received, Lessor may nevertheless elect by written notice to Lessee within 10 days thereafter to: (i) make such restoration and repair as is commercially reasonable with Lessor paying any shortage in proceeds, in which case this Lease shall remain in full force and effect, or (ii) have this Lease terminate 30 days thereafter. Lessee shall not be entitled to reimbursement of any funds contributed by Lessee to repair any such damage or destruction. Premises Partial Damage due to flood or earthquake shall be subject to Paragraph 9.3, notwithstanding that there may be some insurance coverage, but the net proceeds of any such insurance shall be made available for the repairs if made by either Party.

9.3 **Partial Damage - Uninsured Loss**. If a Premises Partial Damage that is not an Insured Loss occurs, unless caused by a negligent or willful act of Lessee (in which event Lessee shall make the repairs at Lessee's expense), Lessor may either: (i) repair such damage as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) terminate this Lease by giving written notice to Lessee within 30 days after receipt by Lessor of knowledge of the occurrence of such damage. Such termination shall be effective 60 days following the date of such notice. In the event Lessor elects to terminate this Lease, Lessee shall have the right within 10 days after receipt of the termination notice to give written notice to Lessor of Lessee's commitment to pay for the repair of such damage without reimbursement from Lessor. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within 30 days after making such commitment. In such event this Lease shall continue in full force and effect, and Lessor shall proceed to make such repairs as soon as reasonably possible after the required funds are available. If Lessee does not make the required commitment, this Lease shall terminate as of the date specified in the termination notice.

9.4 **Total Destruction**. Notwithstanding any other provision hereof, if a Premises Total Destruction occurs, this Lease shall terminate 60 days following such Destruction. If the damage or destruction was caused by the gross negligence or willful misconduct of Lessee, Lessor shall have the right to recover Lessor's damages from Lessee, except as provided in Paragraph 8.3 (e) of this Lease (see Addendum Paragraph 3) ~~Paragraph 8.6~~.

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

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

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

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

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

10. **Real Property Taxes**.

10.1 **Definitions**. As used herein, the term "**Real Property Taxes**" shall include any form of assessment; real estate, general, special, ordinary or extraordinary, or rental levy or tax (other than inheritance, personal income or estate taxes); improvement bond; and/or license fee imposed upon or levied against any legal or equitable interest of Lessor in the Project, Lessor's right to other income therefrom, and/or Lessor's business of leasing, by any authority having the direct or indirect power to tax and where the funds are generated with reference to the Project address and where the proceeds so generated are to be applied by the city, county or other local taxing authority of a jurisdiction within which the Project is located. **"Real**

Property Taxes" shall also include any tax, fee, levy, assessment or charge, or any increase therein: (i) imposed by reason of events occurring during the term of this Lease, including but not limited to, a change in the ownership of the Project, (ii) a change in the improvements thereon, and/or (iii) levied or assessed on machinery or equipment provided by Lessor to Lessee pursuant to this Lease.

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

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

10.4 **Joint Assessment**. If the Building is not separately assessed, Real Property Taxes allocated to the Building shall be an equitable proportion of the Real Property Taxes for all of the land and improvements included within the tax parcel assessed, such proportion to be determined by Lessor from the respective valuations assigned in the assessor's work sheets or such other information as may be reasonably available. Lessor's reasonable determination thereof, in good faith, shall be conclusive.

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

11. **Utilities and Services**.

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

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

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

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

11.5 **Interruptions.** There shall be no abatement of rent and Lessor shall not be liable in any respect whatsoever for the inadequacy, stoppage, interruption or discontinuance of any utility or service due to riot, strike, labor dispute, breakdown, accident, repair or other cause beyond Lessor's reasonable control or in cooperation with governmental request or directions.

12. **Assignment and Subletting**.

12.1 **Lessor's Consent Required**.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Lessee hereby assigns and transfers to Lessor all of Lessee's interest in all Rent payable on any sublease, and Lessor may collect such Rent and apply same toward Lessee's obligations under this Lease; provided, however, that until a Breach shall occur in the performance of Lessee's obligations, Lessee may collect said Rent. In the event that the amount collected by Lessor exceeds Lessee's then outstanding obligations any such excess shall be refunded to Lessee. Lessor shall not, by reason of the foregoing or any assignment of such sublease, nor by reason of the collection of Rent, be deemed liable to the sublessee for any failure of Lessee to perform and comply with any of Lessee's obligations to such sublessee. Lessee hereby irrevocably authorizes and directs any such sublessee, upon receipt of a written notice from Lessor stating that a Breach exists in the performance of Lessee's obligations under this Lease, to pay to Lessor all Rent due and to become due under the sublease. Sublessee shall rely upon any such notice from Lessor and shall pay all Rents to Lessor without any obligation or right to inquire as to whether such Breach exists, notwithstanding any claim from Lessee to the contrary.

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

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

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

(e) Lessor shall deliver a copy of any notice of Default or Breach by Lessee to the sublessee, who shall have the right to cure the Default of Lessee within the grace period, if any, specified in such notice. The sublessee shall have a right of reimbursement and offset from and against Lessee for any such Defaults cured by the sublessee.

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

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

(a) The abandonment of the Premises; or the vacating of the Premises without providing a commercially reasonable level of security, or where the coverage of the property insurance described in Paragraphs 8.1 & 8.2 of this Lease (See Addendum Paragraph 3) ~~Paragraph 8.3~~ is jeopardized as a result thereof, or without providing reasonable assurances to minimize potential vandalism.

(b) The failure of Lessee to make any payment of Rent or any Security Deposit required to be made by Lessee hereunder, whether to Lessor or to a third party, when due, to provide reasonable evidence of insurance or surety bond, or to fulfill any obligation under this Lease which endangers or threatens life or property, where such failure continues for a period of 3 business days following written notice to Lessee. THE ACCEPTANCE BY LESSOR OF A PARTIAL PAYMENT OF RENT OR SECURITY DEPOSIT SHALL NOT CONSTITUTE A WAIVER OF ANY OF LESSOR'S RIGHTS, INCLUDING LESSOR'S RIGHT TO RECOVER POSSESSION OF THE PREMISES.

(c) The failure of Lessee to allow Lessor and/or its agents access to the Premises or the commission of waste, act or acts constituting public or private nuisance, and/or an illegal activity on the Premises by Lessee, where such actions continue for a period of 3 business days following written notice to Lessee.

(d) The failure by Lessee to provide (i) reasonable written evidence of compliance with Applicable Requirements, (ii) the service contracts, (iii) the rescission of an unauthorized assignment or subletting, (iv) an Estoppel Certificate or financial statements, (v) a requested subordination, (vi) evidence concerning any guaranty and/or Guarantor, (vii) any document requested under Paragraph 41, (viii) material data safety sheets (MSDS), or (ix) any other documentation or information which Lessor may reasonably require of Lessee under the terms of this Lease, where any such failure continues for a period of 10 days following written notice to Lessee.

(e) A Default by Lessee as to the terms, covenants, conditions or provisions of this Lease, or of the rules adopted under Paragraph 2.9 hereof, other than those described in subparagraphs 13.1(a), (b) or (c), above, where such Default continues for a period of 30 days after written notice; provided, however, that if the nature of Lessee's Default is such that more than 30 days are reasonably required for its cure, then it shall not be deemed to be a Breach if Lessee commences such cure within said 30 day period and thereafter diligently prosecutes such cure to completion.

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

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

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

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

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

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

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

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

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

13.5 **Interest**. Any monetary payment due Lessor hereunder, other than late charges, not received by Lessor, when due shall bear interest from the 31st day after it was due. The interest ("**Interest**") charged shall be computed at the rate of 10% per annum but shall not exceed the maximum rate allowed by law. Interest is payable in addition to the potential late charge provided for in Paragraph 13.4.

13.6 **Breach by Lessor**. (see Addendum)

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

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

14. **Condemnation**. If the Premises or any portion thereof are taken under the power of eminent domain or sold under the threat of the exercise of said power (collectively "**Condemnation**"), this Lease shall terminate as to the part taken as of the date the condemning authority takes title or possession, whichever first occurs. If more than 10% of the rentable floor area of the Premises, or more than 25% of Lessee's Reserved Parking Spaces, if any, are taken by Condemnation, Lessee may, at Lessee's option, to be exercised in writing within 10 days after Lessor shall have given Lessee written notice of such taking (or in the absence of such notice, within 10 days after the condemning authority shall have taken possession) terminate this Lease as of the date the condemning authority takes such possession. If Lessee does not terminate this Lease in accordance with the foregoing, this Lease shall remain in full force and effect as to the portion of the Premises remaining, except that the Base Rent shall be reduced in proportion to the reduction in utility of the Premises caused by such Condemnation. Condemnation awards and/or payments shall be the property of Lessor, whether such award shall be made as compensation for diminution in value of the leasehold, the value of the part taken, or for severance damages; provided, however, that Lessee shall be entitled to any compensation paid by the condemnor for Lessee's relocation expenses, loss of business goodwill and/or Trade Fixtures, without regard to whether or not this Lease is terminated pursuant to the provisions of this Paragraph. All Alterations and Utility Installations made to the Premises by Lessee, for purposes of Condemnation only, shall be considered the property of the Lessee and Lessee shall be entitled to any and all compensation which is payable therefor. In the event that this Lease is not terminated by reason of the Condemnation, Lessor shall repair any damage to the Premises caused by such Condemnation.

15. **Brokerage Fees**.

~~15.1 **Additional Commission**. In addition to the payments owed pursuant to Paragraph 1.10 above, and unless Lessor and the Brokers otherwise agree in writing, Lessor agrees that: (a) if Lessee exercises any Option, (b) if Lessee or anyone affiliated with Lessee acquires from Lessor any rights to the Premises or other premises owned by Lessor and located within the Project, (c) if Lessee remains in possession of the Premises, with the consent of Lessor, after the expiration of this Lease, or (d) if Base Rent is increased, whether by agreement or operation of an escalation clause herein, then, Lessor shall pay Brokers a fee in accordance with the fee schedule of the Brokers in effect at the time the Lease was executed.~~

~~15.2 **Assumption of Obligations**. Any buyer or transferee of Lessor's interest in this Lease shall be deemed to have assumed Lessor's obligation hereunder. Brokers shall be third party beneficiaries of the provisions of Paragraphs 1.10, 15, 22 and 31. If Lessor fails to pay to Brokers any amounts due as and for brokerage fees pertaining to this Lease when due, then such amounts shall accrue Interest. In addition, if Lessor fails to pay any amounts to Lessee's Broker when due, Lessee's Broker may send written notice to Lessor and Lessee of such failure and if Lessor fails to pay such amounts within 10 days after said notice, Lessee shall pay said monies to its Broker and offset such amounts against Rent. In addition, Lessee's Broker shall be deemed to be a third party beneficiary of any commission agreement entered into by and/or between Lessor and Lessor's Broker for the limited purpose of collecting any brokerage fee owed.~~

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

16. **Estoppel Certificates**.

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

(b) If the Responding Party shall fail to execute or deliver the Estoppel Certificate within such 10 day period, the Requesting Party may execute an Estoppel Certificate stating that: (i) the Lease is in full force and effect without modification except as may be represented by the Requesting Party, (ii) there are no uncured defaults in the Requesting Party's performance, and (iii) if Lessor is the Requesting Party, not more than one month's rent has been paid in advance. Prospective purchasers and encumbrancers may rely upon the Requesting Party's Estoppel Certificate, and the Responding Party shall be estopped from denying the truth of the facts contained in said Certificate. In addition, Lessee acknowledges that any failure on its part to provide such an Estoppel Certificate will expose Lessor to risks and potentially cause Lessor to incur costs not contemplated by this Lease, the extent of which will be extremely difficult to ascertain. Accordingly, should the Lessee fail to execute and/or deliver a requested Estoppel Certificate in a timely fashion the monthly Base Rent shall be automatically increased, without any requirement for notice to Lessee, by an amount equal to 10% of the then existing Base Rent or $100, whichever is greater for remainder of the Lease. The Parties agree that such increase in Base Rent represents fair and reasonable compensation for the additional risk/costs that Lessor will incur by reason of Lessee's failure to provide the Estoppel Certificate. Such increase in Base Rent shall in no event constitute a waiver of Lessee's Default or Breach with respect to the failure to provide the Estoppel Certificate nor prevent the exercise of any of the other rights and remedies granted hereunder.

(c) If Lessor desires to finance, refinance, or sell the Premises, or any part thereof, Lessee and all Guarantors shall within 10 days after written notice from Lessor deliver to any potential lender or purchaser designated by Lessor such financial statements as may be reasonably required by such lender or purchaser, including but not limited to Lessee's financial statements for the past 3 years. All such financial statements shall be received by Lessor and such lender or purchaser in confidence and shall be used only for the purposes herein set forth.

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

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

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

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

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

22. **No Prior or Other Agreements; Broker Disclaimer**. This Lease contains all agreements between the Parties with respect to any matter mentioned herein, and no other prior or contemporaneous agreement or understanding shall be effective. Lessor and Lessee each represents and warrants to the Brokers that it has made, and is relying solely upon, its own investigation as to the nature, quality, character and financial responsibility of the other Party to this Lease and as to the use, nature, quality and character of the Premises. Brokers have no responsibility with respect thereto or with respect to any default or breach hereof by either Party.

23. **Notices**.

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

23.2 **Date of Notice**. Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, the postmark thereon. If sent by regular mail the notice shall be deemed given 72 hours after the same is addressed as required herein and mailed with postage prepaid. Notices delivered by United States Express Mail or overnight courier that guarantees next day delivery shall be deemed given 24 hours after delivery of the same to the Postal Service or courier. Notices transmitted by facsimile transmission or similar means shall be deemed delivered upon telephone confirmation of receipt (confirmation report from fax machine is sufficient), provided a copy is also delivered via delivery or mail. If notice is received on a Saturday, Sunday or legal holiday, it shall be deemed received on the next business day.

24. **Waivers**.

(a) No waiver by Lessor of the Default or Breach of any term, covenant or condition hereof by Lessee, shall be deemed a waiver of any other term, covenant or condition hereof, or of any subsequent Default or Breach by Lessee of the same or of any other term, covenant or condition hereof. Lessor's consent to, or approval of, any act shall not be deemed to render unnecessary the obtaining of Lessor's consent to, or approval of, any subsequent or similar act by Lessee, or be construed as the basis of an estoppel to enforce the provision or provisions of this Lease requiring such consent.

(b) The acceptance of Rent by Lessor shall not be a waiver of any Default or Breach by Lessee. Any payment by Lessee may be accepted by Lessor on account of moneys or damages due Lessor, notwithstanding any qualifying statements or conditions made by Lessee in connection therewith, which such statements and/or conditions shall be of no force or effect whatsoever unless specifically agreed to in writing by Lessor at or before the time of deposit of such payment.

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

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

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

(i) Lessor's Agent. A Lessor's agent under a listing agreement with the Lessor acts as the agent for the Lessor only. A Lessor's agent or subagent has the following affirmative obligations: To the Lessor: A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Lessor. To the Lessee and the Lessor: a. Diligent exercise of reasonable skills and care in performance of the agent's duties. b. A duty of honest and fair dealing and good faith. c. A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

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

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

(b) Brokers have no responsibility with respect to any default or breach hereof by either Party. The Parties agree that no lawsuit or other legal proceeding involving any breach of duty, error or omission relating to this Lease may be brought against Broker more than one year after the Start Date and that the liability (including court costs and attorneys' fees), of any Broker with respect to any such lawsuit and/or legal proceeding shall not exceed the fee received by such Broker pursuant to this Lease; provided, however, that the foregoing limitation on each Broker's liability shall not be applicable to any gross negligence or willful misconduct of such Broker.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35. **Termination; Merger**. Unless specifically stated otherwise in writing by Lessor, the voluntary or other surrender of this Lease by Lessee, the mutual termination or cancellation hereof, or a termination hereof by Lessor for Breach by Lessee, shall automatically terminate any sublease or lesser estate in the Premises; provided, however, that Lessor may elect to continue any one or all existing subtenancies. Lessor's failure within 10 days following any such event to elect to the contrary by written notice to the holder of any such lesser interest, shall constitute Lessor's election to have such event constitute the termination of such interest.

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

37. **Guarantor**.

37.1 **Execution**. The Guarantors, if any, shall each execute a guaranty in the form most recently published by the AIR Commercial Real Estate Association.

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

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

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

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

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

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

39.4 **Effect of Default on Options**.

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

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

(c) An Option shall terminate and be of no further force or effect, notwithstanding Lessee's due and timely exercise of the Option, if, after such exercise and prior to the commencement of the extended term or completion of the purchase, (i) Lessee fails to pay Rent for a period of 30 days after such Rent becomes due (without any necessity of Lessor to give notice thereof), or (ii) if Lessee commits a Breach of this Lease.

40. **Security Measures**. Lessee hereby acknowledges that the Rent payable to Lessor hereunder does not include the cost of guard service or other security measures, and that Lessor shall have no obligation whatsoever to provide same. Lessee assumes all responsibility for the protection of the Premises, Lessee, its agents and invitees and their property from the acts of third parties. In the event, however, that Lessor should elect to provide security services, then the cost thereof shall be an Operating Expense.

41. **Reservations**.

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

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

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

42. **Performance Under Protest**. If at any time a dispute shall arise as to any amount or sum of money to be paid by one Party to the other under the provisions hereof, the Party against whom the obligation to pay the money is asserted shall have the right to make payment "under protest" and such payment shall not be regarded as a voluntary payment and there shall survive the right on the part of said Party to institute suit for recovery of such sum. If it shall be adjudged that there was no legal obligation on the part of said Party to pay such sum or any part thereof, said Party shall be entitled to recover such sum or so much thereof as it was not legally required to pay. A Party who does not initiate suit for the recovery of sums paid "under protest" within 6 months shall be deemed to have waived its right to protest such payment.

43. **Authority; Multiple Parties; Execution**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Executed at: 24031 El Toro Road, Suite 100	Executed at:
On:	On:
By LESSOR:	**By LESSEE:**
The City of Laguna Hills	Dayle McIntosh Center for the Disabled Inc.,
	a California corporation
By:	By:
Name Printed: Bruce E. Channing	Name Printed: Elizabeth Partain
Title: City Manager	Title: Board President
By:	By:
Name Printed: Peggy Johns	Name Printed: Michael Ryan
Title: City Clerk	Title: Board Treasurer
Address: 24031 El Toro Road, Suite 100	Address:
Laguna Hills, CA 92654	
Telephone:( )	Telephone:( )
Facsimile:( )	Facsimile:( )
Email:	Email:
Email:	Emai:
Federal ID No.	Federal ID No.

LESSOR'S BROKER:

Essex Realty Management, Inc.

Attn: Sandi Montez

Address: 111 Corporate Drive, Suite 110

Ladera Ranch, CA 92694

Telephone:(949) 218-3801

Facsimile:(   )

Email:

Broker/Agent DRE License #: 00965485

LESSEE'S BROKER:

Attn:

Address:

Telephone:(   )

Facsimile:(   )

Email:

Broker/Agent DRE License #:

NOTICE: These forms are often modified to meet changing requirements of law and industry needs. Always write or call to make sure you are utilizing the most current form: AIR Commercial Real Estate Association, 500 N Brand Blvd, Suite 900, Glendale, CA 91203. Telephone No. (213) 687-8777. Fax No.: (213) 687-8616.

ADDENDUM TO LEASE

THIS ADDENDUM TO LEASE (this "Addendum") shall constitute part of that certain STANDARD MULTI-TENANT OFFICE LEASE – GROSS ("Lease"), dated as of August 27, 2014, between The City of Laguna Hills ("Lessor"), and Dayle McIntosh Center ("Lessee"). The terms of this Addendum shall be incorporated into the Lease for all purposes. In the event of any conflict between the terms of the Lease and the terms of this Addendum, the terms of this Addendum shall control.

1. Base Rent Schedule. Section 4.4 is hereby added to the Lease to read as follows:

4.4 Base Rent Schedule

4.4.1 The monthly Base Rent payable as defined in paragraph 4.1 and as set forth in paragraph 1.7 (a) of the Lease shall be adjusted as set forth below:

Months		Rent Per Month
12/21/2014	12/20/2015	$1,328.00
12/21/2015	1/20/2016	$1,381.12

2. Use. Section 6.1 of the Lease is hereby deleted in its entirety and replaced by the following:

"6.1. Use. The Premises shall be used only for the Agreed Use and for no other use. Lessee's use of the Premises shall be in compliance with and subject to all Applicable Requirements relating to or affecting the Project, the Premises or the Building or the use or operation thereof, whether now existing or hereafter enacted, including, without limitation, the Americans with Disabilities Act of 1990, 42 USC 12111 et seq. (the "ADA") as the same may be amended from time to time, any and all federal, state or local environmental, health and/or safety-related laws, regulations, standards, decisions of courts, ordinances, rules, codes, orders, decrees, directives, guidelines, permits or permit conditions, currently existing and as amended, enacted, issued or adopted in the future which are or become applicable to Lessee, the Premises, the Building, or the Project ("Environmental Laws"), any transportation or traffic management plan in satisfaction of any requirement imposed on the Project by a governmental agency with jurisdiction over the Project, and any CC&Rs or any supplement thereto recorded in any official or public records with respect to the Project or any portion thereof (collectively, "Applicable Laws"). Lessee shall be responsible for obtaining any permit, business license, or other permits or licenses required by any governmental agency permitting Lessee's use or occupancy of the Premises. Lessee shall not commit waste, overload the floors or structure of the Building, subject the Premises, the Building, the Common Area or the Project to any use which would damage the same or increase the risk of loss or violate any insurance coverage, permit any unreasonable odors, smoke, dust, gas, substances, noise or vibrations to emanate from the Premises, take any action which would constitute a nuisance or would disturb, obstruct or endanger any other tenants, take any action which would abrogate any warranties, or use or allow the Premises to be used for any unlawful purpose. Lessor shall not be responsible for non-compliance by any other tenant or occupant of the Project with, or Lessor's failure to enforce, any of the rules or regulations or CC&Rs or any other terms or provisions of such tenant's or occupant's lease. Lessee shall promptly comply with the reasonable requirements of any board of fire insurance underwriters or other similar body now or hereafter constituted. Lessee shall not do any act which shall in any way encumber the title of Lessor in and to the Premises, the Building or the Project.

3. Insurance; Indemnity. Sections 8.1 through 8.6 of the Lease are hereby deleted in their entirety and replaced by the following:

"8.1 Lessor's Insurance. Lessor shall maintain insurance through individual or blanket policies insuring the Building against fire and extended coverage (including, if Lessor elects, "all risk" coverage, earthquake/volcanic action, flood and/or surface water insurance) for the full replacement cost of the Building, with deductibles and the form and endorsements of such coverage as selected by Lessor, together with rental abatement insurance against loss of Rent in an amount equal to the amount of Rent for a period of at least twelve (12) months commencing on the date of loss. Lessor may also carry such other insurance as Lessor may deem prudent or advisable, including, without limitation, liability insurance in such amounts and on such terms as Lessor shall determine. Lessee shall pay to Lessor, as a portion of the Operating Expenses, the costs of the insurance coverages described herein, including, without limitation, Lessor's cost of any self-insurance deductible or retention.

8.2 Lessee's Insurance. Lessee shall, at Lessee's expense, obtain and keep in force at all times the following insurance:

(a) Commercial General Liability Insurance (Occurrence Form). A policy of commercial general liability insurance (occurrence form) having a combined single limit of not less than One Million Dollars ($1,000,000) per occurrence and Two Million Dollars ($2,000,000) aggregate per location if Lessee has multiple locations, providing coverage for, among other things, blanket contractual liability, premises, products/completed operations with an "Additional Insured Managers or Lessors of Premises Endorsement" and personal and advertising injury coverage, with deletion of the exclusion for explosion, collapse or underground hazard, if applicable, and, if necessary, Lessee shall provide for restoration of the aggregate limit, and provided that the policy shall not contain any intra insured exclusions as between insured persons or organizations, but shall include coverage for liability assumed under the Lease as an "insured contract" for the performance of Lessee's indemnity obligations under the Lease;

(b) Automobile Liability Insurance. Comprehensive automobile liability insurance having a combined single limit of not less than One Million Dollars ($1,000,000) per occurrence and insuring Lessee against liability for claims arising out of ownership, maintenance, or use of any owned, hired or non-owned automobiles;

(c) Workers' Compensation and Employer's Liability Insurance. Workers' compensation insurance having limits not less than those required by state statute and federal statute, if applicable, and covering all persons employed by Lessee in the conduct of its operations on the Premises (including the all states endorsement and, if applicable, the volunteers endorsement), together with employer's liability insurance coverage in the amount of at least Five Hundred Thousand ($500,000);

(d) Property Insurance. "Special Form" property insurance including boiler and machinery comprehensive form, if applicable, covering damage to or loss of any of Lessee's personal property, fixtures, equipment and alterations, including electronic data processing equipment (collectively "Lessee's Property") (and coverage for the full replacement cost thereof including business interruption of the Lessee), together with, if the property of Lessee's invitees is to be kept in the Premises, warehouseman's legal liability or bailee customers insurance for the full replacement cost of the property belonging to invitees and located on the Premises.

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

8.3 General.

(a) Insurance Companies. Insurance required to be maintained by Lessee shall be written by companies licensed to do business in the state in which the Premises are located and having a "General Policyholders Rating" of at least "A-" (or such higher rating as may be required by a lender having a lien on the Premises) and a financial rating of no less than VII as set forth in the most current issue of "Best's Insurance Guide."

(b) Certificates of Insurance. Lessee shall deliver to Lessor certificates of insurance and endorsements for all insurance required to be maintained by Lessee in the form acceptable to Lessor no later than seven (7) days prior to the date of possession of the Premises. Lessee shall, at least ten (10) days prior to expiration of the policy, furnish Lessor with certificates of renewal or "binders" thereof. If Lessee fails to maintain any insurance required in the Lease, Lessee shall be liable for all losses and costs suffered or incurred by Lessor (including litigation costs and attorneys' fees and expenses) resulting from said failure.

(c) Additional Insureds. Lessor, Lessor's lender, and any property management company of Lessor for the Premises shall be named as additional insureds (utilizing ISO Form CG2010 (11/85) or its equivalent) under all of the policies required by section 8.2(a). The policies required under Section 8.2(a) shall provide for severability of interest.

(d) Primary Coverage. All insurance to be maintained by Lessee shall, except for workers' compensation and employer's liability insurance, be primary, without right of contribution from insurance of Lessor. Any umbrella liability policy or excess liability policy (which shall be in "following form") shall provide that if the underlying aggregate is exhausted, the excess coverage will drop down as primary insurance. The limits of insurance maintained by Lessee shall not limit Lessee's liability under the Lease.

(e) Waiver of Subrogation. Notwithstanding any other provisions of the Lease, Lessee and Lessor each waive all rights to recover damages against the other, for loss or damage caused by fire and other perils and any other risk to the extent covered by policies of insurance or required to be covered by policies of insurance which are required to be carried in accordance with this Lease. This provision is intended to waive fully, any rights and/or claims which might give rise to a right of subrogation in favor of any insurance carrier. The coverages obtained by each of Lessee and Lessor pursuant to the Lease shall include, without limitation, a waiver of subrogation endorsement attached to the certificate of insurance.

(f) Notification of Incidents. Lessee shall notify Lessor within twenty-four (24) hours after the occurrence of any accidents or incidents in the Premises, the Building, Common Areas or the Project which could give rise to a claim under any of the insurance policies required under this Section 8.

4. Breach by Lessor; Performance by Lessee on Behalf of Lessor. Section 13.6(b) of the Lease is hereby deleted in its entirety and replaced with the following:

"13.6(b). Lessee's Remedies**.** Lessee and all successors and assigns covenant and agree that, in the event of any actual or alleged default by Lessor, Lessee's sole and exclusive remedy shall be either to seek either specific performance or monetary damages, provided that Lessor shall not be liable for loss of business profits or consequential damages, and provided further, that any recourse for monetary damages by Lessee against Lessor shall be limited solely and exclusively to an amount which is equal to the amounts paid by Lessee to Lessor under the Lease (and Lessee hereby expressly waives and releases personal liability of Lessor in excess of such amount on behalf of itself and all persons claiming by through, or under the lease) Further, in no event shall the obligations of Lessor under the Lease constitute the personal obligations of Lessor or its partners, members, directors, officers, elected officials or shareholders, and Lessee shall have no right to seek recourse against Lessor's partners, members, directors, officers, elected officials or shareholders, or any of their personal assets for the satisfaction of any liability of Lessor with respect to the Lease. Lessee expressly waives all remedies except those specifically set forth in the Lease, including, without limitation, any right of offset or abatement except as specifically set forth in the Lease, any right to terminate the Lease under Civil Code Sections 1932(2), 1933(4) and 1941 or any other successor statute, or any statutory, legal or equitable self-help remedy including, without limitation, Civil Code Section 1942 or any other current or future law. Nothing contained in the Lease shall entitle Lessee to terminate the Lease as a result of Lessor's default nor excuse Lessee from paying Rent or Additional Rent due hereunder."

5. Estoppel Certificates. All references in the Lease to "Estoppel Certificate", including, but not limited to the definition in Section 16(a), shall refer to Lessor's standard form certificate.

6. Recordation. Lessee shall not have any right to cause the Lease or any short form or memorandum thereof to be recorded.

IN WITNESS WHEREOF, the parties have executed this Addendum as of the date of the Lease.

"Lessor"

THE CITY OF LAGUNA HILLS

By: Bruce E. Channing

By:______________________________
Its: City Manager

By: Peggy Johns

By:______________________________
Its: City Clerk

APPROVED AS TO FORM:

By:______________________________
City Attorney

"Lessee"
Dayle McIntosh Center for the Disabled Inc., a California corporation

By: Elizabeth Pertain

____

Its: Board President

By: Michael Ryan

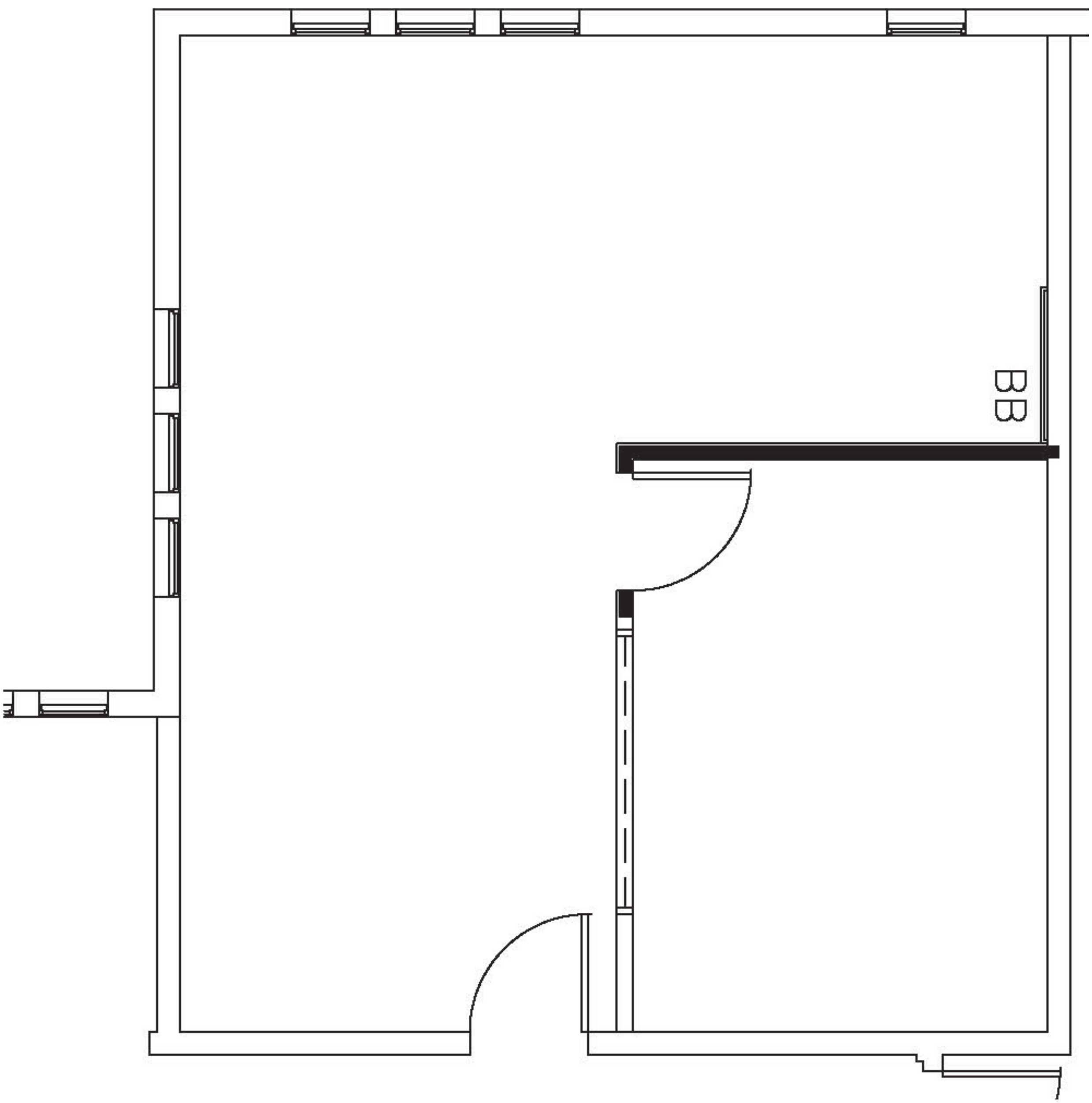
____

Its: Board Treasurer

Exhibit "A"

LAGUNA HILLS CIVIC CENTER

24031-24035 El Toro Road, Laguna Hills



24031-300 El Toro Road
Laguna Hills, CA 92653
± 664 Square Feet

For Leasing Information:

Sandi Montez
smontez@essexrealty.com

Jessica Heer
jheer@essexrealty.com

(949) 218-3801

Managed by:

ESSEX | Management Investment Development

EXHIBIT B

RULES AND REGULATIONS

ATTACHED TO AND MADE A PART OF STANDARD OFFICE LEASE

The following Rules and Regulations shall be in effect at the Office Building Project. Lessor reserves the right to adopt reasonable modifications and additions hereto. In the case of any conflict between these Rules and Regulations and the Lease, the Lease shall be controlling.

1. Except with the prior written consent of Lessor, no Lessee shall conduct any retail sales or any manufacturing of any kind in or from the Premises, or any business other than that specifically provided for in the Lease.

2. Lessor reserves the right to prohibit personal goods and services vendors from access to the Office Building Project except upon such reasonable terms and conditions, including but not limited to the payment of a reasonable fee and provision for insurance coverage, as are related to the safety, care and cleanliness of the Office Building Project, the preservation of good order thereon, and the relief of any financial or other burden on Lessor occasioned by the presence of such vendors or the sale by them of personal goods or services to the Lessee or its employees. If reasonably necessary for the accomplishment of these purposes, Lessor may exclude a particular vendor entirely or limit the number of vendors who may be present at any one time in the Office Building Project. The term “personal goods or services vendors” means persons who periodically enter the Office Building Project of which the Premises are a part for the purpose of selling goods or services to a Lessee, other than goods or services, which are used by a lessee only for the purpose of conducting its business on the Premises. “Personal goods or services” include, but are not limited to, drinking water and other beverages, food, barbering services, and shoe shining services. This Section 2 shall not apply to Lessee’s vendors and suppliers in connection with Lessee’s operation of its business.

3. The sidewalks, halls, passages, elevators and stairways shall not be obstructed by any Lessee or used by it for any purpose other than for ingress to and egress from their respective Premises. The halls, passages, entrances, elevators, stairways, balconies and roof are not for the use of the general public, and Lessor shall in all cases retain the right to control and prevent access thereto of all persons whose presence in the judgment of Lessor shall be prejudicial to the safety, character, reputation and interests of the Office Building Project and its lessees, provided that nothing herein contained shall be construed to prevent such access to persons with whom Lessee normally deals only for the purpose of conducting its business on the Premises (such as clients, customers, office suppliers and equipment vendors, and the like) unless such persons are engaged in illegal activities. No Lessee and no employees of any Lessee shall go upon the roof of the Building without the written consent of Lessor. This Section 3 shall not apply to Lessee’s vendor’s suppliers in connection with Lessee’s operation of its business.

4. The sashes, sash doors, windows, glass lights, and any lights or skylights that reflect or admit light into the halls or other places of the Building shall not be covered or obstructed. The toilet rooms, water and wash closets and other water apparatus shall not be used for any purpose other than that or which they were constructed, and no foreign substance of any kind whatsoever shall be thrown therein, and the expense of any breakage, stoppage or damage, resulting from the violation of this rule shall be borne by the Lessee who, or whose clerks, agents, employees, or visitors, shall have caused it.

5. No sign, advertisement or notice visible from the exterior of the Premises or Building shall be inscribed, painted or affixed by Lessee on any part of the Office Building Project or the Premises without the prior written consent of Lessor. If Lessor shall have given such consent at any time, whether before or after the execution of this Lease, such consent shall in no way operate as a waiver or release of any of the

provisions hereof or of this Lease, and shall be deemed to relate only to the particular sign, advertisement or notice so consented to by Lessor and shall not be construed as dispensing with the necessity or obtaining the specific written consent of Lessor with respect to each and every such sign, advertisement or notice, as the case may be, so consented to by Lessor. Lessor shall have the right to remove any non-approved sign, advertisement or notice, without notice to and at the expense of Lessee, and Lessor shall not be liable in damages for such removal.

6. In order to maintain the outward professional appearance of the Office Building Project all window coverings to be installed at the Premises shall be subject to Lessor's prior approval. If Lessor, by a notice in writing to Lessee, shall object to any curtain, blind, shade or screen attached to or hung in, or used in connection with, any window door of the Premises, such use of such curtain, blind, shade or screen shall be forthwith discontinued by Lessee. No awnings shall be permitted on any part of the Premises.

7. Lessee shall not lay linoleum, tile, carpet or other similar floor covering so that the same shall be affixed to the floor of the Premises in any manner except as approved by Lessor.

8. Lessee shall not do or permit anything to be done in the Premises, or bring or keep anything therein, which shall in any way increase the rate of fire insurance on the Office Building Project, or on the property kept therein, or obstruct or interfere with the rights of other Lessees, or in any way injure or annoy them, or conflict with the regulations of the Fire Department or the fire laws, or with any insurance policy upon the Office Building Project, or any part thereof, or with any rules and ordinances established by the Board of Health or other governmental authority.

9. No Lessee shall sweep or throw or permit to be swept or thrown from the Premises any dirt or other substance into any of the corridors or halls or elevators, or out of the doors or windows or stairways of the Building. Lessee shall not use, keep or permit to be used any foul or noxious gas or substance in the Premises, or permit or suffer the Premises to be occupied or used in a manner offensive or objectionable to Lessor or other occupants of the Office Building Project by reason of noise, odors, fire hazards and/or vibrations, or interfere in any way with other Lessees or those having business therein, nor shall any animals or birds be kept in or about the Office Building Project.

10. Lessee and its employees, agents and invitees shall not smoke any tobacco products or any other smoking materials whatsoever in the Premises, Building, common areas or any other area of the Project except in such areas, if any, as shall be designated by Lessor for smoking, in Lessor's sole and absolute discretion.

11. No cooking shall be done or permitted by Lessee on the Premises, except for the use of a microwave oven for food or Underwriter's Laboratory approved equipment for brewing coffee, tea, and similar beverages shall be permitted, provided that such use is in compliance with law. Offices in the Office Building Project shall not be used for the storage of merchandise or for sleeping or lodging.

12. Lessee, upon the termination of its tenancy, shall deliver to Lessor all the keys of offices, rooms and toilet rooms which shall have been furnished Lessee or which Lessee shall have had made, and in the event of loss of any keys so furnished, shall pay Lessor therefore.

13. On Saturdays after 6:00pm., Sundays and legal holidays, and on other days between the hours of 9:00 p.m. and 7:00 a.m., access to the Office Building Project or to the halls, corridors, elevators or stairways in the Building, or to the Premises may be refused unless the person seeking access is known to the building watchman, if any, in charge and has a pass or is properly identified. Lessor shall in no case be liable for damages for the admission to or exclusion from the Office Building Project of any person whom Lessor has the right to exclude under Rule 3 above. In case of invasion, mob, riot, public excitement, or other commotion, Lessor reserves the right but shall not be

obligated to prevent access to the Office Building Project during the continuance of the same by closing the doors or otherwise, for the safety of the tenants and protection of property in the Office Building Project.

14. Lessee shall see that the windows and doors of the Premises are closed and securely locked before leaving the building and Lessee shall exercise extraordinary care and caution that all water faucets or water apparatus are entirely shut off before Lessee or Lessee's employees leave the Building, and that all electricity, gas or air shall likewise be carefully shut off, so as to prevent waste or damage, and for any default or carelessness Lessee shall make good all injuries sustained by other Lessees or
occupants of the Building or Lessor.

15. Lessee shall not alter any lock or install a new or additional lock or any bolt
on any door of the Premises without prior written consent of Lessor. If Lessor shall give its consent, Lessee shall in each case furnish Lessor with a key for any such lock.

16. Lessee shall not install equipment such as, but not limited to, electronic tabulating or computer equipment requiring electrical or air conditioning service in excess of those to be provided by Lessor under the Lease and any such equipment shall be placed in the Premises in settings approved by Lessor to adsorb or prevent any vibration, noise or annoyance.

17. No bicycle, or shopping cart, or other vehicle or any animal shall be brought into the Premises or the halls, corridors, elevators or any part of the Building by Lessee.

18. Lessor shall have the right to prohibit the use of the name of the Office Building Project or any other publicity by Lessee which in Landlord's opinion tends to impair the reputation of the Office Building Project, or their desirability for other Lessees, and upon written notice from Lessor, Lessee will refrain from or discontinue such publicity.

19. Lessee shall not erect any aerial or antenna on the roof or exterior walls of the Premises, the Building, or the Office Building Project.

20. Lessee shall not overload the floor of the Premises. In addition, Lessee shall not mark, drive nails, screw or drill into partitions, ceilings or floor of the Premises or deface the Premises.

21. No furniture, freight or equipment of any kind shall be brought into the Building or the Building's elevator without the consent of Lessor and all moving of the same into or out of the Building shall be done at such time and in such manner, as Lessor shall designate. Lessor shall have the right to prescribe the weight, size and position of all safes and other heavy equipment brought into the Building and also the times and manner of moving the same in and out of the Office Building Project. Safes or other heavy objects shall, if considered necessary by Lessor, stand on wood strips of such thickness as is necessary to properly distribute the weight. However, Lessor's consent to placement of Lessee's safes, heavy equipment or furniture shall not constitute a representation or warranty by Lessor that the safe, heavy equipment or furniture complies, with regard to distribution of weight and/or vibration, with the provisions of the Rule 21 nor relieve Lessee from responsibility for the consequences of noncompliance. Lessor will not be responsible for loss of or damage to any safe or property from any cause and all damage done to the Building by moving or maintaining any such safe or property from any cause and all damage done to the Building by moving or maintaining any such safe or other property shall be repaired at the expense of Lessee. There shall not be used in any space, or in the public halls of the Building, either by any Lessee or others, any hand trucks except those equipped with rubber tires and side guards.

22. Except with the written consent of Lessor, no person or persons other than those approved by Lessor shall be permitted to enter the Building for their purpose of cleaning the same. Lessee shall not cause any unnecessary labor by reason of Lessee's carelessness or indifference in the preservation of good order and cleanliness. Lessor shall in no way be responsible to any Lessee for any loss of property on the Premises, however occurring, or for any damage done to the effects of any lessee by the janitor or any other employee or any other person. Janitor service shall include ordinary dusting and cleaning by the janitor assigned to such work and shall not include cleaning of carpets or rugs, except normal vacuuming, or moving of furniture and other special services. Janitor service may not be furnished on nights when rooms are occupied after 9:00p.m.

23. Lessor will direct electricians as to where and how telephone and telegraph wires are to be introduced. No boring or cutting for wires will be allowed without the consent of Lessor. The location of telephones, call boxes and other office equipment affixed to the Premises shall be subject to the approval of Lessor.

24. No furniture, packages, supplies, equipment or merchandise will be received in the Building or carried up or down in the elevators, except between such hours and in such elevators as shall be designated by Lessor.

25. Lessor reserves the right to exclude or expel from the Office Building Project any person who in the judgment of Lessor, is intoxicated or under the influence of liquor or illegal, non-prescription drugs, or who shall in any manner do any act in violation of any of the Rules and Regulations of the Office Building Project.

26. The requirements of Lessee will be attended to only upon application to Lessor. Contractors, vendors and employees of Lessor shall not perform any work or do anything outside of their regular duties unless under special instructions from the Lessor or Lessor's agent.

27. No vending machine shall be installed, maintained or operated upon the Premises without the written consent of the Lessor.

28. Lessor shall have the right, exercisable without notice and without liability to Lessee, to change the name and the street address of the Building and/or Office Building Project of which the Premises are a part.

29. Lessee agrees that it shall comply with all fire and security regulations that may be issued from time-to-time by Lessor and Lessee also shall provide Lessor with the name of a designated responsible employee to represent Lessee in all matters pertaining to such fire or security regulations.

30. Lessor reserves the right by written notice to Lessee, to rescind, alter or waive any rule or regulation at any time prescribed for the Office Building Project when, in Lessor's judgment, it is necessary, desirable or proper for the best interest of the Office Building Project and its lessees.

31. Lessees shall not disturb, solicit, or canvas any occupant of the Office Building Project and shall cooperate to prevent same.

32. Lessor shall furnish heating and air conditioning during the hours of 7:00 a.m. to 6:00 p.m., Monday through Friday, and 8:00 a.m. to 12:00 p.m. on Saturday except for holidays. In the event Lessee requires heating and air conditioning during off hours, Sundays or Holidays, Lessor shall on notice provide such services at the then prevailing rate for such extra services.

33. Lessee shall cooperate with Lessor in obtaining maximum effectiveness of the cooling system by closing blinds when the sun's rays fall directly on windows of the premises. Lessee shall not obstruct, alter, or in any way impair the efficient operation of Lessor's heating, ventilating and air-conditioning system. Lessee shall not tamper with or change the setting of any thermostats or control valves.

34. Parking

(a) The parking lot shall be accessible twenty-four (24) hours per day, subject to parking card or other reasonable Identification or security restriction as may be reasonably established by Lessor from time-to-time. Lessee agrees to cooperate with Lessor in completing regular maintenance of the parking lot.

(b) Automobiles must be parked entirely within the stall lines.

(c) All directional signs and arrows must be observed and the speed limit shall be 5 miles per hour.

(d) Parking is prohibited in areas not striped for parking.

(e) Lessor may refuse to permit any person who violates the within rules to park in the parking lot, and any violation of the rules shall subject the automobile to removal from the parking lot at the parker's expense.

(f) Every parker is required to park and lock his or her own automobile. All responsibility for any loss or damage to automobile or any personal property therein is assumed by the parker.

(g) The parking lot is for the sole purpose of parking one automobile per space. Washing, waxing, cleaning or servicing of any vehicles by the parker or his agents is prohibited.

(h) Storage of vehicles in the parking facilities is prohibited. Lessee and Lessee's employees and visitors shall not leave vehicles in the parking lot overnight.

(I) Lessor reserves the right to restrict customer, Lessee and Lessee's employees parking to a limited designated area or areas.

35. Lessee agrees to comply and acquaint its employees with such reasonable rules and regulations in the use of such Common areas as Lessor may adopt from time to time for the orderly and proper operation of said Common Areas.

Lessor reserves the right to make such other and further rules and regulations as in its judgment may be for the safety, care and cleanliness of the Office Building Project and for the preservation of good order therein. Lessee agrees to abide by these Rules and Regulations herein above stated and any additional rules and regulations, which are adopted hereafter.

Date: ____________________ Date: ____________________

Lessor's Initials: ____________________ Lessee's Initials: ________________

EXHIBIT "C"

Waiver and Release.

It is the express and understood intent, purpose, desire, and agreement of the parties in the event of termination for cause or expiration of the Lease term, that Lessee, on behalf of itself, its officers, heirs, agents, shareholders, employees, subcontractors, executors, successors and assigns, shall and does hereby release and discharge Lessor, and its respective elected and appointed officials, officers, directors, employees, attorneys, accountants, consultants, other professionals, and agents, from and against the following: any claims, penalties, actions or causes of action, obligations, and demands of any kind including but not limited to, any claims arising under the California Eminent Domain Law (Title 7 (commending with Section 1230.010) of Part 3 of the California Code of Civil Procedure), the Relocation Statutes and Regulations set forth in Chapter 16 (commending with Section 7260) of Division 7 of the California Government Code and Subchapter 1 (commencing with Section 6000) Division 3 of Title 25 of the California Code of regulations, and claims for a "taking" or inverse condemnation arising under the United States or California Constitutions or under any federal, state, or local law, statute, ordinance, regulation, rule, official policy, court order, or common law (collectively, the "Released Claims").

The parties further acknowledge that the Released Claims include any claims for loss of business goodwill pursuant to Code of Civil Procedure §1263.510 et seq., for precondemnation damages and severance damages.

Date: ___________________

Lessee's Initials: ________________

EXHIBIT "D"

WORK LETTER/REQUIREMENTS FOR IMPROVEMENTS OR ALTERATIONS BY LESSEE

If Lessor shall permit Lessee to construct any interior improvements (subsequent to the initial improvements to be constructed by Lessor, if any) in the Premises or to have any work performed in the Premises at any time prior to or during the Lease term by a contractor retained by Lessee ("Lessee's Work"), then Lessee shall comply with the requirements set forth herein. If Lessee's Work has been properly authorized, Lessee will receive written approval and consent for alterations to the Premises. All alterations to the Premises, excepting movable furniture and trade fixtures, shall, at Lessor's option, become a part of the realty and belong to Lessor.

1. SUBMITTAL OF PLANS. Prior to commencing any work in the Premises, Lessee shall submit to Lessor for approval its proposed plans for the work. Without limiting the foregoing, Lessee shall provide:

(a) A separate scale drawing denoting all proposed construction and/or demolition, if necessary.

(b) A separate drawing for each trade proposing structural, electrical, mechanical, civil or landscaping modifications.

(c) Specify all dimensions and complete references to all work to be performed in the affected areas.

(d) If adding extra electrical or mechanical equipment, provide complete operating and maintenance specifications for each item.

2. CHECKLIST. With respect to each project, Lessor will provide Lessee with a checklist listing the items required to be furnished to Lessor in connection with the proposed work. Lessee shall furnish to Lessor prior to, during, or upon completion of Lessee's Work, as applicable, each of the items specified in the checklist attached hereto as Attachment 1.

3. CONTRACTORS PROVIDING INTERIOR IMPROVEMENT SERVICES.

(a) The contractor employed by Lessee and any subcontractors shall be (i) duly licensed in the state in which the Premises are located, and (ii) subject to Lessor's prior written approval, which approval shall not be unreasonably withheld. If more than one trade is employed on a single job, state law requires the services of a general contractor in addition to contractors for specialty work being performed.

(b) Each contractor shall provide proof of licensing as a general or specialty contractor in accordance with state law. Additionally, each contractor shall furnish proof of licensing in the city or municipality in which the construction related activity is to take place.

(c) Lessee shall use Lessor's subcontractor for mechanical, electrical, plumbing, roofing and roofing consultant if available at competitive rates.

(d) Lessee and Lessee's contractors shall comply with all Applicable Laws pertaining to the performance of Lessee's Work and the completed improvements and all applicable safety regulations established by Lessor or the general contractor.

(e) Prior to commencement of any work in the Premises, Lessee and Lessee's contractors (and any subcontractors) shall obtain and provide Lessor with certificates evidencing Workers' Compensation, public liability and property damage insurance in amounts and forms and with companies

satisfactory to Lessor. Each general contractor (and any subcontractor) employed on the Premises shall provide Lessor with a current certificate of insurance in effect for that contractor with a thirty day notice of cancellation or revocation clause. Insurance requirements are as follows:

(i) Comprehensive General Liability with a $1,000,000 Combined Single Limit covering the liability of Lessor and contractor for bodily injury and property damage arising as a result of the construction of the improvements and the services performed thereunder. Lessor and any Management Company shall be named as an additional insured.

(ii) Comprehensive Automobile Liability with a $1,000,000 Combined Single Limit covering Lessor and vehicles used by contractor (and any subcontractor) in connection with the construction of the improvements.

(iii) Workers' Compensation and Employer's Liability as required by law, for employees of the contractor (and any subcontractors) performing work on the Premises.

(f) The following requirements shall be incorporated as "Special Conditions" into the contract between Lessee and its contractors and a copy of the contract shall be furnished to Lessor prior to the commencement of Lessee's Work:

(i) Prior to start of Lessee's Work, Lessee's contractor shall provide Lessor with a construction schedule in "bar graph" form indicating the completion dates of all phases of Lessee's Work.

(ii) Lessee's contractor shall be responsible for the repair, replacement or clean-up of any damage done by it to other contractors' work which specifically includes accessways to the Premises which may be concurrently used by others.

(iii) Lessee's contractor shall accept the Premises prior to starting any trenching operations. Any rework of sub-base or compaction required after the contractor's initial acceptance of the Premises shall be done by Lessee's contractor, which shall include the removal from the Project of any excess dirt or debris.

(iv) Lessee's contractor shall contain its storage of materials and its operations within the Premises and such other space as it may be assigned by Lessor or Lessor's contractor. Should Lessee's contractor be assigned space outside the Premises, it shall move to such other space as Lessor or Lessor's contractor shall direct from time to time to avoid interference or delays with other work.

(v) Lessee's contractor shall clean up the construction area and surrounding exterior areas daily. All trash, demolition materials and surplus construction materials shall be stored within the Premises and promptly removed from the Premises and the Project and disposed of in an approved sanitation site.

(vi) Lessee's contractor shall provide temporary utilities, portable toilet facilities, and potable drinking water as required for its work within the Premises and shall pay to Lessor's contractor the cost of any temporary utilities and facilities provided by Lessor's contractor at Lessee's

contractor’s request.

(vii) Lessee’s contractor shall notify Lessor or Lessor’s project manager of any planned work to be done on weekends or other than normal job hours.

(viii) Lessee’s contractor or subcontractors shall not post signs on any part of the Project or on the Premises.

4. COSTS.

(a) Lessee shall promptly pay any and all costs and expenses in connection with or arising out of the performance of Lessee’s Work (including the costs of permits thereof) and shall furnish to Lessor evidence of such payment upon request.

(b) Except in the case of carpet replacement or repainting, Lessee shall pay Lessor an amount equal to five percent (5%) of the total hard costs of construction and installation of Lessee’s Work as compensation to Lessor for review of plans, use of facilities and other miscellaneous costs of Lessor incurred as a result of such work.

5. CONTRACTOR’S BONDS. At Lessor's sole discretion, Lessor may require Lessee to obtain performance and completion bonds to insure Interior Work

6. MECHANIC’S LIENS.

(a) Lessee shall not suffer or permit to be enforced against the Premises or any part of the Project any mechanic’s, materialman’s, contractor’s or subcontractor’s lien arising out of any work of improvement, however it may arise.

(b) Lessee shall notify Lessor at least ten (10) days prior to the commencement of construction of any Lessee’s Work and Lessor shall have the right to post and record a notice of no responsibility in conformity with applicable law. Within ten (10) days following completion of Lessee’s Work, Lessee shall file a Notice of Completion and deliver to Lessor an unconditional release and waiver of lien executed by each contractor, subcontractor and materialman involved in Lessee’s Work.

(c) In the event any lien is filed against the Project or any portion thereof or against Lessee’s leasehold interest therein as a result of Lessee’s work, Lessee shall obtain the release and/or discharge of said lien, within ten (10) days after the filing thereof. In the event Lessee fails to do so, Lessor may obtain the release and/or discharge of said lien and Lessee shall indemnify Lessor for the costs thereof, including reasonable attorney’s fees, together with interest at the Applicable Interest Rate from the date of demand. Nothing herein shall prohibit Lessee from contesting the validity of any such asserted claim, provided Lessee has furnished to Lessor a lien release bond freeing the Premises from the effect of the lien claim.

7. INDEMNITY. Lessee shall indemnify, defend (with counsel satisfactory to Lessor) and hold Lessor harmless from and against any and all suits, claims, actions, loss, cost or expense (including claims for workers’ compensation, attorney’s fees and costs) based on personal injury or property damage, or otherwise (including, without limitation, contract and breach of warranty claims) arising from the performance of Lessee’s Work. Lessee shall repair or replace (or, at Lessor’s election, reimburse Lessor for the cost of repairing or replacing) any portion of the Building or item of Lessor’s equipment or any of Lessor’s real or personal property damaged, lost or destroyed in the performance of Lessee’s Work.

8. BUILDING STANDARDS. All work shall conform to Lessor’s established building standards and specifications. Lessee is required to make these standards part of the construction documents.

9. ROOF PENETRATIONS. If improvements penetrate the roof membrane, the penetrations will be sealed per Lessor/IRC roofing specifications and inspected by IRC to maintain roof warranty. The cost of inspection and all corrective work shall be borne by Lessee. Lessee shall use Lessor's original roofing contractor.

10. BUILDING MODIFICATIONS. Work will only be approved within the confines of a given space. Lessee will not be allowed to modify building exterior or mechanical and electrical service as provided to the building in common with other tenants.

11. ELECTRICAL WORK. All electrical work shall be approved from the unit space electrical panel only. Additional service requirements shall be secured only by direction of Lessor. Lessee shall use Lessor's original electrical contractor if available at competitive rates.

12. SCHEDULE OF WORK. Lessee shall be required to provide a schedule of all work to be performed, subject to Lessor approval. All costs to produce such schedule shall be borne solely by Lessee.

13. CLEAN UP AND DISPOSAL OF CONSTRUCTION DEBRIS. Building trash containers are provided for office generated trash only and are not to be used for disposal of construction-related materials and debris. Unapproved usage will result in a penalty assessment to the Lessee equal to the cost of an extra pick-up service as provided under the current rate schedule of regular trash removal service.

14. INSPECTION BY LANDLORD. Lessor reserves the following rights: (i) the right of inspection prior to, during and at completion of all construction and/or demolition, (ii) the right to post and record a notice of nonresponsibility in conformity with California law, and (iii) the right to order, if reasonable, a total stop to all improvements underway for non-compliance with any of the requirements hereof.

15. GENERAL PROVISIONS.

(a) If Lessor has agreed to provide an allowance toward the cost of tenant improvements (other than the initial Lessee Improvement Allowance), Lessor shall retain from such funds an amount determined by Lessor until Lessee has fully complied with the requirements hereof.

(b) All materials, work, installations and decorations of any nature whatsoever brought on or installed in the Premises before the commencement of the Term or throughout the Term shall be at Lessee's risk, and neither Lessor nor any party acting on Lessor's behalf shall be responsible for any damage thereto or loss or destruction thereof due to any reason or cause whatsoever.

(c) Nothing contained herein shall make or constitute Lessee as the agent of Lessor.

<u>Attachment 1 to "Exhibit D"</u>

ITEMS TO BE FURNISHED TO LESSOR FOR EACH WORK OF IMPROVEMENT

1. Plan of Alterations for Lessor Approval.
2. Contractor(s), Address, Telephone Number, Contact Person.
3. Copy of Contractor's State and City Business License.
4. Copy of Building Permit.
5. Copy of Final Inspection and Signed Building Permit Cards.
6. Copy of Certificate of Insurance Naming The City of Laguna Hills and Essex Realty Management as Additional Insured. Insurance to include Comprehensive General Liability, Comprehensive Auto, Workers' Compensation, Employer's Liability and original Endorsement.
7. Signed Unconditional Lien Waiver in favor of Development Corporation.
8. Schedule of Work.
9. Copy of Completion and Payment Bond.
10. Architect's License and Expiration.
11. Copy of Permit Plans.
12. Copy of As-Builts.
13. Copy of Recorded Notice of Completion.
14. Certificate of Occupancy.
15. Evidence of Insurance for All-Risk/Builder's Risk Insurance to the Amount of Improvements.

City of Laguna Hills
City Council Meeting Agenda
Staff Report

DATE: SEPTEMBER 23, 2014

TO: MAYOR AND COUNCIL MEMBERS

FROM: DONALD J. WHITE
ASSISTANT CITY MANAGER

ISSUE: PROPOSED LEASE RENEWAL WITH WINDSTONE BEHAVIORAL HEALTH, A CALIFORNIA CORPORATION, FOR 24031 EL TORO ROAD, SUITE 250, LAGUNA HILLS, CALIFORINA

RECOMMENDATION: THAT THE CITY COUNCIL APPROVE THE LEASE WITH WINDSTONE BEHAVIORAL HEALTH, A CALIFORNIA CORPORATION, FOR 24031 EL TORO ROAD, SUITE 250, LAGUNA HILLS, CALIFORNIA, AND AUTHORIZE THE CITY MANAGER TO EXECUTE THE LEASE.

SUMMARY:

Staff has negotiated a lease renewal with Windstone Behavioral Health for Suite 250. The following are the key lease terms and fiscal analysis:

Commencement Date: November 1, 2014

Term: 3 years (no options)

Rentable Square Feet: 2,445

Upfront Capital: $17,294

Rate: Year 1 - $2.05
Year 2 - $2.13
Year 3 - $2.22

Total Rent Payments: $187,776

Net Present Value: $103,818

Discount Rate: 12%

The City Attorney has reviewed and approved the lease. Staff is recommending approval of the lease.

FISCAL IMPACT:

This 3-year term lease is profitable for the City with a minimal upfront capital requirement.

ATTACHMENTS:

- Lease document

STANDARD MULTI-TENANT OFFICE LEASE - GROSS

AIR COMMERCIAL REAL ESTATE ASSOCIATION

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

1.1 **Parties**: This Lease ("**Lease**"), dated for reference purposes only August 26, 2014, is made by and between The City of Laguna Hills, a municipal corporation organized and existing under the laws of the State of California ("**Lessor**") and Windstone Behavioral Health, a Medical Corporation ("**Lessee**"), (collectively the "**Parties**", or individually a "**Party**").

1.2(a) **Premises**: That certain portion of the Project (as defined below), known as Suite Numbers(s) 250, 2nd floor(s), consisting of approximately 2,445 rentable square feet and approximately ______ useable square feet("**Premises**"). The Premises are located at: 24031 El Toro Road, in the City of Laguna Hills, County of Orange, State of California, with zip code 92654. In addition to Lessee's rights to use and occupy the Premises as hereinafter specified, Lessee shall have non-exclusive rights to the Common Areas (as defined in Paragraph 2.7 below) as hereinafter specified, but shall not have any rights to the roof, the exterior walls, the area above the dropped ceilings, or the utility raceways of the building containing the Premises ("**Building**") or to any other buildings in the Project. The Premises, the Building, the Common Areas, the land upon which they are located, along with all other buildings and improvements thereon, are herein collectively referred to as the "**Project**." The Project consists of approximately 51,943 rentable square feet. (See also Paragraph 2)

1.2(b) **Parking**: 4/1000 unreserved and N/A reserved vehicle parking spaces at a monthly cost of $N/A per unreserved space and $N/A per reserved space. (See Paragraph 2.6)

1.3 **Term**: three years and N/A months ("**Original Term**") commencing November 1, 2014 ("**Commencement Date**") and ending October 31, 2017 ("**Expiration Date**"). (See also Paragraph 3)

1.4 **Early Possession**: If the Premises are available Lessee may have non-exclusive possession of the Premises commencing N/A ("**Early Possession Date**"). (See also Paragraphs 3.2 and 3.3)

1.5 **Base Rent**: $5,012.25 per month ("**Base Rent**)", payable on the First day of each month commencing November 1, 2014. (See also Paragraph 4 *below*)

☑ If this box is checked, there are provisions in this Lease for the Base Rent to be adjusted. See Paragraph 4.4 *(See Addendum Paragraph 1)*

1.6 **Lessee's Share of Operating Expense Increase**: 4.71% percent (4.71%) ("**Lessee's Share**"). In the event that that size of the Premises and/or the Project are modified during the term of this Lease, Lessor shall recalculate Lessee's Share to reflect such modification.

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

(a) **Base Rent**: $5,012.25 for the period November 1-30, 2014.

(b) **Security Deposit**: $5,073.30 on file ("**Security Deposit**"). (See also Paragraph 5)

(c) **Parking**: $N/A for the period N/A.

(d) **Other**: $N/A for N/A.

(e) **Total Due Upon Execution of this Lease**: $5,012.25.

1.8 **Agreed Use**: General Office for Behavioral Health consulting office. (See also Paragraph 6)

1.9 **Base Year; Insuring Party**. The Base Year is 2010. Lessor is the "**Insuring Party**". (See also Paragraphs 4.2 and 8)

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

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

☑ Essex Realty Management represents Lessor exclusively ("**Lessor's Broker**");

☐ N/A represents Lessee exclusively ("**Lessee's Broker**"); or

☐ N/A represents both Lessor and Lessee ("**Dual Agency**").

(b) **Payment to Brokers**: Upon execution and delivery of this Lease by both Parties, Lessor shall pay to the Brokers for the brokerage services rendered by the Brokers the fee agreed to in ~~the attached~~ *a* separate written agreement. ~~or if no such agreement is attached, the sum of ______ or ______% of the total Base Rent payable for the Original Term, the sum of ______ or ______ of the total Base Rent payable during any period of time that the Lessee occupies the Premises subsequent to the Original Term, and/or the sum of ______ or ______% of the purchase price in the event that the Lessee or anyone affiliated with Lessee acquires from Lessor any rights to the Premises.~~

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

1.12 **Business Hours for the Building:** 7:00 a.m. to 6:00 p.m., Mondays through Fridays (except Building Holidays) and 8:00 a.m. to 2:00 p.m. on Saturdays (except Building Holidays). "**Building Holidays**" shall mean the dates of observation of New

Year's Day, President's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day, and N/A .

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

☐ Janitorial services

☐ Electricity

☐ Other (specify): N/A

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

☑ an Addendum consisting of Paragraphs 1 through 6;

☑ a plot plan depicting the Premises; Exhibit "A"

☑ a current set of the Rules and Regulations; Exhibit "B"

☑ a Work Letter; / Requirements for improvements or alterations by Lessee (Exhibit "D")

☐ a janitorial schedule;

☑ other (specify): Exhibit "C" Waiver and Release

.

2. **Premises**.

2.1 **Letting**. Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Premises, for the term, at the rental, and upon all of the terms, covenants and conditions set forth in this Lease. While the approximate square footage of the Premises may have been used in the marketing of the Premises for purposes of comparison, the Base Rent stated herein is NOT tied to square footage and is not subject to adjustment should the actual size be determined to be different. **Note: Lessee is advised to verify the actual size prior to executing this Lease.**

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

2.3 **Compliance**. Lessor warrants to the best of its knowledge that the improvements comprising the Premises and the Common Areas comply with the building codes that were in effect at the time that each such improvement, or portion thereof, was constructed, and also with all applicable laws, covenants or restrictions of record, regulations, and ordinances ("**Applicable Requirements**") in effect on the Start Date. Said warranty does not apply to the use to which Lessee will put the Premises, modifications which may be required by the Americans with Disabilities Act or any similar laws as a result of Lessee's use (see Paragraph 49), or to any Alterations or Utility Installations (as defined in Paragraph 7.3(a)) made or to be made by Lessee. **NOTE: Lessee is responsible for determining whether or not the zoning and other Applicable Requirements are appropriate for Lessee's intended use, and acknowledges that past uses of the Premises may no longer be allowed.** If the Premises do not comply with said warranty, Lessor shall, except as otherwise provided, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, rectify the same. If the Applicable Requirements are hereafter changed so as to require during the term of this Lease the construction of an addition to or an alteration of the Premises, the remediation of any Hazardous Substance, or the reinforcement or other physical modification of the Premises ("**Capital Expenditure**"), Lessor and Lessee shall allocate the cost of such work as follows:

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

(b) If such Capital Expenditure is not the result of the specific and unique use of the Premises by Lessee (such as, governmentally mandated seismic modifications), then Lessor shall pay for such Capital Expenditure and Lessee shall only be obligated to pay, each month during the remainder of the term of this Lease or any extension thereof, on the date that on which the Base Rent is due, an amount equal to 1/144th of the portion of such costs reasonably attributable to the Premises. Lessee shall pay Interest on the balance but may prepay its obligation at any time. If, however, such Capital Expenditure is required during the last 2 years of this Lease or if Lessor reasonably determines that it is not economically feasible to pay its share thereof, Lessor shall have the option to terminate this Lease upon 90 days prior written notice to Lessee unless Lessee notifies Lessor, in writing, within 10 days after receipt of Lessor's termination notice that Lessee will pay for such Capital Expenditure. If Lessor does not elect to terminate, and fails to tender its share of any such Capital Expenditure, Lessee may advance such funds and deduct same, with Interest, from Rent until Lessor's share of such costs have been fully paid. If Lessee is unable to finance Lessor's share, or if the balance of the Rent due and payable for the remainder of this Lease is not sufficient to fully reimburse Lessee on an offset basis, Lessee shall have the right to terminate this Lease upon 30 days written notice to Lessor.

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

2.4 **Acknowledgements**. Lessee acknowledges that: (a) it has been given an opportunity to inspect and measure the Premises, (b) Lessee has been advised by Lessor and/or Brokers to satisfy itself with respect to the size and condition of the Premises (including but not limited to the electrical, HVAC and fire sprinkler systems, security, environmental aspects, and compliance with Applicable Requirements), and their suitability for Lessee's intended use, (c) Lessee has made such investigation as it deems necessary with reference to such matters and assumes all responsibility therefor as the same relate to its occupancy of the Premises, (d) it is not relying on any representation as to the size of the Premises made by Brokers or Lessor, (e) the square footage of the Premises was not material to Lessee's decision to lease the Premises and pay the Rent stated herein, and (f) neither Lessor, Lessor's agents, nor Brokers have made any oral or written representations or warranties with respect to said matters other than as set forth in this Lease. In addition, Lessor acknowledges that: (i) Brokers have made no representations, promises or warranties concerning Lessee's ability to honor the Lease or suitability to occupy the Premises, and (ii) it is Lessor's sole responsibility to investigate the financial capability and/or suitability of all proposed tenants.

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

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

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

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

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

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

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

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

(a) To make changes to the Common Areas, including, without limitation, changes in the location, size, shape and number of the lobbies, windows, stairways, air shafts, elevators, escalators, restrooms, driveways, entrances, parking spaces, parking areas, loading and unloading areas, ingress, egress, direction of traffic, landscaped areas, walkways and utility raceways;

(b) To close temporarily any of the Common Areas for maintenance purposes so long as reasonable access to the Premises remains available;

(c) To designate other land outside the boundaries of the Project to be a part of the Common Areas;

(d) To add additional buildings and improvements to the Common Areas;

(e) To use the Common Areas while engaged in making additional improvements, repairs or alterations to the Project, or any portion thereof; and

(f) To do and perform such other acts and make such other changes in, to or with respect to the Common Areas and Project as Lessor may, in the exercise of sound business judgment, deem to be appropriate.

3. **Term**.

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

3.2 **Early Possession**. Any provision herein granting Lessee Early Possession of the Premises is subject to and conditioned upon the Premises being available for such possession prior to the Commencement Date. Any grant of Early Possession only conveys a non-exclusive right to occupy the Premises. If Lessee totally or partially occupies the Premises prior to the Commencement Date, the obligation to pay Base Rent shall be abated for the period of such Early Possession. All other terms of this Lease (including but not limited to the obligations to pay Lessee's Share of the Operating Expense Increase) shall be in effect during such period. Any such Early Possession shall not affect the Expiration Date.

3.3 **Delay In Possession**. Lessor agrees to use its best commercially reasonable efforts to deliver possession of the Premises to Lessee by the Commencement Date. If, despite said efforts, Lessor is unable to deliver possession by such date, Lessor shall not be subject to any liability therefor, nor shall such failure affect the validity of this Lease or change the Expiration Date. Lessee shall not, however, be obligated to pay Rent or perform its other obligations until Lessor delivers possession of the Premises and any period of rent abatement that Lessee would otherwise have enjoyed shall run from the date of delivery of possession and continue for a period equal to what Lessee would otherwise have enjoyed under the terms hereof, but minus any days of delay caused by the acts or omissions of Lessee. If possession is not delivered within 60 days after the Commencement Date, as the same may be extended under the terms of any Work Letter executed by Parties, Lessee may, at its option, by notice in writing within 10 days after the end of such 60 day period, cancel this Lease, in which event the Parties shall be discharged from all obligations hereunder. If such written notice is not received by Lessor within said 10 day period, Lessee's right to cancel shall terminate. If possession of the Premises is not delivered within 120 days after the Commencement Date, this Lease shall terminate unless other agreements are reached between Lessor and Lessee, in writing.

3.4 **Lessee Compliance**. Lessor shall not be required to deliver possession of the Premises to Lessee until Lessee complies with its obligation to provide evidence of insurance (~~Paragraph 8.5)~~ Paragraph 8.2 &8.3 of this Lease (see Addendum Paragraph 3). Pending delivery of such evidence, Lessee shall be required to perform all of its obligations under this Lease from and after the Start Date, including the payment of Rent, notwithstanding Lessor's election to withhold possession pending receipt of such evidence of insurance. Further, if Lessee is required to perform any other conditions prior to or concurrent with the Start Date, the Start Date shall occur but Lessor may elect to withhold possession until such conditions are satisfied.

4. **Rent**.

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

4.2 **Operating Expense Increase.** Lessee shall pay to Lessor during the term hereof, in addition to the Base Rent, Lessee's Share of the amount by which all Operating Expenses for each Comparison Year exceeds the amount of all Operating Expenses for the Base Year, such excess being hereinafter referred to as the **"Operating Expense Increase"**, in accordance with the following provisions:

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

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

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

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

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

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

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

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

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

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

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

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

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

(viii) The cost of any capital improvement to the Building or the Project not covered under the provisions of Paragraph 2.3 provided; however, that Lessor shall allocate the cost of any such capital improvement over a 12 year period and Lessee shall not be required to pay more than Lessee's Share of 1/144th of the cost of such Capital Expenditure in any given month;

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

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

(d) Any item of Operating Expense that is specifically attributable to the Premises, the Building or to any other building in the

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

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

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

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

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

4.3 **Payment**. Lessee shall cause payment of Rent to be received by Lessor in lawful money of the United States on or before the day on which it is due, without offset or deduction (except as specifically permitted in this Lease). All monetary amounts shall be rounded to the nearest whole dollar. In the event that any invoice prepared by Lessor is inaccurate such inaccuracy shall not constitute a waiver and Lessee shall be obligated to pay the amount set forth in this Lease. Rent for any period during the term hereof which is for less than one full calendar month shall be prorated based upon the actual number of days of said month. Payment of Rent shall be made to Lessor at its address stated herein or to such other persons or place as Lessor may from time to time designate in writing. Acceptance of a payment which is less than the amount then due shall not be a waiver of Lessor's rights to the balance of such Rent, regardless of Lessor's endorsement of any check so stating. In the event that any check, draft, or other instrument of payment given by Lessee to Lessor is dishonored for any reason, Lessee agrees to pay to Lessor the sum of $~~25~~ 75 in addition to any Late Charge and Lessor, at its option, may require all future Rent be paid by cashier's check. Payments will be applied first to accrued late charges and attorney's fees, second to accrued interest, then to Base Rent and Common Area Operating Expenses, and any remaining amount to any other outstanding charges or costs.

5. **Security Deposit**. Lessee shall deposit with Lessor upon execution hereof the Security Deposit as security for Lessee's faithful performance of its obligations under this Lease. If Lessee fails to pay Rent, or otherwise Defaults under this Lease, Lessor may use, apply or retain all or any portion of said Security Deposit for the payment of any amount already due Lessor, for Rents which will be due in the future, and/ or to reimburse or compensate Lessor for any liability, expense, loss or damage which Lessor may suffer or incur by reason thereof. If Lessor uses or applies all or any portion of the Security Deposit, Lessee shall within 10 days after written request therefor deposit monies with Lessor sufficient to restore said Security Deposit to the full amount required by this Lease. If the Base Rent increases during the term of this Lease, Lessee shall, upon written request from Lessor, deposit additional monies with Lessor so that the total amount of the Security Deposit shall at all times bear the same proportion to the increased Base Rent as the initial Security Deposit bore to the initial Base Rent. Should the Agreed Use be amended to accommodate a material change in the business of Lessee or to accommodate a sublessee or assignee, Lessor shall have the right to increase the Security Deposit to the extent necessary, in Lessor's reasonable judgment, to account for any increased wear and tear that the Premises may suffer as a result thereof. If a change in control of Lessee occurs during this Lease and following such change the financial condition of Lessee is, in Lessor's reasonable judgment, significantly reduced, Lessee shall deposit such additional monies with Lessor as shall be sufficient to cause the Security Deposit to be at a commercially reasonable level based on such change in financial condition. Lessor shall not be required to keep the Security Deposit separate from its general accounts. Within 90 days after the expiration or termination of this Lease, Lessor shall return that portion of the Security Deposit not used or applied by Lessor. No part of the Security Deposit shall be considered to be held in trust, to bear interest or to be prepayment for any monies to be paid by Lessee under this Lease.

6. **Use**. (See Addendum "Paragraph 2".)

6.1 ~~**Use**. Lessee shall use and occupy the Premises only for the Agreed Use, or any other legal use which is reasonably comparable thereto, and for no other purpose. Lessee shall not use or permit the use of the Premises in a manner that is unlawful, creates damage, waste or a nuisance, or that disturbs occupants of or causes damage to neighboring premises or properties. Other than guide, signal and seeing eye dogs, Lessee shall not keep or allow in the Premises any pets, animals, birds, fish, or reptiles. Lessor shall not unreasonably withhold or delay its consent to any written request for a modification of the Agreed Use, so long as the same will not impair the structural integrity of the improvements of the Building, will not adversely affect the mechanical, electrical, HVAC, and other systems of the Building, and/or will not affect the exterior appearance of the Building. If Lessor elects to withhold consent, Lessor shall within 7 days after such request give written notification of same, which notice shall include an explanation of Lessor's objections to the change in the Agreed Use.~~

6.2 **Hazardous Substances**.

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

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

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

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

(e) **Lessor Indemnification**. Except as otherwise provided in paragraph 8.7, Lessor and its successors and assigns shall indemnify, defend, reimburse and hold Lessee, its employees and lenders, harmless from and against any and all environmental damages, including the cost of remediation, which result from Hazardous Substances which existed on the Premises prior to Lessee's occupancy or which are caused by the gross negligence or willful misconduct of Lessor, its agents or employees. Lessor's obligations, as and when required by the Applicable Requirements, shall include, but not be limited to, the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease.

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

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

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

6.4 **Inspection; Compliance**. Lessor and Lessor's "**Lender**" (as defined in Paragraph 30) and consultants shall have the right to enter into Premises at any time, in the case of an emergency, and otherwise at reasonable times, after reasonable notice, for the purpose of inspecting the condition of the Premises and for verifying compliance by Lessee with this Lease. The cost of any such inspections shall be paid by Lessor, unless a violation of Applicable Requirements, or a Hazardous Substance Condition (see paragraph 9.1e) is found to exist or be imminent, or the inspection is requested or ordered by a governmental authority. In such case, Lessee shall upon request reimburse Lessor for the cost of such inspection, so long as such inspection is reasonably related to the violation or contamination. In addition, Lessee shall provide copies of all relevant material safety data sheets (**MSDS**) to Lessor within 10 days of the receipt of written request therefor.

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

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

7.2 **Lessor's Obligations**. Subject to the provisions of Paragraphs 2.2 (Condition), 2.3 (Compliance), 4.2 (Operating Expenses), 6 (Use), 7.1 (Lessee's Obligations), 9 (Damage or Destruction) and 14 (Condemnation), Lessor, subject to reimbursement pursuant to Paragraph 4.2, shall keep in good order, condition and repair the foundations, exterior walls, structural condition of interior bearing walls, exterior roof, fire sprinkler system, fire alarm and/or smoke detection systems, fire hydrants, and the Common Areas. Lessee expressly waives the benefit of any statute now or hereafter in effect to the extent it is inconsistent with the terms of this Lease.

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

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

(b) **Consent**. Lessee shall not make any Alterations or Utility Installations to the Premises without Lessor's prior written consent. Lessee may, however, make non-structural Alterations or Utility Installations to the interior of the Premises (excluding the roof) without such consent but upon notice to Lessor, as long as they are not visible from the outside, do not involve puncturing, relocating or removing the roof, ceilings, floors or any existing walls, will not affect the electrical, plumbing, HVAC, and/or life safety systems, and the cumulative cost thereof during this Lease as extended does not exceed $2,000. Notwithstanding the foregoing, Lessee shall not make or permit any roof penetrations and/or install anything on the roof without the prior written approval of Lessor. Lessor may, as a precondition to granting such approval, require Lessee to utilize a contractor chosen and/or approved by Lessor. Any Alterations or Utility Installations that Lessee shall desire to make and which require the consent of the Lessor shall be presented to Lessor in written form with detailed plans. Consent shall be deemed conditioned upon Lessee's: (i) acquiring all applicable governmental permits, (ii) furnishing Lessor with copies of both the permits and the plans and specifications prior to commencement of the work, and (iii) compliance with all conditions of said permits and other Applicable Requirements in a prompt and expeditious manner. Any Alterations or Utility Installations shall be performed in a workmanlike manner with good and sufficient materials. Lessee shall promptly upon completion furnish Lessor with asbuilt plans and specifications. For work which costs an amount in excess of one month's Base Rent, Lessor may condition its consent upon Lessee providing a lien and completion bond in an amount equal to 150% of the estimated cost of such Alteration or Utility Installation and/or upon Lessee's posting an additional Security Deposit with Lessor. In addition to. and without limitng the other requirements of this Paragraph 7.3 all utilities, installations, and alterations made by Lessee shall also be subject to the provisions of Exhibit "D" attached to this Lease.

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

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

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

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

(c) **Surrender; Restoration**. Lessee shall surrender the Premises by the Expiration Date or any earlier termination date, with all of the improvements, parts and surfaces thereof clean and free of debris, and in good operating order, condition and state of repair, ordinary wear and tear excepted. "Ordinary wear and tear" shall not include any damage or deterioration that would have been prevented by good maintenance practice. Notwithstanding the foregoing, if this Lease is for 12 months or less, then Lessee shall surrender the Premises in the same condition as delivered to Lessee on the Start Date with NO allowance for ordinary wear and tear. Lessee shall repair any damage occasioned by the installation, maintenance or removal of Trade Fixtures, Lessee owned Alterations and/or Utility Installations, furnishings, and equipment as well as the removal of any storage tank installed by or for Lessee. Lessee shall also completely remove from the Premises any and all Hazardous Substances brought onto the Premises by or for Lessee, or any third party (except Hazardous Substances which were deposited via underground migration from areas outside of the Premises) even if such removal would require Lessee to perform or pay for work that exceeds statutory requirements. Trade Fixtures shall remain the property of Lessee and shall be removed by Lessee. Any personal property of Lessee not removed on or before the Expiration Date or any earlier termination date shall be deemed to have been abandoned by Lessee and may be disposed of or retained by Lessor as Lessor may desire. The failure by Lessee to timely vacate the Premises pursuant to this Paragraph 7.4(c) without the express written consent of Lessor shall constitute a holdover under the provisions of Paragraph 26 below.

8. (See Addendum Paragraph 3.) **Insurance; Indemnity**.

~~8.1 **Insurance Premiums**. The cost of the premiums for the insurance policies maintained by Lessor pursuant to paragraph 8 are included as Operating Expenses (see paragraph 4.2 (c)(iv)). Said costs shall include increases in the premiums resulting from additional coverage related to requirements of the holder of a mortgage or deed of trust covering the Premises, Building and/or Project, increased valuation of the Premises, Building and/or Project, and/or a general premium rate increase. Said costs shall not, however, include any premium increases resulting from the nature of the occupancy of any other tenant of the Building. If the Project was not insured for the entirety of the Base Year, then the base premium shall be the lowest annual premium reasonably obtainable for the required insurance as of the Start Date, assuming the most nominal use possible of the Building and/or Project. In no event, however, shall Lessee be responsible for any portion of the premium cost attributable to liability insurance coverage in excess of $2,000,000 procured under Paragraph 8.2(b).~~

~~8.2 **Liability Insurance**.~~

~~(a) **Carried by Lessee**. Lessee shall obtain and keep in force a Commercial General Liability policy of insurance protecting Lessee and Lessor as an additional insured against claims for bodily injury, personal injury and property damage based upon or arising out of the ownership, use, occupancy or maintenance of the Premises and all areas appurtenant thereto. Such insurance shall be on an occurrence basis providing single limit coverage in an amount not less than $1,000,000 per occurrence with an annual aggregate of not less than $2,000,000. Lessee shall add Lessor as an additional insured by means of an endorsement at least as broad as the Insurance Service Organization's "Additional Insured-Managers or Lessors of Premises" Endorsement and coverage shall also be extended to include damage caused by heat, smoke or fumes from a hostile fire. The policy shall not contain any intra-insured exclusions as between insured persons or organizations, but shall include coverage for liability assumed under this Lease as an "**insured contract**" for the performance of Lessee's indemnity obligations under this Lease. The limits of said insurance shall not, however, limit the liability of Lessee nor relieve Lessee of any obligation hereunder. Lessee shall provide an endorsement on its liability policy(ies) which provides that its insurance shall be primary to and not contributory with any similar insurance carried by Lessor, whose insurance shall be considered excess insurance only.~~

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

~~8.3 **Property Insurance - Building, Improvements and Rental Value**.~~

~~(a) **Building and Improvements**. Lessor shall obtain and keep in force a policy or policies of insurance in the name of Lessor, with loss payable to Lessor, any ground-lessor, and to any Lender insuring loss or damage to the Building and/or Project. The amount of such insurance shall be equal to the full insurable replacement cost of the Building and/or Project, as the same shall exist from time to time, or the amount required by any Lender, but in no event more than the commercially reasonable and available insurable value thereof. Lessee Owned Alterations and Utility Installations, Trade Fixtures, and Lessee's personal property shall be insured by Lessee not by Lessor. If the coverage is available and commercially appropriate, such policy or policies shall insure against all risks of direct physical loss or damage (except the perils of flood and/or earthquake unless required by a Lender), including coverage for debris removal and the enforcement of any Applicable Requirements requiring the upgrading, demolition, reconstruction or replacement of any portion of the Premises as the result of a covered loss. Said policy or policies shall also contain an agreed valuation provision in lieu of any coinsurance clause, waiver of subrogation, and inflation guard protection causing an increase in the annual property insurance coverage amount by a factor of not less than the adjusted U.S. Department of Labor Consumer Price Index for All Urban Consumers for the city nearest to where the Premises are located. If such insurance coverage has a deductible clause, the deductible amount shall not exceed $5,000 per occurrence.~~

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

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

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

~~8.4 **Lessee's Property; Business Interruption Insurance; Worker's Compensation Insurance.**~~

~~(a) **Property Damage**. Lessee shall obtain and maintain insurance coverage on all of Lessee's personal property, Trade Fixtures, and Lessee Owned Alterations and Utility Installations. Such insurance shall be full replacement cost coverage with a deductible of not to exceed $1,000 per occurrence. The proceeds from any such insurance shall be used by Lessee for the replacement of personal property, Trade Fixtures and Lessee Owned Alterations and Utility Installations.~~

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

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

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

~~8.5 **Insurance Policies**. Insurance required herein shall be by companies maintaining during the policy term a "General Policyholders Rating" of at least A-, VII, as set forth in the most current issue of "Best's Insurance Guide", or such other rating as may be required by a Lender. Lessee shall not do or permit to be done anything which invalidates the required insurance policies. Lessee shall, prior to the Start Date, deliver to Lessor certified copies of policies of such insurance or certificates with copies of the required endorsements evidencing the existence and amounts of the required insurance. No such policy shall be cancelable or subject to modification except after 10 days prior written notice to Lessor. Lessee shall, at least 30 days prior to the expiration of such policies, furnish Lessor with evidence of renewals or "insurance binders" evidencing renewal thereof, or Lessor may order such insurance and charge the cost thereof to Lessee, which amount shall be payable by Lessee to Lessor upon demand. Such policies shall be for a term of at least one year, or the length of the remaining term of this Lease, whichever is less. If either Party shall fail to procure and maintain the insurance required to be carried by it, the other Party may, but shall not be required to, procure and maintain the same.~~

~~8.6 **Waiver of Subrogation**. Without affecting any other rights or remedies, Lessee and Lessor each hereby release and relieve the other, and waive their entire right to recover damages against the other, for loss of or damage to its property arising out of or incident to the perils required to be insured against herein. The effect of such releases and waivers is not limited by the amount of insurance carried or required, or by any deductibles applicable hereto. The Parties agree to have their respective property damage insurance carriers waive any right to subrogation that such companies may have against Lessor or Lessee, as the case may be, so long as the insurance is not invalidated thereby.~~

8.7 **Indemnity**. Except for Lessor's gross negligence or willful misconduct, Lessee shall indemnify, protect, defend and hold harmless the Premises, Lessor and its agents, Lessor's master or ground lessor, partners and Lenders, from and against any and all claims, loss of rents and/or damages, liens, judgments, penalties, attorneys' and consultants' fees, expenses and/or liabilities arising out of, involving, or in connection with, the use and/or occupancy of the Premises by Lessee. If any action or proceeding is brought against Lessor by reason of any of the foregoing matters, Lessee shall upon notice defend the same at Lessee's expense by counsel reasonably satisfactory to Lessor and Lessor shall cooperate with Lessee in such defense. Lessor need not have first paid any such claim in order to be defended or indemnified.

8.8 **Exemption of Lessor and its Agents from Liability**. Notwithstanding the negligence or breach of this Lease by Lessor or its agents, neither Lessor nor its agents shall be liable under any circumstances for: (i) injury or damage to the person or goods, wares, merchandise or other property of Lessee, Lessee's employees, contractors, invitees, customers, or any other person in or about the Premises, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, indoor air quality, the presence of mold or from the breakage, leakage, obstruction or other defects of pipes, fire sprinklers, wires, appliances, plumbing, HVAC or lighting fixtures, or from any other cause, whether the said injury or damage results from conditions arising upon the Premises or upon other portions of the Building, or from other sources or places, (ii) any damages arising from any act or neglect of any other tenant of Lessor or from the failure of Lessor or its agents to enforce the provisions of any other lease in the Project, or (iii) injury to Lessee's business or for any loss of income or profit therefrom. Instead, it is intended that Lessee's sole recourse in the event of such damages or injury be to file a claim on the insurance policy(ies) that Lessee is required to maintain pursuant to the provisions of paragraph 8.

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

9. **Damage or Destruction**.

9.1 **Definitions**.

(a) "**Premises Partial Damage**" shall mean damage or destruction to the improvements on the Premises, other than Lessee Owned Alterations and Utility Installations, which can reasonably be repaired in 3 months or less from the date of the damage or destruction, and the cost thereof does not exceed a sum equal to 6 month's Base Rent. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

(b) "**Premises Total Destruction**" shall mean damage or destruction to the improvements on the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which cannot reasonably be repaired in 3 months or less from the date of the damage or destruction and/or the cost thereof exceeds a sum equal to 6 month's Base Rent. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

(c) "**Insured Loss**" shall mean damage or destruction to improvements on the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which was caused by an event required to be covered by the insurance described in Paragraphs 8.1 &8.2 of this Lease (See Addendum Paragraph 3) ~~Paragraph 8.3(a)~~, irrespective of any deductible amounts or coverage limits involved.

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

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

9.2 **Partial Damage - Insured Loss**. If a Premises Partial Damage that is an Insured Loss occurs, then Lessor shall, at Lessor's expense, repair such damage (but not Lessee's Trade Fixtures or Lessee Owned Alterations and Utility Installations) as soon as reasonably possible and this Lease shall continue in full force and effect; provided, however, that Lessee shall, at Lessor's election, make the repair of any damage or destruction the total cost to repair of which is $5,000 or less, and, in such event, Lessor shall make any applicable insurance proceeds available to Lessee on a reasonable basis for that purpose. Notwithstanding the foregoing, if the required insurance was not in force or the insurance proceeds are not sufficient to effect such repair, the Insuring Party shall promptly contribute the shortage in proceeds as and when required to complete said repairs. In the event, however, such shortage was due to the fact that, by reason of the unique nature of the improvements, full replacement cost insurance coverage was not commercially reasonable and available, Lessor shall have no obligation to pay for the shortage in insurance proceeds or to fully restore the unique aspects of the Premises unless Lessee provides Lessor with the funds to cover same, or adequate assurance thereof, within 10 days following receipt of written notice of such shortage and request therefor. If Lessor receives said funds or adequate assurance thereof within said 10 day period, the party responsible for making the repairs shall complete them as soon as reasonably possible and this Lease shall remain in full force and effect. If such funds or assurance are not received, Lessor may nevertheless elect by written notice to Lessee within 10 days thereafter to: (i) make such restoration and repair as is commercially reasonable with Lessor paying any shortage in proceeds, in which case this Lease shall remain in full force and effect, or (ii) have this Lease terminate 30 days thereafter. Lessee shall not be entitled to reimbursement of any funds contributed by Lessee to repair any such damage or destruction. Premises Partial Damage due to flood or earthquake shall be subject to Paragraph 9.3, notwithstanding that there may be some insurance coverage, but the net proceeds of any such insurance shall be made available for the repairs if made by either Party.

9.3 **Partial Damage - Uninsured Loss**. If a Premises Partial Damage that is not an Insured Loss occurs, unless caused by a negligent or willful act of Lessee (in which event Lessee shall make the repairs at Lessee's expense), Lessor may either: (i) repair such damage as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) terminate this Lease by giving written notice to Lessee within 30 days after receipt by Lessor of knowledge of the occurrence of such damage. Such termination shall be effective 60 days following the date of such notice. In the event Lessor elects to terminate this Lease, Lessee shall have the right within 10 days after receipt of the termination notice to give written notice to Lessor of Lessee's commitment to pay for the repair of such damage without reimbursement from Lessor. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within 30 days after making such commitment. In such event this Lease shall continue in full force and effect, and Lessor shall proceed to make such repairs as soon as reasonably possible after the required funds are available. If Lessee does not make the required commitment, this Lease shall terminate as of the date specified in the termination notice.

9.4 **Total Destruction**. Notwithstanding any other provision hereof, if a Premises Total Destruction occurs, this Lease shall terminate 60 days following such Destruction. If the damage or destruction was caused by the gross negligence or willful misconduct of Lessee, Lessor shall have the right to recover Lessor's damages from Lessee, except as provided in Paragraph 8.3 (e) of this Lease (see Addendum Paragraph 3) ~~Paragraph 8.6~~.

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

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

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

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

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

10. **Real Property Taxes**.

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

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

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

10.4 **Joint Assessment**. If the Building is not separately assessed, Real Property Taxes allocated to the Building shall be an equitable proportion of the Real Property Taxes for all of the land and improvements included within the tax parcel assessed, such proportion to be determined by Lessor from the respective valuations assigned in the assessor's work sheets or such other information as may be reasonably available. Lessor's reasonable determination thereof, in good faith, shall be conclusive.

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

11. **Utilities and Services**.

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

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

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

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

11.5 **Interruptions.** There shall be no abatement of rent and Lessor shall not be liable in any respect whatsoever for the inadequacy, stoppage, interruption or discontinuance of any utility or service due to riot, strike, labor dispute, breakdown, accident, repair or other cause beyond Lessor's reasonable control or in cooperation with governmental request or directions.

12. **Assignment and Subletting**.

12.1 **Lessor's Consent Required**.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Lessee hereby assigns and transfers to Lessor all of Lessee's interest in all Rent payable on any sublease, and Lessor may collect such Rent and apply same toward Lessee's obligations under this Lease; provided, however, that until a Breach shall occur in the performance of Lessee's obligations, Lessee may collect said Rent. In the event that the amount collected by Lessor exceeds Lessee's then outstanding obligations any such excess shall be refunded to Lessee. Lessor shall not, by reason of the foregoing or any assignment of such sublease, nor by reason of the collection of Rent, be deemed liable to the sublessee for any failure of Lessee to perform and comply with any of Lessee's obligations to such sublessee. Lessee hereby irrevocably authorizes and directs any such sublessee, upon receipt of a written notice from Lessor stating that a Breach exists in the performance of Lessee's obligations under this Lease, to pay to Lessor all Rent due and to become due under the sublease. Sublessee shall rely upon any such notice from Lessor and shall pay all Rents to Lessor without any obligation or right to inquire as to whether such Breach exists, notwithstanding any claim from Lessee to the contrary.

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

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

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

(e) Lessor shall deliver a copy of any notice of Default or Breach by Lessee to the sublessee, who shall have the right to cure the Default of Lessee within the grace period, if any, specified in such notice. The sublessee shall have a right of reimbursement and offset from and against Lessee for any such Defaults cured by the sublessee.

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

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

(a) The abandonment of the Premises; or the vacating of the Premises without providing a commercially reasonable level of security, or where the coverage of the property insurance described in Paragraphs 8.1 & 8.2 of this Lease (See Addendum Paragraph 3) ~~Paragraph 8.3~~ is jeopardized as a result thereof, or without providing reasonable assurances to minimize potential vandalism.

(b) The failure of Lessee to make any payment of Rent or any Security Deposit required to be made by Lessee hereunder, whether to Lessor or to a third party, when due, to provide reasonable evidence of insurance or surety bond, or to fulfill any obligation under this Lease which endangers or threatens life or property, where such failure continues for a period of 3 business days following written notice to Lessee. THE ACCEPTANCE BY LESSOR OF A PARTIAL PAYMENT OF RENT OR SECURITY DEPOSIT SHALL NOT CONSTITUTE A WAIVER OF ANY OF LESSOR'S RIGHTS, INCLUDING LESSOR'S RIGHT TO RECOVER POSSESSION OF THE PREMISES.

(c) The failure of Lessee to allow Lessor and/or its agents access to the Premises or the commission of waste, act or acts constituting public or private nuisance, and/or an illegal activity on the Premises by Lessee, where such actions continue for a period of 3 business days following written notice to Lessee.

(d) The failure by Lessee to provide (i) reasonable written evidence of compliance with Applicable Requirements, (ii) the service contracts, (iii) the rescission of an unauthorized assignment or subletting, (iv) an Estoppel Certificate or financial statements, (v) a requested subordination, (vi) evidence concerning any guaranty and/or Guarantor, (vii) any document requested under Paragraph 41, (viii) material data safety sheets (MSDS), or (ix) any other documentation or information which Lessor may reasonably require of Lessee under the terms of this Lease, where any such failure continues for a period of 10 days following written notice to Lessee.

(e) A Default by Lessee as to the terms, covenants, conditions or provisions of this Lease, or of the rules adopted under Paragraph 2.9 hereof, other than those described in subparagraphs 13.1(a), (b) or (c), above, where such Default continues for a period of 30 days after written notice; provided, however, that if the nature of Lessee's Default is such that more than 30 days are reasonably required for its cure, then it shall not be deemed to be a Breach if Lessee commences such cure within said 30 day period and thereafter diligently prosecutes such cure to completion.

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

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

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

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

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

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

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

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

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

13.5 **Interest**. Any monetary payment due Lessor hereunder, other than late charges, not received by Lessor, when due shall bear interest from the 31st day after it was due. The interest ("**Interest**") charged shall be computed at the rate of 10% per annum but shall not exceed the maximum rate allowed by law. Interest is payable in addition to the potential late charge provided for in Paragraph 13.4.

13.6 **Breach by Lessor**. (see Addendum)

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

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

14. **Condemnation**. If the Premises or any portion thereof are taken under the power of eminent domain or sold under the threat of the exercise of said power (collectively "**Condemnation**"), this Lease shall terminate as to the part taken as of the date the condemning authority takes title or possession, whichever first occurs. If more than 10% of the rentable floor area of the Premises, or more than 25% of Lessee's Reserved Parking Spaces, if any, are taken by Condemnation, Lessee may, at Lessee's option, to be exercised in writing within 10 days after Lessor shall have given Lessee written notice of such taking (or in the absence of such notice, within 10 days after the condemning authority shall have taken possession) terminate this Lease as of the date the condemning authority takes such possession. If Lessee does not terminate this Lease in accordance with the foregoing, this Lease shall remain in full force and effect as to the portion of the Premises remaining, except that the Base Rent shall be reduced in proportion to the reduction in utility of the Premises caused by such Condemnation. Condemnation awards and/or payments shall be the property of Lessor, whether such award shall be made as compensation for diminution in value of the leasehold, the value of the part taken, or for severance damages; provided, however, that Lessee shall be entitled to any compensation paid by the condemnor for Lessee's relocation expenses, loss of business goodwill and/or Trade Fixtures, without regard to whether or not this Lease is terminated pursuant to the provisions of this Paragraph. All Alterations and Utility Installations made to the Premises by Lessee, for purposes of Condemnation only, shall be considered the property of the Lessee and Lessee shall be entitled to any and all compensation which is payable therefor. In the event that this Lease is not terminated by reason of the Condemnation, Lessor shall repair any damage to the Premises caused by such Condemnation.

15. **Brokerage Fees**.

~~15.1 **Additional Commission**. In addition to the payments owed pursuant to Paragraph 1.10 above, and unless Lessor and the Brokers otherwise agree in writing, Lessor agrees that: (a) if Lessee exercises any Option, (b) if Lessee or anyone affiliated with Lessee acquires from Lessor any rights to the Premises or other premises owned by Lessor and located within the Project, (c) if Lessee remains in possession of the Premises, with the consent of Lessor, after the expiration of this Lease, or (d) if Base Rent is increased, whether by agreement or operation of an escalation clause herein, then, Lessor shall pay Brokers a fee in accordance with the fee schedule of the Brokers in effect at the time the Lease was executed.~~

~~15.2 **Assumption of Obligations**. Any buyer or transferee of Lessor's interest in this Lease shall be deemed to have assumed Lessor's obligation hereunder. Brokers shall be third party beneficiaries of the provisions of Paragraphs 1.10, 15, 22 and 31. If Lessor fails to pay to Brokers any amounts due as and for brokerage fees pertaining to this Lease when due, then such amounts shall accrue Interest. In addition, if Lessor fails to pay any amounts to Lessee's Broker when due, Lessee's Broker may send written notice to Lessor and Lessee of such failure and if Lessor fails to pay such amounts within 10 days after said notice, Lessee shall pay said monies to its Broker and offset such amounts against Rent. In addition, Lessee's Broker shall be deemed to be a third party beneficiary of any commission agreement entered into by and/or between Lessor and Lessor's Broker for the limited purpose of collecting any brokerage fee owed.~~

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

16. **Estoppel Certificates**.

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

(b) If the Responding Party shall fail to execute or deliver the Estoppel Certificate within such 10 day period, the Requesting Party may execute an Estoppel Certificate stating that: (i) the Lease is in full force and effect without modification except as may be represented by the Requesting Party, (ii) there are no uncured defaults in the Requesting Party's performance, and (iii) if Lessor is the Requesting Party, not more than one month's rent has been paid in advance. Prospective purchasers and encumbrancers may rely upon the Requesting Party's Estoppel Certificate, and the Responding Party shall be estopped from denying the truth of the facts contained in said Certificate. In addition, Lessee acknowledges that any failure on its part to provide such an Estoppel Certificate will expose Lessor to risks and potentially cause Lessor to incur costs not contemplated by this Lease, the extent of which will be extremely difficult to ascertain. Accordingly, should the Lessee fail to execute and/or deliver a requested Estoppel Certificate in a timely fashion the monthly Base Rent shall be automatically increased, without any requirement for notice to Lessee, by an amount equal to 10% of the then existing Base Rent or $100, whichever is greater for remainder of the Lease. The Parties agree that such increase in Base Rent represents fair and reasonable compensation for the additional risk/costs that Lessor will incur by reason of Lessee's failure to provide the Estoppel Certificate. Such increase in Base Rent shall in no event constitute a waiver of Lessee's Default or Breach with respect to the failure to provide the Estoppel Certificate nor prevent the exercise of any of the other rights and remedies granted hereunder.

(c) If Lessor desires to finance, refinance, or sell the Premises, or any part thereof, Lessee and all Guarantors shall within 10 days after written notice from Lessor deliver to any potential lender or purchaser designated by Lessor such financial statements as may be reasonably required by such lender or purchaser, including but not limited to Lessee's financial statements for the past 3 years. All such financial statements shall be received by Lessor and such lender or purchaser in confidence and shall be used only for the purposes herein set forth.

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

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

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

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

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

22. **No Prior or Other Agreements; Broker Disclaimer**. This Lease contains all agreements between the Parties with respect to any matter mentioned herein, and no other prior or contemporaneous agreement or understanding shall be effective. Lessor and Lessee each represents and warrants to the Brokers that it has made, and is relying solely upon, its own investigation as to the nature, quality, character and financial responsibility

of the other Party to this Lease and as to the use, nature, quality and character of the Premises. Brokers have no responsibility with respect thereto or with respect to any default or breach hereof by either Party.

23. **Notices**.

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

23.2 **Date of Notice**. Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, the postmark thereon. If sent by regular mail the notice shall be deemed given 72 hours after the same is addressed as required herein and mailed with postage prepaid. Notices delivered by United States Express Mail or overnight courier that guarantees next day delivery shall be deemed given 24 hours after delivery of the same to the Postal Service or courier. Notices transmitted by facsimile transmission or similar means shall be deemed delivered upon telephone confirmation of receipt (confirmation report from fax machine is sufficient), provided a copy is also delivered via delivery or mail. If notice is received on a Saturday, Sunday or legal holiday, it shall be deemed received on the next business day.

24. **Waivers**.

(a) No waiver by Lessor of the Default or Breach of any term, covenant or condition hereof by Lessee, shall be deemed a waiver of any other term, covenant or condition hereof, or of any subsequent Default or Breach by Lessee of the same or of any other term, covenant or condition hereof. Lessor's consent to, or approval of, any act shall not be deemed to render unnecessary the obtaining of Lessor's consent to, or approval of, any subsequent or similar act by Lessee, or be construed as the basis of an estoppel to enforce the provision or provisions of this Lease requiring such consent.

(b) The acceptance of Rent by Lessor shall not be a waiver of any Default or Breach by Lessee. Any payment by Lessee may be accepted by Lessor on account of moneys or damages due Lessor, notwithstanding any qualifying statements or conditions made by Lessee in connection therewith, which such statements and/or conditions shall be of no force or effect whatsoever unless specifically agreed to in writing by Lessor at or before the time of deposit of such payment.

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

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

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

(i) <u>Lessor's Agent.</u> A Lessor's agent under a listing agreement with the Lessor acts as the agent for the Lessor only. A Lessor's agent or subagent has the following affirmative obligations: <u>To the Lessor:</u> A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Lessor. <u>To the Lessee and the Lessor:</u> a. Diligent exercise of reasonable skills and care in performance of the agent's duties. b. A duty of honest and fair dealing and good faith. c. A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

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

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

(b) Brokers have no responsibility with respect to any default or breach hereof by either Party. The Parties agree that no lawsuit or other legal proceeding involving any breach of duty, error or omission relating to this Lease may be brought against Broker more than one year after the Start Date and that the liability (including court costs and attorneys' fees), of any Broker with respect to any such lawsuit and/or legal proceeding shall not exceed the fee received by such Broker pursuant to this Lease; provided, however, that the foregoing limitation on each Broker's liability shall not be applicable to any gross negligence or willful misconduct of such Broker.

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

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

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

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

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

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

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

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

30.3 **Non-Disturbance**. With respect to Security Devices entered into by Lessor after the execution of this Lease, Lessee's subordination of this Lease shall be subject to receiving a commercially reasonable non-disturbance agreement (a "**Non-Disturbance Agreement**") from the Lender which Non-Disturbance Agreement provides that Lessee's possession of the Premises, and this Lease, including any options to extend the term hereof, will not be disturbed so long as Lessee is not in Breach hereof and attorns to the record owner of the Premises. Further, within 60 days after the execution of this Lease, Lessor shall, if requested by Lessee, use its commercially reasonable efforts to obtain a Non-Disturbance Agreement from the holder of any pre-existing Security Device which is secured by the Premises. In the event that Lessor is unable to provide the Non-Disturbance Agreement within said 60 days, then Lessee may, at Lessee's option, directly contact Lender and attempt to negotiate for the execution and delivery of a Non-Disturbance Agreement.

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

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

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

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

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

35. **Termination; Merger**. Unless specifically stated otherwise in writing by Lessor, the voluntary or other surrender of this Lease by Lessee, the mutual termination or cancellation hereof, or a termination hereof by Lessor for Breach by Lessee, shall automatically terminate any sublease or lesser estate in the Premises; provided, however, that Lessor may elect to continue any one or all existing subtenancies. Lessor's failure within 10 days following any such event to elect to the contrary by written notice to the holder of any such lesser interest, shall constitute Lessor's election to have such event constitute the termination of such interest.

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

37. **Guarantor**.

37.1 **Execution**. The Guarantors, if any, shall each execute a guaranty in the form most recently published by the AIR Commercial Real Estate Association.

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

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

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

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

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

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

39.4 **Effect of Default on Options**.

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

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

(c) An Option shall terminate and be of no further force or effect, notwithstanding Lessee's due and timely exercise of the Option, if, after such exercise and prior to the commencement of the extended term or completion of the purchase, (i) Lessee fails to pay Rent for a period of 30 days after such Rent becomes due (without any necessity of Lessor to give notice thereof), or (ii) if Lessee commits a Breach of this Lease.

40. **Security Measures**. Lessee hereby acknowledges that the Rent payable to Lessor hereunder does not include the cost of guard service or other security measures, and that Lessor shall have no obligation whatsoever to provide same. Lessee assumes all responsibility for the protection of the Premises, Lessee, its agents and invitees and their property from the acts of third parties. In the event, however, that Lessor should elect to provide security services, then the cost thereof shall be an Operating Expense.

41. **Reservations**.

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

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

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

42. **Performance Under Protest**. If at any time a dispute shall arise as to any amount or sum of money to be paid by one Party to the other under the provisions hereof, the Party against whom the obligation to pay the money is asserted shall have the right to make payment "under protest" and such payment shall not be regarded as a voluntary payment and there shall survive the right on the part of said Party to institute suit for recovery of such sum. If it shall be adjudged that there was no legal obligation on the part of said Party to pay such sum or any part thereof, said Party shall be entitled to recover such sum or so much thereof as it was not legally required to pay. A Party who does not initiate suit for the recovery of sums paid "under protest" within 6 months shall be deemed to have waived its right to protest such payment.

43. **Authority; Multiple Parties; Execution**

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

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

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

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

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

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

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

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

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

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

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

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

50. Tenant Improvement. Landlord shall provide to Lessee a tenant improvement allowance up to $12,000.00 to be used to replace the carpet and to paint the interior of the premesis.

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

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

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

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

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

Executed at: 24031 El Toro Road, Suite 100	Executed at:
On:	On:
By LESSOR:	**By LESSEE:**
The City of Laguna Hills	Windstone Behavioral Health, a Medical Corporation
By:	By:
Name Printed: Bruce E. Channing	Name Printed: George Oras
Title: City Manager	Title: President
By:	By:
Name Printed: Peggy Johns	Name Printed: George Oras
Title: City Clerk	Title: Secretary
Address: 24031 El Toro Road, Suite 100 Laguna Hills, CA 92654	Address: 151 Kalmus Drive #K2 Costa Mesa, CA 92626
Telephone:(___)	Telephone:(___)
Facsimile:(___)	Facsimile:(___)
Email:	Email:
Email:	Emai:
Federal ID No.	

INITIALS INITIALS

FORM

Federal ID No. ____________________

LESSOR'S BROKER:

Essex Realty Management, Inc.

Attn: Sandi Montez

Address: 111 Corporate Drive, Suite 110

Ladera Ranch, CA 92694

Telephone:(949) 218-3801

Facsimile:(____)

Email:

Broker/Agent DRE License #: 00965485

LESSEE'S BROKER:

Attn:

Address:

Telephone:(____)

Facsimile:(____)

Email:

Broker/Agent DRE License #:

NOTICE: These forms are often modified to meet changing requirements of law and industry needs. Always write or call to make sure you are utilizing the most current form: AIR Commercial Real Estate Association, 500 N Brand Blvd, Suite 900, Glendale, CA 91203. Telephone No. (213) 687-8777. Fax No.: (213) 687-8616.

ADDENDUM TO LEASE

THIS ADDENDUM TO LEASE (this "Addendum") shall constitute part of that certain STANDARD MULTI-TENANT OFFICE LEASE – GROSS ("Lease"), dated as of August 26, 2014, between The City of Laguna Hills ("Lessor"), and Windstone Behavioral Health, a California corporation ("Lessee"). The terms of this Addendum shall be incorporated into the Lease for all purposes. In the event of any conflict between the terms of the Lease and the terms of this Addendum, the terms of this Addendum shall control.

1. Base Rent Increase. Paragraph 4.4. is hereby added to the Lease to read as follows:

4.4.1 The monthly Base Rent payable as set forth Paragraph 1.5 and as set forth in Paragraph 1.7 (a) of the Lease shall be adjusted annually on the Commencement Date of the Lease, and on such other dates stated, to the amounts set forth below:

11/1/14 – 10/31/15	$5,012.25 ($2.05psf)
11/1/15 – 10/31/16	$5,207.85 ($2.13psf)
11/1/16 – 10/31/17	$5,427.90 ($2.22psf)

2. Use. Paragraph 6.1 of the Lease is hereby deleted in its entirety and replaced by the following:

"6.1. Use. The Premises shall be used only for the Agreed Use and for no other use. Lessee's use of the Premises shall be in compliance with and subject to all Applicable Requirements relating to or affecting the Project, the Premises or the Building or the use or operation thereof, whether now existing or hereafter enacted, including, without limitation, the Americans with Disabilities Act of 1990, 42 USC 12111 et seq. (the "ADA") as the same may be amended from time to time, any and all federal, state or local environmental, health and/or safety-related laws, regulations, standards, decisions of courts, ordinances, rules, codes, orders, decrees, directives, guidelines, permits or permit conditions, currently existing and as amended, enacted, issued or adopted in the future which are or become applicable to Lessee, the Premises, the Building, or the Project ("Environmental Laws"), any transportation or traffic management plan in satisfaction of any requirement imposed on the Project by a governmental agency with jurisdiction over the Project, and any CC&Rs or any supplement thereto recorded in any official or public records with respect to the Project or any portion thereof (collectively, "Applicable Laws"). Lessee shall be responsible for obtaining any permit, business license, or other permits or licenses required by any governmental agency permitting Lessee's use or occupancy of the Premises. Lessee shall not commit waste, overload the floors or structure of the Building, subject the Premises, the Building, the Common Area or the Project to any use which would damage the same or increase the risk of loss or violate any insurance coverage, permit any unreasonable odors, smoke, dust, gas, substances, noise or vibrations to emanate from the Premises, take any action which would constitute a nuisance or would disturb, obstruct or endanger any other tenants, take any action which would abrogate any warranties, or use or allow the Premises to be used for any unlawful purpose. Lessor shall not be responsible for non-compliance by any other tenant or occupant of the Project with, or Lessor's failure to enforce, any of the rules or regulations or CC&Rs or any other terms or provisions of such tenant's or occupant's lease. Lessee shall promptly comply with the reasonable requirements of any board of fire insurance underwriters or other similar body now or hereafter constituted. Lessee shall not do any act which shall in any way encumber the title of Lessor in and to the Premises, the Building or the Project.

3. Insurance; Indemnity. Paragraph 8.1 through 8.6 of the Lease are hereby deleted in their entirety and replaced by the following:

"8.1 Lessor's Insurance. Lessor shall maintain insurance through individual or blanket policies insuring the Building against fire and extended coverage (including, if Lessor elects, "all risk" coverage, earthquake/volcanic action, flood and/or surface water insurance) for the full replacement cost of the Building, with deductibles and the form and endorsements of such coverage as selected by Lessor, together with rental abatement insurance against loss of Rent in an amount equal to the amount of Rent for a period of at least twelve (12) months commencing on the date of loss. Lessor may also carry such other insurance as Lessor may deem prudent or advisable, including, without limitation, liability insurance in such amounts and on such terms as Lessor shall determine. Lessee shall pay to Lessor, as a portion of the Operating Expenses, the costs of the insurance coverages described herein, including, without limitation, Lessor's cost of any self-insurance deductible or retention.

8.2 Lessee's Insurance. Lessee shall, at Lessee's expense, obtain and keep in force at all times the following insurance:

(a) Commercial General Liability Insurance (Occurrence Form). A policy of commercial general liability insurance (occurrence form) having a combined single limit of not less than Two Million Dollars ($2,000,000) per occurrence and Two Million Dollars ($2,000,000) aggregate per location if Lessee has multiple locations, providing coverage for, among other things, blanket contractual liability, premises, products/completed operations with an "Additional Insured Managers or Lessors of Premises Endorsement" and personal and advertising injury coverage, with deletion of the exclusion for explosion, collapse or underground hazard, if applicable, and, if necessary, Lessee shall provide for restoration of the aggregate limit, and provided that the policy shall not contain any intra insured exclusions as between insured persons or organizations, but shall include coverage for liability assumed under the Lease as an "insured contract" for the performance of Lessee's indemnity obligations under the Lease;

(b) Automobile Liability Insurance. Comprehensive automobile liability insurance having a combined single limit of not less than Two Million Dollars ($1,000,000) per occurrence and insuring Lessee against liability for claims arising out of ownership, maintenance, or use of any owned, hired or non-owned automobiles;

(c) Workers' Compensation and Employer's Liability Insurance. Workers' compensation insurance having limits not less than those required by state statute and federal statute, if applicable, and covering all persons employed by Lessee in the conduct of its operations on the Premises (including the all states endorsement and, if applicable, the volunteers endorsement), together with employer's liability insurance coverage in the amount of at least One Million Dollars ($1,000,000);

(d) Property Insurance. "Special Form" property insurance including boiler and machinery comprehensive form, if applicable, covering damage to or loss of any of Lessee's personal property, fixtures, equipment and alterations, including electronic data processing equipment (collectively "Lessee's Property") (and coverage for the full replacement cost thereof including business interruption of the Lessee), together with, if the property of Lessee's invitees is to be kept in the Premises, warehouseman's legal liability or bailee customers insurance for the full replacement cost of the property belonging to invitees and located on the Premises.

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

8.3 General.

(a) Insurance Companies. Insurance required to be maintained by Lessee shall be written by companies licensed to do business in the state in which the Premises are located and having a "General Policyholders Rating" of at least "A-" (or such higher rating as may be required by a lender having a lien on the Premises) and a financial rating of no less than VII as set forth in the most current issue of "Best's Insurance Guide."

(b) Certificates of Insurance. Lessee shall deliver to Lessor certificates of insurance and endorsements for all insurance required to be maintained by Lessee in the form acceptable to Lessor no later than seven (7) days prior to the date of possession of the Premises. Lessee shall, at least ten (10) days prior to expiration of the policy, furnish Lessor with certificates of renewal or "binders" thereof. If Lessee fails to maintain any insurance required in the Lease, Lessee shall be liable for all losses and costs suffered or incurred by Lessor (including litigation costs and attorneys' fees and expenses) resulting from said failure.

(c) Additional Insureds. Lessor, Lessor's lender, and any property management company of Lessor for the Premises shall be named as additional insureds (utilizing ISO Form CG2010 (11/85) or its equivalent) under all of the policies required by section 8.2(a). The policies required under Section 8.2(a) shall provide for severability of interest.

(d) Primary Coverage. All insurance to be maintained by Lessee shall, except for workers' compensation and employer's liability insurance, be primary, without right of contribution from insurance of Lessor. Any umbrella liability policy or excess liability policy (which shall be in "following form") shall provide that if the underlying aggregate is exhausted, the excess coverage will drop down as primary insurance. The limits of insurance maintained by Lessee shall not limit Lessee's liability under the Lease.

(e) Waiver of Subrogation. Notwithstanding any other provisions of the Lease, Lessee and Lessor each waive all rights to recover damages against the other, for loss or damage caused by fire and other perils and any other risk to the extent covered by policies of insurance or required to be covered by policies of insurance which are required to be carried in accordance with this

Lease. This provision is intended to waive fully, any rights and/or claims which might give rise to a right of subrogation in favor of any insurance carrier. The coverages obtained by each of Lessee and Lessor pursuant to the Lease shall include, without limitation, a waiver of subrogation endorsement attached to the certificate of insurance.

(f) Notification of Incidents. Lessee shall notify Lessor within twenty-four (24) hours after the occurrence of any accidents or incidents in the Premises, the Building, Common Areas or the Project which could give rise to a claim under any of the insurance policies required under this Paragraph 8.

4. Breach by Lessor; Performance by Lessee on Behalf of Lessor. Paragraph 13.6(b) of the Lease is hereby deleted in its entirety and replaced with the following:

"13.6(b). Lessee's Remedies**.** Lessee and all successors and assigns covenant and agree that, in the event of any actual or alleged default by Lessor, Lessee's sole and exclusive remedy shall be either to seek either specific performance or monetary damages, provided that Lessor shall not be liable for loss of business profits or consequential damages, and provided further, that any recourse for monetary damages by Lessee against Lessor shall be limited solely and exclusively to an amount which is equal to the amounts paid by Lessee to Lessor under the Lease (and Lessee hereby expressly waives and releases personal liability of Lessor in excess of such amount on behalf of itself and all persons claiming by through, or under the lease) Further, in no event shall the obligations of Lessor under the Lease constitute the personal obligations of Lessor or its elected or appointed officers and officials, employees, agents, and volunteers, and Lessee shall have no right to seek recourse against Lessor's elected or appointed officers and officials, employees, agents, and volunteers, or any of their personal assets for the satisfaction of any liability of Lessor with respect to the Lease. Lessee expressly waives all remedies except those specifically set forth in the Lease, including, without limitation, any right of offset or abatement except as specifically set forth in the Lease, any right to terminate the Lease under Civil Code Sections 1932(2), 1933(4) and 1941 or any other successor statute, or any statutory, legal or equitable self-help remedy including, without limitation, Civil Code Section 1942 or any other current or future law. Nothing contained in the Lease shall entitle Lessee to terminate the Lease as a result of Lessor's default nor excuse Lessee from paying Rent or Additional Rent due hereunder."

5. Estoppel Certificates. All references in the Lease to "Estoppel Certificate", including, but not limited to the definition in Paragraph 16(a), shall refer to Lessor's standard form certificate.

6. Recordation. Lessee shall not have any right to cause the Lease or any short form or memorandum thereof to be recorded.

IN WITNESS WHEREOF, the parties have executed this Addendum as of the date of the Lease.

"Lessor"

THE CITY OF LAGUNA HILLS

By: Bruce E. Channing

By:________________________________
Its: City Manager

By: Peggy Johns

By:________________________________
Its: City Clerk

APPROVED AS TO FORM:

By:________________________________
City Attorney

"Lessee"

Windstone Behavioral Health, a Medical Corporation

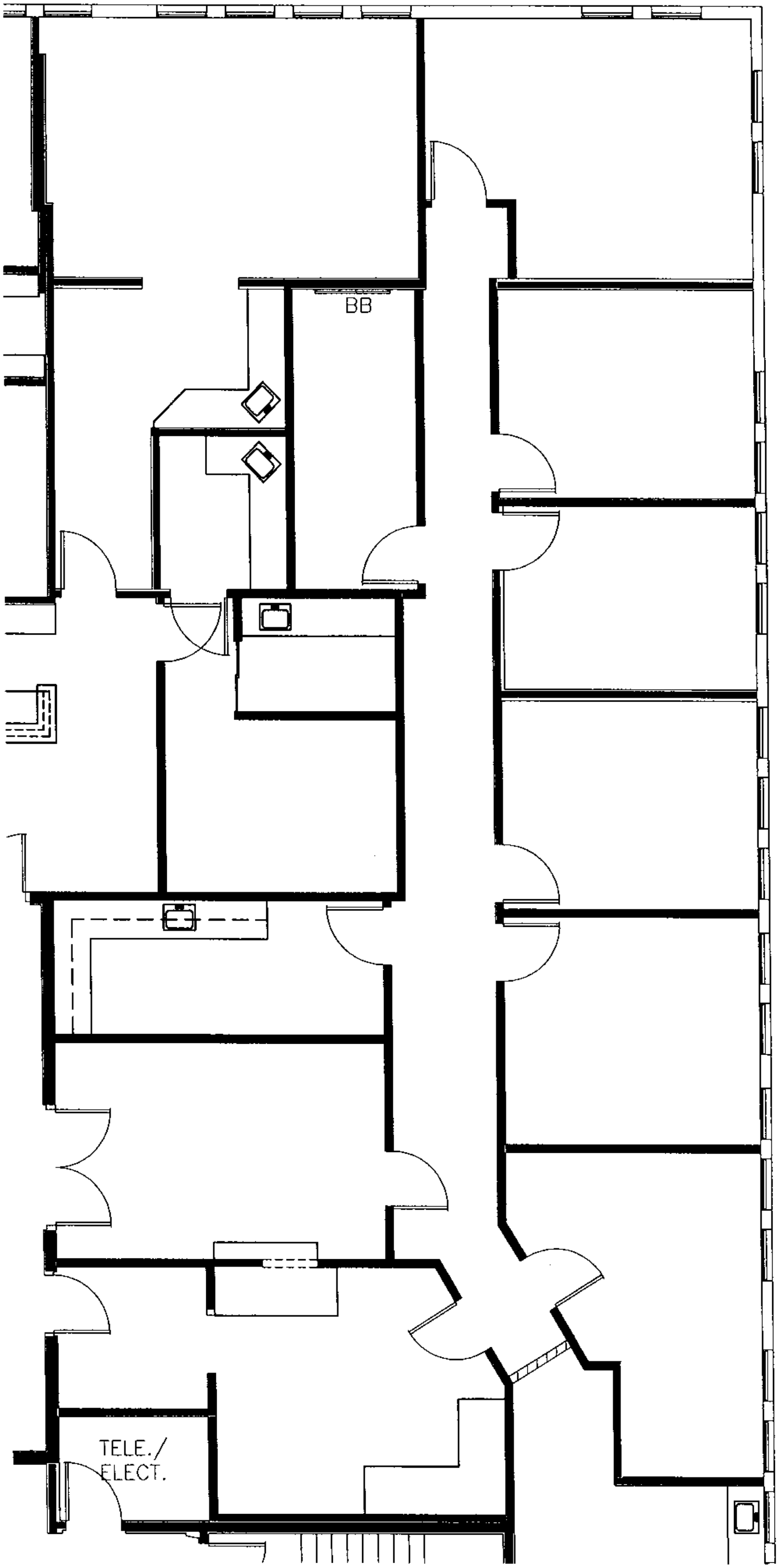
By:
__George Oras____________

Its: President

By:___________________________
George Oras

Its: Secretary

EXHIBIT "A"



WINDSTONE
SUITE 250

EXHIBIT B

RULES AND REGULATIONS

ATTACHED TO AND MADE A PART OF STANDARD OFFICE LEASE

The following Rules and Regulations shall be in effect at the Office Building Project. Lessor reserves the right to adopt reasonable modifications and additions hereto. In the case of any conflict between these Rules and Regulations and the Lease, the Lease shall be controlling.

1. Except with the prior written consent of Lessor, no Lessee shall conduct any retail sales or any manufacturing of any kind in or from the Premises, or any business other than that specifically provided for in the Lease.

2. Lessor reserves the right to prohibit personal goods and services vendors from access to the Office Building Project except upon such reasonable terms and conditions, including but not limited to the payment of a reasonable fee and provision for insurance coverage, as are related to the safety, care and cleanliness of the Office Building Project, the preservation of good order thereon, and the relief of any financial or other burden on Lessor occasioned by the presence of such vendors or the sale by them of personal goods or services to the Lessee or its employees. If reasonably necessary for the accomplishment of these purposes, Lessor may exclude a particular vendor entirely or limit the number of vendors who may be present at any one time in the Office Building Project. The term "personal goods or services vendors" means persons who periodically enter the Office Building Project of which the Premises are a part for the purpose of selling goods or services to a Lessee, other than goods or services, which are used by a lessee only for the purpose of conducting its business on the Premises. "Personal goods or services" include, but are not limited to, drinking water and other beverages, food, barbering services, and shoe shining services. This Section 2 shall not apply to Lessee's vendors and suppliers in connection with Lessee's operation of its business.

3. The sidewalks, halls, passages, elevators and stairways shall not be obstructed by any Lessee or used by it for any purpose other than for ingress to and egress from their respective Premises. The halls, passages, entrances, elevators, stairways, balconies and roof are not for the use of the general public, and Lessor shall in all cases retain the right to control and prevent access thereto of all persons whose presence in the judgment of Lessor shall be prejudicial to the safety, character, reputation and interests of the Office Building Project and its lessees, provided that nothing herein contained shall be construed to prevent such access to persons with whom Lessee normally deals only for the purpose of conducting its business on the Premises (such as clients, customers, office suppliers and equipment vendors, and the like) unless such persons are engaged in illegal activities. No Lessee and no employees of any Lessee shall go upon the roof of the Building without the written consent of Lessor. This Section 3 shall not apply to Lessee's vendor's suppliers in connection with Lessee's operation of its business.

4. The sashes, sash doors, windows, glass lights, and any lights or skylights that reflect or admit light into the halls or other places of the Building shall not be covered or obstructed. The toilet rooms, water and wash closets and other water apparatus shall not be used for any purpose other than that or which they were constructed, and no foreign substance of any kind whatsoever shall be thrown therein, and the expense of any breakage, stoppage or damage, resulting from the violation of this rule shall be borne by the Lessee who, or whose clerks, agents, employees, or visitors, shall have caused it.

5. No sign, advertisement or notice visible from the exterior of the Premises or Building shall be inscribed, painted or affixed by Lessee on any part of the Office Building Project or the Premises without the prior written consent of Lessor. If Lessor shall have given such consent at any time, whether before or after the execution of this Lease, such consent shall in no way operate as a waiver or release of any of the

provisions hereof or of this Lease, and shall be deemed to relate only to the particular sign, advertisement or notice so consented to by Lessor and shall not be construed as dispensing with the necessity or obtaining the specific written consent of Lessor with respect to each and every such sign, advertisement or notice, as the case may be, so consented to by Lessor. Lessor shall have the right to remove any non-approved sign, advertisement or notice, without notice to and at the expense of Lessee, and Lessor shall not be liable in damages for such removal.

6. In order to maintain the outward professional appearance of the Office Building Project all window coverings to be installed at the Premises shall be subject to Lessor's prior approval. If Lessor, by a notice in writing to Lessee, shall object to any curtain, blind, shade or screen attached to or hung in, or used in connection with, any window door of the Premises, such use of such curtain, blind, shade or screen shall be forthwith discontinued by Lessee. No awnings shall be permitted on any part of the Premises.

7. Lessee shall not lay linoleum, tile, carpet or other similar floor covering so that the same shall be affixed to the floor of the Premises in any manner except as approved by Lessor.

8. Lessee shall not do or permit anything to be done in the Premises, or bring or keep anything therein, which shall in any way increase the rate of fire insurance on the Office Building Project, or on the property kept therein, or obstruct or interfere with the rights of other Lessees, or in any way injure or annoy them, or conflict with the regulations of the Fire Department or the fire laws, or with any insurance policy upon the Office Building Project, or any part thereof, or with any rules and ordinances established by the Board of Health or other governmental authority.

9. No Lessee shall sweep or throw or permit to be swept or thrown from the Premises any dirt or other substance into any of the corridors or halls or elevators, or out of the doors or windows or stairways of the Building. Lessee shall not use, keep or permit to be used any foul or noxious gas or substance in the Premises, or permit or suffer the Premises to be occupied or used in a manner offensive or objectionable to Lessor or other occupants of the Office Building Project by reason of noise, odors, fire hazards and/or vibrations, or interfere in any way with other Lessees or those having business therein, nor shall any animals or birds be kept in or about the Office Building Project.

10. Lessee and its employees, agents and invitees shall not smoke any tobacco products or any other smoking materials whatsoever in the Premises, Building, common areas or any other area of the Project except in such areas, if any, as shall be designated by Lessor for smoking, in Lessor's sole and absolute discretion.

11. No cooking shall be done or permitted by Lessee on the Premises, except for the use of a microwave oven for food or Underwriter's Laboratory approved equipment for brewing coffee, tea, and similar beverages shall be permitted, provided that such use is in compliance with law. Offices in the Office Building Project shall not be used for the storage of merchandise or for sleeping or lodging.

12. Lessee, upon the termination of its tenancy, shall deliver to Lessor all the keys of offices, rooms and toilet rooms which shall have been furnished Lessee or which Lessee shall have had made, and in the event of loss of any keys so furnished, shall pay Lessor therefore.

13. On Saturdays after 6:00pm., Sundays and legal holidays, and on other days between the hours of 9:00 p.m. and 7:00 a.m., access to the Office Building Project or to the halls, corridors, elevators or stairways in the Building, or to the Premises may be refused unless the person seeking access is known to the building watchman, if any, in charge and has a pass or is properly identified. Lessor shall in no case be liable for damages for the admission to or exclusion from the Office Building Project of any person whom Lessor has the right to exclude under Rule 3 above. In case of invasion, mob, riot, public excitement, or other commotion, Lessor reserves the right but shall not be

obligated to prevent access to the Office Building Project during the continuance of the same by closing the doors or otherwise, for the safety of the tenants and protection of property in the Office Building Project.

14. Lessee shall see that the windows and doors of the Premises are closed and securely locked before leaving the building and Lessee shall exercise extraordinary care and caution that all water faucets or water apparatus are entirely shut off before Lessee or Lessee's employees leave the Building, and that all electricity, gas or air shall likewise be carefully shut off, so as to prevent waste or damage, and for any default or carelessness Lessee shall make good all injuries sustained by other Lessees or occupants of the Building or Lessor.

15. Lessee shall not alter any lock or install a new or additional lock or any bolt on any door of the Premises without prior written consent of Lessor. If Lessor shall give its consent, Lessee shall in each case furnish Lessor with a key for any such lock.

16. Lessee shall not install equipment such as, but not limited to, electronic tabulating or computer equipment requiring electrical or air conditioning service in excess of those to be provided by Lessor under the Lease and any such equipment shall be placed in the Premises in settings approved by Lessor to adsorb or prevent any vibration, noise or annoyance.

17. No bicycle, or shopping cart, or other vehicle or any animal shall be brought into the Premises or the halls, corridors, elevators or any part of the Building by Lessee.

18. Lessor shall have the right to prohibit the use of the name of the Office Building Project or any other publicity by Lessee which in Landlord's opinion tends to impair the reputation of the Office Building Project, or their desirability for other Lessees, and upon written notice from Lessor, Lessee will refrain from or discontinue such publicity.

19. Lessee shall not erect any aerial or antenna on the roof or exterior walls of the Premises, the Building, or the Office Building Project.

20. Lessee shall not overload the floor of the Premises. In addition, Lessee shall not mark, drive nails, screw or drill into partitions, ceilings or floor of the Premises or deface the Premises.

21. No furniture, freight or equipment of any kind shall be brought into the Building or the Building's elevator without the consent of Lessor and all moving of the same into or out of the Building shall be done at such time and in such manner, as Lessor shall designate. Lessor shall have the right to prescribe the weight, size and position of all safes and other heavy equipment brought into the Building and also the times and manner of moving the same in and out of the Office Building Project. Safes or other heavy objects shall, if considered necessary by Lessor, stand on wood strips of such thickness as is necessary to properly distribute the weight. However, Lessor's consent to placement of Lessee's safes, heavy equipment or furniture shall not constitute a representation or warranty by Lessor that the safe, heavy equipment or furniture complies, with regard to distribution of weight and/or vibration, with the provisions of the Rule 21 nor relieve Lessee from responsibility for the consequences of noncompliance. Lessor will not be responsible for loss of or damage to any safe or property from any cause and all damage done to the Building by moving or maintaining any such safe or property from any cause and all damage done to the Building by moving or maintaining any such safe or other property shall be repaired at the expense of Lessee. There shall not be used in any space, or in the public halls of the Building, either by any Lessee or others, any hand trucks except those equipped with rubber tires and side guards.

22. Except with the written consent of Lessor, no person or persons other than those approved by Lessor shall be permitted to enter the Building for their purpose of cleaning the same. Lessee shall not cause any unnecessary labor by reason of Lessee's carelessness or indifference in the preservation of good order and cleanliness. Lessor shall in no way be responsible to any Lessee for any loss of property on the Premises, however occurring, or for any damage done to the effects of any lessee by the janitor or any other employee or any other person. Janitor service shall include ordinary dusting and cleaning by the janitor assigned to such work and shall not include cleaning of carpets or rugs, except normal vacuuming, or moving of furniture and other special services. Janitor service may not be furnished on nights when rooms are occupied after 9:00p.m.

23. Lessor will direct electricians as to where and how telephone and telegraph wires are to be introduced. No boring or cutting for wires will be allowed without the consent of Lessor. The location of telephones, call boxes and other office equipment affixed to the Premises shall be subject to the approval of Lessor.

24. No furniture, packages, supplies, equipment or merchandise will be received in the Building or carried up or down in the elevators, except between such hours and in such elevators as shall be designated by Lessor.

25. Lessor reserves the right to exclude or expel from the Office Building Project any person who in the judgment of Lessor, is intoxicated or under the influence of liquor or illegal, non-prescription drugs, or who shall in any manner do any act in violation of any of the Rules and Regulations of the Office Building Project.

26. The requirements of Lessee will be attended to only upon application to Lessor. Contractors, vendors and employees of Lessor shall not perform any work or do anything outside of their regular duties unless under special instructions from the Lessor or Lessor's agent.

27. No vending machine shall be installed, maintained or operated upon the Premises without the written consent of the Lessor.

28. Lessor shall have the right, exercisable without notice and without liability to Lessee, to change the name and the street address of the Building and/or Office Building Project of which the Premises are a part.

29. Lessee agrees that it shall comply with all fire and security regulations that may be issued from time-to-time by Lessor and Lessee also shall provide Lessor with the name of a designated responsible employee to represent Lessee in all matters pertaining to such fire or security regulations.

30. Lessor reserves the right by written notice to Lessee, to rescind, alter or waive any rule or regulation at any time prescribed for the Office Building Project when, in Lessor's judgment, it is necessary, desirable or proper for the best interest of the Office Building Project and its lessees.

31. Lessees shall not disturb, solicit, or canvas any occupant of the Office Building Project and shall cooperate to prevent same.

32. Lessor shall furnish heating and air conditioning during the hours of 7:00 a.m. to 6:00 p.m., Monday through Friday, and 8:00 a.m. to 12:00 p.m. on Saturday except for holidays. In the event Lessee requires heating and air conditioning during off hours, Sundays or Holidays, Lessor shall on notice provide such services at the then prevailing rate for such extra services.

33. Lessee shall cooperate with Lessor in obtaining maximum effectiveness of the cooling system by closing blinds when the sun's rays fall directly on windows of the premises. Lessee shall not obstruct, alter, or in any way impair the efficient operation of Lessor's heating, ventilating and air-conditioning system. Lessee shall not tamper with or change the setting of any thermostats or control valves.

34. Parking

(a) The parking lot shall be accessible twenty-four (24) hours per day, subject to parking card or other reasonable Identification or security restriction as may be reasonably established by Lessor from time-to-time. Lessee agrees to cooperate with Lessor in completing regular maintenance of the parking lot.

(b) Automobiles must be parked entirely within the stall lines.

(c) All directional signs and arrows must be observed and the speed limit shall be 5 miles per hour.

(d) Parking is prohibited in areas not striped for parking.

(e) Lessor may refuse to permit any person who violates the within rules to park in the parking lot, and any violation of the rules shall subject the automobile to removal from the parking lot at the parker's expense.

(f) Every parker is required to park and lock his or her own automobile. All responsibility for any loss or damage to automobile or any personal property therein is assumed by the parker.

(g) The parking lot is for the sole purpose of parking one automobile per space. Washing, waxing, cleaning or servicing of any vehicles by the parker or his agents is prohibited.

(h) Storage of vehicles in the parking facilities is prohibited. Lessee and Lessee's employees and visitors shall not leave vehicles in the parking lot overnight.

(I) Lessor reserves the right to restrict customer, Lessee and Lessee's employees parking to a limited designated area or areas.

35. Lessee agrees to comply and acquaint its employees with such reasonable rules and regulations in the use of such Common areas as Lessor may adopt from time to time for the orderly and proper operation of said Common Areas.

Lessor reserves the right to make such other and further rules and regulations as in its judgment may be for the safety, care and cleanliness of the Office Building Project and for the preservation of good order therein. Lessee agrees to abide by these Rules and Regulations herein above stated and any additional rules and regulations, which are adopted hereafter.

Date: ____________________ Date: ___________________

Lessor's Initials: ___________________ Lessee's Initials: _______________

EXHIBIT "C"

Waiver and Release.

It is the express and understood intent, purpose, desire, and agreement of the parties in the event of termination for cause or expiration of the Lease term, that Lessee, on behalf of itself, its officers, heirs, agents, shareholders, employees, subcontractors, executors, successors and assigns, shall and does hereby release and discharge Lessor, and its respective elected and appointed officials, officers, directors, employees, attorneys, accountants, consultants, other professionals, and agents, from and against the following: any claims, penalties, actions or causes of action, obligations, and demands of any kind including but not limited to, any claims arising under the California Eminent Domain Law (Title 7 (commending with Section 1230.010) of Part 3 of the California Code of Civil Procedure), the Relocation Statutes and Regulations set forth in Chapter 16 (commending with Section 7260) of Division 7 of the California Government Code and Subchapter 1 (commencing with Section 6000) Division 3 of Title 25 of the California Code of regulations, and claims for a "taking" or inverse condemnation arising under the United States or California Constitutions or under any federal, state, or local law, statute, ordinance, regulation, rule, official policy, court order, or common law (collectively, the "Released Claims").

The parties further acknowledge that the Released Claims include any claims for loss of business goodwill pursuant to Code of Civil Procedure §1263.510 et seq., for precondemnation damages and severance damages.

Date: ___________________

Lessee's Initials: ________________

EXHIBIT "D"

WORK LETTER/REQUIREMENTS FOR IMPROVEMENTS OR ALTERATIONS BY LESSEE

If Lessor shall permit Lessee to construct any interior improvements (subsequent to the initial improvements to be constructed by Lessor, if any) in the Premises or to have any work performed in the Premises at any time prior to or during the Lease term by a contractor retained by Lessee (“Lessee’s Work”), then Lessee shall comply with the requirements set forth herein. If Lessee’s Work has been properly authorized, Lessee will receive written approval and consent for alterations to the Premises. All alterations to the Premises, excepting movable furniture and trade fixtures, shall, at Lessor’s option, become a part of the realty and belong to Lessor.

1. SUBMITTAL OF PLANS. Prior to commencing any work in the Premises, Lessee shall submit to Lessor for approval its proposed plans for the work. Without limiting the foregoing, Lessee shall provide:

(a) A separate scale drawing denoting all proposed construction and/or demolition, if necessary.

(b) A separate drawing for each trade proposing structural, electrical, mechanical, civil or landscaping modifications.

(c) Specify all dimensions and complete references to all work to be performed in the affected areas.

(d) If adding extra electrical or mechanical equipment, provide complete operating and maintenance specifications for each item.

2. CHECKLIST. With respect to each project, Lessor will provide Lessee with a checklist listing the items required to be furnished to Lessor in connection with the proposed work. Lessee shall furnish to Lessor prior to, during, or upon completion of Lessee’s Work, as applicable, each of the items specified in the checklist attached hereto as Attachment 1.

3. CONTRACTORS PROVIDING INTERIOR IMPROVEMENT SERVICES.

(a) The contractor employed by Lessee and any subcontractors shall be (i) duly licensed in the state in which the Premises are located, and (ii) subject to Lessor’s prior written approval, which approval shall not be unreasonably withheld. If more than one trade is employed on a single job, state law requires the services of a general contractor in addition to contractors for specialty work being performed.

(b) Each contractor shall provide proof of licensing as a general or specialty contractor in accordance with state law. Additionally, each contractor shall furnish proof of licensing in the city or municipality in which the construction related activity is to take place.

(c) Lessee shall use Lessor’s subcontractor for mechanical, electrical, plumbing, roofing and roofing consultant if available at competitive rates.

(d) Lessee and Lessee’s contractors shall comply with all Applicable Laws pertaining to the performance of Lessee’s Work and the completed improvements and all applicable safety regulations established by Lessor or the general contractor.

(e) Prior to commencement of any work in the Premises, Lessee and Lessee’s contractors (and any subcontractors) shall obtain and provide Lessor with certificates evidencing Workers’ Compensation, public liability and property damage insurance in amounts and forms and with companies

satisfactory to Lessor. Each general contractor (and any subcontractor) employed on the Premises shall provide Lessor with a current certificate of insurance in effect for that contractor with a thirty day notice of cancellation or revocation clause. Insurance requirements are as follows:

(i) Comprehensive General Liability with a $1,000,000 Combined Single Limit covering the liability of Lessor and contractor for bodily injury and property damage arising as a result of the construction of the improvements and the services performed thereunder. Lessor and any Management Company shall be named as an additional insured.

(ii) Comprehensive Automobile Liability with a $1,000,000 Combined Single Limit covering Lessor and vehicles used by contractor (and any subcontractor) in connection with the construction of the improvements.

(iii) Workers' Compensation and Employer's Liability as required by law, for employees of the contractor (and any subcontractors) performing work on the Premises.

(f) The following requirements shall be incorporated as "Special Conditions" into the contract between Lessee and its contractors and a copy of the contract shall be furnished to Lessor prior to the commencement of Lessee's Work:

(i) Prior to start of Lessee's Work, Lessee's contractor shall provide Lessor with a construction schedule in "bar graph" form indicating the completion dates of all phases of Lessee's Work.

(ii) Lessee's contractor shall be responsible for the repair, replacement or clean-up of any damage done by it to other contractors' work which specifically includes accessways to the Premises which may be concurrently used by others.

(iii) Lessee's contractor shall accept the Premises prior to starting any trenching operations. Any rework of sub-base or compaction required after the contractor's initial acceptance of the Premises shall be done by Lessee's contractor, which shall include the removal from the Project of any excess dirt or debris.

(iv) Lessee's contractor shall contain its storage of materials and its operations within the Premises and such other space as it may be assigned by Lessor or Lessor's contractor. Should Lessee's contractor be assigned space outside the Premises, it shall move to such other space as Lessor or Lessor's contractor shall direct from time to time to avoid interference or delays with other work.

(v) Lessee's contractor shall clean up the construction area and surrounding exterior areas daily. All trash, demolition materials and surplus construction materials shall be stored within the Premises and promptly removed from the Premises and the Project and disposed of in an approved sanitation site.

(vi) Lessee's contractor shall provide temporary utilities, portable toilet facilities, and potable drinking water as required for its work within the Premises and shall pay to Lessor's contractor the cost of any temporary utilities and facilities provided by Lessor's contractor at Lessee's

contractor’s request.

(vii) Lessee’s contractor shall notify Lessor or Lessor’s project manager of any planned work to be done on weekends or other than normal job hours.

(viii) Lessee’s contractor or subcontractors shall not post signs on any part of the Project or on the Premises.

4. COSTS.

(a) Lessee shall promptly pay any and all costs and expenses in connection with or arising out of the performance of Lessee’s Work (including the costs of permits thereof) and shall furnish to Lessor evidence of such payment upon request.

(b) Except in the case of carpet replacement or repainting, Lessee shall pay Lessor an amount equal to five percent (5%) of the total hard costs of construction and installation of Lessee’s Work as compensation to Lessor for review of plans, use of facilities and other miscellaneous costs of Lessor incurred as a result of such work.

5. CONTRACTOR’S BONDS. At Lessor's sole discretion, Lessor may require Lessee to obtain performance and completion bonds to insure Interior Work

6. MECHANIC’S LIENS.

(a) Lessee shall not suffer or permit to be enforced against the Premises or any part of the Project any mechanic’s, materialman’s, contractor’s or subcontractor’s lien arising out of any work of improvement, however it may arise.

(b) Lessee shall notify Lessor at least ten (10) days prior to the commencement of construction of any Lessee’s Work and Lessor shall have the right to post and record a notice of no responsibility in conformity with applicable law. Within ten (10) days following completion of Lessee’s Work, Lessee shall file a Notice of Completion and deliver to Lessor an unconditional release and waiver of lien executed by each contractor, subcontractor and materialman involved in Lessee’s Work.

(c) In the event any lien is filed against the Project or any portion thereof or against Lessee’s leasehold interest therein as a result of Lessee’s work, Lessee shall obtain the release and/or discharge of said lien, within ten (10) days after the filing thereof. In the event Lessee fails to do so, Lessor may obtain the release and/or discharge of said lien and Lessee shall indemnify Lessor for the costs thereof, including reasonable attorney’s fees, together with interest at the Applicable Interest Rate from the date of demand. Nothing herein shall prohibit Lessee from contesting the validity of any such asserted claim, provided Lessee has furnished to Lessor a lien release bond freeing the Premises from the effect of the lien claim.

7. INDEMNITY. Lessee shall indemnify, defend (with counsel satisfactory to Lessor) and hold Lessor harmless from and against any and all suits, claims, actions, loss, cost or expense (including claims for workers’ compensation, attorney’s fees and costs) based on personal injury or property damage, or otherwise (including, without limitation, contract and breach of warranty claims) arising from the performance of Lessee’s Work. Lessee shall repair or replace (or, at Lessor’s election, reimburse Lessor for the cost of repairing or replacing) any portion of the Building or item of Lessor’s equipment or any of Lessor’s real or personal property damaged, lost or destroyed in the performance of Lessee’s Work.

8. BUILDING STANDARDS. All work shall conform to Lessor’s established building standards and specifications. Lessee is required to make these standards part of the construction documents.

9. ROOF PENETRATIONS. If improvements penetrate the roof membrane, the penetrations will be sealed per Lessor/IRC roofing specifications and inspected by IRC to maintain roof warranty. The cost of inspection and all corrective work shall be borne by Lessee. Lessee shall use Lessor's original roofing contractor.

10. BUILDING MODIFICATIONS. Work will only be approved within the confines of a given space. Lessee will not be allowed to modify building exterior or mechanical and electrical service as provided to the building in common with other tenants.

11. ELECTRICAL WORK. All electrical work shall be approved from the unit space electrical panel only. Additional service requirements shall be secured only by direction of Lessor. Lessee shall use Lessor's original electrical contractor if available at competitive rates.

12. SCHEDULE OF WORK. Lessee shall be required to provide a schedule of all work to be performed, subject to Lessor approval. All costs to produce such schedule shall be borne solely by Lessee.

13. CLEAN UP AND DISPOSAL OF CONSTRUCTION DEBRIS. Building trash containers are provided for office generated trash only and are not to be used for disposal of construction-related materials and debris. Unapproved usage will result in a penalty assessment to the Lessee equal to the cost of an extra pick-up service as provided under the current rate schedule of regular trash removal service.

14. INSPECTION BY LANDLORD. Lessor reserves the following rights: (i) the right of inspection prior to, during and at completion of all construction and/or demolition, (ii) the right to post and record a notice of nonresponsibility in conformity with California law, and (iii) the right to order, if reasonable, a total stop to all improvements underway for non-compliance with any of the requirements hereof.

15. GENERAL PROVISIONS.

(a) If Lessor has agreed to provide an allowance toward the cost of tenant improvements (other than the initial Lessee Improvement Allowance), Lessor shall retain from such funds an amount determined by Lessor until Lessee has fully complied with the requirements hereof.

(b) All materials, work, installations and decorations of any nature whatsoever brought on or installed in the Premises before the commencement of the Term or throughout the Term shall be at Lessee's risk, and neither Lessor nor any party acting on Lessor's behalf shall be responsible for any damage thereto or loss or destruction thereof due to any reason or cause whatsoever.

(c) Nothing contained herein shall make or constitute Lessee as the agent of Lessor.

<u>Attachment 1 to "Exhibit D"</u>

ITEMS TO BE FURNISHED TO LESSOR FOR EACH WORK OF IMPROVEMENT

1. Plan of Alterations for Lessor Approval.
2. Contractor(s), Address, Telephone Number, Contact Person.
3. Copy of Contractor's State and City Business License.
4. Copy of Building Permit.
5. Copy of Final Inspection and Signed Building Permit Cards.
6. Copy of Certificate of Insurance Naming The City of Laguna Hills and Essex Realty Management as Additional Insured. Insurance to include Comprehensive General Liability, Comprehensive Auto, Workers' Compensation, Employer's Liability and original Endorsement.
7. Signed Unconditional Lien Waiver in favor of Development Corporation.
8. Schedule of Work.
9. Copy of Completion and Payment Bond.
10. Architect's License and Expiration.
11. Copy of Permit Plans.
12. Copy of As-Builts.
13. Copy of Recorded Notice of Completion.
14. Certificate of Occupancy.
15. Evidence of Insurance for All-Risk/Builder's Risk Insurance to the Amount of Improvements.

City of Laguna Hills
City Council Meeting Agenda
Staff Report

DATE: SEPTEMBER 23, 2014

TO: MAYOR AND COUNCIL MEMBERS

FROM: KENNETH H. ROSENFIELD
DIRECTOR OF PUBLIC SERVICES/CITY ENGINEER

ISSUE: PROGRESS PAYMENT NO. 9 FOR LA PAZ OPEN SPACE PROJECT, CIP NO. 615A

RECOMMENDATION: THAT THE CITY COUNCIL APPROVE PROGRESS PAYMENT NO. 9, IN THE NET AMOUNT OF $1,140.00, TO ENVIRONMENTAL CONSTRUCTION, INC., FOR LA PAZ OPEN SPACE IMPROVEMENTS, CIP NO. 615A.

SUMMARY:

Work on the La Paz Open Space Improvements, CIP No. 615A, began on November 18, 2013, and is being performed by Environmental Construction, Inc. Construction of the site was substantially completed in May 2014 and the project was placed into the one-year maintenance period. Work performed in July included the monthly maintenance of the site as a part of the one year maintenance period. The contractor has submitted the ninth progress payment request for approval.

BACKGROUND:

A routine monthly action for capital improvement projects is the submission, review, and approval of the contractor's invoice. Procedurally, field staff verifies the contractor's quantities and matches them with the submitted invoice. The unit prices and total costs of the project are confirmed by the office staff and a progress payment is then processed. A five-percent (5%) retention is withheld from each payment to assure final performance of the work. The contractor for the project, Environmental Construction, Inc., has submitted the eighth progress payment for the subject project as follows:

ITEM #	DESCRIPTION	QUANTITY	UNIT	$	AMOUNT
44	1 Year Maintenance Period	0.08	LS	$ 15,000.00	$ 1,200.00

Total To Date	$1,097,708.28	
Less Prior Billing	$1,096,508.28	
Total This Period	$ 1,200.00	$ 1,200.00
Less 5% Retention		$ (60.00)
Due		$ 1,140.00

FISCAL IMPACT:

The Capital Improvement Program (CIP) Budget did not anticipate this project would have expenditures in the 2014-15 Fiscal Year. Therefore, an adjustment to the CIP project allocations will be made to cover these minor maintenance and related expenditures.

City of Laguna Hills
City Council Meeting Agenda
Staff Report

DATE: SEPTEMBER 23, 2014

TO: MAYOR AND COUNCIL MEMBERS

FROM: KENNETH H. ROSENFIELD
DIRECTOR OF PUBLIC SERVICES/CITY ENGINEER

ISSUE: APPLICATION TO THE ORANGE COUNTY TRANSPORTATION AUTHORITY FOR FUNDS FOR THE ARTERIAL PAVEMENT MANAGEMENT PROGRAM FOR THE ARTERIAL HIGHWAY PAVEMENT REHABILITATION – VARIOUS LOCATIONS PROJECT

RECOMMENDATION: THAT THE CITY COUNCIL ADOPT A RESOLUTION ENTITLED: "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA HILLS, CALIFORNIA, AUTHORIZING APPLICATION FOR FUNDS FOR THE ARTERIAL PAVEMENT MANAGEMENT PROGRAM FUNDED WITH REGIONAL SURFACE TRANSPORTATION PROGRAM FUNDING UNDER THE MOVING AHEAD FOR PROGRESS IN THE 21ST CENTURY FEDERAL TRANSPORTATION ACT FOR THE ARTERIAL HIGHWAY PAVEMENT REHABILITATION – VARIOUS LOCATIONS PROJECT."

SUMMARY:

The Orange County Transportation Authority (OCTA) has issued a call for projects for arterial highway pavement resurfacing based upon anticipated Federal funding being available in the 2015-16 (or later) Fiscal Year. The City is eligible to submit a project which meets certain pavement condition ratings and be on an arterial highway. Staff has identified five arterial highway segments in significant need of pavement rehabilitation which meet all eligibility requirements. This funding program requires a minimum 50% match of local funds. The funding application also requires the adoption of a Resolution. Approval of the Resolution is recommended.

BACKGROUND:

The OCTA has issued a call for projects, referred to as the Arterial Pavement Management (APM) program, which seeks to allocate on a competitive basis Federal funds for arterial highway pavement preservation based upon the anticipation that this funding will become available in the next fiscal year or later. The current Federal transportation funding authorization, "Moving Ahead for Progress in the 21st Century," known as MAP-21, will expire next spring unless extended by Congress. If the funding is extended and renewed, then the cities in Orange County will have projects ready to go to construction in accordance with this OCTA call for projects.

The City is eligible to submit a project which meets certain pavement condition ratings and be on an arterial highway. Staff has identified five arterial highway segments in significant need of pavement rehabilitation and that meets all eligibility requirements and has prepared the attached Application which includes vicinity maps and cost estimates. The five arterial highway segments recommended for the APM application were selected based upon their low Pavement Condition Index and need for preservation. Under the concept of “worst first,” the arterial highway pavements most in need of maintenance will be restored and preserved. The segments are as follows:

1) Alicia Parkway, From Moulton Parkway to Westerly City Limit
2) Cabot Road, From Oso Parkway to Southerly City Limit (Segment 1)
3) Cabot Road, From Northerly City Limit (northerly of Rapid Falls Road) to Southerly City Limit (southerly of Rapid Falls Road) (Segment 2)
4) Los Alisos Boulevard, From Easterly City Limit to Paseo de Valencia
5) Paseo de Valencia, From La Paz Road to Cabot Road.

City Council approval of the submission of the Application through the adoption of the required and attached Resolution is recommended.

FISCAL IMPACT:

The APM offers cities $500,000 of Federal funds to use on arterial highway pavement preservation provided this funding is equally matched with local funds. It is proposed that Highway User Tax Account (HUTA) Gas Tax funds and/or Measure M-2 turnback funds be allocated in the next Capital Improvement Program Budget cycle as the City’s matching funds. The project has an estimated design cost of $100,000, a construction cost of $900,000, a construction engineering cost of $135,000 and a 15% contingency of $135,000, for a total project estimated cost of $1,270,000. At the time of the grant of this funding, the City can choose to accept or decline the funding depending upon a review of all Capital Improvement Budget priorities.

CEQA FINDINGS:

If the APM is funded, the City will have to process both a CEQA and NEPA review of the project meeting all of the criteria required by the use of Federal funds.

ATTACHMENTS:

- Resolution
- Application

RESOLUTION NO. 2014-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA HILLS, CALIFORNIA, AUTHORIZING APPLICATION FOR FUNDS FOR THE ARTERIAL PAVEMENT MANAGEMENT PROGRAM FUNDED WITH REGIONAL SURFACE TRANSPORTATION PROGRAM FUNDING UNDER THE MOVING AHEAD FOR PROGRESS IN THE 21ST CENTURY FEDERAL TRANSPORTATION ACT FOR THE ARTERIAL HIGHWAY PAVEMENT REHABILITATION – VARIOUS LOCATIONS PROJECT

The City Council of the City of Laguna Hills, California, hereby finds, determines, declares, and resolves as follows:

WHEREAS, the United State Congress enacted the Moving Ahead for Progress in the 21st Century (MAP-21) Federal Transportation Act on July 6, 2012, which makes Regional Surface Transportation Program funds available to the Orange County Transportation Authority (OCTA); and

WHEREAS, OCTA has established the procedures and criteria for reviewing proposals; and

WHEREAS, the City of Laguna Hills possesses authority to nominate projects funded using Regional Surface Transportation Program funding, provide sufficient local match, and to finance, acquire, and construct the proposed project; and

WHEREAS, by formal action the City Council authorizes the nomination of the Arterial Highway Pavement Rehabilitation – Various Locations project, including all understanding and assurances contained therein, and authorizes the person identified as the official representative of the City of Laguna Hills to act in connection with the nomination and to provide such additional information as may be required; and

WHEREAS, the City of Laguna Hills will maintain and operate the property acquired, developed, rehabilitated, or restored for the life of the resultant facilities; and

WHEREAS, with the approval of the California Department of Transportation (Caltrans) and/or OCTA, the City of Laguna Hills or its successors in interest in the property may transfer the responsibility to maintain and operate the property; and

WHEREAS, the City of Laguna Hills will give Caltrans and/or OCTA's representatives access to and the right to examine all records, books, papers or documents related to the arterial pavement management project; and

WHEREAS, the City of Laguna Hills will cause project work to commence within six months following notification from the State or OCTA that funds have been authorized to proceed by the Federal Highway Administration and that the project will be carried to completion with reasonable diligence; and

WHEREAS, the City of Laguna Hills commits $500,000, or more as necessary, of Highway Users Tax Account (Gas Tax) funding to provide a minimum 50% match of the total project cost as match to the requested $500,000 in OCTA RSTP funds for a total project cost estimated to be approximately $1,135,000; and

WHEREAS, the City of Laguna Hills is responsible for preparing and submitting all necessary Caltrans-required documentation including the E-76 request and agrees to submit the E-76 Request to Caltrans District 12 by February 1 of the fiscal year identified for project funding; and

WHEREAS, the City of Laguna Hills will comply where applicable with provisions of the California Environmental Quality Act, the National Environmental Policy Act, the American with Disabilities Act, Federal Title VI, Disadvantaged Business Enterprise (DBE), Buy America provision, and any other federal, state, and/or local laws, rules and/or regulations; and

WHEREAS, the City Council authorizes the City Manager to execute any necessary cooperative agreements between the City of Laguna Hills and OCTA to facilitate the delivery of the project.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAGUNA HILLS, CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE, AND ORDER AS FOLLOWS:

SECTION 1. The City Engineer is the official representative of the City of Laguna Hills authorized to apply for the Regional Surface Transportation Program funding under the Moving Ahead for Progress in the 21st Century Federal Transportation Act for the Arterial Highway Pavement Rehabilitation – Various Locations project.

SECTION 2. The City Manager is the official representative of the City of Laguna Hills authorized to execute any necessary cooperative agreements between the City of Laguna Hills and OCTA to facilitate the delivery of the project.

SECTION 3. The City Manager is the official representative of the City of Laguna Hills authorized to execute any necessary amendments to the Master Funding Agreement between the City of Laguna Hills and the State of California to facilitate the delivery of the project.

SECTION 4. The City of Laguna Hills agrees to fund its share of the project costs and any additional costs over the identified programmed amount.

PASSED, APPROVED, AND ADOPTED this 23rd day of September, 2014.

ANDREW BLOUNT, MAYOR

ATTEST:

PEGGY J. JOHNS, CITY CLERK

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss
CITY OF LAGUNA HILLS)

I, Peggy J. Johns, City Clerk of the City of Laguna Hills, California, DO HEREBY CERTIFY that the foregoing is a true and correct copy of Resolution No. 2014- x adopted by the City Council of the City of Laguna Hills, California, at a Regular Meeting thereof held on the 23rd day of September 2014, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

(SEAL)

PEGGY J. JOHNS, CITY CLERK

CITY OF LAGUNA HILLS

September 24, 2014

MR. BEN KU
Senior Transportation Funding Analyst
OCTA
550 S. Main Street
P.O. Box 14184
Orange, CA 92863-1584

SUBJECT: ARTERIAL PAVEMENT MANAGEMENT PROGRAM SUBMITTAL FOR CITY OF LAGUNA HILLS ARTERIAL HIGHWAY PAVEMENT REHABILITATION – VARIOUS LOCATIONS

Dear Mr. KU,

Submitted for review and approval are three sets of the subject project submittal. The City of Laguna Hills appreciates the opportunity to submit this project for RSTP funding. The project combines the rehabilitation of five arterial highway segments into one project and seeks the maximum $500,000 funding grant. Please contact me directly at (949) 707-2655 should you need any additional information.

Sincerely,

Kenneth H. Rosenfield, P.E.
Director of Public Services

Enclosure

24035 El Toro Road • Laguna Hills, California 92653 • (949) 707-2600 • FAX (949) 707-2633
website: www.ci.laguna-hills.ca.us

CITY OF LAGUNA HILLS
ARTERIAL HIGHWAY PAVEMENT REHABILITATION – VARIOUS LOCATIONS

TABLE OF CONTENTS

ATTACHMENT B

Arterial Pavement Management Program (APM) Application Form

PART ONE: GENERAL PROJECT INFORMATION

Applications are due no later than September 26, 2014 at 4:00 PM

AGENCY: City of Laguna Hills

PROJECT LIMITS*: Arterial Highway Pavement Rehabilitation - Various Locations

STREET AND LENGTH (LANE MILES)

Please see following pages for limits of five street segments

START LOCATION (INTERSECTION)

END LOCATION (INTERSECTION)

ADMINISTRATIVE AGENCY APPLICANT
Project Administrator/person with day-to-day responsibility for implementing project (Name, title, agency, address, phone, email)

Name / Title: Kenneth H. Rosenfield, P.E. / City Engineer
Agency: City of Laguna Hills
Address: 24035 El Toro Road, Laguna Hills, CA 92653
Phone: 949-707-2655
Email: krosenfield@ci.laguna-hills.ca.us

RSTP FUNDS REQUESTED	$ 500,000	39%
LOCAL MATCH	$ 770,000	61%
TOTAL PROJECT COST	$ 1,270,000	

[X] Project is a stand alone project.

[ ] Project is part of a larger project.
Total Project Cost (if part of a larger project; round dollars to nearest thousands)

AGENCY CONTACT (Name, title, agency, address, phone, email)
Name / Title: Same as Above
Agency:
Address:
Phone:
Email:

PROPOSED SCHEDULE:

	Date
Project Study Report Approved	N/A
Begin Environmental (PA&ED) Phase	Jan-16
Circulate Draft Environmental Document	Mar-16
Draft Project Report	N/A
End Environmental Phase (PA&ED Milestone)	Jun-16
Begin Design Phase (PS&E) Phase	Jul-16
End Design Phase (Ready to List for Advertisement Milestone)	Dec-16
Begin Right of Way Phase	N/A
End Right of Way Phase (Right of Way Certification Milestone)	N/A
Begin Construction Phase (Contract Award Milestone)	Jul-17
End Construction Phase (Construction Contract Acceptance Milestone)	Apr-18
Begin Closeout Phase	Apr-18
End Closeout Phase (Closeout Report)	Jun-18

* for multi-segment projects provide individual ADT and PCI in scope

PART ONE: GENERAL PROJECT INFORMATION (cont.)

SCOPE OF PROPOSED PROJECT

Describe the project's location, limits of work, size, etc. (*Do not* include the justification or benefits).

Clearing and Grubbing, Pavement removal and replacement of deteriorated sections, Access Ramps, Cold Planing/Grinding, Crack Sealing, Pavement Fabric, 0.125' Asphalt Concrete Overlay, Raise Water Valves and Manholes to grade, & Striping

SCOPE OF PROPOSED PROJECT - (APPLICABLE FOR MULTI-SEGMENT PROJECTS)

Work to include portions of: 1) Alicia Parkway, From Moulton Parkway to Westerly City Limit, 2) Cabot Road, From Oso Parkway to Southerly City Limit, 3) Cabot Road, From Northerly City Limit (northerly of Rapid Falls Road) to Southerly City Limit (southerly of Rapid Falls Road), 4) Los Alisos Boulevard, From Easterly City Limit to Paseo de Valencia, and 5) Paseo de Valencia, From La Paz Road to Cabot Road.

MULTI-SEGMENT DETAILS

Use Weighted ADT and PCI Values on PART 3: Evaluation Criteria

Segments	Street Name	Lane Miles	ADT	Weighted ADT	PCI	Weighted PCI
1	Alicia	1.5	40100	9,114	42	19
2	Cabot Segment 1	0.6	16700	1,518	66	5
3	Cabot Segment 2	0.6	12500	1,136	51	3
4	Los Alisos	2.2	22500	7,500	68	25
5	Paseo de Valencia	1.7	5500	1,417	62	4
6						
7		0	0		0	
Total		6.6		20685		55

FUNDING JUSTIFICATION OF PROPOSED PROJECT

Provide an explanation and justification for funding.

The above listing of arterial highway segments in the City of Laguna Hills represents the worst pavement condition ratings of all arterial highways in the City. Pavement preservation is necessary in order to forestall full pavement failure. These segments are sufficiently close to each other to constitute a viable single project.

PART TWO: FUNDING

Contact: Kenneth H. Rosenfield, P.E. Phone: 949-707-2655

Agency: City of Laguna Hills Email: krosenfield@ci.laguna-hills.ca.us

PROJECT COMPONENT COSTS

PRELIMINARY ENGINEERING PHASE:	
Construction Documents	$ 95,000
Environmental Documents	$ 5,000
TOTAL PRELIMINARY ENGINEERING	$ 100,000
RIGHT-OF-WAY PHASE (ACQUISITION):	
Capital	$ -
Support Costs	$ -
TOTAL RIGHT-OF-WAY	$ -
CONSTRUCTION PHASE:	
Construction Contract Items	$ 900,000
Contingencies	$ 135,000
Construction Engineering	$ 135,000
TOTAL CONSTRUCTION	$ 1,170,000
TOTAL PROJECT COST	$ 1,270,000

LOCAL FUNDING SHARE DETAIL

	Fiscal Year	APM RSTP	Match (50% or more)	Total Cost	Total Cost[1]	Percent Match
Construction	16-17	$ 500,000	$ 770,000	$ 1,270,000	$ -	60.6%
TOTAL		$ 500,000	$ 770,000	$ 1,270,000	$ -	60.6%

1. Fill in only when APM project is a segment or phase of a larger project, not a stand-alone project.

SOURCE(S) OF MATCH (spell out; no acronyms) Highway Users Tax Account (Gas Tax) and M-2 Turnback

Construction ________

MAINTENANCE (The project must be maintained in a functional and operational manner as its intended purpose for the expected life cycle for the type of project. If it is not maintained in such a manner, reimbursement of all or a portion of the APM funds may be required. With the exception of up to 3 years of funds for establishing landscaping, maintenance costs are ineligible for RSTP funds and must be funded locally.)

Who will maintain? City of Laguna Hills

What is the source of maintenance funds? Gas Tax and M-2 turnback

If project is within Caltrans Right-of-Way application, must be signed by Deputy District Director, Maintenance

DDD Maintenance N/A Date: ________

PART TWO: FUNDING (continued)

ITEM ESTIMATE - DIRECT ITEM COSTS

Item #	Description	Unit	Quantity	Unit Price	Amount
1	Clearing and Grubbing	LS	1	$ 50,000	$ 50,000
2	Remove and Replace AC	SF	40000	$ 6	$ 240,000
3	ADA Ramps	EA	43	$2,500	$ 107,500
4	Cold Plane/Edge Grind	SF	82000	$0.15	$ 12,300
5	0.125' AC Overlay with Crack Seal and Fabric	T	5200	$85	$ 442,000
6	Raise Water Valves and Manholes to Grade	EA	50	$200	$ 10,000
7	Striping	LS	1	$38,200	$ 38,200
					$ -
					$ -
					$ -
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					$ -
	TOTAL DIRECT COST				$ 900,000
	TOTAL PROJECT COST				$ 1,270,000

PART THREE: EVALUATION CRITERIA

WEIGHTED CRITERIA

1 Facility Usage (10 points)

APM projects will submit information for the Average Daily Travel (**ADT**) on the proposed project roadway. Multi-segment project's ADT will use a weighted scoring as indicated in Part 1. ADT with 40,000 or greater (10 pts); 35,000-39,999 (9 pts); 30,000-34,999 (8 pts); 25,000-29,999 (7 pts); 20,000-24,999 (6 points); 10,000-19,999 (5 pts); Less than 10,000 (0 pts).

What is the ADT range? 20685 ______ 6 pts

2 Cost Effectiveness (20 points)

Cost effectiveness criteria that is calculated through the cost-ratio element based on total dollars spent on APM roadway over ADT. Projects will be ranked by the following tiers. <5 (10 pts); 5-10 (9 pts); 11-16 (8 pts); 17-21 (7 pts); 22-26 (6 pts); 27-31 (5 pts); 32-36 (4 pts); 37-41 (3 pts); 42-46 (2 pts); 47-50 (1 pt); Greater than 50 (0 pt);

Total Project Cost	ADT	Cost Per ADT
$ 1,270,000.00	20685	$ 61.40

______ - pts.

3 Matching Funds (10 points)

Minimum match of < 52% (0 pts); 53-55% (1 pts); 56-57% (2 pts); 58-59% (3 pts); 60-61% (4 pts); 62-63% (5 pts); 64-65% (6 pts); 66-67% (7 pts);68-39% (8 pts); 70-71% (9 pts); **71% match or more receives 10 points.**

What is the percent match being provided? 60 ______ 4 pts

4 Local Relevance (48 points)

a. Indicate if this is an agency designated priority project? One per local agency (If Yes: 30 pts; If No: 0 pts) ______ 30 pts

b. Indicate if this project has or will include construction of an on street bikeway? (If Yes: 3 pts; If No: 0 pts) ______ 3 pts

c. Pavement Condition Index Ranking

The Pavement Condition Index Ranking (PCIR) will be scored according to the following ranges: 0-40 (5 pts); 41-59 (7 pts); 60-85 (10 pts). Multi-segment project's PCI will use a weighted scoring as indicated in Part 1

PCIR RANGE #	55

______ 7 pts

d. Project Readiness (5 points)

Is Project Design Complete? (If Yes: 5 pts; If No: 0 pts) ______ - pts

5 System Significance (22 pts)

a. Project Treatments include: Pavement Maintenance (10 pts); Road Rehabilitation (10 pts); Road Reconstruction (5 pts); ______ 20 pts

b. Sustainability

Does the project involve the use of recycled material during construction? (If Yes: 5 pts; If No: 0 pts) ______ 5 pts

c. Bus or Truck Route

Is the project located on a bus or truck route? (If Yes: 7 pts; If No: 0 pts) ______ 7 pts

Total Points: ______ 82 pts.

PART FOUR: CERTIFICATION & ASSURANCES

This page must be signed in order for the project to be considered for funding.

THE CITY OF LAGUNA HILLS possesses legal authority to nominate this arterial pavement management project, provide sufficient local match, and to finance, acquire, and construct the proposed project; and by formal action (e.g., a resolution) the Implementing Agency's governing body authorizes the nomination of the arterial pavement management project, including all understanding and assurances contained therein, and authorizes the person identified as the official representative of the Implementing Agency to act in connection with the nomination and to provide such additional

THE CITY OF LAGUNA HILLS will maintain and operate the property acquired, developed, rehabilitated, or restored for the life of the resultant facility(ies) or activity. With the approval of the OCTA, the Implementing Agency or its successors in interest in the property may transfer the responsibility to maintain and operate the property.

THE CITY OF LAGUNA HILLS will give the OCTA representative access to and the right to examine all records, books, papers, or documents related to the arterial pavement management project.

THE CITY OF LAGUNA HILLS will comply where applicable with provisions of the California Environmental Quality Act, the National Environmental Policy Act, the Americans with Disabilities Act, Title VI and Disadvantaged Business Enterprise (DBE), Buy America provision, the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation, Federal Highways Administration Regional Surface Transportation Program Guidance, Caltrans Local Assistance Procedures Manual, if applicable, any other federal, state, and/or local laws, rules and/or regulations.

If Regional Surface Transportation Program funds or projects are used for other than the intended purposes as defined by federal or state guidelines, the implementing agency may be required to remit all federal funds back to the OCTA.

I certify that the information contained in this Arterial Pavement Management program application, including required attachments, is accurate and that I have read and understand the important information and agree to the assurances on this form.

Signed ______________________ Date September 23, 2014

(Administering Agency Representative)

Printed (Name and Title) Kenneth H. Rosenfield, P.E., City Engineer

Administering Agency City of Laguna Hills

RESOLUTION NO. 2014-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA HILLS, CALIFORNIA, AUTHORIZING APPLICATION FOR FUNDS FOR THE ARTERIAL PAVEMENT MANAGEMENT PROGRAM FUNDED WITH REGIONAL SURFACE TRANSPORTATION PROGRAM FUNDING UNDER THE MOVING AHEAD FOR PROGRESS IN THE 21ST CENTURY FEDERAL TRANSPORTATION ACT FOR THE ARTERIAL HIGHWAY PAVEMENT REHABILITATION – VARIOUS LOCATIONS PROJECT

The City Council of the City of Laguna Hills, California, hereby finds, determines, declares, and resolves as follows:

WHEREAS, the United State Congress enacted the Moving Ahead for Progress in the 21st Century (MAP-21) Federal Transportation Act on July 6, 2012, which makes Regional Surface Transportation Program funds available to the Orange County Transportation Authority (OCTA); and

WHEREAS, OCTA has established the procedures and criteria for reviewing proposals; and

WHEREAS, the City of Laguna Hills possesses authority to nominate projects funded using Regional Surface Transportation Program funding, provide sufficient local match, and to finance, acquire, and construct the proposed project; and

WHEREAS, by formal action the City Council authorizes the nomination of the Arterial Highway Pavement Rehabilitation – Various Locations project, including all understanding and assurances contained therein, and authorizes the person identified as the official representative of the City of Laguna Hills to act in connection with the nomination and to provide such additional information as may be required; and

WHEREAS, the City of Laguna Hills will maintain and operate the property acquired, developed, rehabilitated, or restored for the life of the resultant facilities; and

WHEREAS, with the approval of the California Department of Transportation (Caltrans) and/or OCTA, the City of Laguna Hills or its successors in interest in the property may transfer the responsibility to maintain and operate the property; and

WHEREAS, the City of Laguna Hills will give Caltrans and/or OCTA's representatives access to and the right to examine all records, books, papers or documents related to the arterial pavement management project; and

WHEREAS, the City of Laguna Hills will cause project work to commence within six months following notification from the State or OCTA that funds have been authorized to proceed by the Federal Highway Administration and that the project will be carried to completion with reasonable diligence; and

WHEREAS, the City of Laguna Hills commits $500,000, or more as necessary, of Highway Users Tax Account (Gas Tax) funding to provide a minimum 50% match of the total project cost as match to the requested $500,000 in OCTA RSTP funds for a total project cost estimated to be approximately $1,135,000; and

WHEREAS, the City of Laguna Hills is responsible for preparing and submitting all necessary Caltrans-required documentation including the E-76 request and agrees to submit the E-76 Request to Caltrans District 12 by February 1 of the fiscal year identified for project funding; and

WHEREAS, the City of Laguna Hills will comply where applicable with provisions of the California Environmental Quality Act, the National Environmental Policy Act, the American with Disabilities Act, Federal Title VI, Disadvantaged Business Enterprise (DBE), Buy America provision, and any other federal, state, and/or local laws, rules and/or regulations; and

WHEREAS, the City Council authorizes the City Manager to execute any necessary cooperative agreements between the City of Laguna Hills and OCTA to facilitate the delivery of the project.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAGUNA HILLS, CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE, AND ORDER AS FOLLOWS:

SECTION 1. The City Engineer is the official representative of the City of Laguna Hills authorized to apply for the Regional Surface Transportation Program funding under the Moving Ahead for Progress in the 21st Century Federal Transportation Act for the Arterial Highway Pavement Rehabilitation – Various Locations project.

SECTION 2. The City Manager is the official representative of the City of Laguna Hills authorized to execute any necessary cooperative agreements between the City of Laguna Hills and OCTA to facilitate the delivery of the project.

SECTION 3. The City Manager is the official representative of the City of Laguna Hills authorized to execute any necessary amendments to the Master Funding Agreement between the City of Laguna Hills and the State of California to facilitate the delivery of the project.

SECTION 4. The City of Laguna Hills agrees to fund its share of the project costs and any additional costs over the identified programmed amount.

PASSED, APPROVED, AND ADOPTED this 23rd day of September, 2014.

____
ANDREW BLOUNT, MAYOR

ATTEST:

____
PEGGY J. JOHNS, CITY CLERK

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss
CITY OF LAGUNA HILLS)

I, Peggy J. Johns, City Clerk of the City of Laguna Hills, California, DO HEREBY CERTIFY that the foregoing is a true and correct copy of Resolution No. ________________ adopted by the City Council of the City of Laguna Hills, California, at a Regular Meeting thereof held on the x day of x 2014, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

(SEAL)

____
PEGGY J. JOHNS, CITY CLERK

PART SIX: COOPERATIVE AGREEMENT CONCURRENCE

This page must be signed in order for the project to be considered for funding.

Project Implementing Agency has reviewed the attached draft Arterial Pavement Maintenance Program cooperative agreement template and has determined that the cooperative agreement is:

[X] Sufficient and meets the expectations of the Project Implementing Agency. No further changes necessary.

[ ] Sufficient, with the suggested modifications:

Please list and explain:

Arterial Pavement Maintenance Program cooperative agreement will be finalized and executed between Project Implementing Agency and OCTA if the project is selected for funding.

I certify that the information contained in this Arterial Pavement Maintenance Program application, including required attachments, is accurate and that I have read and understood the important information and agree to the assurances on this form.

Signed ______________________ Date 23-Sep-14

(Administering Agency Representative)

Printed (Name and Title) Kenneth H. Rosenfield, P.E., City Engineer

Administering Agency City of Laguna Hills

CHECK LIST AND EVALUATION CRITERIA

Check list of Application Items (check all items included in this package)

- [x] Application (Part 1 - 3)
  - [x] Cover Letter
  - [x] Table of Contents
  - [x] 3 Copies
  - [x] PART 1 - General Project Information
  - [x] PART 2 - Funding
  - [x] PART 3 - Evaluation Criteria
  - [x] PART 4 - Certification & Assurances
  - [x] PART 5 - Agency Resolution
  - [x] PART 6 - Cooperative Agreement Concurrence
- [x] Signed Final Resolution (when available)
- [ ] Environmental Documentation
- [x] Project Site Maps/Photos
- [x] Design / Concept Drawing
- [x] 30 Pages Maximum

Evaluation Criteria and Point Distribution

Weighted Criteria	Points	Percentage
Facility Usage	10	10%
Cost Effectiveness	20	20%
Local Relevance	48	48%
System Significance	22	22%
Total	***100***	***100%***

NORTH

95m

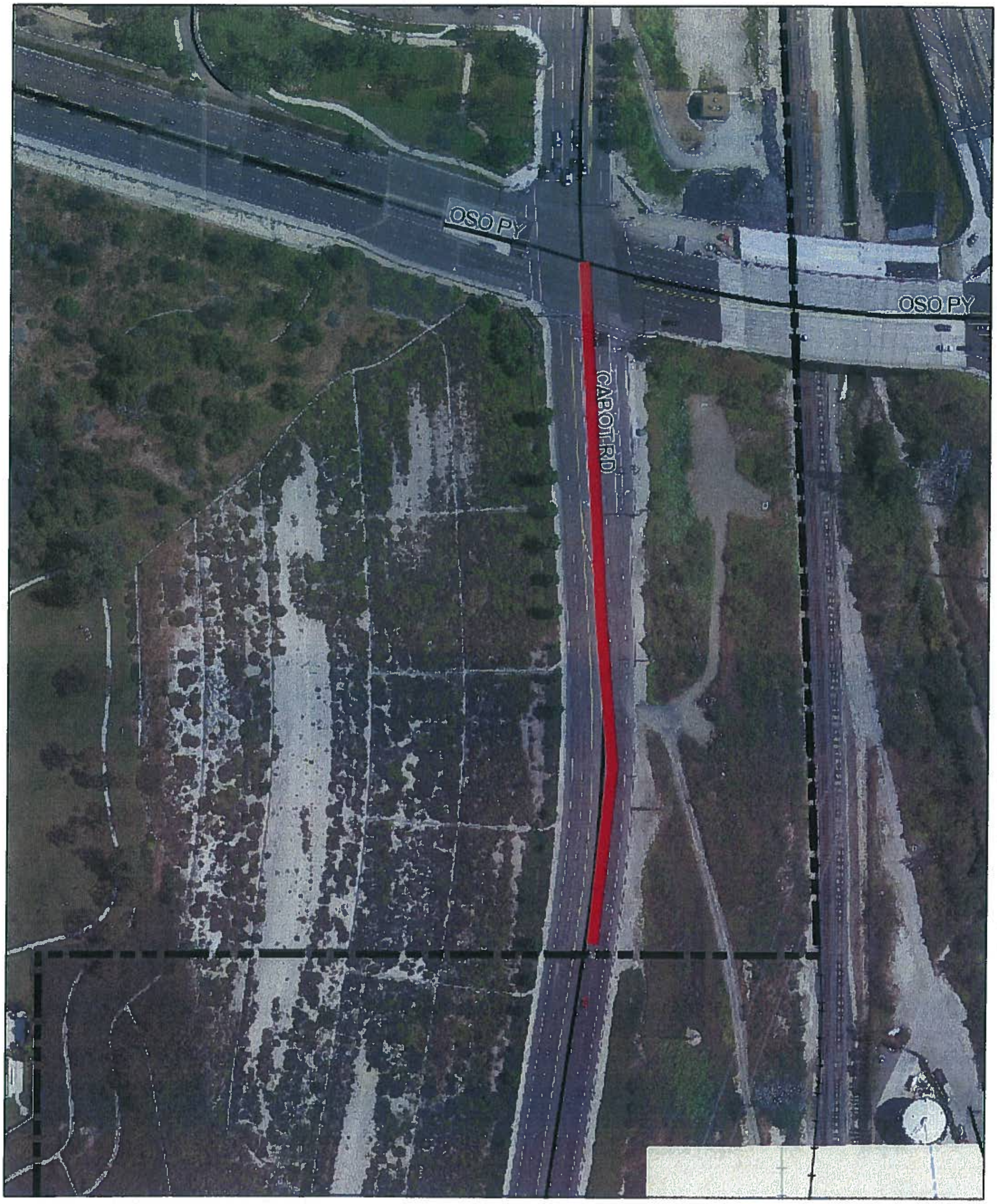
300ft

Date: 09/15/14

VICINITY MAP-
ALICIA PARKWAY

A-1

9/23/2014 ITEM NO. 3.8



NORTH

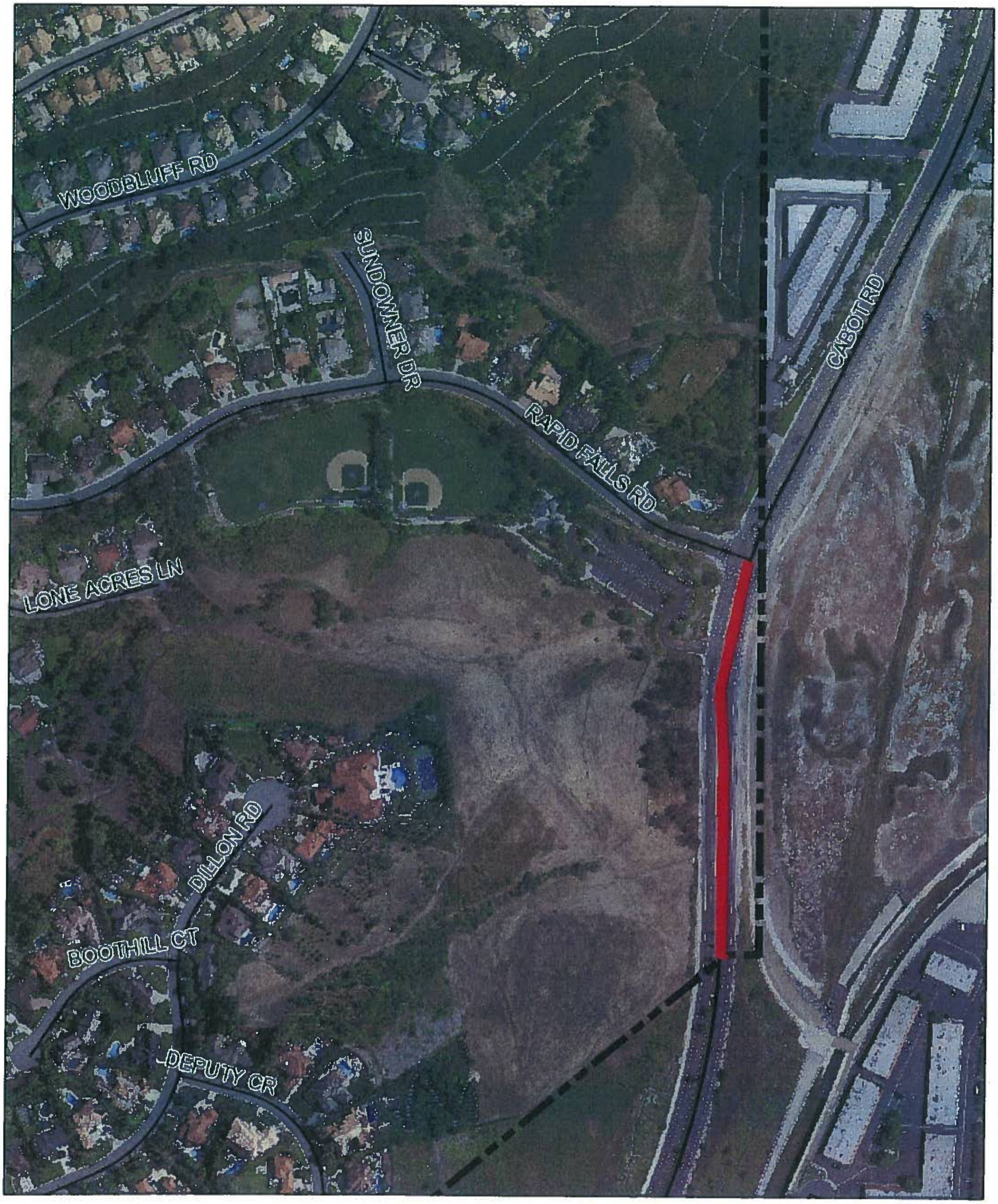
45m

100ft

Date: 09/15/14

VICINITY MAP-
CABOT ROAD
SEGMENT 1
A-2

9/23/2014 ITEM NO. 3.8



NORTH

100m

300ft

Date: 09/15/14

VICINITY MAP-
CABOT ROAD
SEGMENT 2
A-3

9/23/2014 ITEM NO. 3.8

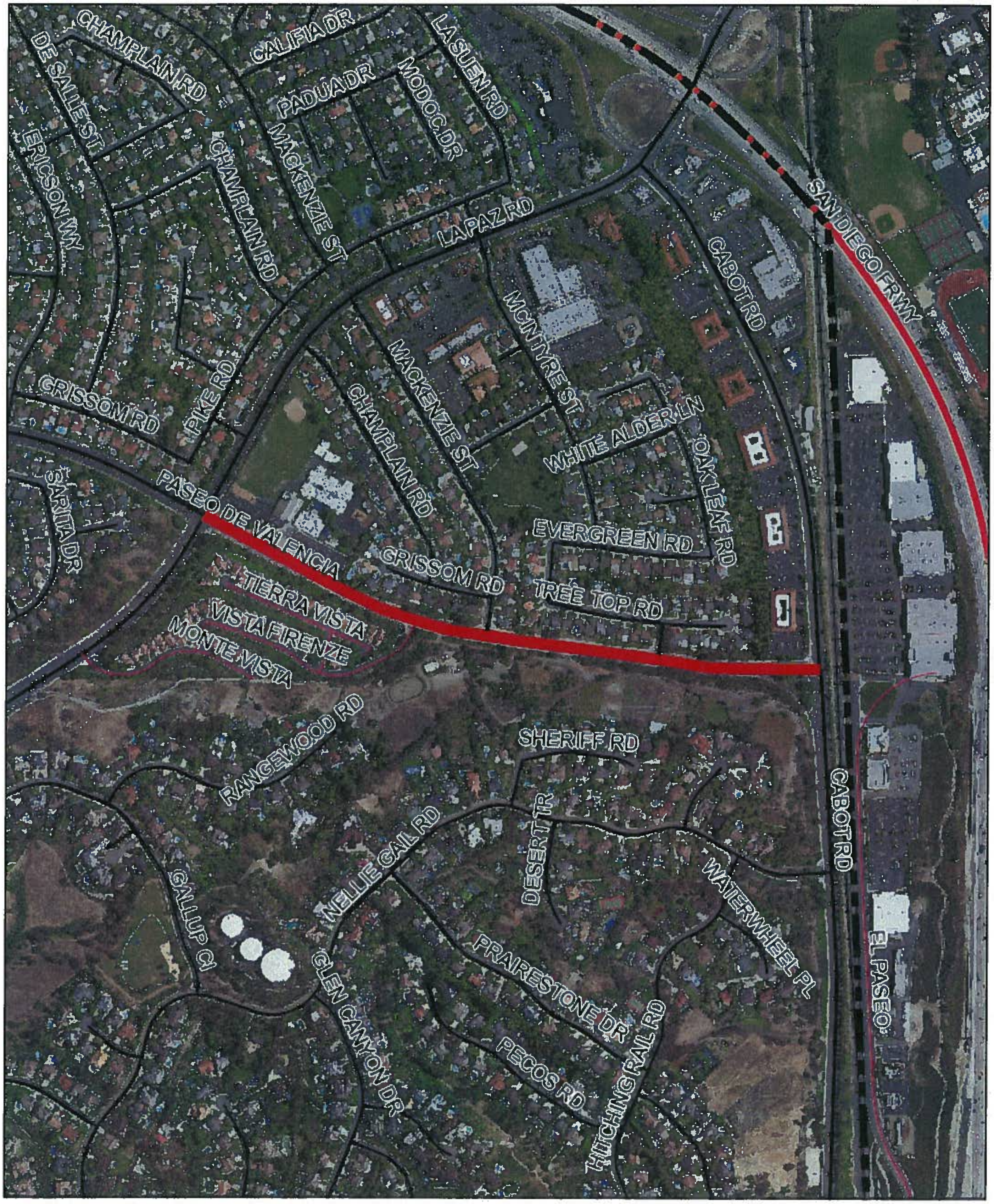
NORTH

100m

600ft

Date: 09/15/14

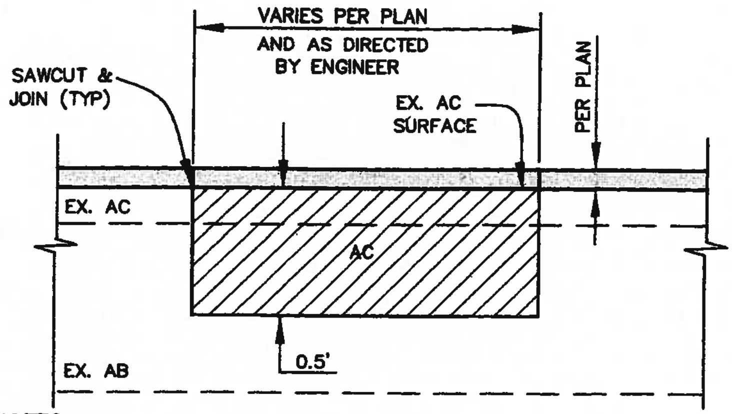
VICINITY MAP-
LOS ALISOS



NORTH 100m 600ft

Date: 09/15/14

VICINITY MAP-
PASEO DE VALENCIA

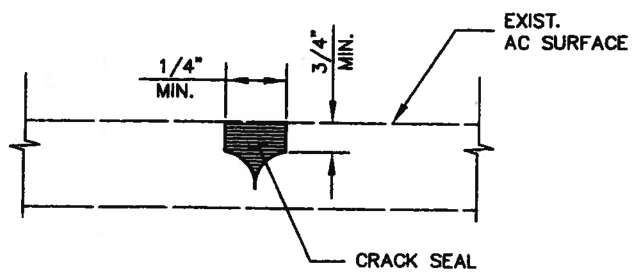


NOTES:

1. REMOVE EXIST. AC AND A.B. TO A DEPTH OF 0.5'
2. RECOMPACT EXIST. AB (MIN. R.C.=95% IN TOP 1.0')

REMOVE AND REPLACE ASPHALT CONCRETE

N.T.S.

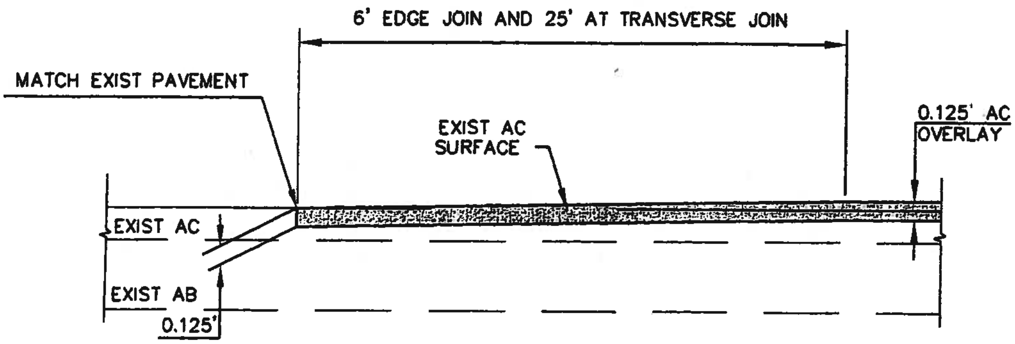


NOTES:

1. ROUTE AND AIR BLOW DEBRIS AND MOISTURE FROM ALL CRACKS 1/4" WIDE OR GREATER WITH HOT AIR LANCE.
2. FILL WITH HOT CRACK SEAL COMPOUND PER SPECIFICATION.
3. SEALANT SHALL BE FLUSH WITH EXIST. PAVEMENT SURFACE.

CRACK SEALING DETAIL

N.T.S.



TYPICAL COLD PLANE
AT EDGE AND TRANSVERSE JOIN DETAIL

N.T.S.

City of Laguna Hills Arterial Highway Pavement Rehabilitation - Various Locations

Excerpt of Pavement Management Plan Data

Street Name	From	To	MPAH	Length	Width	Area	PCI
ALICIA PKWY	MOULTON PKWY	W. CITY LIMITS	MAJOR	1306	42	60602	45
ALICIA PKWY	CITY LIMITS	MOULTON PKWY	MAJOR	1363	42	57246	38
CABOT RD Segment 1	S CITY LIMITS	OSO PKWY	PRIMARY	854	40	34160	65
CABOT RD	OSO PKWY	S. CITY LIMITS	PRIMARY	830	40	34320	67
CABOT RD Segment 2	RAPID FALLS RD	S. CITY LIMITS	PRIMARY	812	40	32480	50
CABOT RD	S. CITY LIMITS	RAPID FALLS DR	PRIMARY	787	40	31480	52
PASEO DE VALENCIA	LA PAZ RD	MACKENZIE ST	SECONDARY	1468	29	42572	56
PASEO DE VALENCIA	MACKENZIE ST	PINE NUT RD	SECONDARY	827	29	23983	62
PASEO DE VALENCIA	PINE NUT RD	CABOT RD	SECONDARY	777	29	22533	65
PASEO DE VALENCIA	MACKENZIE ST	LA PAZ RD	SECONDARY	1488	29	43152	65
LOS ALISOS BLVD	PASEO DE VALENCIA	AVE DE LA CARLOTA	MAJOR	1457	38	62836	64
LOS ALISOS BLVD	1-5 OVERPASS	AVE DE LA CARLOTA	MAJOR	699	28	24972	64
LOS ALISOS BLVD	AVE DE LA CARLOTA	PASEO DE VALENCIA	MAJOR	1482	40	66752	69
LOS ALISOS BLVD	AVE DE LA CARLOTA	1-5 OVERPASS	MAJOR	757	28	26596	81

CITY OF LAGUNA HILLS

AVERAGE DAILY TRAFFIC VOLUMES

(24-HOUR TWO-WAY TRAFFIC)

2013

LOCATION	2001	2003	2005	2007	2009	2011	2013
ALAMEDA AVENUE							
Aliso Hills Drive to La Paz Road	1,000	1,800	1,800	900	1,400	600	1,600
ALICIA PARKWAY							
I-5 Fwy to Hon Ave./P.D. Alicia	54,500	58,200	52,900	51,500	57,100	54,200	54,300
Hon Ave./P.D. Alicia to Costeau Street	48,400	54,700	52,500	45,500	43,900	41,900	46,400
Costeau Street to Wilkes Place	43,400	51,800	47,700	49,000	44,300	47,500	47,600
Wilkes Place to P.D. Valencia	43,400	44,000	45,100	43,200	40,700	41,400	45,200
P.D. Valencia to Aliso Hills Drive	46,300	44,600	44,400	44,600	42,800	39,600	43,300
Aliso Hills Drive to Moulton Parkway	42,100	53,800	45,800	39,900	40,600	39,900	40,200
Moulton Parkway to Ramona St.	40,300	43,800	49,200	39,100	35,300	34,700	40,100
ALISO HILLS DRIVE							
Alicia Parkway to Alameda Avenue	2,300	2,400	2,200	2,200	1,600	2,000	2,700
Alameda Avenue to La Paz Road	1,800	1,900	1,900	1,800	1,800	1,500	1,700
AVENIDA DE LA CARLOTA							
Lake Forest Drive to Ridge Route Drive	9,300	11,700	11,300	9,100	11,600	11,300	10,800
Ridge Route Drive to P.D. Valencia	15,000	18,200	17,900	15,600	14,800	17,100	15,900
P.D. Valencia to El Toro Rd.	32,200	31,800	29,100	29,200	28,900	29,100	30,800
EL Toro Rd. to South of Mall	15,500	17,300	14,700	14,100	13,600	15,700	13,600
South of Mall to Los Alisos Boulevard	13,900	15,100	14,600	12,900	13,800	13,000	12,700
BRIDLEWOOD DRIVE							
Nellie Gail Road to Oso Parkway	1,100	1,200	1,200	1,100	1,700	1,200	1,000
Oso Parkway to Vista Viejo	1,000	900	1,100	1,000	1,000	2,300	2,200
CABOT ROAD							
La Paz Road to P.D. Valencia	10,500	18,500	11,100	9,900	8,500	9,900	10,300
P.D. Valencia to Nellie Gail Rd.	15,700	22,700	15,900	15,200	14,500	12,100	13,600
Nellie Gail Rd. to El Paseo	14,600	19,100	17,800	14,300	11,900	11,600	12,800
El Paseo to Oso Parkway	20,100	25,600	23,000	19,100	17,700	16,500	15,800
Oso Parkway to Vista Viejo	15,300	20,800	14,600	14,100	17,200	15,500	16,700
Rapid Falls Rd. to South City Limits	11,100	18,300	11,400	12,900	13,000	12,300	12,500
DEL LAGO DRIVE							
Lake Forest Drive to Alcalde Drive	2,500	7,500	6,700	2.500	2,200	2,400	2,800
EL PASEO							
East of Cabot Road	10,400	13,500	12,500	10,700	8,900	9,400	7,300
EL TORO ROAD							
P.D. Valencia to Avenida De La Carlota	29,400	42,400	37,700	25,600	*	27,200	34,900
Avenida De La Carlota to I-5 Fwy.	56,100	61,400	42,600	50,200	53,700	66,400	55,600
GALLUP CIRCLE							
La Paz Rd. to Nellie Gail Rd.	1,700	1,200	1,000	1,000	1,100	1,200	1,200
GREENFIELD DRIVE							
South City Limits to Hidden Trail Rd.	2,500	3,200	2,200	2,400	2,000	2,000	1,900
HIDDEN TRAIL ROAD							
Nellie Gail Road to Rapid Falls Road	1,700	2,100	1,600	1,400	1,300	1,200	1,200
Rapid Falls Road to Greenfield Drive	2,400	2,400	2,100	2,400	2,200	2,300	1,800
LAGUNA HILLS DRIVE							
Moulton Parkway to Paseo De Valencia	21,500	21,400	25,500	23,000	20,800	22,000	21,800

* = NO TRAFFIC COUNT DUE TO CONSTRUCTION IN PROGRESS

LOCATION	2001	2003	2005	2007	2009	2011	2013
LA PAZ ROAD							
I-5 Fwy to Cabot Road	41,100	44,900	42,000	41,100	40,500	37,600	35,800
Cabot Road to P.D. Valencia	20,700	25,000	22,900	19,000	20,400	17,500	17,500
P.D. Valencia to Aliso Hills Drive	15,900	19,700	20,700	18,100	18,400	16,700	16,800
Aliso Hills Drive to Alameda Avenue	15,900	17,500	18,700	15,500	12,500	14,900	15,100
Alameda Avenue to Moulton Parkway	16,400	17,300	19,400	15,300	16,700	15,500	15,200
Moulton Parkway to SR-73	19,500	21,200	20,700	18,200	17,400	17,100	16,400
LAKE FOREST DRIVE							
Ave. De La Carlota to Del Lago Drive	28,600	27,600	27,700	29,300	24,700	30,000	31,100
Del Lago Drive to Moulton Parkway	23,000	22,900	22,900	20,000	18,100	18,600	18,900
Moulton Parkway to Santa Vittoria Drive	6,000	11,300	–	–	–	–	–
Moulton Parkway to Mill Creek	–	–	9,500	8,100	6,100	7,300	6,200
Mill Creek to Santa Vittoria Drive	–	–	4,500	4,100	3,700	4,000	4,300
LOS ALISOS BOULEVARD							
P.D. Valencia to Ave. De La Carlota	23,100	22,400	30,600	22,600	21,400	21,900	21,400
Ave. De La Carlota to East City Limits	27,000	26,900	42,100	24,700	22,900	24,100	23,500
MILL CREEK DRIVE							
Lake Forest Drive to Ridge Route Drive	3,100	2,900	2,400	2,000	1,700	2,000	2,800
MOULTON PARKWAY							
Lake Forest Drive to Ridge Route Drive	32,100	40,700	31,100	27,200	26,800	22,800	24,300
Ridge Route Drive to Santa Maria Avenue	34,200	34,600	33,800	31,000	28,800	22,900	25,200
Glenwood Drive to Laguna Hills Drive	–	34,500	28,000	23,000	23,700	22,100	21,600
Laguna Hills Drive to Alicio Parkway	25,700	28,800	24,300	22,600	24,800	20,900	21,800
Alicia Parkway to La Paz Road	22,600	23,000	22,700	21,100	19,800	21,000	19,800
La Paz Road to Oso Parkway	17,800	19,400	19,000	17,100	16,100	18,800	20,300
Oso Parkway to Nellie Gail Road	21,300	23,600	19,600	21,700	20,900	20,100	21,100
NELLIE GAIL ROAD							
Cabot Road to Gallup Circle	1,700	2,300	1,300	1,300	1,200	1,300	1,200
Gallup Circle to Bridlewood Drive	1,200	1,000	1,100	1,100	1,100	1,000	900
Bridlewood Drive to Buckskin Drive	1,200	800	1,200	1,100	1,100	1,100	900
Buckskin Drive to Oso Parkway	1,600	900	1,200	1,100	900	1,000	1,700
Oso Parkway to Hidden Trail Road	2,500	2,500	2,800	2,900	2,500	2,700	2,300
Hidden Trail Road to Moulton Parkway	1,400	1,400	1,700	1,400	1,400	1,100	1,100
OSO PARKWAY							
West City Limits to Moulton Parkway	22,700	24,800	21,700	24,000	24,500	24,200	22,700
Moulton Parkway to Nellie Gail Road	22,600	30,500	27,200	31,800	30,800	28,900	29,400
Nellie Gail Road to Bridlewood Drive	26,900	30,300	30,100	30,400	26,900	31,900	29,100
Bridlewood Drive to Cabot Road	32,700	36,800	28,000	30,100	27,500	33,600	30,500
Cabot Road to I-5 Fwy.	42,200	52,100	43,000	42,100	40,800	*	37,800
PASEO DE VALENCIA							
Avenida De La Carlotá to El Toro Road	13,300	17,000	14,300	14,300	14,400	15,900	15,700
El Toro Road to Health Center Drive	19,900	27,000	26,300	22,500	24,500	21,600	23,300
Health Center Drive to Los Alisos Boulevard	20,100	28,700	22,800	17,700	21,400	23,200	22,300
Los Alisos Boulevard to Kennington Drive	34,000	35,500	35,800	33,400	32,900	32,800	31,800
Kennington Drive to Laguna Hills Drive	34,700	34,300	39,200	33,800	31,500	32,000	31,100
Laguna Hills Drive to Alicia Parkway	28,000	37,400	25,600	26,900	26,300	25,600	24,600
Alicia Parkway to La Paz Road	12,400	13,000	11,700	11,400	10,000	10,200	10,900
La Paz Road to Cabot Road	6,900	7,000	7,000	6,100	6,200	5,100	5,500
RAPID FALLS ROAD							
Hidden Trail Road to Lost Trail Drive	2,400	2,700	2,100	2,200	2,000	1,900	1,700
Lost Trail Drive to Cabot Road	2,700	2,300	2,500	2,600	2,400	2,400	2,000
RIDGE ROUTE DRIVE							
West City Limits to Moulton Parkway	4,300	5,000	4,100	4,400	4,200	3,900	4,200
Moulton Parkway to Peralta Drive	7,200	7,900	8,100	7,600	6,400	7,000	6,900
Peralta Drive to Avenida De La Carlota	7,500	8,200	10,200	8,300	7,400	8,200	8,100
SANTA MARIA AVENUE							
Santa Vittoria to Moulton Parkway	10,500	13,000	11,000	7,200	11,200	5,700	7,700
SANTA VITTORIA DRIVE							
Lake Forest Drive to Ridge Route Drive	4,700	7,000	4,900	4,800	4,400	5,900	5,100
Ridge Route Road to Santa Maria Avenue	1,700	1,800	1,800	1,900	1,600	1,400	1,800
VIA LOMAS							
Moulton Parkway to Alicia Parkway	1,500	2,300	2,000	2,000	1,700	1,700	1,600
VISTA VIEJO							
East of Bridlewood Drive	3,500	3,400	5,300	3,500	3,300	3,000	3,000

City of Laguna Hills
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Staff Report

DATE: SEPTEMBER 23, 2014

TO: MAYOR AND COUNCIL MEMBERS

FROM: DONALD J. WHITE
ASSISTANT CITY MANAGER

ISSUE: GOVERNMENT CODE SECTION 66006 - DEVELOPMENT IMPACT FEES ANNUAL REPORT

RECOMMENDATION: THAT THE CITY COUNCIL APPROVE THE DEVELOPMENT IMPACT FEES ANNUAL REPORT PURSUANT TO GOVERNMENT CODE SECTION 66006.

SUMMARY:

The City of Laguna Hills has three types of development impact fees that may be assessed on new developments: Public Art Fees, Traffic Mitigation Fees, and Quimby Act Fees. According to State Law, upon receipt of development impact fees, certain reports are required to be made by the public agency. The staff report details the required annual report, pursuant to Section 66006 of the Government Code.

BACKGROUND:

AB 1600, as provided for in Section 66000 of the Government Code, regulates how public agencies collect, maintain, and spend impact fees imposed on developers for the purpose of defraying costs of public facilities. It includes specific requirements for accounting, spending and annually reporting the fees. It also includes requirements for findings or refunds if fees remain unspent for five or more years after receipt.

Pursuant to AB 1600, public agencies are required to: (1) prepare an annual report within 180 days after the last day of each fiscal year; (2) include fifth year findings in the prepared report, if necessary; (3) make the report available to the public; and (4) review the report at a regularly scheduled City Council meeting.

The following fees collected by the City have been identified as fees subject to the above-mentioned requirements: Public Art Fees, Traffic Mitigation Fees, and Quimby Act Fees.

Section 66006 requires the following information be made available to the public in an annual report:

(A) A brief description of the type of fee in the account or fund;
(B) The amount of the fee;
(C) The beginning and ending balance of the account or fund;
(D) The amount of the fees collected and interest earned;
(E) Identification of each public improvement on which fees were expended and the amount of the expenditures on each improvement, including the total percentage of the cost of the public improvement that was funded with the fees;
(F) Identification of an approximate date by which the construction of the public improvement will commence if the local agency determines that sufficient funds have been collected to complete financing on an incomplete public improvement, and the public improvement remains incomplete;
(G) A description of each interfund transfer or loan made from the account or fund, including the public improvement on which the transferred or loaned fees will be expended, and, in the case of an interfund loan, the date on which the loan will be repaid, and the rate of interest that the account or fund will receive on the loan; and
(H) The amount of any refunds made pursuant to Section 66001(e) and the amount of any allocations pursuant to Section 66001(f).

In addition to the requirements of Section 66006, Section 66008 provides that a local agency shall expend a fee for public improvements solely and exclusively for the purpose for which it is collected. The fee may not be levied, collected or imposed for general revenue purposes.

The annual report with the required findings is included as an attachment to this staff report. As detailed within the report, $88,904 in Quimby Fees were expended in FY 2013-2014. A total of $10,294 in Public Art Fees were collected for the same fiscal year. No other fees were collected for the Traffic Mitigation Fees fund or the Quimby Act Fees fund. Therefore, the Public Art Fees and Quimby Fees fund balances as of June 30, 2014 are ($234,920) and ($88,904), respectively. Due to the negative balance of the two funds, as Public Art Fees and Quimby Fees are collected, they will be used to reimburse the General Fund. There was no activity in the Traffic Mitigation Fee fund.

Section 66001 (d) specifies that every fifth fiscal year following the first deposit into the account, the following findings must be made with respect to the unexpended portion of the funds: (1) identify the purpose to which the fee is to be put; (2) demonstrate a reasonable relationship between the fee and the purpose for which it is charged; (3) identify all sources and amounts of funding anticipated to complete financing of incomplete improvements; and (4) designate the approximate dates on which the funding referred to in (3) is expected to be deposited into the appropriate account or fund. The fifth year findings are not required due to the fact that the received funds have been expended in a timely manner.

Pursuant to Section 66006, the annual report must be made available to the public and be reviewed by the City Council at a regularly scheduled meeting not less than 15 days after the information is made available to the public. A copy of this report was available at the City Clerk's office on September 8, 2014, thereby satisfying the law's requirement that the report be available to the public by that date. The Building Industry Association (BIA) received an advance copy of this report by that date as well.

FISCAL IMPACT:

No fiscal impact.

ATTACHMENTS:

- Exhibit A – Development Impact Fees Annual Report for Fiscal Year Ended 6/30/14

Exhibit A

City of Laguna Hills
Annual Report on Development Impact Fees
Pursuant to Government Code Section 66006
Fiscal Year 2013/2014

			Public Art Fees*	Traffic Mitigation Fees	Quimby Fees
Revenues:					
	Fees		$ 10,294	$ -	$ -
	Interest		$ -	$ -	$ -
	Misc Revenue		$ -	$ -	$ -
		Total Revenue	$ 10,294	$ -	$ -
Expenditures:			$ -	$ -	$ 88,904
		Total Expenditures	$ -	$ -	$ 88,904
Transfers In/Out			$ -	$ -	
Change in Fund Balance			$ 10,294	$ -	$ (88,904)
Beginning Fund Balance, July 1			$ (245,214)	$ -	$ -
Ending Fund Balance, June 30			$ (234,920)	$ -	$ (88,904)

*The adoption of the Urban Village Specific Plan in November 2002 included a public art component whereby all new developments with a total construction cost of $250,000 or more are required to provide public art, or contribute to a Public Art Fund as part of their project. The minimum value for the Public Art component or in-lieu fee is equal to one-half percent (0.5%) of the total costs of the project. Permissible use of fee revenue include: the artist fee for design and fabrication, mountings and bases for installation of the artwork, and lighting that is integral to the artwork.

ANNUAL REPORT ON DEVELOPMENT IMPACT FEES
FY 2013/2014

The Laguna Hills City Council has adopted three development impact fees: Public Art Fees, Traffic Mitigation Fees, and Quimby Act Fees. Pursuant to Section 66006 of the State Government Code, it is required that the City annually publish summary information regarding each development impact fee.

Type of Fee

There are currently three types of development impact fees in the City of Laguna Hills:

- Public Art Fees: This fee provides funding for Public Art throughout the Urban Village, thereby enhancing the cultural and aesthetic environment of the City and to encourage creativity, education, and the appreciation of the arts.

- Traffic Mitigation Fees: This fee provides funding for additional or improved traffic signal, operation, and infrastructure improvements for which the need is generated by new development within the Urban Village.

- Quimby Act Fees: This fee provides funding for additional or improved park and/or recreation facilities improvements for which the need is generated by new development within the City.

Amount of Fee

The amounts of the development impact fees are shown below:

- Public Art Fees:

  The minimum amount for the public art component or in-lieu fees shall be required of all new developments with a total construction cost of $250,000 or more pursuant to the following formula:

  TCC x 0.005 = Value of Public Art or In-Lieu Fee

  TCC= Total construction costs of the project (building permit valuation)
  0.005=Minimum value shall be 0.5% of total construction costs

- Traffic Mitigation Fees:

  The fee shall be three thousand nine hundred fourteen dollars ($3,914.00) per each new PM peak hour trip as determined by the City Engineer based upon a traffic study.

- Quimby Act Fees

  The amount of land or in-lieu fees to be dedicated shall be determined pursuant to the following formula:

$$A = \frac{5.0(DU \times PPD)}{1,000}$$

In-Lieu Fee: A x FMV

A= Acres required to be dedicated as parkland
5.0= Park acreage standard for the City
DU= Number of proposed dwelling units
FMV= Fair Market Value
PPD= Number of persons per dwelling unit as applicable for the subdivision and type of dwelling units to be constructed

Beginning and Ending Balances of Funds

The beginning and ending balances of each of the fee accounts are shown in the table below. The ending balance was arrived at by adding the fees collected and interest earned to each account, and then subtracting the expenditures.

Balances	Public Art Fees	Traffic Mitigation Fees	Quimby Fees
Beginning Balance (7/1/2012)	$ (245,214)	$ -	$ -
Ending Balance (6/30/2013)	$ (234,920)	$ -	$ (88,904)

The Public Art Fees and Quimby Fees funds shows a negative balance because more money has been spent on projects funded by these fees than has been collected. General Fund money was used to pay the difference, and as Public Art Fees and Quimby Fees are collected, they will be used to reimburse the General Fund. This year, $10,294 in Public Art fees were collected to go toward reimbursing the General Fund.

Fees Collected and Interest Earned

The table below shows the amount of fees collected and interest earned.

Balances	Public Art Fees	Traffic Mitigation Fees	Quimby Fees
Fees Collected	$ 10,294	$ -	$ -
Interest Earned	$ -	$ -	$ -

Expenditures

For this section, state law requires an identification of each public improvement on which fees were expended and the amount of expenditures on each improvement, including the total percentage of the cost of the public improvement that was funded with fees.

Improvement	Fee Used	Amount of Fees Expended	% of Cost Funded by Fees to Date
Park Renovations	Quimby Fees	$ 31,655	100%
Community Center Renovations	Quimby Fees	$ 57,249	100%

Construction Commencement Date for Incomplete Improvements

Not applicable at this time.

Interfund Transfers and Loans

The Public Art Fees and Quimby Fees funds shows a negative balance because more money has been spent on projects funded by these fees than has been collected. General Fund money was used to pay the difference, and as Public Art Fees and Quimby Fees are collected, they will be used to reimburse the General Fund. This fiscal year, $10,294 in Public Art fees were used to reimburse the General Fund.

No other interfund transfers were made, nor were any collected fees loaned to another account.

Amount of Refunds

No refunds of any of these fees were made or required in FY 2013/2014.

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DATE: SEPTEMBER 23, 2014

TO: MAYOR AND COUNCIL MEMBERS

FROM: KENNETH H. ROSENFIELD
DIRECTOR OF PUBLIC SERVICES/CITY ENGINEER

ISSUE: PROGRESS PAYMENT NO. 1 FOR CITYWIDE PAVEMENT REHABILITATION PROJECT, CIP NO. 101-I

RECOMMENDATION: THAT THE CITY COUNCIL APPROVE PROGRESS PAYMENT NO. 1, IN THE NET AMOUNT OF $231,550.49, TO ALL AMERICAN ASPHALT, FOR CITYWIDE PAVEMENT REHABILITATION PROJECT, CIP NO. 101-I.

SUMMARY:

Work on the Citywide Pavement Rehabilitation Project, CIP No. 101-I, began on August 15, 2014, and is being performed by All American Asphalt. Work performed in August included clearing and grubbing, grinding, pavement repairs, access ramps and sub-drain installation. Upcoming work includes pavement resurfacing in both Zones A and D. The contractor has submitted the first progress payment request for approval.

BACKGROUND:

A routine monthly action for capital improvement projects is the submission, review, and approval of the contractor's invoice. Procedurally, field staff verifies the contractor's quantities and matches them with the submitted invoice. The unit prices and total costs of the project are confirmed by the office staff and a progress payment is then processed. A five-percent (5%) retention is withheld from each payment to assure final performance of the work. The contractor for the project, All American Asphalt, has submitted the first progress payment for the subject project as follows:

ITEM #	DESCRIPTION	QUANTITY	UNIT	$	AMOUNT
1	Clearing & Grubbing	.50	LS	$80,019.00	$ 40,009.50
2	R&R 0.33' Asphalt	27,496	SF	$ 3.85	$105,859.60
3	Cold Plane/Edge Grind	129,578	SF	$ .17	$ 22,028.26
9	Subdrain	336	LF	$ 65.00	$ 21,840.00
10	Access Ramps	18	EA	$ 3,000.00	$ 54,000.00

Total To Date	$243,737.36	
Less Prior Billing	$ -0-	
Total This Period	$243,737.36	$243,737.36
Less 5% Retention		$(12,186.87)
		$231,550.49

FISCAL IMPACT:

The progress payment is within the 2014-15 Fiscal Year Capital Improvement Program Budget for the Citywide Pavement Rehabilitation Project, CIP No. 101-I.

4. PLANNING AGENCY

Mayor Blount recessed the City Council meeting and acting in the capacity of Chair, called the meeting of the Planning Agency of the City of Laguna Hills, California, to order at 7:31 PM.

4.1 ROLL CALL OF PLANNING AGENCY MEMBERS

Present: Chair Blount, Agency Member Carruth, and Agency Member Kogerman

Absent: Vice Chair Gilbert and Agency Member Bressette

4.2 PUBLIC COMMENTS

There were no Public Comments.

4.3 APPROVAL OF MINUTES FOR AUGUST 26, 2014

THE PLANNING AGENCY APPROVED THE MINUTES OF THE AUGUST 26, 2014, REGULAR MEETING, BY M/AGENCY MEMBER CARRUTH, S/AGENCY MEMBER KOGERMAN.
APPROVED BY A VOTE OF 3-0-2, (AGENCY MEMBER BRESSETTE AND VICE CHAIR GILBERT ABSENT).

4.4 ADMINISTRATIVE REPORTS

There were no Administrative Reports.

4.5 PLANNING AGENCY PUBLIC HEARINGS

4.5.1 CONDITIONAL USE PERMIT NO. 07-14-2912, A REQUEST BY CLAUDIU ILIE TO ESTABLISH A 5,614 SQUARE FOOT MUSIC SCHOOL AND RECORDING STUDIO AT 25255 CABOT ROAD, SUITE 100, IN THE (OP) OFFICE PROFESSIONAL ZONING DISTRICT.

Chair Blount opened the Public Hearing.

Claudiu Ilie, Applicant, spoke on the project and answered questions from City Council and indicated he agreed to all of the Conditions of Approval.

Adrian Suta, Applicant, spoke on the project and answered questions from City Council.

Chair Blount closed the Public Hearing.

THE PLANNING AGENCY ADOPTED RESOLUTION NO. PA2014-09-09-1, A RESOLUTION OF THE PLANNING AGENCY OF THE CITY OF LAGUNA HILLS, CALIFORNIA, APPROVING CONDITIONAL USE PERMIT NO. 07-14-2912, A REQUEST BY CLAUDIU ILIE TO ESTABLISH A 5,614 SQUARE FOOT MUSIC

SCHOOL AND RECORDING STUDIO AT 25255 CABOT ROAD, SUITE 100, IN THE (OP) OFFICE PROFESSIONAL ZONING DISTRICT, BY M/AGENCY MEMBER KOGERMAN, S/AGENCY MEMBER CARRUTH.
APPROVED BY A VOTE OF 3-0-2 (AGENCY MEMBER BRESSETTE AND VICE CHAIR GILBERT ABSENT).

PLANNING AGENCY ADJOURNMENT

Mayor Blount reconvened the City Council Meeting at 7:53 PM. All Council Members were present, with the exception of Council Member Bressette and Mayor Pro Tempore Gilbert.

5. CITY COUNCIL PUBLIC HEARINGS

There were no City Council Public Hearings.

6. ADMINISTRATIVE REPORTS

6.1 City Manager

The City Manager gave no reports.

6.2 Assistant City Manager

6.2.1 RESPONSE TO ORANGE COUNTY GRAND JURY REPORT ENTITLED "ORANGE COUNTY CITY PENSION LIABILITIES - BUDGET TRANSPARENCY CRITICALLY NEEDED"

THE CITY COUNCIL AUTHORIZED THE MAYOR TO SIGN THE LETTER OF RESPONSE TO THE ORANGE COUNTY GRAND JURY'S JUNE 18, 2014, REPORT ENTITLED "ORANGE COUNTY CITY PENSION LIABILITIES-BUDGET TRANSPARENCY CRITICALLY NEEDED," TO INCLUDE A MINOR MODIFICATION TO RECOMMENDATION NUMBER 7, BY M/COUNCIL MEMBER KOGERMAN, S/COUNCIL MEMBER CARRUTH.
APPROVED BY A VOTE OF 3-0-2, (COUNCIL MEMBER BRESSETTE AND MAYOR PRO TEMPORE GILBERT ABSENT).

6.2.2 2013-15 BIENNIAL BUDGET REVIEW

THE CITY COUNCIL RECIEVED AND FILED THE REPORT, BY M/COUNCIL MEMBER KOGERMAN, S/COUNCIL MEMBER CARRUTH.
APPROVED BY A VOTE OF 3-0-2 (COUNCIL MEMBER BRESSETTE AND MAYOR PRO TEMPORE GILBERT ABSENT).

7. MATTERS AGENDIZED AND PRESENTED BY CITY COUNCIL MEMBERS AND MAYOR

There were no matters agendized and presented by City Council Members and Mayor.

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DATE: SEPTEMBER 23, 2014

TO: CHAIR AND AGENCY MEMBERS

FROM: DAVID CHANTARANGSU, AICP
DIRECTOR OF COMMUNITY DEVELOPMENT

ISSUE: CONDITIONAL USE PERMIT/PARKING USE PERMIT (CUP/PUP) NO. 7-14-2924, A REQUEST BY ADVANCE BEAUTY COLLEGE TO ESTABLISH A BEAUTY COLLEGE IN THE FORMER CLAIM JUMPER BUILDING IN THE COURTYARD AT LA PAZ SHOPPING CENTER AT 25332 MCINTYRE STREET IN THE COMMUNITY COMMERCIAL ZONE

RECOMMENDATION: THAT THE PLANNING AGENCY: (1) CONDUCT A PUBLIC HEARING FOR CUP/PUP NO. 7-14-2924; AND (2) ADOPT A RESOLUTION ENTITLED: "A RESOLUTION OF THE PLANNING AGENCY OF THE CITY OF LAGUNA HILLS, CALIFORNIA, APPROVING CONDITIONAL USE PERMIT/PARKING USE PERMIT (CUP/PUP) NO. 7-14-2924, A REQUEST BY ADVANCE BEAUTY COLLEGE TO ESTABLISH A BEAUTY COLLEGE IN THE FORMER CLAIM JUMPER BUILDING IN THE COURTYARD AT LA PAZ SHOPPING CENTER AT 25332 MCINTYRE STREET IN THE COMMUNITY COMMERCIAL (CC) ZONE."

SUMMARY:

Advance Beauty College, Inc., (the “Applicant”) has submitted plans to modify the former Claim Jumper building at the Courtyard at La Paz Shopping Center (“the Center”) for the purpose of establishing a beauty college (Advance Beauty College – ABC). The Applicant wishes to re-locate to the Center from their current location at Moulton Plaza, where they have been operating for approximately two years under CUP/PUP No. 2007-118 (originally approved for Lake Forest Beauty College). A beauty college fits the definition of a “commercial school” which is permitted in the Community Commercial (CC) zone with the approval of a Conditional Use Permit (CUP). A parking study was conducted, confirming the availability of parking for the proposed use. The school will operate Tuesday through Friday from 9:00 AM until 10:00 PM, and on Saturdays from 9:00 AM until 5:30 PM. The school enrolls 140 students split between day and evening classes. On Saturdays, up to 90 students are expected. Seven staff will be on the site as well. The school anticipates serving up to 20 clients per hour for training purposes. The Applicant will be required to bring the building into conformance with the City’s property maintenance standards prior to

commencing the use. Several other conditions are recommended that will ensure the use will not negatively impact surrounding residents or businesses.

Staff has reviewed the project and finds that it is consistent with the goals and strategies of the General Plan, and that the project meets the requirements of the Laguna Hills Municipal Code (LHMC). Staff has also reviewed the project for compliance with the California Environmental Quality Act (CEQA) and determined that the project is categorically exempt from further environmental review. Conditions of approval have been added to ensure that this project will not result in any significant or adverse impacts to the public health, safety, and general welfare. Therefore, staff is recommending approval of CUP/PUP No. 7-14-2924.

AUTHORITY:

The City's zoning regulations require that certain uses obtain approval of a CUP from the Planning Agency. The purpose of a CUP is to enable the Planning Agency to place conditions on the operation of a use to ensure the use will not negatively impact adjoining properties. A CUP is used to evaluate uses that may have a moderate to high potential for adverse impacts to adjacent or abutting uses or the surrounding community due to operating characteristics. Examples of impacts that have the potential to be detrimental to any property include noise, traffic, light and glare, or any activity that substantially diminishes the ability of a person or business to use or enjoy their property. Approval of CUPs can allow a use to be established, subject to expressed conditions, to ensure compatibility between the requested use and existing uses.

The Laguna Hills Municipal Code (LHMC) establishes the requirements for the review and approval (or denial) of CUPs in Section 9-92.080(C). The Planning Agency has the authority to review and approve CUP applications, and exercise some measure of control over the extent of the use seeking approval. Since the City places a high value on the quality of life afforded to residents, and the success of local businesses, the CUP process ensures that the community's values are maintained. In addition to the general procedures for CUPs found in Chapter 9-92.080(C) of the Municipal Code, each zone classification identifies whether or not a use is permitted to operate by right (with no CUP), or if a CUP is required. For the CC Zone, Table 9-28.020 identifies a "commercial school" as a use that requires the review and approval of a CUP.

In addition to the CUP for the proposed use, the Applicant is requesting the Planning Agency's approval of a Parking Use Permit (PUP) pursuant to the requirements of Section 9-44.070 and 9-92.080(C) of the LHMC. A PUP allows the City to recognize that multiple uses on one site are able to share common parking based on a parking demand approach. Otherwise, each use would be required to meet its individual parking demand which sometimes leads to an oversupply of parking and inefficient use of land. A request for a PUP is always accompanied by a corresponding CUP. This PUP, if approved, will supersede the existing PUP for the Center approved as part of the recent approval for the Dunkin' Donuts project.

BACKGROUND:

The subject property (Courtyard at La Paz Shopping Center) is improved with approximately 75,000 square feet of retail commercial space and includes a variety of commercial uses that serve local residents including restaurants, medical office, retail, personal service uses and fitness uses. In August of this year the Planning Agency approved the development of a Dunkin' Donuts drive-through business at the Center, which will add a +/- 2,000 square foot freestanding building at the southwest corner of the property at the intersection of La Paz Road and McIntyre Street. Uses adjacent to the Center include single-family residences to the north (across La Paz Road) and to the south on Spruce Lane. La Paz Village is located to the west and various office uses are located to the east. There are significant grade differences between the subject property and the office uses to the east. Residential uses to the south are slightly below grade with the shopping center near McIntyre Street, but the residential grades drop away from the Center a distance of over 20 feet in height in the vicinity of the former Claim Jumper restaurant building.

Staff notes the existing restaurant building is in need of general exterior property maintenance and repair including the replacement of broken windows, damaged exterior siding, and peeling paint. Parking lot areas north and west of the building have also deteriorated and exhibit extensive cracking, a few potholes, and severely faded parking space striping.

ABC has been located in Moulton Plaza (located on Moulton Parkway between Santa Maria Avenue and Ridge Route Drive in North Laguna Hills) for approximately two years, where the business took over CUP/PUP No. 2007-118, which was approved for Lake Forest Beauty College. Staff is not aware of any issues related to the operation of the beauty school since ABC began operating at the beginning of 2013. ABC now wishes to relocate to the Courtyard at La Paz Shopping Center, due to the ideal location for their needs and the opportunity to be in a free-standing building. The subject building is 8,597 square feet, formerly occupied by Claim Jumper Restaurant, which has been vacant since the restaurant closed in 2010.

City staff is advised that the owners and operators of ABC are experienced beauty college practitioners. According to the Applicant's Letter of Justification (Attachment 2), ABC offers courses in makeup artistry, cosmetology, cosmetology instruction, the practice of holistic health (includes components of massage, reflexology, aromatherapy, nutrition, and acupressure), manicuring and massage therapy. The college is affiliated with Saddleback College and provides extensive state board exam preparation to assist students to become state licensed cosmetologists and estheticians. According to the Applicant's Letter of Justification, ABC is an approved school of instruction for the massage therapy programs certified by the California Massage Therapy Council (CAMTC)[1]. It is also an approved school with the National Certification Board for Therapeutic Massage and Body Work. ABC is also approved by the California Bureau for Private Postsecondary Education (BPPE). Attachment 2 contains additional information regarding certifications as well as the curriculum for each area of study offered by ABC. In addition to the Laguna Hills location, they have a campus in Garden Grove, which has been in operation since 1999. The City of Garden Grove has provided a reference letter on behalf of the operators which is also included in Attachment 2.

PROJECT DESCRIPTION AND ANALYSIS:

As described above the school will provide a variety of opportunities for students to receive training in the cosmetology and esthetician arts, as well as massage and holistic health. The existing restaurant floor plan will be completely remodeled to accommodate areas for training and instruction. The floor plan also includes offices, restrooms, and conference rooms.

ABC is open Tuesday through Saturday, and closed Sundays, Mondays, and holidays. Operating hours vary, but are generally 9:00 am to 5:30 pm. Evening classes are offered Tuesday through Friday from 6:00 pm to 10:00 pm. In addition to students and staff, clients will also be coming to the facility to have various services performed. Clients are limited to those necessary for the instruction and practice of students enrolled at ABC (Condition 24). The facility will not have appointments and see clients like a typical salon or spa. The school enrolls a total of 140 students at one time and limits enrollment to 85 students during the day, and 55 students during evening classes. On Saturdays, up to 90 students are expected. Seven staff will be on the site as well. The school anticipates serving up to 20 clients per hour for training purposes. The school is estimated to generate around 350 vehicle trips per day. In contrast the previous restaurant use is estimated to have generated around 1,100 trips.

Building Modifications

The project involves no expansion of the existing building and is limited to interior tenant improvements to repurpose the building from the former restaurant use, as well as exterior repairs needed to address the items described earlier. Additionally, the loading dock and equipment area for the restaurant will be re-designed and re-purposed as an outdoor patio

[1] The California Massage Therapy Council (CAMTC) was created by the California Legislature through the enactment of Senate Bill 731. The purpose behind CAMTC's creation was to serve the interests of the public and the massage profession by establishing standards and making the process of certification consistent throughout the State of California. California Business and Professions Code Section 4601(g) gives CAMTC the responsibility to determine if the curricula of a massage school meet the requirements of CAMTC law and to investigate applicants' education. To meet the "approved school" definition in CAMTC law, the school must be approved by a legitimate approval body (e.g., the California Bureau for Private Postsecondary Education (BPPE) or other approval body listed in Section 4600(a)) and the approval must be for the massage program and must also meet CAMTC's minimum standards for training and curriculum in massage and related subjects.

area. Existing roof top equipment related to the former restaurant use will also be removed.

The patio area will be used by students during break times in their schedule. There is also an interior break room. A condition of approval has been added that requires that the Applicants construct a 10-foot wall on the south side of the patio area to provide a sound buffer from the patio to neighboring residences, which are +/- 75 feet away (Condition 19). In addition to the wall, the 30-foot wide driveway between the patio and property line as well the significant grade change (the neighboring residences are much lower than the subject site) will help to further mitigate any noise issues to neighboring residences. Despite these factors, should noise associated with the outdoor break area become an issue, the noise Ordinance in the LHMC would apply (Condition 13) and the Applicant would need to work with the City to resolve any issues, which includes review by the Planning Agency if needed.

Prior to ABC beginning its operations, the Applicant will be responsible for ensuring any repairs, or other maintenance to the exterior of the structure is completed in order to bring the building into conformance with the City's property maintenance standards (Condition 16).

Parking

The Center recently commissioned a parking study (dated June 16, 2014) by Linscott Law & Greenspan, which reviewed parking at the Center. The study included the re-purposing of the subject building from restaurant to the proposed use. The study establishes shared parking for all of the current and proposed uses in the Center, which will have a parking supply of 486 spaces once the Dunkin' Donuts development is completed.

At the time the parking study was conducted, LL&G was using 90 students and 5 staff as a basis for the parking requirement, resulting in 118 spaces being used as the demand for ABC. The school's actual staffing is slightly higher, requiring 2 additional parking spaces. Based on Tables 6 and 7 of the parking study (Attachment 4), which projects the Center's peak parking demand based on a shared parking basis, a surplus of over 80 spaces will be available during the peak weekday demand period, and a surplus of over 100 spaces will be available at the peak weekend demand period. The demand for two additional parking spaces over the originally anticipated demand of 118 spaces for the use does not have a material impact on the Center's parking supply.

ABC has indicated that their staff and students will be instructed to park at the rear of the building, whenever possible, shifting the parking demand to an area that would otherwise be underutilized (see Condition 26). Staff believes that from a parking standpoint, ABC will have significantly lower impact (due to number of spaces demanded and peak demand times) than a restaurant similar to the previous use. Based on all of these factors, the existing LL&G parking study (2014) and its analysis of the center and the parking demand of ABC are sufficient to establish shared parking between the proposed use and the other uses at the center.

Staff notes that Condition 15 requires the Applicant to re-stripe parking areas north and west of the school's building (generally within 300 feet). While staff customarily recommends that these types of improvements be completed prior to the commencement of the use, the property owner has requested that performance of the condition be deferred. Because of the construction of the new Dunkin' Donuts building, and other planned maintenance at the shopping center that may damage the parking lot, staff is recommending that the Planning Agency allow the use to commence without restriping of the parking areas. Instead, the Applicant (which includes the property owner by definition of the project conditions of approval) will be allowed to defer the improvements for up to 12-months from the approval date of this permit (6-9 months after commencement of the use).

PUBLIC COMMENT:

A total of 103 public hearing notices were mailed, including all property owners within a 300-foot radius of the subject property and all tenants of the subject property. To date no comments have been received by staff.

CEQA FINDINGS:

Staff has reviewed the proposed project for compliance with the California Environmental Quality Act (CEQA) and determined that this project is categorically exempt from CEQA pursuant to Section 15301 of Title 14, Chapter 3 of the California Code of Regulations (Class 1, Existing Facilities). This exemption applies to the permitting or minor alteration of existing structures.

CONCLUSION:

ABC will re-purpose a building that has been vacant for nearly four years, since the former restaurant closed. It is an ideal location for ABC and provides sufficient space for all of the courses of study offered by the school. While the beauty college will generate additional parking demand over current conditions, it will be significantly less than another restaurant would be and will utilize an underutilized portion of the parking lot. The parking study (LL&G 2014) demonstrates that based upon the number of spaces demanded by a trade school (as amended by the City to account for client visits) and the peak demand profiles for this use, there is sufficient parking for this use as well as other existing and planned uses at the Center. Staff recommends approval of the beauty college, which can make use of the existing space, without creating additional traffic or parking burdens that might be associated with other types of uses that could potentially locate here. The building will be brought into conformance with property maintenance standards and the vandalism concerns and other nuisances associated with a vacant building will be eliminated. Based on the above, staff recommends approval of CUP/PUP No. 7-14-2924.

ATTACHMENTS:

1. Resolution of Approval
2. Letter of Justification
3. Plans
4. Parking Study

CUP/PUP No. 7-14-2924
Attachment #1

Resolution of Approval

RESOLUTION NO. PA2014-

A RESOLUTION OF THE PLANNING AGENCY OF THE CITY OF LAGUNA HILLS, CALIFORNIA, APPROVING CONDITIONAL USE PERMIT/PARKING USE PERMIT (CUP/PUP) NO. 7-14-2924, A REQUEST BY ADVANCE BEAUTY COLLEGE TO ESTABLISH A BEAUTY COLLEGE IN THE FORMER CLAIM JUMPER BUILDING IN THE COURTYARD AT LA PAZ SHOPPING CENTER AT 25332 MCINTYRE STREET IN THE COMMUNITY COMMERCIAL (CC) ZONE

The Planning Agency of the City of Laguna Hills, California, hereby finds, determines, declares, and resolves as follows:

WHEREAS, Advance Beauty College, Inc., ("the Applicant"), has been operating a beauty college (Advance Beauty College – ABC) for approximately two years at Moulton Plaza; and

WHEREAS, the Applicant has filed an application for Conditional Use Permit/ Parking Use Permit (CUP/PUP No. 7-14-2924) to relocate ABC to the former Claim Jumper building in the Courtyard at La Paz Shopping Center at 25332 McIntyre Street in the CC Zone; and

WHEREAS, CUP/PUP No. 7-14-2924 is hereby found to be Categorically Exempt from the California Environmental Quality Act (CEQA) based upon a Class 1 (CEQA Guidelines Sections 15301, Existing Facilities) exemption; and

WHEREAS, the Planning Agency has considered evidence presented by the Community Development Department, the Applicant, and other interested parties with respect to the subject application at a public hearing held on September 23, 2014.

NOW, THEREFORE, THE PLANNING AGENCY OF THE CITY OF LAGUNA HILLS, CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE, AND ORDER AS FOLLOWS:

SECTION 1. The above recitals are true and correct, and are incorporated herein by reference.

SECTION 2. That the required findings by the City for approval of CUP/PUP No. 7-14-2924 have been met and made as follows:

Conditional Use Permit

1. The proposed use is consistent with the general plan in that:

The General Plan land use designation for the property is Community Commercial, which is implemented by the CC zone and is intended to provide areas for the general shopping and commercial service needs of area residents. As one of the few beauty colleges in the area, the school will meet a service need of the surrounding community. The beauty college, classified as a "commercial school" is a permitted use within the CC zone subject to the approval of a CUP.

2. The nature, condition, and development of adjacent uses, buildings, and structures have been considered and the proposed conditional use will not adversely affect or be materially detrimental to the adjacent uses, buildings, or structures in that:

The proposed beauty college and associated joint use of parking will not result in physical changes to the subject site and is not expected to have adverse effects on adjacent uses or structures. The parking study demonstrates sufficient parking for all uses with the addition of the beauty college. Further the parking demand will be concentrated in the back corner of the property, where parking is currently underutilized. Therefore the request for shared parking will not negatively affect existing or planned uses on the subject property. The beauty college does abut residential along the south property line. However, adverse effects on neighboring residences will be minimized by a variety of factors. Outdoor uses are limited to an outdoor patio used only as a break area, which is separated from the residential properties by approximately 30 feet and a 20-foot grade separation. Additionally a 10-foot wall will be constructed on the south side of the patio to mitigate any noise. The proposed use is less intensive compared with other typical retail, restaurant, or service uses typically associated with a commercial shopping center. The proposed use is expected to generate 346 daily trips compared to the former restaurant use, which is estimated to have generated over 1,100 trips.

3. The proposed site is adequate in size and shape to accommodate the use and integrate it with the existing and planned uses in the vicinity in that:

The proposed beauty college will be located in an existing building in a +/- 7.5 acre neighborhood shopping center with adequate access to public streets, and a significant on-site parking supply of 486 parking spaces. The center has operated for over 30 years without resulting in significant detrimental impacts to the immediately adjacent area. No changes to the site plan are proposed. Circulation within the site remains entirely unchanged. The project parking study indicates sufficient parking for this use as well as all existing and planned uses in the center. The parking demand for this use is lower than most other uses typical for a retail center (such as the restaurant that previously occupied the building).

4. All required development standards prescribed by this code can be achieved in that:

The Applicant is re-locating the beauty college to an existing building in the commercial center. No changes to the site plan or building footprint are proposed. Any legal non-conforming conditions existing at the site will remain legal non-conforming. The minor change to convert the loading dock and outdoor equipment area to a small patio will meet all development standards including lot coverage and setbacks. As previously identified, sufficient parking also exists for this use.

5. The conditions and limitations placed upon the use are necessary to ensure compatibility with adjacent or abutting uses and the preservation of the public peace, safety, and welfare in that:

   The conditions of approval contained in this resolution are standard for permits of this nature and include requirements to minimize noise impacts and promote conformance with the City's property maintenance requirements, which helps to ensure compatibility with surrounding uses and protect the public peace, safety, and welfare. Condition 12 requires the applicant to comply with the City's smoking ordinance to avoid direct exposure of the general public to second-hand smoke, Condition 13 requires the Applicant to comply with the City's noise ordinance and mitigate any noise disturbances that violate the City's Municipal Code when notified by the City, Condition 14 requires the Applicant to implement any necessary modifications to parking and circulation should insufficiencies, issues, complaints or problems arise on the site relative to adequate parking and circulation, Condition 16 requires the Applicant to bring the building to be used to meet the City's basic property maintenance standards, Condition 18 requires landscaping and irrigation to be in working condition, and Condition 19 requires the construction of a 10-foot high solid patio wall to act as a noise buffer between adjoining residential uses and the school's proposed break area.

<u>Parking Use Permit</u>

1. The proposed joint use parking permit is consistent with the intent and purpose of the development code in that:

   The development code allows parking to be shared among users on one or multiple sites. Shared parking within commercial centers is a common application of this provision. Rather than providing parking for each individual business as a stand-alone use, with shared parking, uses are able to share parking on the site as a whole. The parking study associated with this PUP reflects current parking availability and demand for all current and proposed uses.

2. The joint use parking permit provides a reasonable and enforceable means for all uses to share parking facilities in that:

   All uses sharing parking are located on the same property and therefore have access to all parking on the subject site. No parking spaces are designated for any one specific business.

3. The requirement for parking established by the joint parking use permit shall assure that parking demands for the participating uses are continually met in that:

Condition 14 requires that if the mix of uses changes significantly from that in the parking study (LL&G 2014), the City can request that a new parking study be conducted, allowing re-evaluation of parking at the site. This will ensure that parking demand for all uses at the subject site continue to be met.

NOW, THEREFORE, based upon the above findings, the Planning Agency of the City of Laguna Hills does hereby approve CUP/PUP No. 7-14-2924 subject to the following conditions:

General

1. The following Conditions of Approval shall be binding and enforceable against, and, whenever used herein, the term "Applicant" shall mean and refer to, each of the following: the project applicant, Advance Beauty College, Inc., the owner(s) and tenant(s) of the property, and each of their respective successors and assigns.

2. Unless the context dictates otherwise, whenever the term "this Permit" is used in the following Conditions of Approval, it shall collectively refer to the conditional use permit and parking use permit, CUP/PUP No. 7-14-2924, approved pursuant to this Resolution.

3. To the fullest extent permitted by law, the Applicant shall, at its sole cost and expense, protect, defend, indemnify, and hold harmless the City, its elected and appointed officers and officials, employees, agents, departments, agencies, authorized volunteers, consultants, boards, commissions, and committees, and instrumentalities thereof ("Indemnitees"), from and against any and all claims, liabilities, losses, fines, demands, penalties, lawsuits, writs of mandamus, and any other claims or actions or proceedings of any kind whatsoever (whether legal, equitable, declaratory, administrative or adjudicatory in nature), and alternative dispute resolution procedures (including, but not limited to, arbitrations, mediations, and other such procedures), judgments, orders and decisions (collectively "Claims" and "Actions"), brought against the Indemnitees, which seek to attack, challenge, modify, set aside, void, or annul any action of or any permit or approval issued by the Indemnitees (including actions approved by the voters of the City) for, in connection with, or concerning the approval of this Permit. It is expressly understood and agreed that the City shall have the right to approve, which approval will not be unreasonably withheld, the legal counsel providing the defense of the Indemnitees for the Claims and Actions, and that the Applicant shall promptly reimburse the City for all costs and expenses directly and necessarily incurred by the City in the course of the defense, including reasonable attorneys' fees. The City shall promptly notify the Applicant of any Claims and Actions brought against the Indemnitees and shall cooperate in the defense of any such Claims and Actions. If the Applicant fails to so defend

the Claims and Actions, the City shall have the right but not the obligation to do so and, if it does, the Applicant shall promptly pay the City's full cost thereof.

4. This approval constitutes approval of the proposed project only to the extent that it complies with the City's Development Code and any other applicable zoning regulations. Approval does not include any action or findings as to compliance or approval of the project regarding any other applicable ordinance, regulation, or requirement.

5. Failure to abide by and faithfully comply with any and all conditions of approval shall constitute grounds for revocation of this Permit by the Laguna Hills Planning Agency.

6. The Applicant shall agree in writing to these conditions of approval within 30 days of the Planning Agency's approval.

7. Pursuant to Government Code Section 66020, the Applicant is informed that the 90-day period in which the Applicant may protest the fees, dedications, reservation, or exaction imposed on this project through the conditions of approval has begun.

8. The Applicant shall reimburse the City for any outstanding staff time spent on the processing of this Permit within 60 days of the Planning Agency's approval.

9. This Permit shall expire and be of no further force or effect if the Permit is not implemented within two years from September 23, 2014.

10. Within 48 hours from project approval, the Applicant shall submit to the City a check in the amount of $50.00, made payable to the Orange County Clerk-Recorder, for filing the Notice of Exemption.

11. This Permit authorizes the operation of private vocational school offering courses in makeup artistry, cosmetology, cosmetology instruction, the practice of holistic health, manicuring, and massage therapy. As determined by the Community Development Director, any significant physical change, modification, intensification or expansion of the use shall require an amendment of this Permit. All such occupancy of the use shall be in conformance with the limitations of Condition of Approval No. 23 as stated herein.

<u>Planning</u>

12. The Applicant shall comply with LHMC Chapter 5-28 (Smoking and Sale of Tobacco Products). Required signage and notices shall be installed prior to the commencement of the use.

13. The Applicant shall comply with LHMC Chapter 5-24 (Noise Control). In the event of complaints regarding noise, the Community Development Director shall investigate and, if noise is found to exist outside of the Applicant's premises that substantially and adversely

impacts one or more office/ commercial/ residential properties, or that substantially and adversely increases the ambient noise levels in the vicinity above levels existing without the project, the Community Development Director may bring this Permit back to the Planning Agency to consider additional conditions, amended conditions, or revocation.

14. If at any time in the future the Community Development Director determines, in his or her sole discretion, that a parking and circulation study is necessary to address parking and/or circulation issues relative to any change in any use or any portion of any use (i.e., change in tenant mix) in the shopping center, the Applicant shall, at its sole cost and expense, be responsible for the cost of a parking and circulation study prepared by a licensed consultant selected by the City. The Applicant shall, at its sole cost and expense, be responsible for implementation of any reasonable mitigation measures deemed appropriate by the Director related to such impacts based on the findings of such study.

15. Within 12 months from the date of the approval of this Permit, the parking lot areas north and west of the subject building (generally within 300 feet of the subject building), not including parking spaces directly fronting other buildings/storefronts, shall be re-striped by the Applicant to the satisfaction of the Community Development Director.

16. Prior to issuance of Certificate of Use and Occupancy, the Applicant shall make all repairs and conduct other maintenance on the building required to bring the building into compliance with City property maintenance standards found in LHMC 9-74.050, including repair/replacement of damaged siding, cladding, windows, and paint. Required building repairs and maintenance shall be completed prior to issuance of Certificate of Use and Occupancy.

17. All parking on the subject site, including any parking easement areas shall be accessible and open at all times to all users of the center, except as required for construction or maintenance purposes.

18. All landscaping directly surrounding the subject building shall be in live and growing condition and all associated irrigation shall be in working condition prior to building permit final inspection, but in no event later than issuance of the Certificate of Use and Occupancy.

19. The Applicant shall provide a solid 10-foot high sound wall at the south side of the new patio to provide a noise buffer between the patio and adjacent residential properties. The wall shall be included on the tenant improvement plans for the use and shall be installed prior to building permit final inspection. The wall shall run the entire length of the south side of the patio and shall be, at a minimum, 8-feet high cement block masonry with any balance being constructed of a solid building material. The exterior patio wall shall generally be

compatible with the building's exterior architectural features. Final design and construction shall be subject to review and approval by the Community Development Director.

20. Rooftop equipment related to the previous use shall be removed prior to issuance of a Certificate of Use and Occupancy. This shall be noted on the roof plan for the building, submitted as a part of the plans for tenant improvements.

21. All parking lot signage and pavement markings related to the previous use shall be removed prior to issuance of the Certificate of Use and Occupancy.

22. Any person engaged in the application of massage as defined in the LHMC shall only be either an instructor employed by the school or an enrolled student. Massage services shall only be provided in conjunction with massage course instruction and student training and shall be limited to those necessary for enrolled students to achieve minimum training hours required by the state or applicable accreditation body.

23. Operation of the school shall be in conformance with the application materials submitted for CUP/PUP-7-14-2924, including the Letter of Justification and Operations Plan. Areas of instruction shall be limited to makeup artistry, cosmetology, cosmetology instruction, the practice of holistic health, manicuring, and massage therapy.

24. Services offered to the public at the school shall be limited to those necessary for the enrolled students to achieve minimum training hours required by the state or applicable accreditation body.

25. The school shall maintain all required accreditations/certifications for all courses of study offered. This includes the National Accrediting Commission of Career Arts and Sciences, the Bureau for Private Postsecondary Education, the Board of Barbering and Cosmetology, and the California Massage Therapy Council.

26. Students and staff shall park in the parking lot area at the rear of and immediately surrounding the subject building (Zone 5 on Attachment 4). Once this preferred area is at capacity (i.e. no more spaces are available in Zone 5) staff and students may park elsewhere on the site as close to the building as possible (Zones 4 and/or 6).

<u>Building</u>

27. The Applicant shall be responsible for ensuring all applicable building permits are obtained, as required by section 103 of the 2013 CA Building Code prior to commencement of any work for which a permit is required.

28. Any required documents submitted for the purpose of building permit issuance shall be accurately labeled and reflect all work, as required by section 107 of the 2013 CA Building Code.

29. Applicant shall submit approvals from the Orange County Fire Authority or provide verification of plan submittal prior to issuance of building permit.

30. At time of permit issuance the Applicant shall submit Construction and Demolition Waste Recycling Program paperwork, if applicable, as required by City Ordinance No. 2003-9 and to comply with mandates of the California Integrated Waste Management Board (CIWMB).

31. Applicant shall comply with all general construction water quality regulations, as required by City Ordinance No. 2003-12.

32. Applicant shall comply with California Disabled Accessibility requirements, as required by Chapter 11 of the California Building Code at the time of document submittal for the purpose of permit issuance.

33. Applicant shall comply with all requirements of the California Energy Commission at the time of document submittal for the purpose of permit issuance.

34. All construction shall comply with the 2013 CA Building, Plumbing, Mechanical, and Electrical Codes with regard to mixed occupancies.

Orange County Fire Authority

35. Prior to concealing interior construction, the Applicant shall submit a fire sprinkler system plan (service codes PR430-PR455) if the building is currently sprinklered and the system requires modification.

PASSED, APPROVED, AND ADOPTED this 23rd day of SEPTEMBER, 2014.

____
ANDREW BLOUNT, CHAIR

ATTEST:

____
PEGGY J. JOHNS, CITY CLERK

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss
CITY OF LAGUNA HILLS)

I, Peggy J. Johns, City Clerk of the City of Laguna Hills, California, DO HEREBY CERTIFY that the foregoing is a true and correct copy of Resolution No. PA2014- adopted by the Planning Agency of the City of Laguna Hills, California, at a Regular Meeting thereof held on the 23rd day of September, 2014, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

____

PEGGY J. JOHNS, CITY CLERK

CUP/PUP No. 7-14-2924
Attachment #2

Letter of Justification

Letter of Justification
[Updated September 4, 2014]

May 14, 2014

David Chantarangsu, A.I.C.P.
Director
Community Development Department
City of Laguna Hills
24035 El Toro Road
Laguna Hills, CA 92653

RE: Application Request to Establish a Beauty College School Use (within the Courtyard at La Paz Shopping Center) at 25332 McIntyre Street

Dear Mr. Chantarangsu:

On behalf of Advance Beauty College ("College"), I am pleased to submit our application to relocate the College from Moulton Plaza to the Courtyard at La Paz Shopping Center ("Center"). Specifically, the College is proposing to occupy the former Claim Jumper Restaurant building (8,597 square feet), which: (1) is ideally located and perfectly suited to the College's needs, and (2) will allow the school to establish its own identity (by locating within a free-standing building). No major exterior modifications are currently proposed; however, the building will be repainted, the old loading dock removed, and an outdoor patio added. Interior improvements will be required to accommodate the beauty college programs.

At some point in the future, the College would like to purchase the site and consider exterior design changes that would be compatible to the Center. We also believe that the College will both complement and benefit the other tenants in the Center, including the restaurants and other retail/service businesses.

Background

Advance Beauty College is a private vocational school that offers courses in makeup artistry, cosmetology, cosmetology instruction, holistic health practitioner, manicuring, and massage therapy. It offers Cosmetology and Esthetics programs that combine classroom teaching with hands-on training. The College is affiliated with Saddleback College and provides extensive State Board Exam preparation to help the students successfully become licensed as a cosmetologist or esthetician in the State of California. Its students have a very high pass rate on the State Board Exam, with an average of over 90%. Massage therapy is the newest program at the Laguna Hills location. This 600 hour program focuses on the basic techniques of massage. Students will learn techniques in Swedish, Chair, Shiatsu, Thai, Lomi Lomi, Hot Stone, Cold Stone, and Reflexology from experienced instructors.

The College is accredited by the National Accrediting Commission of Career Arts and Sciences (NACCAS), and was last approved in 2012 for a term of 6 years (the maximum number of years that can be granted). The College was approved at the state level by the Bureau for Private Postsecondary Education (BPPE) for the same 6 year term. Both of these organizations have a set of rules and regulations that schools must adhere to in order to maintain good standing.

The College curriculum is overseen by the Board of Barbering and Cosmetology (BBC) for the manicuring, esthetics, and cosmetology programs. The BBC oversees the health and safety standards of the barbering and beauty industry. The College is approved for the massage therapy programs by the California Massage Therapy Council (CAMTC). CAMTC is the voluntary certification body for massage therapists to allow them to practice statewide with one license. The College is also an approved school with the National Certification Board for Therapeutic Massage and Bodywork. This means that the students are eligible to sit for the national massage therapy exam if they meet the qualifications and standards mandated by the board.

Licensing requirements in the State of California are as follows:

- Cosmetologists must complete 1600 hours of training and pass the state board exam.
- Estheticians must complete 600 hours of training and pass the state board exam.
- Manicurists must complete 400 hours of training and pass the state board exam.
- Massage therapy is regulated by each city; however, in addition, students may choose to become certified by CAMTC by completing a minimum of 500 hours and passing an approved exam.

The owners and operators of Advance Beauty College, Tam Nguyen, President, and Linh Nguyen, Vice President, have made significant contributions to education (and educational institutions) in Orange County. Tam Nguyen was recently appointed to the Board of Governors for California State University, Fullerton, and is an elected Board Member of the American Association of Cosmetology Schools (AACS). Tam and Linh are experienced operators of beauty colleges that are committed to providing a quality education that will allow their students to serve the communities in which they locate. In addition to the Laguna Hills Campus, they have successfully operated the Advance Beauty College in the City of Garden Grove since 1999, including having received *Family Owned Business* awards and honors from the Orange County Business Journal and the Family Business Council, which is part of Cal State University Fullerton's Mihaylo College of Business and Economics. During the past fifteen (15) years of operating beauty colleges in Orange County, they have demonstrated that they: (1) provide a quality education for their students, (2) are respectful of other nearby residences and businesses, (3) contribute to the communities in which they locate, and (4) willingly comply with all City requirements. Accordingly, our application also includes a letter of support from the City of Garden Grove that hi-lights a cooperative approach to problem-solving and our commitment to the community. See attached letter dated May 7, 2014.

Operational Plan

The beauty college operates Tuesday through Friday, from 9:00 a.m. – 5:30 p.m., and 6:00 pm – 10:00 p.m., and Saturday, from 9:00 a.m. – 5:30 p.m. We are closed Sundays and Mondays. There are seven (7) staff members. The school has 140 students split between the daytime and evening classes, as follows: a maximum of 85 students at the site Tuesday through Friday (during the day), with 55 students in the evenings. On Saturday, the maximum number of students at the site is capped at 90. The number of clients coming to the site range from 5 – 15 per hour during the day time, and 15 – 20 per hour during the evening when the classes are smaller in size. See attached *Operational Plan*.

Application Request

The application packet consists of a Conditional Use Permit (CUP) request to establish a private school use in a commercial zone and a Parking Use Permit (PUP) request to share parking with the other tenants located within the Center. The owners of the Center (La Paz Shopping Center, LLP) recently completed, and submitted to the City of Laguna Hills ("City"), a parking study for the Center that includes the proposed beauty college school use. The results of the parking study demonstrate that, based upon the existing and proposed uses within the Center (including the beauty college), there is adequate parking within the Center to accommodate the proposed school use. The parking study is on file with the City.

As required by the City's application process, the Findings to approve a CUP / PUP are outlined below, as follows:

1. That the proposed use is consistent with the General Plan:

The subject site is designated as Community Commercial (CC) in the General Plan. The CC designation provides appropriately located areas for the general shopping and commercial service needs of area residents. As one of the few beauty colleges in south Orange County, the school meets a service need to the surrounding community. A beauty college school, as a "private school," is a permitted use within the CC Land Use Designation, subject to the granting of a CUP.

2. That the nature, condition, and development of adjacent uses, buildings, and structures have been considered and the proposed conditional use will not adversely affect or be materially detrimental to the adjacent uses, buildings, or structures:

The beauty college school use and joint use of parking will not result in any physical changes to the subject site and no negative impacts will occur as a result of allowing the school to locate at the property through the issuance of a CUP/PUP. The proposed project is not expected to create any adverse effects *or be materially detrimental to adjacent uses, buildings, or structures. More specifically, although residential uses on Spruce Lane abut the site to the south of the subject site, there are several factors that mitigate land use compatibility concerns, including: (1) there are no outdoor play areas associated with an adult vocational school and the patio area is generally only used on a limited basis for lunch and class breaks, (2) access to the school site does not take place through the residential area, (3) there is a solid block wall that separates the school use and Center from the nearby residences, and (4) the residences on Spruce Lane are located 10-15 feet below the pad elevation of the Center and the school site.*

3. That the proposed site is adequate in size and shape to accommodate the use and integrate it with the existing and planned uses in the vicinity:

The subject tenant space is adequate to accommodate the beauty college use and there is adequate parking at the site to accommodate the proposed use. The parking required to accommodate the beauty college use is actually less than that required for the previous restaurant use. In addition, the subject building is located in a rear corner of the Center away from the Center's inline tenants, and is surrounded by a substantial field of convenient parking. Therefore, there is no incentive for the college students, staff, or clients to park in front of other businesses within the Center since the most convenient parking to the school use is immediately adjacent to the beauty college building.

4. That all required development standards prescribed by the Laguna Hills Development Code can be achieved:

The Laguna Hills Development Code permits public or private schools within the Community Commercial (CC) zoning district, subject to approval of a CUP. A PUP is also needed to demonstrate that the project provides all necessary parking for the school use (and all uses within the Center), and satisfies the City's parking requirements, as provided in Section 9.44.070. The proposed project complies with all applicable development standards set forth in the City's zoning and development code.

5. That the conditions and limitations placed upon the use are necessary to insure compatibility with adjacent or abutting uses and the preservation of the public health, safety, and welfare:

The conditions of approval imposed on the project will ensure that the operation of a school use (fully contained within an existing building) will not negatively impact the surrounding uses in terms of noise or parking. Conditions necessary to secure the purposes of the City's zoning and development code, including evidence of compliance with conditions, will provide assurances that the proposed use complies with all applicable development requirements.

6. That the proposed joint parking use permit is consistent with the intent and purpose of the development code:

The subject site is an existing shopping center located in the City's Community Commercial (CC) Zoning District. A beauty school use is permitted within the CC Zoning District subject to the approval of a Conditional Use Permit. Per Chapter 9-44 of the City's Development Code, parking to meet the beauty school use may be provided through joint use parking at the site, subject to approval of a PUP/CUP. The parking analysis prepared for the subject application demonstrates that there is adequate parking to accommodate the use.

7. That the joint parking use permit provides a reasonable and enforceable means for all uses to share parking facilities:

Imposing reasonable Conditions of Approval to the school use, such as requiring that the school operate within the parameters of their approved Operational Plan, and requiring that all students park as close to the school as possible, will ensure that adequate parking is maintained at the Center for all tenants and patrons.

8. That the requirement for parking established by the joint parking use permit shall assure that parking demands for the participating uses are continually met:

Limiting the beauty school to the size and operation components that were used in the parking study to verify that adequate parking will be maintained at all times within the Courtyard at La Paz Center will ensure that the school use will not have any negative impacts to surrounding uses.

9. That all of the findings for a Conditional Use Permit can be made:
See Findings 1-5, as listed above.

For all of the reasons and findings provided above, we respectfully request approval of our application to establish the Advance Beauty College within the Courtyard at La Paz Shopping Center.

Sincerely,

Vern Jones, Planning Consultant, on behalf of Advance Beauty College
Jones Planning Consultants (JPC)

Attachments:

- Letter from City of Garden Grove Dated 5-7-14
- Operational Plan

GARDEN GROVE

CITY OF GARDEN GROVE

May 7, 2014

Chairman Blount and Members of the Planning Agency
City of Laguna Hills
24035 El Toro Road
Laguna Hills, CA 92653

Subject: Advance Beauty College

Dear Chairman Blount and Members of the Planning Agency:

I am writing to you today on behalf of the City of Garden Grove, Community Development Department, regarding a local business, Advance Beauty College. This school has been operating in Garden Grove since 1999 and has worked cooperatively with the City through the Conditional Use Permit (CUP) process. The school is located in an older, yet busy, eight acre retail center that is home to restaurants, retail, and a grocery store. Since the original CUP was approved, the school has expanded in size due to the success of the business, and the owners have been cooperative and resourceful in working through any potential parking and/or land use concerns.

The owners of the business, Tam Nguyen and Linh Nguyen, are professional, responsive, and very active in our community. Tam was the President of the Vietnamese American Chamber of Commerce and is always willing to lend a hand when asked to help with community events or serving on local boards. Tam and Linh are polite and thoughtful and believe in solutions that work for all parties. Advance Beauty College is an asset to our community providing jobs for residents and also a retail service to customers.

I am happy to answer any questions you may have about Advance Beauty College. Please feel free to contact me at (714) 741-5148.

Sincerely,

Susan Emery

Susan Emery
Community Development Director
City of Garden Grove

Advance Beauty College
25332 McIntyre Street
Laguna Hills, CA 92653
Telephone: (949) 951-8883

OPERATIONAL PLAN

DAY	HOURS	FUNCTION	STUDENTS	STAFF	CLIENTS	TOTAL ONSITE
TUESDAY thru FRIDAY	9:00am - 10:30am	Classes	85	7	None	92
	10:30am - Noon	Classes	85	7	10 - 15	107
	Noon – 1:00 pm	Lunch	55	7	5	67
	1:00pm – 2:00pm	Classes	85	7	20	107
	2:00pm - 5:30pm	Classes	70	7	5	82
TUESDAY EVENING	6:00pm – 10:00pm	Classes	55	2	None	57
WED. – FRIDAY EVENING	6:00pm - 10:00pm	Classes	55	3	15 - 20	78
SATURDAY	9:00am - 5:30pm	Classes	90	7	10-15	112
SUNDAYS, MONDAYS, & HOLIDAYS	Closed					

NOTE:

1. Students and staff will park in the rear of the shopping center. School guidelines will specify appropriate parking areas for students, staff, and clients.
2. All City regulations regarding smoking are strictly enforced.

RECEIVED
AUG 2 8 2014
CITY OF LAGUNA HILLS

COSMETOLOGY COURSE **(1,600 HOURS)**

SESSIONS: Begin weekly on Tuesdays, throughout the year.

COURSE DESCRIPTION: Learn the proper use of implements relative to all cosmetology services. Acquire the knowledge of analyzing the scalp, face, and hands prior to all services to determine any disorders. You will learn the procedures and terminology used in performing all cosmetology services, learn the application of daytime and evening make-up to include the application of individual and strip eyelashes, learn the proper procedure of manicuring to include water and oil manicure and pedicure, learn the application of brush-on nails, nail wraps, and nail tips.

COURSE MISSION AND OBJECTIVES: It is the mission of Advance Beauty College to prepare students enrolled in the Cosmetology program for licensure and job entry level skills.

COSMETOLOGY PERFORMANCE OBJECTIVE:

1. Acquire knowledge of laws and rules regulating California's cosmetological establishments' practices.
2. Acquire the knowledge of sanitation and sterilization as related to all phases of hair, skin, and nails.
3. Acquire knowledge of general theory relative to cosmetology including anatomy, physiology, chemistry, and theory.
4. Acquire business management techniques common to cosmetology.

CURRICULUM

MINIMUM SPECIFIED PRACTICAL OPERATIONS:

10	Disinfection	200	Wet Hair Styling
40	Thermal Hair Styling	20	Thermal Press and Curl
80	Permanent Waving	25	Chemical Straightening
80	Haircutting	20	Hair Bleaching
50	Hair Coloring	20	Scalp and Hair Treatments
10	Manual Facials	15	Electrical Facial
15	Chemicals (Skin peels, masks & scrubs)	10	Make up applications
20	Eyebrow Arching and Hair Removal	15	Water and Oil Manicure
10	Complete Pedicure	50	Liquid and Powder Brush-on
50	Artificial Nail Tips	20	Nail Wraps and Repairs

SUBJECT OF TECHNICAL INSTRUCTION:	Min. Hours of Technical Instruction:
1. The Cosmetology Act and the Program's Rules & Regulations	20

14. Facials A. Manual (Shall include cleansing, scientific manipulations packs, and masks.) B. Electrical (Shall include the use of all electrical modalities, including dermal lights and electrical apparatus for facials and skin care purposes.) However, machines capable of producing an electrical current shall not be used to stimulate so as to contract, or for the purpose of contracting, the muscles of the body or face.) C. Chemicals (Shall include chemical skin peels, packs, masks and scrubs. Training shall emphasize that only non-living, upper-most layers of facial skin, known as the epidermis may be removed, and only for the purpose of beautification. All practical operations mustbe performed in accordance with section 992 regarding skin peeling.)	25
15. Eyebrow Arching and Hair Removal (Shall include the use of wax, tweezers, electric or manual and depilatories for the removal of superfluous hair.)	10
16. Make-up (Shall include skin analysis, complete and corrective make-up, lash and brow tinting and the application of false eyelashes.)	15
17. Manicuring and Pedicuring	
A. Water and Oil Manicure, including nail analysis, and hand and arm massage.	05
B. Complete Pedicure, including nail analysis, and foot and ankle massage.	05
C. Artificial Nails	
1) Liquid and Powder Brush-on	10
2) Artificial Nail Tips	10
3) Nail Wraps and Repairs	05

ADDITIONAL TRAINING WILL BE GIVEN IN THE FOLLOWING SUBJECT MATTER:

Salon Mgmt., communication skills that includes professional ethics, salesmanship, decorum, record keeping, client service record cards and preparing a resume, employment, modeling, desk and reception, and care and other subjects relating to Cosmetology field.

INSTRUCTIONAL METHODS USED: The curriculum for students enrolled in a cosmetologist course shall consist of sixteen hundred (1,600) clock hours of technical instruction and practical operations covering all practices constituting the art of cosmetology pursuant to Section 7316 of the Barbering and Cosmetology Act. Technical instruction means instruction given by demonstration, lecture, classroom participation, or examination. Practical operation shall mean actual performance by the student of a complete service on another person or mannequin. Please note 505 hours are devoted to clinic/theory experience which shall include all phases of cosmetology.

REQUIRED TEXTS FOR COSMETOLOGY COURSE:

- **Milady's Standard Cosmetology,** ISBN 9781439059302 , Price: $122
- **Performance Criteria for Cosmetology,** By Advance Beauty College, Copyright 2009, Price: $16.50
- **Cosmetology Test Book,** By Advance Beauty College, Copyright 2009, Price: $21.50

ADVANCED MANICURING COURSE ***(600 Hours)***

SESSIONS: Begin weekly on Tuesdays, throughout the year.

COURSE DESCRIPTION: Use of proper implements relative to all manicuring, pedicuring, and artificial nails. Develop the knowledge to recognize the various skin conditions and disorders. Acquire knowledge of analyzing the hands and feet, prior to all services to determine any disorders. Develop the knowledge of safety precautions in use of manicuring, pedicure and artificial nails. This course goes beyond the basics of manicuring and adds advanced techniques to prepare students to be salon ready.

COURSE MISSION AND OBJECTIVES: It is the mission of Advance Beauty College to prepare students enrolled in the Manicuring program for licensure and job entry level skills.

ADVANCED MANICURING PERFORMANCE OBJECTIVE:

Acquire knowledge of laws and rules regulating California Cosmetological establishments' practices, understand sterilization procedures, acquire the knowledge of general theory relative to manicuring, including anatomy, physiology, chemistry, and theory relative to practical procedures performed and acquire business management techniques common to manicurist.

CURRICULUM

MINIMUM SPECIFIED PRACTICAL OPERATIONS:

60	Disinfection and Sanitation	40	Water and Oil manicures
20	Complete Pedicures	80	Acrylic: Liquid and Powder Brush on nails
10	Spa Manicure	5	Spa Pedicure
60	Nail Tips	40	Nail Wraps and repairs
20	Gel Enhancements	20	Gel Polish
20	Nail Art		

TECHNICAL SUBJECT:	MINIMUM THEORY HOURS
1. The Cosmetology Act and the Program's Rules and Regulations.	10
2. Cosmetology Chemistry related to manicuring practices. (Shall include the chemical composition and purpose of nail care preparations.)	10
3. Health and Safety/Hazardous Substances (Shall include the chemicals and health establishments, material safety data sheets, protection from hazardous chemicals and preventing chemical injuries, health and safety laws and agencies, ergonomics, communicable diseases, including HIV/AIDS and Hepatitis B.)	15

4. Disinfection and Sanitation (shall include procedures to protect the health and safety of the consumer as well as the technician. The fifteen required minimum operations shall entail performing all necessary functions for disinfecting instruments and equipment as specified in Section 979 and 980. Disinfection should be emphasized through-out the entire training period and must be performed before use of all instruments and equipment.)	20
5. Bacteriology, anatomy, and physiology.	10
6. Water and oil Manicures, including hand and arm massage.	15
7. Complete Pedicure, including foot and ankle massage.	10
8. Application of Artificial nails	
(A) Acrylic: Liquid and Powder	20
(B) Nail Tips	10
(C) Nail wraps and repairs	05
(D) Gel Enhancements	05
(E) Gel Polish	05
(F) Nail Art	05

ADDITIONAL ADVANCED TRAINING WILL BE GIVEN IN THE FOLLOWING SUBJECT MATTER:

Salon Mgmt., communication skills that includes professional ethics, salesmanship, decorum, record keeping, client service record cards and preparing a resume, employment development, modeling, desk and reception, and care and other subjects relating to Cosmetology field.

INSTRUCTIONAL METHODS USED: The curriculum for students enrolled in a manicurist pedicurist course shall consist of four hundred (600) clock hours of technical instruction and practical operations covering all practices of a manicurist and pedicurist. Technical instruction means instruction by demonstration, lecture, classroom participation, or examination. Practical operation means the actual performance by the student of a complete service on another person. Please note 40 hours are devoted to clinical/theory experience which will include all phases of manicuring.

REQUIRED TEXTS FOR MANICURING COURSE:

- **Milady's Standard Nail Technology**, ISBN 9781435497689, Price: $125.50
- **Manicuring Performance Criteria,** By Advance Beauty College, Copyright 2009, Price: $8
- **Manicuring Test Package,** By Advance Beauty College, Copyright 2009, Price: $12

ESTHETICIAN COURSE ***(600 HOURS)***

SESSIONS: Begin weekly on Tuesdays, throughout the year.

COURSE DESCRIPTION: Learn the proper use of implements relative to all Esthetician services, acquire the knowledge of analyzing the skin prior to all services to determine any disorders, will learn the procedures and terminology used in performing all Esthetician services, will learn the application of daytime and evening make-up to include the application of individual and false strip eyelashes and also learn the proper procedure of plain and electrical facials.

Be able to appreciate good workmanship common to cosmetology/manicurist/esthetician, possess a positive attitude towards the public and fellow workers, appreciate honesty and integrity and have improved personality in dealings with patrons and colleagues.

COURSE MISSION AND OBJECTIVES: It is the mission of Advance Beauty College to prepare students enrolled in the Esthetician program for licensure and job entry level skills.

ESTHETICIAN PERFORMANCE OBJECTIVE: Acquire knowledge of laws and rules regulating California Cosmetological establishing practices, acquire the knowledge of sanitation and sterilization as related to all phases of skin, acquire the knowledge of general theory relative to Esthetics including anatomy, physiology, chemistry, and theory and acquire business management techniques common to Esthetics.

CURRICULUM:

MINIMUM SPECIFIED PRACTICAL OPERATIONS:

10	Disinfection and Sanitation	40	Facials (Manual)
60	Facials (Electrical)	40	Chemicals (Chemical skin peels, packs, masks and scrubs)
40	Wax and depilatories	40	Make-up & Eyelash Application
10	Hair Removal & Eyebrow Arching, Tweezers		

TECHNICAL SUBJECT:	MINIMUM THEORY HOURS
1. The Cosmetology Act and the Program's Rules and Regulations.	10
2. Chemistry pertaining to the practices of a Esthetician. (Shall include the chemical composition and purpose of cosmetic and skin care preparation. Shall also include the elementary chemical makeup, chemical skin peels, physical, and chemical changes of matter.)	10
3. Health and Safety/Hazardous Substances (Shall include training in chemicals and health establishments, material safety data sheets protection from hazardous chemicals and preventing chemical injuries, health and safety laws and agencies, ergonomics, communicable diseases, including HIV/AIDS and Hepatitis B.)	20
4. Electricity (Shall include the nature of electrical current, principles of operating electrical devices, and the various safety precautions used when operating electrical equipment.)	10
5. Disinfection and Sanitation (Shall include procedures to protect the health and safety of the consumer as well as the technician. The ten required minimum operations shall entail performing all necessary functions for disinfecting instruments and equipments and equipment as specified in Sections 979 and 980. Disinfection should be emphasized through-out the entire training period and must be performed before use of all instruments and equipment.)	10
6. Bacteriology, anatomy, physiology, skin analysis and conditions.	15

7. Facials A. Manual (Shall include skin analysis, cleansing, scientific manipulations, packs, and masks. B. Electrical (Shall include the use of all electrical modalities including dermal lights and electrical apparatus, for facials and skin care purposes; however, machines capable of producing current shall not be used to stimulate so as to contract, or for the purpose of contracting, the muscles of the body or face.) C. Chemical (Shall include chemical skin peels, packs, masks and scrubs. Training shall emphasize that only non-living, upper-most layers of facial skin, known as the epidermis may be removed, and only for the purpose of beautification. All practical operations must be performed in accordance with section 992 regarding skin peeling.)	20 30 20
8. Eyebrow Arching and hair Removal (Shall include the use of wax, tweezers, electric or manual and depilatories for the removal of superfluous hair.) A. Tweezers A. Wax and depilatories	05 20
9. Make-Up (Shall include skin analysis, complete and corrective make-up, and the application of false eyelashes.)	20
10. Training will also include classes in Salon Mgmt., communication skills that includes professional ethics, salesmanship, decorum, record keeping, client service record cards and preparing a resume, employment development, modeling, desk and reception, and care and other subjects relating to Cosmetology field.	
11. Preparation – Shall include client consultations, intake procedures, contraindications, professionalism, client record keeping, pre and post operative care, CPR/AED, salon and spa skills.	15

INSTRUCTIONAL METHODS USED: The curriculum for students enrolled in an Esthetician course shall consist of six hundred (600) clock hours of technical instruction and practical operations covering all practices of a Esthetician, pursuant to Section 7354 of the Cosmetology Act. For the purpose of this section, technical instruction shall mean instruction by demonstration, lecture, classroom participation, pre-examination. Practical operation shall mean the actual performance by the student of a complete service on another person. Please note 170 hours will be devoted to clinic/theory experience which shall include all phases of being an Esthetician.

REQUIRED TEXTS FOR ESTHETICIAN COURSE:

- **Milady's Standard Esthetics**, ISBN 9781428318922, Price: $153.50

TEACHER TRAINING COURSE ***(600 HOURS)***

SESSIONS: Begin weekly on Tuesdays, throughout the year.

COURSE DESCRIPTION: Develop occupational experiences and personal characteristics that will upgrade the cosmetology profession by producing quality students, develop lesson plans, outlines, procedures and tests that will insure student comprehension and will instill the will to learn in even the most difficult student, development of a course content reflecting a comprehensive, correlated unit of study, development of instructional materials that will facilitate set-up and preparation of class and development of supplemental teaching aids that will give the student a variety of ideas from which to draw and maintain motivation.

instruction by demonstration, lecture, classroom participation, or examination. Practical operation shall mean the actual performance by the Teacher Training of teaching techniques and principles. Please note 110 hours will be devoted to clinic/theory experience which shall include all phases of being an Instructor.

REQUIRED TEXTS FOR TEACHER TRAINING COURSE:

- **Milady's Master Educator**, ISBN 9781428321519, Price: $150

MASSAGE THERAPY COURSE **(600 HOURS)**

SESSIONS: Begin weekly on Tuesdays, throughout the year.

COURSE DESCRIPTION: Learn the proper use of implements relative to all services, acquire the knowledge of massage therapy prior to all services to determine any disorders, injuries, will learn the procedures and terminology used in performing all massage services, will learn the all basic massage techniques including Swedish, American and Shiatsu and will learn the all proper procedures of massage therapy.

COURSE MISSION AND OBJECTIVES: It is the mission of Advance Beauty College to prepare students enrolled in the Massage Therapy program with thorough knowledge and technique in the art of massage and entry level job skills.

MASSAGE THERAPY PERFORMANCE OBJECTIVE: Acquire knowledge of establishing practices, acquire the knowledge of sanitation and sterilization as related to all phases of massage therapy, acquire the knowledge of general theory relative to massage including anatomy, physiology, nutrition, and acquire business management techniques.

Be able to appreciate good workmanship common to the field of massage, possess a positive attitude towards the public and fellow workers, appreciate honesty and integrity and have improved personality in dealing with patrons and colleagues.

CURRICULUM	MINIMUM HOURS OF INSTRUCTION	MINIMUM HOURS OF PRACTICE
1. Health and Safety/Hazardous Substances (Shall include training in chemicals and health establishments, material safety data sheets, protection from hazardous chemicals and preventing chemical injuries, health and safety laws and agencies, ergonomics, communicable diseases, including HIV/AIDS and Hepatitis B.)	15	
2. Disinfection and Sanitation (shall includee procedures to protect to protect the health and safety of the consumer as well as the technician. The ten required minimum operations shall entail performing all necessary functions for disinfecting instruments and equipment as specified Disinfection should be emphasized throughout the entire training period and must be performed before use of all instruments and equipment.)	10	5
3. History, anatomy, and physiology.	125	
4. Ethics, Nutrition, Principles & Techniques	15	

5. The Body's Muscles & Nerves	10	
6. Trigger points of Massage	10	
7. Other systems of Massage	5	
8. Basics of the Traditional Massage	10	10
9. Basics of the Traditional Swedish Massage	10	25
10. Chair Massage	10	10
11. Basic Shiatsu Routine & 16 movements	20	20
12. Aroma Therapy	5	
13. Patterns of Ki	15	15
14. The Front, Back and Side Channels	20	20
15. Introduction of other systems of Massage and Bodyworks	10	10
16. Sports Massage, Study of pre/post event massage, training massage, injury care, nerve innovations, range of motion, structural kinesiology, muscle testing and PNF stretching	30	25
17. Introduction to Holistic theory	15	
18. Business practices, setting up a massage business	25	10
19. Reflexology	25	25
20. Pathology	40	

INSTRUCTIONAL METHODS USED: The curriculum for students enrolled in the massage course shall consist of six hundred (600) clock hours of technical instruction and practical operations in teaching the art of massage. Technical instruction means instruction by demonstration, lecture, classroom participation, or examination. Practical operation shall mean the actual performance by the massage technician of all techniques and principles.

REQUIRED TEXTS FOR MASSAGE THERAPY COURSE (600 HOURS):

- **Theory and Practice of Therapeutic Massage,** ISBN 9781435485242, Price: $105
- **Practical Handbook for Massage Therapy**, By Advance Beauty College, Copyright 2009, Price: $27
- **Massage Guidebook**, By Advance Beauty College, Copyright 2009, Price: $27

HOLISTIC HEALTH PRACTITIONER COURSE ***(1000 HOURS)***

SESSIONS: Begin weekly on Tuesdays, throughout the year.

COURSE DESCRIPTION: Learn the proper use of implements relative to all services, acquire the knowledge of holistic therapy prior to all services to determine any disorders, injuries, will learn the procedures and terminology used in performing all holistic services, will learn the all basic holistic techniques including Swedish, American and Shiatsu and will learn the all proper procedures of holistic therapy.

COURSE MISSION AND OBJECTIVES: It is the mission of Advance Beauty College to prepare students enrolled in the Holistic Health Practitioner program with a thorough knowledge and technique in the art of massage and entry level job skills.

HOLISTIC HEALTH PRACTITIONER PERFORMANCE OBJECTIVE: Acquire knowledge of establishing practices, acquire the knowledge of sanitation and sterilization as related to all phases of holistic therapy, acquire the knowledge of general theory relative to holistic including anatomy, physiology, nutrition, and acquire business management techniques.

Be able to appreciate good workmanship common to the field of holistic, possess a positive attitude towards the public and fellow workers, appreciate honesty and integrity and have improved personality in dealing with patrons and colleagues.

CURRICULUM	MINIMUM HOURS OF INSTRUCTION	MINIMUM HOURS OF PRACTICE
1. Health and Safety/Hazardous Substances (Shall include training in chemicals and health establishments, material safety data sheets, protection from hazardous chemicals and preventing chemical injuries, health and safety laws and agencies, ergonomics, communicable diseases, including HIV/AIDS and Hepatitis B.)	15	
2. Disinfection and Sanitation (shall include procedures to protect to protect the health and safety of the consumer as well as the technician. The ten required minimum operations shall entail performing all necessary functions for disinfecting instruments and equipment as specified Disinfection should be emphasized throughout the entire training period and must be performed before use of all instruments and equipment.)	10	5
3. Skeletal	10	
4. Ethics, Nutrition, Principles & Techniques	15	

5. The Body's Muscles & Nerves	10	
6. Trigger points of Massage	10	
7. Other systems of Massage	5	
8. Basics of the Traditional Massage	25	20
9. Basics of the Traditional Swedish Massage	25	50
10. Chair Massage	10	25
11. Basic Shiatsu Routine & 16 movements	20	75
12. Aroma Therapy	10	10
13. Patterns of KI/QI/CHI	10	35
14. The Front, Back and Side Channels	25	25
15. Introduction of other systems of Massage and Bodyworks	10	15
16. Sports Massage, Study of pre/post event massage, training massage, injury care, nerve innovations, range of motion, structural kinesiology, muscle testing and PNF stretching	55	100
17. Introduction to Holistic theory	15	
18. Accupressure 1&2, Cover 12 muscle meridians and the five elements and the Yin Yang Theory and incorporating different Eastern Techniques	35	30
19. Reflexology	10	15
20. Social Psychology	25	
21. Supervised training in a sport/clinical facility		200
22. Chair-Side Techniques Business practices and setting up a business	25	15

INSTRUCTIONAL METHODS USED: The curriculum for students enrolled in the Holistic Practitioner course shall consist of one thousand (1000) clock hours of technical instruction and practical operations in teaching the art of holistic. Technical instruction means instruction by demonstration, lecture, classroom participation, or examination. Practical operation shall mean the actual performance by the technician of all techniques and principles. The minimum combined total clock hours of 1000, include the technical instruction phase and opportunity for the student to acquire the necessary skills through practical applications developed under the supervision of the school's instructors.

REQUIRED TEXTS FOR HOLISTIC HEALTH PRACTITIONER COURSE:

- **Theory and Practice of Therapeutic Massage,** ISBN 9781435485242, Price: $105
- **Practical Handbook for Massage Therapy**, By Advance Beauty College, Copyright 2009, Price: $27
- **Massage Guidebook**, By Advance Beauty College, Copyright 2009, Price: $27

CUP/PUP No. 7-14-2924
Attachment #3

Plans

ADVANCE
BEAUTY · COLLEGE

CONSULTANTS

BUILDING OWNER

DESIGN CONSULTANT

PHD
[illegible] Alabama Street
Huntington Beach, CA 92648
t-(714) 960-[illegible]
f-(714) 960-[illegible]
E Mail PHD-HB@verizon.net

INDEX

SHEET	DESCRIPTION
T-1	TITLE SHEET
SP-1	SITE PLAN
D-1	DEMO PLAN
A-1	FLOOR PLAN
A-3	EXTERIOR ELEVATIONS, PARTIAL SITE PLAN & RENDERING

CITY NOTES

VICINITY MAP

PROJECT LOCATION

NOTES

NOTE

1. CONTRACTOR TO VERIFY ALL CONDITIONS AND DIMENSIONS AT SITE AND ALL DISCREPANCIES SHALL BE BROUGHT TO THE ATTENTION TO TO THE APPROPRIATE CONSULTANTS BEFORE PROCEEDING WITH WORK.
2. ANY ERROR OR OMISSION FOUND IN THESE DRAWINGS SHALL BE BROUGHT TO THE ATTENTION OF THE CONTRACTOR AND CONSULTANTS IMMEDIATE ATTENTION
3. DO NOT SCALE DRAWINGS. WRITTEN DIMENSIONS TAKE PRECEDENCE OVER SCALE DIMENSIONS.
4. ALL DIMENSIONS ARE TO FACE OF STUD OR TO FACE OF FRAMING UNLESS NOTED OTHERWISE.
5. THESE PLANS AND CALCULATIONS COMPLY WITH 2005 [illegible] CALIFORNIA ENERGY CONSERVATION REGULATIONS FOR NON-RESIDENTIAL BUILDINGS.
6. [illegible]
7. [illegible] AT [illegible] FT. TRAVEL DISTANCES. VERIFY LOCATIONS WITH INSPECTOR.
8.

PROJECT DATA

CODES

2013 CALIFORNIA BUILDING CODE
2013 CALIFORNIA MECHANICAL CODE
2013 CALIFORNIA PLUMBING CODE
2013 CALIFORNIA ELECTRICAL CODE
2013 CALIFORNIA ENERGY CODE- TITLE 24 ENERGY REGULATIONS
ALL APPLICABLE STATE AND
LOCAL CODES AND ORDINANCES

ZONE	
TYPE OF CONSTRUCTION	V B
NO. OF STORIES	(1)
BUILDING HEIGHT	[illegible]
FIRE SPRINKLER	NO
OCCUPANCY	B
BUILDING SIZE	[illegible] S.F.
SITE AREA	

TENANT OCCUPANCY

SPACE NAME	AREA	RATIO	OCCUPANCY	NO OF OCCUPANCY	
RETAIL/ENTRY	1,2[illegible] SF	100			
MULTI-PURPOSE TRAINING AREA	2,0[illegible] SF	100			
SPA/ MASSAGE TRAINING AREA	3,0[illegible] SF	100			
NAIL ROOM	[illegible] SF	100			
SHAMPOO AREA	[illegible] SF	100			
COMPUTER/LIBRARY	[illegible] SF	100			
SERVICE ROOM	[illegible] SF	100			
RESTROOMS	[illegible] SF				
BREAK ROOM	[illegible] SF	100			
OUTDOOR BREAK AREA	*[illegible] SF	100			
TOTAL	[illegible] SF				

* OUTDOOR AREA IS NOT COUNTED IN THE BUILDING TOTAL.

LEGAL DESCRIPTION

PROJECT ADDRESS

25332 McIntyre Street
Laguna Hills, CA
APN:

SCOPE OF WORK

PROPOSED NEW TEACHING/TRAINING BEAUTY COLLEGE THAT WILL ALSO SERVE AS A RETAIL SALON.

1. DEMOLISH INTERIOR RESTAURANT FIXTURES AND FINISHES
2. BUILD NEW PARTITIONS PER PLAN
3. ADD NEW FIXTURES AND FINISHES PER PLAN
4. UPGRADE ALL TITLE 24 ACCESSIBILITY.

PHD

Q³ inc.

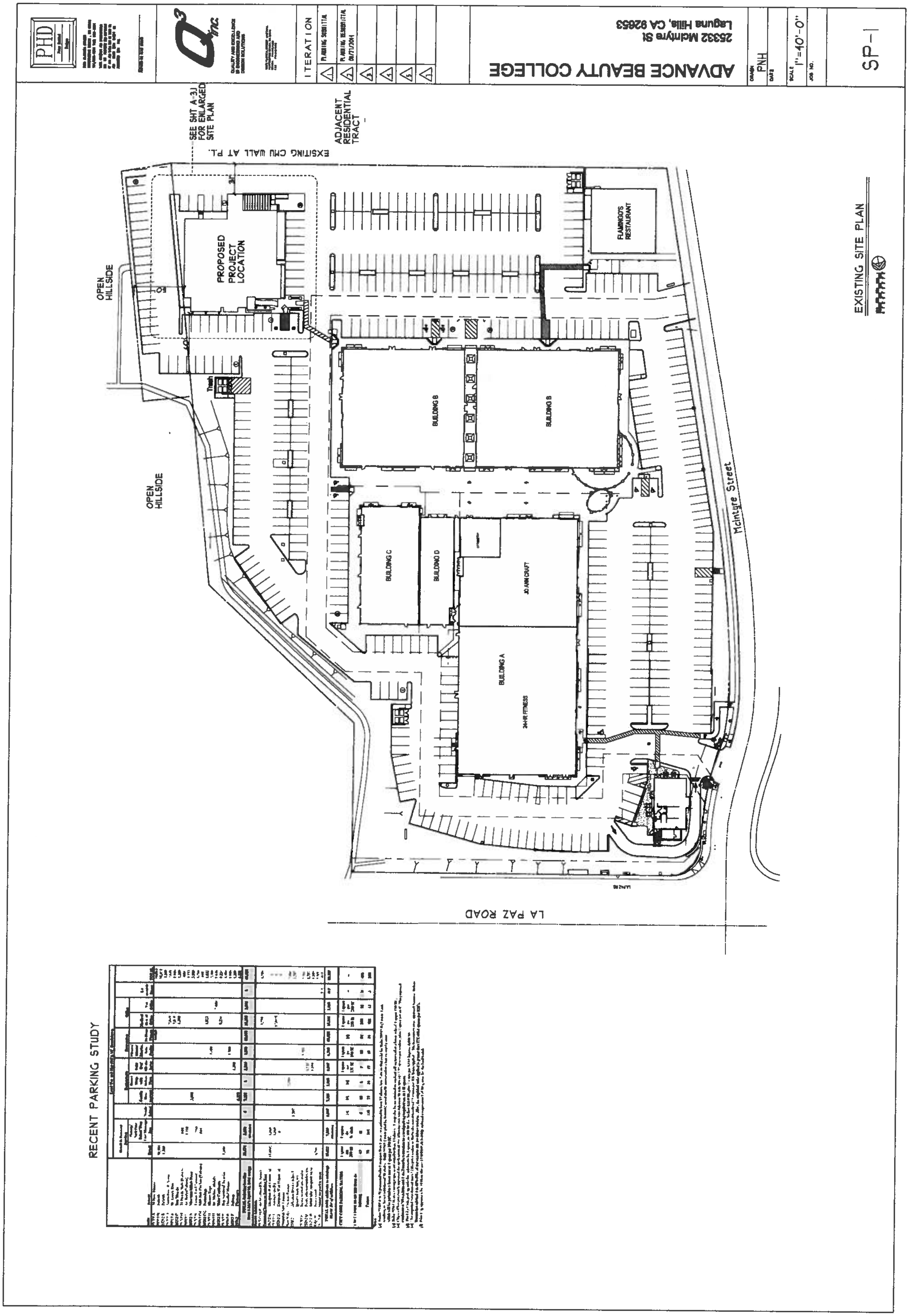
ITERATION

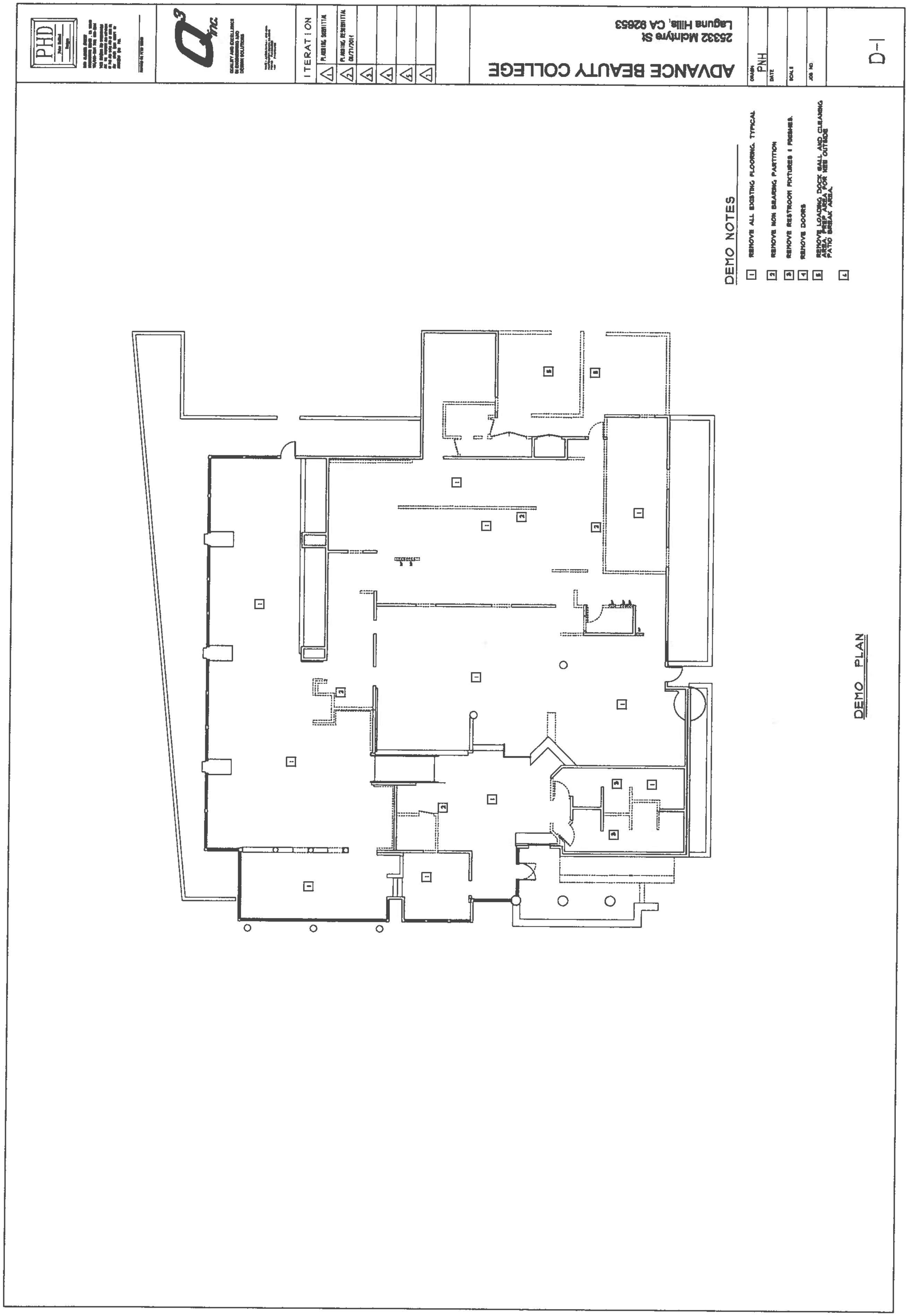
1	PLANNING SUBMITTAL
2	PLANNING RESUBMITTAL 09/21/2014
3	
4	
5	
6	

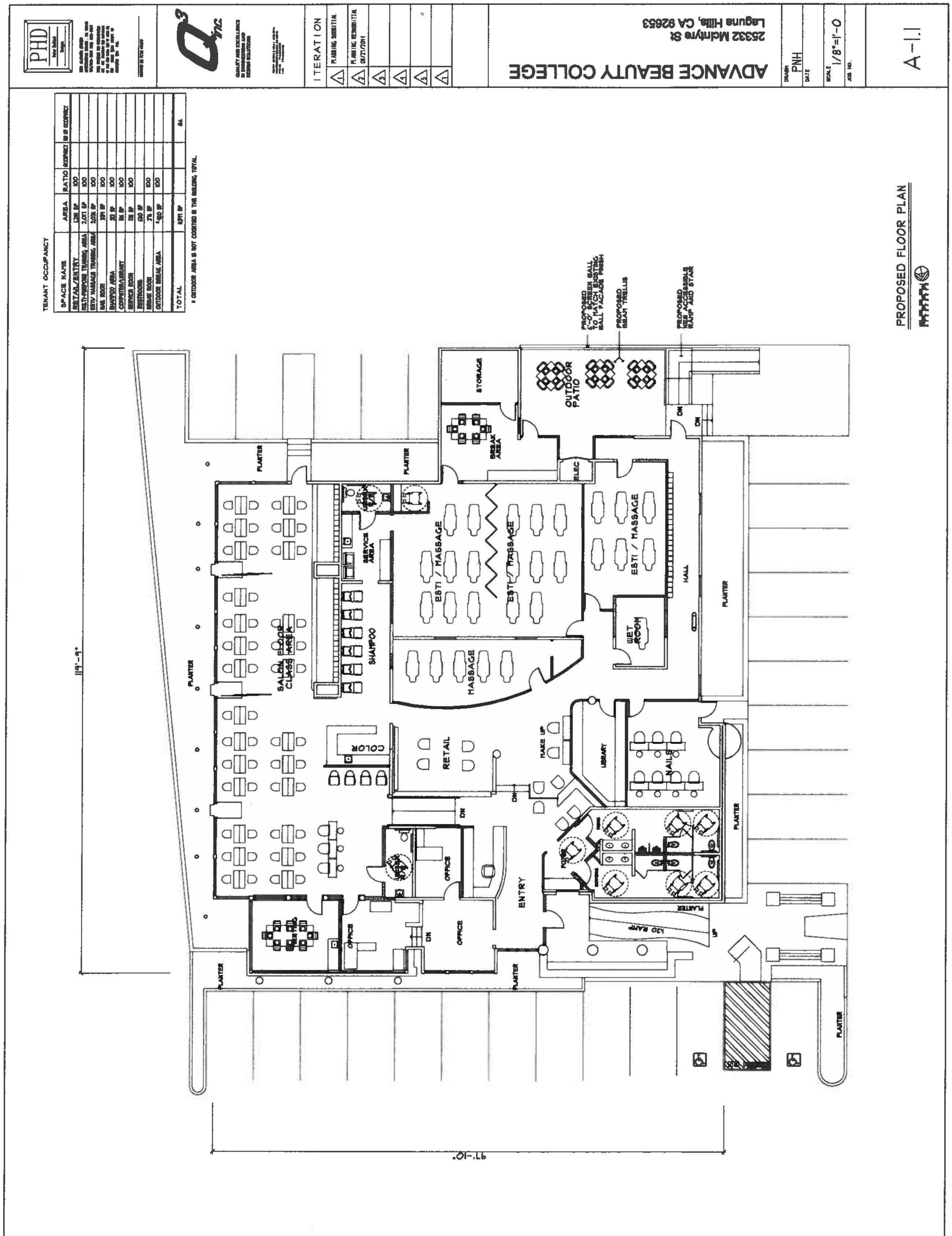
ADVANCE BEAUTY COLLEGE
25332 McIntyre St
Laguna Hills, CA 92653

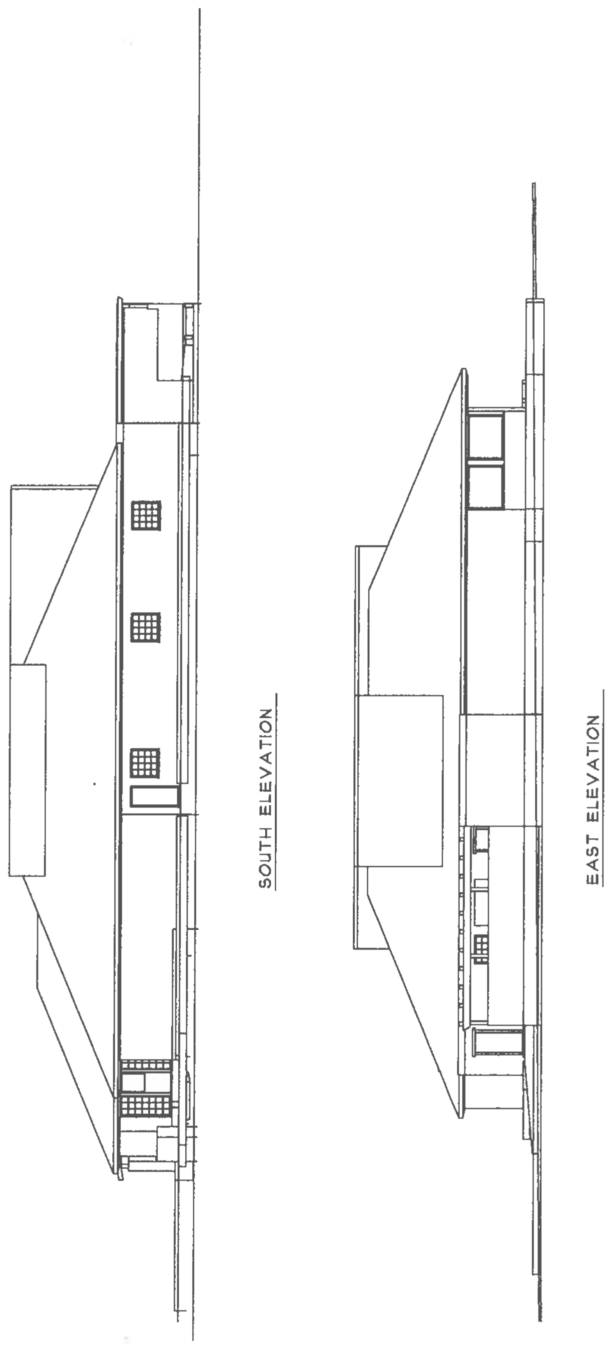
DRAWN PNH
DATE
SCALE
JOB NO.

T-1


ADVANCE BEAUTY COLLEGE
25332 McIntyre St
Laguna Hills, CA 92653
SP-1
1"=40'-0"
PNH
ITERATION
PLANNING SUBMITTAL
EXISTING SITE PLAN
SEE SHT A-3.1 FOR ENLARGED SITE PLAN
EXSITING CMU WALL AT P.L.
ADJACENT RESIDENTIAL TRACT
PROPOSED PROJECT LOCATION
OPEN HILLSIDE
OPEN HILLSIDE
Trash
FLAMINGO'S RESTAURANT
BUILDING B
BUILDING B
BUILDING C
BUILDING D
JO ANN CRAFT
BUILDING A
24-HR FITNESS
McIntyre Street
LA PAZ ROAD
RECENT PARKING STUDY


ADVANCE BEAUTY COLLEGE
25332 McIntyre St
Laguna Hills, CA 92653
ITERATION
PLANNING SUBMITTAL
PLANNING RESUBMITTAL
08/21/2014
PNH
D-1
DEMO NOTES
1 REMOVE ALL EXISTING FLOORING, TYPICAL
2 REMOVE NON BEARING PARTITION
3 REMOVE RESTROOM FIXTURES & FINISHES.
4 REMOVE DOORS
5 REMOVE LOADING DOCK WALL AND CLEANING AREA, PREP AREA FOR NEW OUTSIDE PATIO BREAK AREA.
DEMO PLAN


ADVANCE BEAUTY COLLEGE
25332 McIntyre St
Laguna Hills, CA 92653
ITERATION
A-1.1
1/8"=1'-0
PNH
PROPOSED FLOOR PLAN
TENANT OCCUPANCY
119'-9"
97'-10"
SALON FLOOR CLASS AREA
SHAMPOO
SERVICE AREA
COLOR
RETAIL
MASSAGE
ESTI / MASSAGE
WET ROOM
HALL
LIBRARY
NAILS
MAKE UP
ENTRY
OFFICE
ELEC
BREAK AREA
STORAGE
OUTDOOR PATIO
PLANTER
1:20 RAMP
UP
DN



ADVANCE BEAUTY COLLEGE

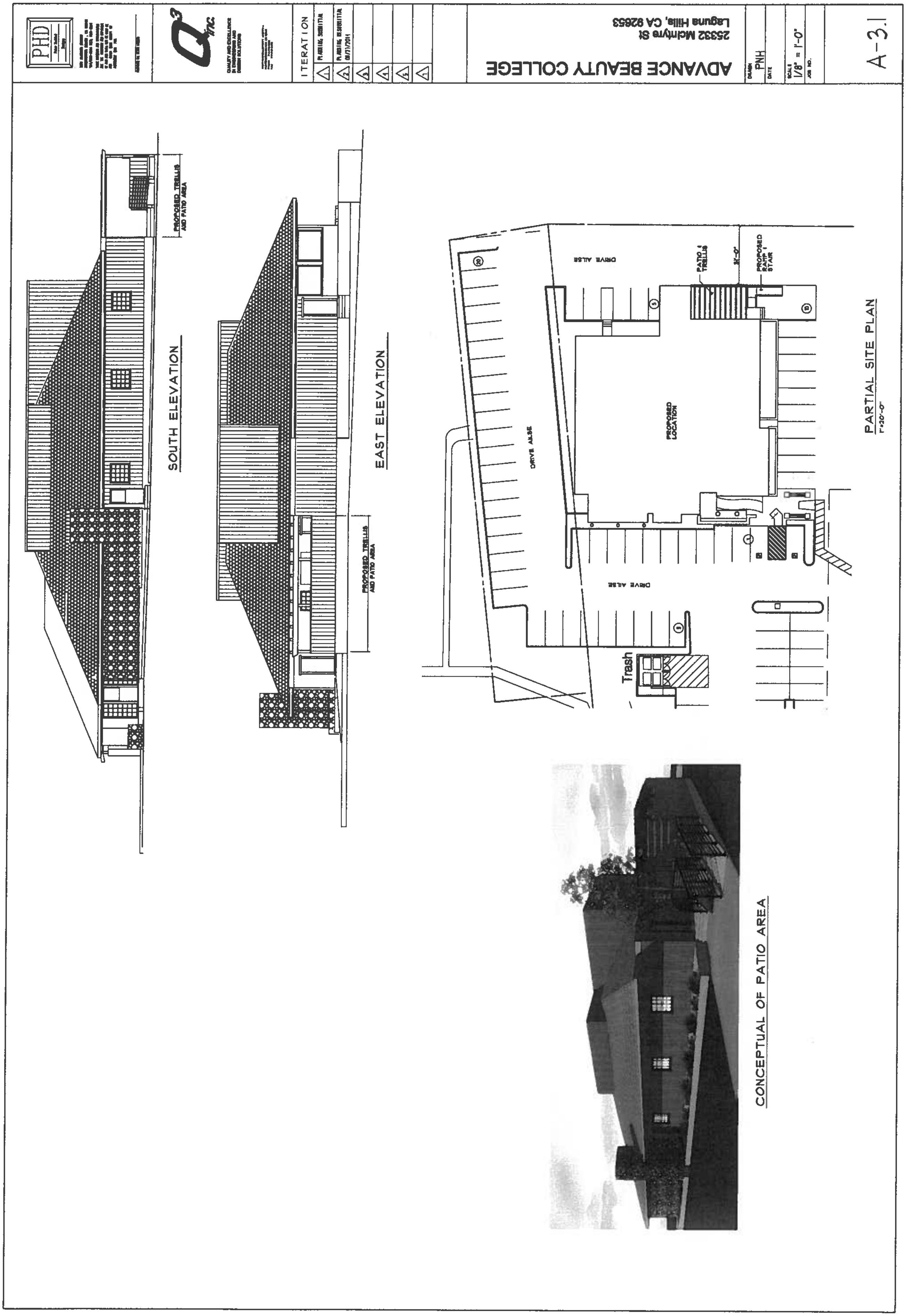
25332 McIntyre St
Laguna Hills, CA 92653

ITERATION

DRAWN: PNH

SCALE: 1/8" = 1'-0"

A-3.1



ADVANCE BEAUTY COLLEGE
25332 McIntyre St
Laguna Hills, CA 92653
ITERATION
PNH
1/8" = 1'-0"
A-3.1
SOUTH ELEVATION
PROPOSED TRELLIS AND PATIO AREA
EAST ELEVATION
PROPOSED TRELLIS AND PATIO AREA
PARTIAL SITE PLAN
1"=20'-0"
DRIVE AISLE
PROPOSED LOCATION
PATIO & TRELLIS
PROPOSED RAMP & STAIR
Trash
CONCEPTUAL OF PATIO AREA

CUP/PUP No. 7-14-2924
Attachment #4

Parking Study

LINSCOTT
LAW &
GREENSPAN
engineers

Engineers & Planners
Traffic
Transportation
Parking

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www.llgengineers.com

Pasadena
Irvine
San Diego
Woodland Hills

June 16, 2014

Ms. Asha Hiralal
H&A Holdings Group Inc.
4 Park Plaza, Suite 530
Irvine, California 92614

LLG Reference: 2.13.3349.2

Subject: **Parking Demand and Traffic Impact Study for Courtyard at La Paz**
Laguna Hills, California

Dear Ms. Hiralal:

Linscott, Law & Greenspan, Engineers (LLG) is pleased to present the findings of a Parking Demand and Traffic Impact Study we prepared for the existing Courtyard at La Paz commercial center (referred to as the "Center" in this study), located at the northeast corner of the La Paz Road/McIntyre Street intersection in the City of Laguna Hills, California. This updates our prior reports (dated April 12, 2013 and May 1, 2014) to evaluate potential changes in leasing and tenancy at the Center, including the addition Advance Beauty Academy and Dunkin Donuts, and address the City's comments on the May 2014 study.

This study focused on the following tasks:

a) Calculated the Code-based parking requirements for the Center based on the application of City Code parking ratios; identified any Code-based surplus or deficiency by comparing Code requirements against existing supply

b) Incorporated findings from the April 2013 study related to existing parking supply and demand, actual operational surplus or deficiency, and comparisons between calculated demand and observed/actual demand (to estimate parking contingencies inherent in the City Code and shared parking calculations)

c) Applied City-approved parking ratios to Advance Beauty Academy, and an empirical ratio to Dunkin Donuts, and derived hourly parking profiles for each use based on operational data provided to LLG

d) Estimated the Center's future parking demand (with the recent addition of dental office in Suite 25272 D&E, proposed Dunkin Donuts and Advance Beauty Academy, and current vacancies presumed to be occupied by anticipated tenants) through the application of the Shared Parking methodology, and identified any parking surplus or deficiency under future conditions

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e) Added the incremental parking requirements of future tenants to the actual demand observed (based on the April 2013 study's parking demand counts), and identified any parking surplus or deficiency under this scenario (considered to be a more realistic representation of parking conditions)

f) Evaluated the proposed drive-thru lane for Dunkin Donuts, queuing, and internal circulation for the Center

g) To address City staff comments on the May 1, 2014 report, conducted a comprehensive traffic impact analysis at 5 key intersections and detailed evaluation of existing conditions without, and with, potential new leases (i.e., Dunkin Donuts, Advance Beauty School, martial arts studio, 3,057 SF of future take-out/quick-serve food uses, and 3,708 SF of future retail).

Briefly, we conclude that based on the application of the Shared Parking methodology, and on empirical study of existing parking demand, the parking needs of the entire Center, including the proposed leases/future tenants, would be adequately served by onsite parking supply on weekdays and weekends. Further, the addition of the potential new leases to the Center is not expected to cause significant traffic impacts at the 5 study intersections during the AM and PM peak hours under Existing + Project conditions; therefore, no mitigation measures are necessary.

The following pages describe our study approach and findings in greater detail.

PROJECT DESCRIPTION

Existing development in Courtyard at La Paz consists of a mix of uses. ***Table 1*** presents the most recent development tabulation for the Center, with the upper portion of the table summarizing the current occupancies, and the middle portion (in purple, blue, and red text) describing how current vacancies (totaling 20,033 SF) and new construction (2,000 SF for Dunkin Donuts) could be occupied by future tenants.

Not accounting for the recent addition of dental office in Suite 25272 D&E (purple text) to remain consistent with the April 2013 study, existing occupied square footage totals 66,524 SF, and with the addition of 22,033 SF, the Center would have 88,557 SF of occupied/leased space in the future.

The existing onsite parking supply for Courtyard at La Paz totals 504 spaces, of which 14 are handicapped spaces. For detailed study purposes, the parking areas were divided into 6 zones, as illustrated on ***Figure 1***. It should be noted that, during the parking demand observations of the April 2013 study, 36 spaces in Zone 5 were offline (fenced off), and not accessible for parking, leaving only 20 spaces in operation for Zone 5 at that time. The following provides a supply breakdown:

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Zone 1:	152 spaces
Zone 2:	41 spaces
Zone 3:	33 spaces
Zone 4:	86 spaces
Zone 5:	56 spaces
Zone 6:	136 spaces
Total:	**504 spaces**

The development of Dunkin Donuts at the southwest corner (presuming La Paz Road runs in the north-south direction) of the Center will result in the net loss of 18 parking spaces in Zone 1. Subtracting 18 spaces from the 504-space existing supply totals 486 spaces, corresponding to the Center's future parking supply.

CITY CODE PARKING REQUIREMENTS

For the purposes of parking calculations, the City of Laguna Hills exempts areas for vertical shafts, restrooms, utility shafts and excess common area/open patios where no service or seating occurs, from the GFA calculation of the building. This calculation essentially uses GFA as the starting point, and after reducing for the above named components, results in the building's GFA that becomes the basis of the parking calculation. This study presumed that the "useable" square footage reported in the development tabulation provided to LLG represents "parking" GFA, as required by the City's parking methodology.

Parking Ratios

The bottom rows of *Table 1* present the application of City Code parking ratios, City-approved ratios for Advance Beauty School, and an empirical ratio for Dunkin Donuts.

City staff has previously approved parking ratios for Advance Beauty School, consisting of 1.25 spaces per student and 1 space per staff.

City Code does not have a comparable use for a donut shop with a drive-thru, corresponding to the proposed Dunkin Donuts; therefore, it was necessary to apply an empirical ratio to Dunkin Donuts. Although Dunkin Donuts provided LLG with transaction data from their Gilbert, Arizona facility (with a similar size of 2,100 SF, drive-thru, and demographic setting) any further information that could help in estimating parking demand for Dunkin Donuts was not available.

Coffee shops typically relate with donut shops, and in fact, ITE's parking and trip generation manuals have combined the two into one land use category. Based on

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ITE, the average ratio for coffee/donut shops is 10.4 spaces per 1,000 SF. Based on numerous parking studies that LLG previously completed for Starbucks, a peak "design-level ratio" of 12 spaces per 1,000 SF has been developed, which is greater than ITE's. This derived Starbucks peak ratio is rooted in field studies of sites without drive-thru lanes. This is concluded to be a conservative approach. At sites with a drive-thru lane, Starbucks has advised that 40% to 60% of its sales volume uses the drive-thru lane (inferring some corresponding reduction in parking demand). While this drive-thru split does not translate directly to an equivalent reduction in peak parking demand, the ratio of 12.0 spaces per 1,000 SF is concluded to have at least a ten to twenty percent integrated contingency. Based on these considerations, the ratio was applied to Dunkin Donuts. It should also be noted that Dunkin Donuts has advised that 40% to 50% of transactions at their Gilbert facility use the drive-thru lane.

Standalone Parking Requirements

Application of the parking ratios to the existing occupied square footage yields a total Code-based requirement of 438 spaces. This 438-space Code requirement for existing occupied space corresponds to a surplus of 30 spaces when compared to the existing onsite supply (in operation at the time of the April 2013 study) of 468 spaces.

Presuming the addition of 22,033 SF of new tenants, the Code-based requirement under future conditions totals 688 spaces. Comparing this 688-space requirement against the future supply of 486 spaces results in a Code-based deficiency of 202 spaces.

SHARED PARKING ANALYSIS

The Shared Parking methodology was also applied in estimating the parking needs of the project. This goes beyond simply calculating the City Code requirement, and looks at the operational demand picture within the actual physical setting. The objective of this Shared Parking analysis is to estimate the peak parking requirements for the various project components of the Center based upon their combined parking demand patterns.

Parking experience indicates that combining different land uses, whose parking demands peak at different times (of the day, week, and year), generally result in a parking demand that is significantly lower than "stand-alone" or "free-standing" facilities. In other words, a mixed-use development results in an overall parking need that is less than the sum of the individual peak parking requirements for each land use (parking ratios/factors specific to each land use, or city parking code rates are typically applied to these "stand-alone" developments).

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The analytical procedures in a Shared Parking analysis are well documented in the Urban Land Institute's (ULI's) *Shared Parking* (First and Second Editions) publication. The publication defines Shared Parking as "parking space that can be used to serve two or more individual land uses without conflict or encroachment." Therefore, Shared Parking calculations recognize that when different uses share a common parking footprint, the total number of spaces needed to support the collective whole is determined by adding the different parking profiles (by time of day or day of week) of each use comprising the mixed-use development. This is done rather than applying individual peak ratios to each land use component.

There is an important common element between the traditional "code" and the Shared Parking calculation methodologies. The peak parking ratio, or "highpoint" for each land use's parking profile, typically equals the "code" parking ratio for that use.

Calculated Demand versus Observed/Actual Demand

***Tables** 2* and *3* present the Shared Parking summaries for existing occupied uses at the Center during weekday and weekend conditions, respectively. The total size of each land use category, the City Code ratios applied to each column, hourly parking profiles per ULI, and the resultant hourly parking demand appear in the individual columns of *Tables 2* and *3*.

As highlighted in yellow, based on the shared parking calculation presented on *Table 2*, the existing peak demand is 361 spaces at 11:00 AM, which corresponds to a calculated surplus of 107 spaces when compared against the 468-space supply in operation during the April 2013 study.

The far right column (shaded in blue) of *Table 2* indicates that, based on LLG's weekday parking counts on January 9, 2013, the observed/actual demand at 11:00 AM was 197 spaces. The bottom portion of *Table 2* summarizes that the difference between calculated demand and the observed demand is 164 spaces, corresponding to an 83% parking contingency inherent in the calculated demand. This underscores how conservative the calculation methodology is, and that it may likely overstate parking demand estimates.

Table 3 presents the shared parking summary for existing occupied uses at the Center during weekend conditions. As highlighted in yellow, based on the shared parking calculation, the existing peak demand is 326 spaces (also at 11:00 AM), which corresponds to a calculated surplus of 142 spaces when compared against the 468-space in operation during the April 2013 study.

The far right column (shaded in blue) of *Table 3* indicates that, based on LLG's weekend parking counts on January 12, 2013, the observed/actual demand at 11:00 AM was 217 spaces. The bottom portion of *Table 3* summarizes that the difference

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between calculated demand and the observed demand is 109 spaces, corresponding to a 50% parking contingency inherent in the calculated demand. Again, this shows how much more conservative the calculation methodology is compared to empirical data.

Future Shared Parking Conditions

Tables 4 and ***5*** present the Shared Parking summaries for future weekday and weekend conditions, respectively. The total size of each land use category, the City Code ratios applied to each column, hourly parking profiles per ULI, and the resultant hourly parking demand appear in the individual columns of *Tables 4* and *5*.

Based on operational data provided to LLG by Advance Beauty School, and transaction data by Dunkin Donuts, hourly parking profiles were derived, and incorporated into the shared parking analysis.

As indicated in *Table 4*, the resultant maximum or peak demand for the Center totals 526 spaces (occurring at 1:00 PM) under future weekday conditions, corresponding to a calculated deficiency of 40 spaces when compared against the future 486-space supply.

Table 5 indicates a peak demand of 486 spaces (at 11:00 AM) under future weekend conditions, matching the future supply of 486 spaces (there would be parking surpluses during all other hours of a weekend day). Therefore, there would be sufficient supply to meet the future parking needs of the Center under weekend conditions.

Survey Plus Shared Parking Conditions

As described previously, *Tables 2* through *5* present shared parking calculations based on direct application of the ULI Shared Parking methodology (referred to as "Straight ULI"). However, as evident from *Tables 2* and *3*, which tested the ability/precision of Straight ULI in predicting parking demand for the Center by comparing calculated existing demand against actual parking counts, Straight ULI could likely overstate the Center's realistic parking needs. Based on this, the 40-space deficiency under future weekday conditions (reported on *Table 4*) is considered to result from unrealistic and overestimated demand calculations.

A hybrid approach, sometimes known as "Surveyed Plus Shared", has been determined in other applications to be a reasonable parking calculation technique for shopping centers, and mixed-use developments with multiple ownerships that are in some form of transition. It is used to calibrate the shared parking model to provide more realistic estimates and a finer resolution of practical "design-level" demand.

This technique supports a strategy where the parking requirements for existing developed parcels and tenancy types are frozen at a design level (even if less than code) as long as those use types and individual building floor areas stay essentially the same. The incremental parking needs of added or changed development types are evaluated using ULI Shared parking techniques applied to only the use and square footage increments.

In other words, Survey Plus Shared is a calibration approach where the parking demand of existing tenancies are accounted for by actual parking demand count, and further future tenancies (to full occupancy of the Center) are accounted for using Straight ULI. In the Survey Plus Shared method, the parking needs for future tenancies of now-vacant suites have an automatic contingency "built in" to that methodology. Any site-wide surpluses (total supply minus total demand) essentially feed back into existing demand for the site as a contingency of "extra spaces" to serve fluctuations in those current demand levels.

Through the application of the Survey Plus Shared methodology, considered to provide the best basis for demand-versus-supply comparisons in this study, the incremental parking requirements of anticipated and/or proposed leases were added to the existing parking demand baseline (based on the January 9 and 12, 2013 field study/parking utilization surveys).

As indicated in ***Table 6***, the peak parking demand on a weekday totals 397 spaces (at 5:00 PM), corresponding to a surplus of 89 spaces when compared to the future supply of 486 spaces. Per ***Table 7***, the weekend demand was slightly lower (377 spaces at 11:00 AM) compared to weekday conditions, yielding a greater surplus of 109 spaces.

Based on the above findings, we conclude that based on the application of the Survey Plus Shared methodology, the parking needs of the entire Center, including the proposed leases/future tenants, would be adequately served by the future parking supply on weekdays and weekends.

DRIVE-THRU OPERATIONS

Dunkin Donuts has indicated that the service standard for how long a customer is on the drive-thru lane is 150 seconds from the order/menu board until the pickup window. The Gilbert, Arizona facility averages about 140 seconds during the morning peak hour. These drive-thru service times are much lower than other fast-food restaurants that have service rates between 180 and 240 seconds.

Based on LLG's review of the proposed drive-thru configuration, approximately 8 vehicles could be accommodated within the drive-thru lane, consisting of 5 vehicles before reaching the order/menu board, and 3 vehicles between the order/menu board

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and the pickup window. This proposed design of the drive-thru lane is adequate, and meets or exceeds design standards from the Quick Service Restaurant Magazine, and LLG's prior studies of Starbucks and fast-food restaurants. Based on a recent study, the 85th percentile queue on the drive-thru lane is 7 vehicles. Earlier studies have indicated an empirical queue storage ratio of 2 vehicles per 1,000 SF. Applying this ratio to 2,000 SF for Dunkin Donuts yields a queue storage requirement for only 4 vehicles. Compared to these standards, the proposed Dunkin Donuts drive-thru could accommodate more than the 85th percentile queue length, and double the number of vehicles expected on the drive-thru lane.

It should be noted further that a drive-thru lane is self-regulating. That is, customers will approach the property and evaluate whether it would be faster to enter the drive-thru lane, or park the car and walk in. Dunkin Donuts intends to operate the drive-thru lane in the same efficient manner as their Gilbert facility, and beat or maintain the 150-second service objective.

Vehicles accessing the drive-thru lane will need to enter from the Center's eastern driveway on McIntyre Street (left-turns into the western driveway are prohibited), and then turn left onto the first drive aisle (running parallel to McIntyre Street). During the morning peak period when Dunkin Donuts would be busiest, not many vehicles will be parked along this drive aisle that would cause any conflicts with vehicles destined for Dunkin Donuts.

Based upon the considerations described above, no changes are recommended to the proposed design of the drive-thru for Dunkin Donuts.

TRAFFIC IMPACT ANALYSIS

This section of the report presents the findings of a traffic impact analysis conducted to determine the potential impacts associated with the proposed new leases at the Center. It evaluates the existing operating conditions at 5 key study intersections within the project vicinity, estimates the trip generation potential of the proposed new leases, and identifies any significant traffic impacts attributable to the project. The traffic study satisfies the City's traffic impact study guidelines, and its scope was developed in conjunction with the City's Traffic Engineering staff. ***Figure 2*** presents a Vicinity Map, which illustrates the general location of the project and depicts the 5 study locations and surrounding street system.

Project Traffic Generation

Traffic generation is expressed in vehicle trip ends, defined as one-way vehicular movements, either entering or exiting the generating land use. Generation factors and equations used in the traffic forecasting procedure are found in the 8th Edition of *Trip*

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Generation, published by the Institute of Transportation Engineers (ITE) [Washington, D.C., 2008].

Table 8 presents the ITE trip rates (including the average of ITE pass-by percentages applied to Dunkin Donuts) applied to Dunkin Donuts, 3,057 SF of future take-out/quick serve, and 3,708 SF of future retail, use of operational data for Advance Beauty School, tripmaking assumptions for the future martial arts studio, and the resulting trip generation estimates for the project. As indicated in *Table 8*, the addition of potential new leases to the Center would result in 1,202 weekday daily trips, 80 AM peak hour trips, and 115 PM peak hour trips.

Existing Traffic Conditions

Figure 3 presents an inventory of the existing intersection and roadway physical characteristics, and identifies the number of travel lanes for key arterials, median type, posted speed limits, as well as intersection lane geometry and traffic controls for the key area study intersections.

Existing AM and PM peak hour traffic volumes for the 5 key study intersections evaluated in this report were obtained from manual morning and evening peak hour turning movement counts conducted by National Data and Surveying Services, Inc. in June 2014, prior to the end of the school year. ***Figures 4*** and ***5*** illustrate the existing AM and PM peak hour traffic volumes at the 5 key study intersections evaluated in this report, respectively.

In conformance with the City of Laguna Hills traffic impact study guidelines, existing AM and PM peak hour operating conditions for the key signalized study intersections were evaluated using the Intersection Capacity Utilization (ICU) method. The ICU technique is intended for signalized intersection analysis and estimates the volume to capacity (V/C) relationship for an intersection based on the individual V/C ratios for key conflicting traffic movements. The ICU numerical value represents the percent signal (green) time, and thus capacity, required by existing and/or future traffic. The ICU methodology assumes uniform traffic distribution per intersection approach lane and optimal signal timing. The ICU calculations use a lane capacity of 1,700 vehicles per hour per lane (vphpl) for left-turn, through, and right-turn lanes, and a clearance interval factor of 0.05.

The ICU value translates to a Level of Service (LOS) estimate, which is a relative measure of the intersection performance. The ICU value is the sum of the critical volume to capacity ratios at an intersection; it is not intended to be indicative of the LOS of each of the individual turning movements. The six qualitative categories of Level of Service have been defined along with the corresponding ICU value range and are shown in the table on the next page.

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LEVEL OF SERVICE CRITERIA FOR SIGNALIZED INTERSECTIONS

Level of Service (LOS)	Intersection Capacity Utilization Value (ICU)	Level of Service Description
A	≤ 0.600	EXCELLENT. No vehicle waits longer than one red light, and no approach phase is fully used.
B	0.601 – 0.700	VERY GOOD. An occasional approach phase is fully utilized; many drivers begin to feel somewhat restricted within groups of vehicles.
C	0.701 – 0.800	GOOD. Occasionally drivers may have to wait through more than one red light; backups may develop behind turning vehicles.
D	0.801 – 0.900	FAIR. Delays may be substantial during portions of the rush hours, but enough lower volume periods occur to permit clearing of developing lines, preventing excessive backups.
E	0.901 – 1.000	POOR. Represents the most vehicles intersection approaches can accommodate; may be long lines of waiting vehicles through several signal cycles.
F	> 1.000	FAILURE. Backups from nearby locations or on cross streets may restrict or prevent movement of vehicles out of the intersection approaches. Potentially very long delays with continuously increasing queue lengths.

According to City of Laguna Hills criteria, LOS D is the minimum acceptable condition that should be maintained during the AM and PM peak commute hours.

Table 9 summarizes the existing peak hour levels of service for the 5 key study intersections based on existing traffic volumes and lane geometry, and indicates that all 5 key intersections currently operate at an acceptable LOS C or better. ***Appendix A*** contains the detailed level of service worksheets.

Existing Plus Project Traffic Conditions

Figure 6 presents the traffic distribution pattern for the project. Project traffic volumes both entering and exiting the site have been distributed and assigned to the adjacent street system based on the following considerations:

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- the site's proximity to major traffic carriers (i.e. I-5 Freeway, La Paz Road, Paseo de Valencia, etc.)
- expected localized traffic flow patterns based on adjacent street channelization and presence of traffic signals
- existing intersection traffic volumes
- ingress/egress availability at the project site

The project traffic generation estimates from *Table 8* were assigned to the street system by applying the trip distribution pattern from *Figure 6*. The project-generated AM and PM peak hour traffic volumes are presented in ***Figures 7*** and ***8***, respectively.

The project-only volumes shown on *Figures 7* and *8* were then added to the existing AM and PM peak hour traffic volumes (previously shown on *Figures 4* and *5*), resulting in Existing Plus Project traffic volumes during the AM and PM peak hours, as presented on ***Figures 9*** and ***10***, respectively.

The City of Laguna Hills considers LOS D to be the minimum acceptable condition that should be maintained during the AM and PM peak hours for all intersections. A development project is considered to cause a significant traffic impact if it results in a deficient LOS E or F, or if it increases the ICU at an intersection operating at a LOS E or F under conditions without the project by 0.01 or greater.

Based on the application of the City's significant traffic impact criteria, *Table 9* indicates that all 5 key intersections would operate at an acceptable LOS C or better during the AM and PM peak hours under Existing Plus Project conditions; therefore, the project is not expected to cause any significant traffic impacts, and no mitigation measures will be required. *Appendix A* contains the detailed level of service worksheets.

We appreciate the opportunity to work on this project. If you have any questions regarding this letter, please do not hesitate to call me at (714) 641-1587.

Sincerely,

Linscott, Law & Greenspan, Engineers

Trissa (de Jesus) Allen, P.E.
Senior Transportation Engineer

LINSCOTT LAW & GREENSPAN engineers

TABLE 1
DEVELOPMENT SUMMARY
Courtyard at La Paz, Laguna Hills

Suite	Tenant	Land Use and Size (GFA SF) Breakdown: Retail & Personal Services: Retail	Retail & Personal Services: Beauty/ Nail/Tan/ Salon/ Wax Ctr/ Massage Spa	Trade School	Restaurants: Family Res-taurant	Restaurants: Donut Shop with Drive-Thru	Restaurants: Take-Out/ Quick-Serve	Recreation: Fitness/ Dance/ Martial Arts Studio	Recreation: 24 Hour Fitness	Office: Medical-Dental Office	Office: Vet Office	Un-useable Space	TOTAL
25252 A	24 Hour Fitness								18,000				18,000
25252 B	JoAnn's	10,414											10,414
25292 R	JoAnn's	1,560											1,560
25252 D	Aaron Sako & Assoc.									2,639			2,639
25272 A	Dr. Enoch Kim									2,040			2,040
25272 C	Ben Rinaldo									1,200			1,200
25272 G	#1 Hair & Nails (5 chairs)		600										600
25272 J	A+ Body (2 chairs)		1,132										1,132
25292 A	Mountain Mike's Pizza				3,000								3,000
25292 B	Tuscan Tan (2 chairs)		1,250										1,250
25292 C-1	S&S Hair Crafters (7 chairs)		668										668
25292 C-2	Posturelogy									1,022			1,022
25292 D	Bikram Yoga							2,700					2,700
25292 H	Dr. Michael Abdella										2,640		2,640
25292 K	Valor Healthcare									9,234			9,234
25292 P	Boy Scouts of America	1,500											1,500
25292 S	Unveiled Fitness							1,500					1,500
25292 T	Subway						1,200						1,200
25342	Flamingo's				4,225								4,225
TOTAL (existing baseline from LLG's April 12, 2013 study)		**13,474**	**3,650 (16 chairs)**	**0**	**7,225**	**0**	**1,200**	**4,200**	**18,000**	**16,135**	**2,640**	**0**	**66,524**
Recent Addition:													
25272 D&E	dental office (Dr. Teran)									1,750			1,750
Potential Change to Existing Use:													
25292 R	European Wax Center [a]	(1,560)	1,560										0
25252 D	massage spa [b]		2,639							(2,639)			0
25292 B	European Wax Center [a]		0										0
Potential New Leases:													
New Bldg.	Dunkin Donuts					2,000							2,000
25332	Advance Beauty School (prior Claim Jumper)			8,597									8,597
25292 F	future martial arts studio							2,508					2,508
25292 Q	future take-out/quick-serve						1,557						1,557
25292 W	future take-out/quick-serve						1,500						1,500
Bldg. D	future retail	3,708											3,708
25272 B	vacant; unuseable space											413	413
TOTAL (with additions to existing) ***22,033 SF of additions***		**15,622**	**7,849 (38 chairs)**	**8,597**	**7,225**	**2,000**	**4,257**	**6,708**	**18,000**	**15,246**	**2,640**	**413**	**88,557**
CITY CODE PARKING RATIOS		1 space per 200 SF	3 spaces per b. chair	[c]	[d]	[e]	1 space per 250 SF	1 space per 100 SF	[f]	1 space per 150 SF	1 space per 200 SF	--	--
CITY CODE REQUIREMENTS													
Existing		**67**	**48**	**0**	**75**	**0**	**5**	**42**	**80**	**108**	**13**	**0**	**438**
Future		**78**	**114**	**118**	**75**	**24**	**17**	**67**	**80**	**102**	**13**	**0**	**688**

Notes:

[a] Suites 25292 R & B, presumed to be European Wax Center, are estimated to have 12 chairs, less 2 chairs that exist for Suite 25292 B (Tuscan Tan), resulting in the net addition of 10 chairs. Suite 25292 R (occupied by JoAnn's) could also be converted to a beauty supply store, which will be parked at a lower rate of 1 space per 200 SF.

[b] Suite 25252 D, as a massage spa, is estimated to have 12 chairs. It may also be maintained as medical office (parked at a lower rate of 1 sp per 150 SF).

[c] City staff has previously approved the application of the following ratios to Advance Beauty School: 1.25 spaces per student, plus 1 space per staff. The proposed maximum of 90 students and 5 staff members translate to a total parking requirement of 118 spaces.

[d] The City Code parking ratio for restaurants is: 1 space per 100 SF for the first 4,000 SF, plus 1 space per 50 SF beyond 4,000 SF.

[e] The empirical ratio derived from LLG's prior studies at Starbucks w/o drive-thru (12 spaces per KSF) was applied. This is a conservative approach because Dunkin Donuts has advised that 40%-50% of transactions use the drive-thru lane. Also, the empirical ratio applied is greater than ITE (10.4 spaces per KSF).

[f] Prior City approvals for 24 Hour Fitness (CUP/PUP 2007-004) included a requirement of 80 spaces for the health club.

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TABLE 2
EXISTING OCCUPIED DEMAND vs. PARKING COUNTS
WEEKDAY SHARED PARKING DEMAND ANALYSIS
Courtyard at La Paz, Laguna Hills

Land Use	Retail & Personal Services	Family Restaurant	Take-Out/Quick-Serve	Fitness/Health Club	Medical-Dental-Vet Office			
Size	17.124 KSF	7.225 KSF	1.200 KSF	22.200 KSF	18.775 KSF			
Pkg Rate	6.72 /KSF	10.38 /KSF	4.00 /KSF	5.50 /KSF	6.44 /KSF		Comparison w/ Operational Supply of 468 Spaces	*Actual Demand Observed per LLG Parking Counts (Jan. 9, 2013)*
Gross Spaces	115 Spc.	75 Spc.	5 Spc.	122 Spc.	121 Spc.			
Time of Day	Number of Spaces	Number of Spaces	Number of Spaces	Number of Spaces	Number of Spaces	Shared Parking Demand	Surplus (Deficiency)	
6:00 AM	3	16	0	86	0	105	363	--
7:00 AM	8	28	0	51	0	87	381	--
8:00 AM	21	34	1	51	97	204	264	--
9:00 AM	45	41	1	86	113	286	182	*96*
10:00 AM	72	46	3	86	121	328	140	*166*
11:00 AM	**91**	**48**	**4**	**97**	**121**	**361**	**107**	*197*
12:00 PM	100	53	5	74	64	296	172	*192*
1:00 PM	104	48	5	86	113	356	112	*188*
2:00 PM	100	30	5	86	121	342	126	*179*
3:00 PM	95	26	3	86	121	331	137	*185*
4:00 PM	95	26	3	97	113	334	134	*231*
5:00 PM	99	41	3	111	105	359	109	*233*
6:00 PM	99	43	4	122	81	349	119	*247*
7:00 PM	99	43	4	109	36	291	177	*214*
8:00 PM	85	43	3	96	18	245	223	*147*
9:00 PM	57	33	1	82	0	173	295	*80*
10:00 PM	33	30	1	41	0	105	363	*51*
11:00 PM	11	27	0	13	0	51	417	--
12:00 AM	0	15	0	0	0	15	453	--
Calculated Peak/Maximum Parking Demand:						361		
Observed Demand during the same peak:								197
Difference in Demand (Calculated minus Observed):							164	
Contingency (in Calculated Demand relative to Observed):							83%	

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TABLE 3
EXISTING OCCUPIED DEMAND vs. PARKING COUNTS
WEEKEND SHARED PARKING DEMAND ANALYSIS
Courtyard at La Paz, Laguna Hills

Land Use	Retail & Personal Services	Family Restaurant	Take-Out/Quick-Serve	Fitness/Health Club	Medical-Dental-Vet Office		Comparison w/ Operational Supply of 468 Spaces	Actual Demand Observed per LLG Parking Counts (Jan. 12, 2013)
Size	17.124 KSF	7.225 KSF	1.200 KSF	22.200 KSF	18.775 KSF			
Pkg Rate	6.72 /KSF	10.38 /KSF	4.00 /KSF	5.50 /KSF	6.44 /KSF			
Gross Spaces	115 Spc.	75 Spc.	5 Spc.	122 Spc.	121 Spc.			
Time of Day	Number of Spaces	Number of Spaces	Number of Spaces	Number of Spaces	Number of Spaces	Shared Parking Demand	Surplus (Deficiency)	
6:00 AM	3	12	0	79	0	94	374	--
7:00 AM	8	24	0	45	0	77	391	--
8:00 AM	18	39	1	36	97	191	277	--
9:00 AM	45	55	1	50	113	264	204	129
10:00 AM	66	69	3	36	121	295	173	190
11:00 AM	82	69	4	50	121	326	142	217
12:00 PM	97	75	5	50	64	291	177	187
1:00 PM	106	65	5	31	0	207	261	184
2:00 PM	115	53	4	27	0	199	269	177
3:00 PM	115	34	3	31	0	183	285	178
4:00 PM	110	37	3	56	0	206	262	198
5:00 PM	105	48	3	100	0	256	212	184
6:00 PM	94	55	4	95	0	248	220	171
7:00 PM	87	55	4	60	0	206	262	155
8:00 PM	77	52	3	31	0	163	305	109
9:00 PM	61	28	1	10	0	100	368	66
10:00 PM	42	23	1	2	0	68	400	41
11:00 PM	17	17	0	2	0	36	432	--
12:00 AM	0	10	0	0	0	10	458	--
					Calculated Peak/Maximum Parking Demand:	326		
					Observed Demand during the same peak:			217
					Difference in Demand (Calculated minus Observed):		109	
					Contingency (in Calculated Demand relative to Observed):		50%	

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TABLE 4
FUTURE OCCUPANCY
WEEKDAY SHARED PARKING DEMAND ANALYSIS
Courtyard at La Paz, Laguna Hills

Land Use	Retail & Personal Services	Advance Beauty School	Family Restaurant	Dunkin Donuts	Take-Out/ Quick-Serve	Fitness/Health Club	Medical-Dental-Vet Office		Comparison w/ Future Supply of 486 Spaces
Size Pkg Rate	23.471 KSF 8.18 /KSF	8.597 KSF 13.73 /KSF	7.225 KSF 10.38 /KSF	2.000 KSF 12.00 /KSF	4.257 KSF 4.00 /KSF	24.708 KSF 5.95 /KSF	17.886 KSF 6.43 /KSF		
Gross Spaces	192 Spc.	118 Spc.	75 Spc.	24 Spc.	17 Spc.	147 Spc.	115 Spc.		
Time of Day	Number of Spaces	Number of Spaces	Number of Spaces	Number of Spaces	Number of Spaces	Number of Spaces	Number of Spaces	Shared Parking Demand	Surplus (Deficiency)
6:00 AM	5	0	16	14	1	103	0	139	347
7:00 AM	13	0	28	21	2	62	0	126	360
8:00 AM	35	0	34	21	4	62	92	248	238
9:00 AM	75	53	41	14	5	103	107	398	88
10:00 AM	119	118	46	12	10	103	115	523	(37)
11:00 AM	151	65	48	6	15	117	115	517	(31)
12:00 PM	166	65	53	5	17	89	61	456	30
1:00 PM	**173**	**71**	**48**	**7**	**17**	**103**	**107**	**526**	**(40)**
2:00 PM	166	71	30	5	16	103	115	506	(20)
3:00 PM	159	71	26	4	10	103	115	488	(2)
4:00 PM	159	71	26	5	10	117	107	495	(9)
5:00 PM	165	71	41	2	10	133	100	522	(36)
6:00 PM	165	27	43	2	15	147	77	476	10
7:00 PM	165	27	43	1	14	131	34	415	71
8:00 PM	142	27	43	0	9	115	18	354	132
9:00 PM	95	27	33	0	5	99	0	259	227
10:00 PM	55	27	30	0	4	51	0	167	319
11:00 PM	19	0	27	0	2	16	0	64	422
12:00 AM	0	0	15	0	2	0	0	17	469

TABLE 5
FUTURE OCCUPANCY
WEEKEND SHARED PARKING DEMAND ANALYSIS

Courtyard at La Paz, Laguna Hills

Land Use	Retail & Personal Services	Advance Beauty School	Family Restaurant	Dunkin Donuts	Take-Out/ Quick-Serve	Fitness/Health Club	Medical-Dental-Vet Office		Comparison w/ Future Supply of 486 Spaces
Size Pkg Rate	23.471 KSF 8.18 /KSF	8.597 KSF 13.73 /KSF	7.225 KSF 10.38 /KSF	2.000 KSF 12.00 /KSF	4.257 KSF 4.00 /KSF	24.708 KSF 5.95 /KSF	17.886 KSF 6.43 /KSF		
Gross Spaces	192 Spc.	118 Spc.	75 Spc.	24 Spc.	17 Spc.	147 Spc.	115 Spc.		
Time of Day	Number of Spaces	Number of Spaces	Number of Spaces	Number of Spaces	Number of Spaces	Number of Spaces	Number of Spaces	Shared Parking Demand	Surplus (Deficiency)
6:00 AM	6	0	12	10	1	95	0	124	362
7:00 AM	14	0	24	15	1	54	0	108	378
8:00 AM	30	0	39	22	4	43	92	230	256
9:00 AM	75	78	55	24	5	60	107	404	82
10:00 AM	109	78	69	19	9	43	115	442	44
11:00 AM	**136**	**78**	**69**	**14**	**14**	**60**	**115**	**486**	**0**
12:00 PM	161	78	75	7	16	60	61	458	28
1:00 PM	177	78	65	2	16	37	0	375	111
2:00 PM	192	78	53	7	15	32	0	377	109
3:00 PM	192	78	34	3	9	37	0	353	133
4:00 PM	184	78	37	5	9	67	0	380	106
5:00 PM	175	78	48	3	9	121	0	434	52
6:00 PM	155	0	55	2	14	115	0	341	145
7:00 PM	146	0	55	0	13	73	0	287	199
8:00 PM	129	0	52	1	8	37	0	227	259
9:00 PM	102	0	28	0	5	12	0	147	339
10:00 PM	71	0	23	0	4	2	0	100	386
11:00 PM	29	0	17	0	1	2	0	49	437
12:00 AM	0	0	10	0	1	0	0	11	475

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TABLE 6
FUTURE OCCUPANCY (with Survey Results)
WEEKDAY SHARED PARKING DEMAND ANALYSIS
Courtyard at La Paz, Laguna Hills

Land Use	Retail & Personal Services	Advance Beauty School	Family Restaurant	Dunkin Donuts	Take-Out/ Quick-Serve	Fitness/ Health Club	Medical-Dental Vet Office	*Actual Demand Observed per LLG Parking Counts (Jan. 9, 2013)*	Total Shared Parking Demand	Comparison w/ Future Supply of 486 Spaces
Size	6.347 KSF	8.597 KSF	0.000 KSF	2.000 KSF	3.057 KSF	2.508 KSF	-0.889 KSF			
Pkg Rate	12.13 /KSF	13.73 /KSF	0.00 /KSF	12.00 /KSF	4.00 /KSF	10.00 /KSF	6.67 /KSF			
Gross Spaces	77 Spc.	118 Spc.	0 Spc.	24 Spc.	12 Spc.	25 Spc.	-6 Spc.			
Time of Day	Number of Spaces	Number of Spaces	Number of Spaces	Number of Spaces	Number of Spaces	Number of Spaces	Number of Spaces			Surplus (Deficiency)
6:00 AM	2	0	0	14	1	18	0	--	--	--
7:00 AM	5	0	0	21	1	11	0	--	--	--
8:00 AM	14	0	0	21	3	11	(5)	--	--	--
9:00 AM	30	53	0	14	4	18	(6)	*96*	209	277
10:00 AM	49	118	0	12	8	18	(6)	*166*	365	121
11:00 AM	61	65	0	6	11	20	(6)	*197*	354	132
12:00 PM	67	65	0	5	12	15	(3)	*192*	353	133
1:00 PM	70	71	0	7	12	18	(6)	*188*	360	126
2:00 PM	67	71	0	5	11	18	(6)	*179*	345	141
3:00 PM	64	71	0	4	7	18	(6)	*185*	343	143
4:00 PM	64	71	0	5	7	20	(6)	*231*	392	94
5:00 PM	**66**	**71**	**0**	**2**	**7**	**23**	**(5)**	***233***	**397**	**89**
6:00 PM	66	27	0	2	11	25	(4)	*247*	374	112
7:00 PM	66	27	0	1	10	23	(2)	*214*	339	147
8:00 PM	57	27	0	0	6	20	(1)	*147*	256	230
9:00 PM	38	27	0	0	4	17	0	*80*	166	320
10:00 PM	22	27	0	0	3	8	0	*51*	111	375
11:00 PM	8	0	0	0	1	2	0	--	--	--
12:00 AM	0	0	0	0	1	0	0	--	--	--

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TABLE 7
FUTURE OCCUPANCY (with Survey Results)
WEEKEND SHARED PARKING DEMAND ANALYSIS
Courtyard at La Paz, Laguna Hills

Land Use	Retail & Personal Services	Advance Beauty School	Family Restaurant	Dunkin Donuts	Take-Out/ Quick-Serve	Fitness/ Health Club	Medical-Dental Vet Office	*Actual Demand Observed per LLG Parking Counts (Jan. 12, 2013)*	Total Shared Parking Demand	Comparison w/ Future Supply of 486 Spaces
Size	6.347 KSF	8.597 KSF	0.000 KSF	2.000 KSF	3.057 KSF	2.508 KSF	-0.889 KSF			
Pkg Rate	12.13 /KSF	13.73 /KSF	0.00 /KSF	12.00 /KSF	4.00 /KSF	10.00 /KSF	6.67 /KSF			
Gross Spaces	77 Spc.	118 Spc.	0 Spc.	24 Spc.	12 Spc.	25 Spc.	-6 Spc.			
Time of Day	Number of Spaces	Number of Spaces	Number of Spaces	Number of Spaces	Number of Spaces	Number of Spaces	Number of Spaces			Surplus (Deficiency)
6:00 AM	3	0	0	10	1	16	0	--	--	--
7:00 AM	5	0	0	15	1	9	0	--	--	--
8:00 AM	12	0	0	22	3	7	(5)	--	--	--
9:00 AM	30	78	0	24	4	10	(6)	*129*	269	217
10:00 AM	44	78	0	19	6	7	(6)	*190*	338	148
11:00 AM	**54**	**78**	**0**	**14**	**10**	**10**	**(6)**	***217***	**377**	**109**
12:00 PM	65	78	0	7	11	10	(3)	*187*	355	131
1:00 PM	71	78	0	2	11	6	0	*184*	352	134
2:00 PM	77	78	0	7	10	5	0	*177*	354	132
3:00 PM	77	78	0	3	7	6	0	*178*	349	137
4:00 PM	74	78	0	5	6	12	0	*198*	373	113
5:00 PM	70	78	0	3	7	21	0	*184*	363	123
6:00 PM	63	0	0	2	10	20	0	*171*	266	220
7:00 PM	59	0	0	0	10	13	0	*155*	237	249
8:00 PM	51	0	0	1	6	6	0	*109*	173	313
9:00 PM	41	0	0	0	4	2	0	*66*	113	373
10:00 PM	29	0	0	0	3	0	0	*41*	73	413
11:00 PM	11	0	0	0	1	0	0	--	--	--
12:00 AM	0	0	0	0	1	0	0	--	--	--

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TABLE 8
TRIP GENERATION ESTIMATES
Courtyard at La Paz, Laguna Hills

Description	Size	Daily	AM Peak Hour In	AM Peak Hour Out	AM Peak Hour Total	PM Peak Hour In	PM Peak Hour Out	PM Peak Hour Total
ITE Trip Rates [a]								
Coffee/Donut Shop w/ Drive-Thru (trips per 1,000 SF)		818.58	51%	49%	100.58	50%	50%	42.80
Specialty Retail (trips per 1,000 SF)		44.32	44%	56%	2.71	48%	52%	6.84
Potential New Leases [b]								
Dunkin Donuts	2,000 SF	1,637	103	98	201	43	43	86
ITE Pass-By Reduction [c]:	69%	(1,130)	(71)	(68)	(139)	(30)	(30)	(60)
		507	32	30	62	13	13	26
Advance Beauty School [d]	8,597 SF	346	0	0	0	20	5	25
Future Martial Arts Studio [e]	2,508 SF	50	0	0	0	13	5	18
Future Take-Out/Quick Serve [f]	3,057 SF	135	4	4	8	10	11	21
Future Retail [f]	3,708 SF	164	4	6	10	12	13	25
Project Traffic Generation		**1,202**	**40**	**40**	**80**	**68**	**47**	**115**

Notes:

[a] Source: *Trip Generation* (9th Edition), Institute of Transportation Engineers (ITE), 2012.

[b] Other anticipated changes in current tenancy would result in a reduction in trips during the AM and PM peak hours, or yield the same number of trips, and are therefore excluded from this table.

[c] The 69% is based on the average of the ITE pass-by trip percentage for fast-food restaurants with drive-thru (49%) and for fast-food restaurants with drive-thru window and no indoor seating (89%). As a conservative measure, no additional trip reductions are applied, such as internal capture, which considers the walk-in traffic/synergy/internal trip interactions between different uses within the Center.

[d] The trip generation estimates were based upon the operational data provided by Advance Beauty School.

[e] Based on the 25 parking spaces required for the future martial arts studio, it was estimated that 50% of those spaces would translate to inbound trips during the PM peak hour (5 outbound trips were assumed). No classes are anticipated during the AM peak hour.

[f] ITE trip rates for Specialty Retail were applied.

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TABLE 9
EXISTING PLUS PROJECT INTERSECTION CAPACITY ANALYSIS
Courtyard at La Paz, Laguna Hills

Key Intersection	Time Period	(1) Year 2014 Existing Traffic Conditions		(3) Year 2014 Existing Plus Project Traffic Conditions		(4) Significant Impact	
		V/C Ratio	LOS	V/C Ratio	LOS	Change in V/C	Yes/No
1. La Paz Road at	AM	0.649	B	0.651	B	0.002	No
Muirlands Boulevard/I-5 NB Ramps	PM	0.699	B	0.702	C	0.003	No
2. La Paz Road at	AM	0.713	C	0.722	C	0.009	No
I-5 SB Ramps-Cabot Road	PM	0.726	C	0.736	C	0.010	No
3. La Paz Road at	AM	0.470	A	0.491	A	0.021	No
McIntyre Street	PM	0.503	A	0.545	A	0.042	No
4. La Paz Road at	AM	0.514	A	0.520	A	0.006	No
Paseo De Valencia	PM	0.489	A	0.496	A	0.007	No
5. Alicia Parkway at	AM	0.613	B	0.614	B	0.001	No
Paseo De Valencia	PM	0.622	B	0.622	B	0.000	No

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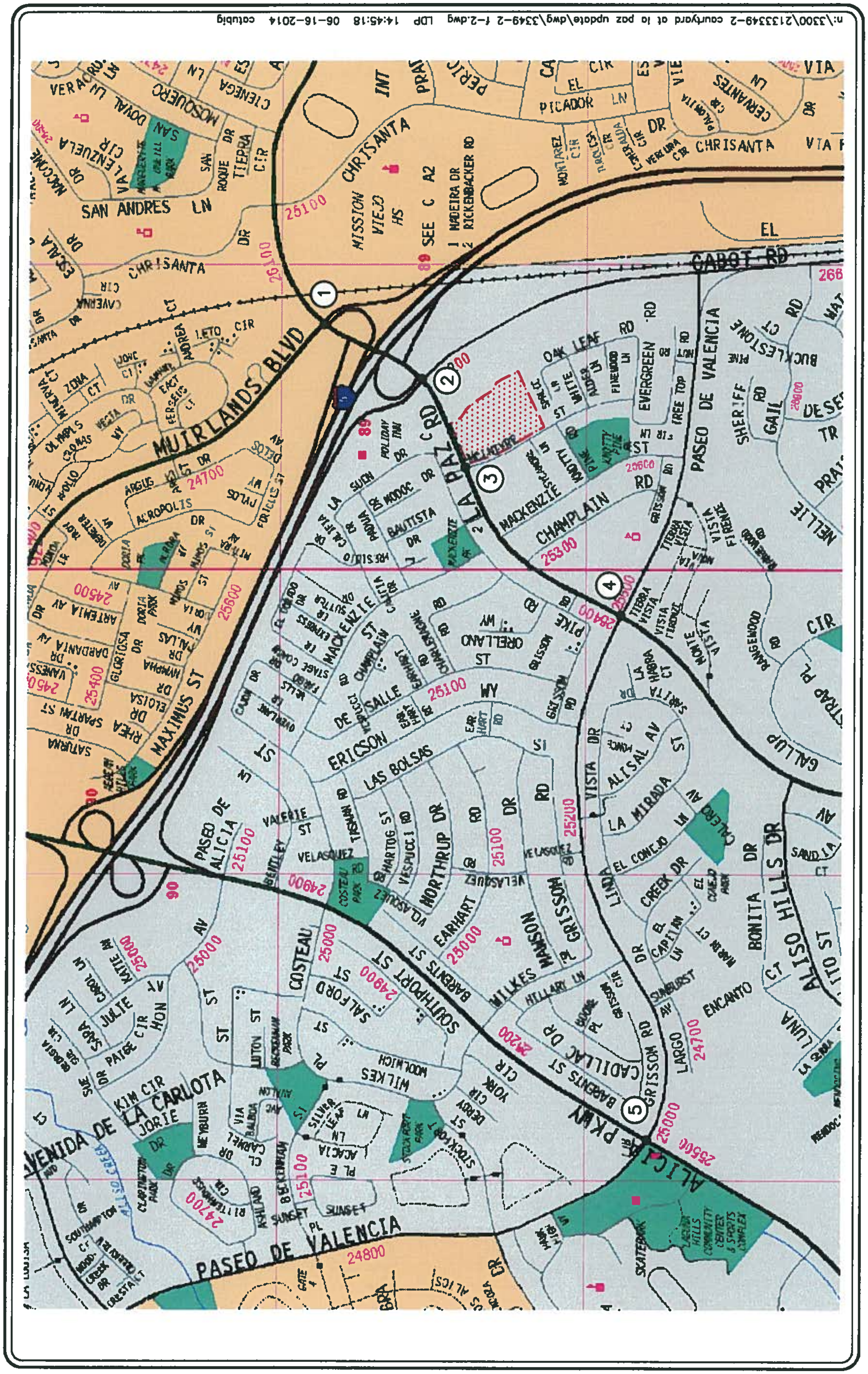
FIGURE 1
PARKING ZONES
Courtyard at La Paz, Laguna Hills



SOURCE: THOMAS BROS.

KEY

= STUDY INTERSECTION

= PROJECT SITE

N NO SCALE

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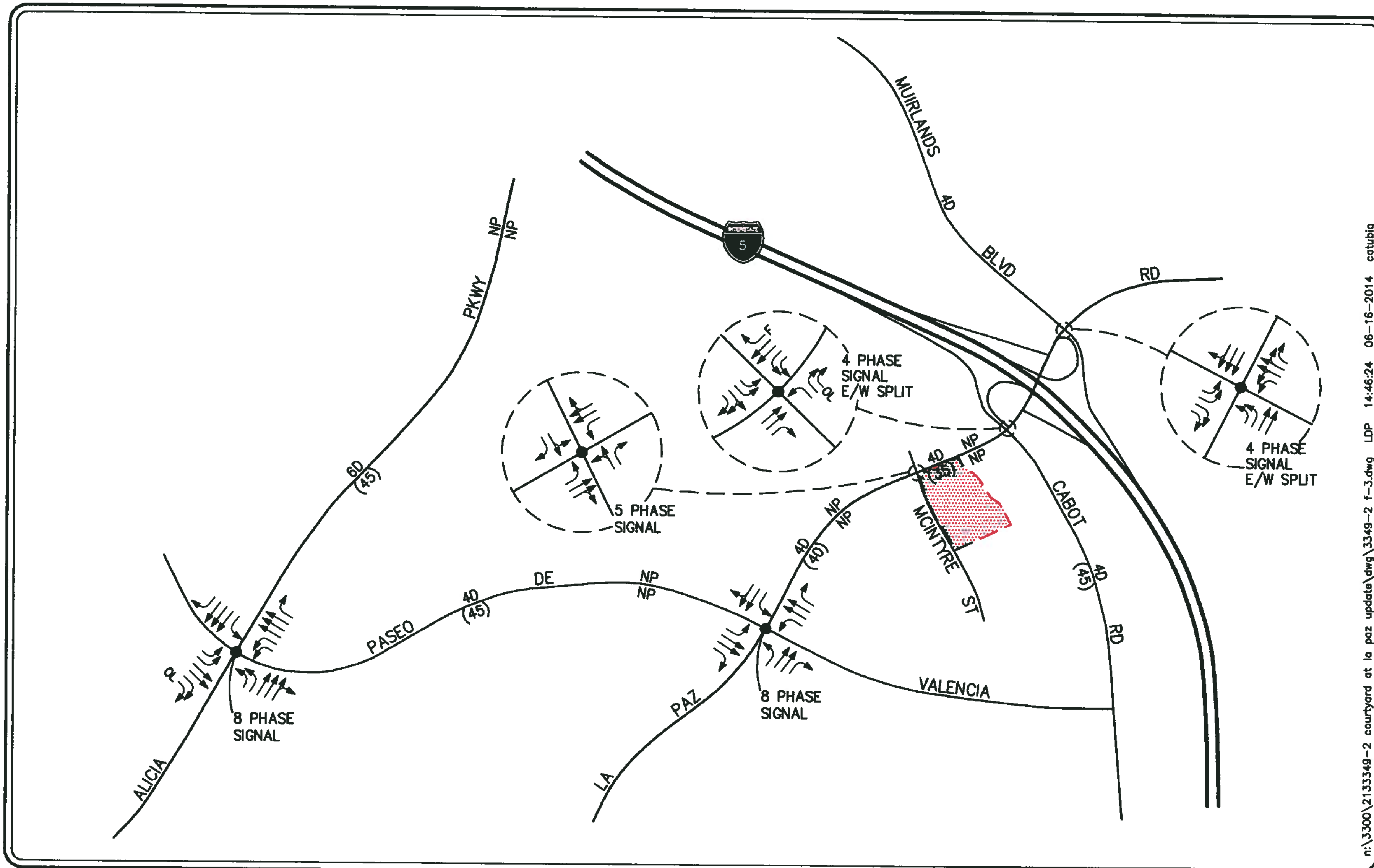
FIGURE 2

VICINITY MAP

COURTYARD AT LA PAZ, LAGUNA HILLS

n:\3300\2133349-2 courtyard at la paz update\dwg\3349-2 f-2.dwg LDP 14:45:18 06-16-2014 cotubig



LINSCOTT LAW & GREENSPAN engineers

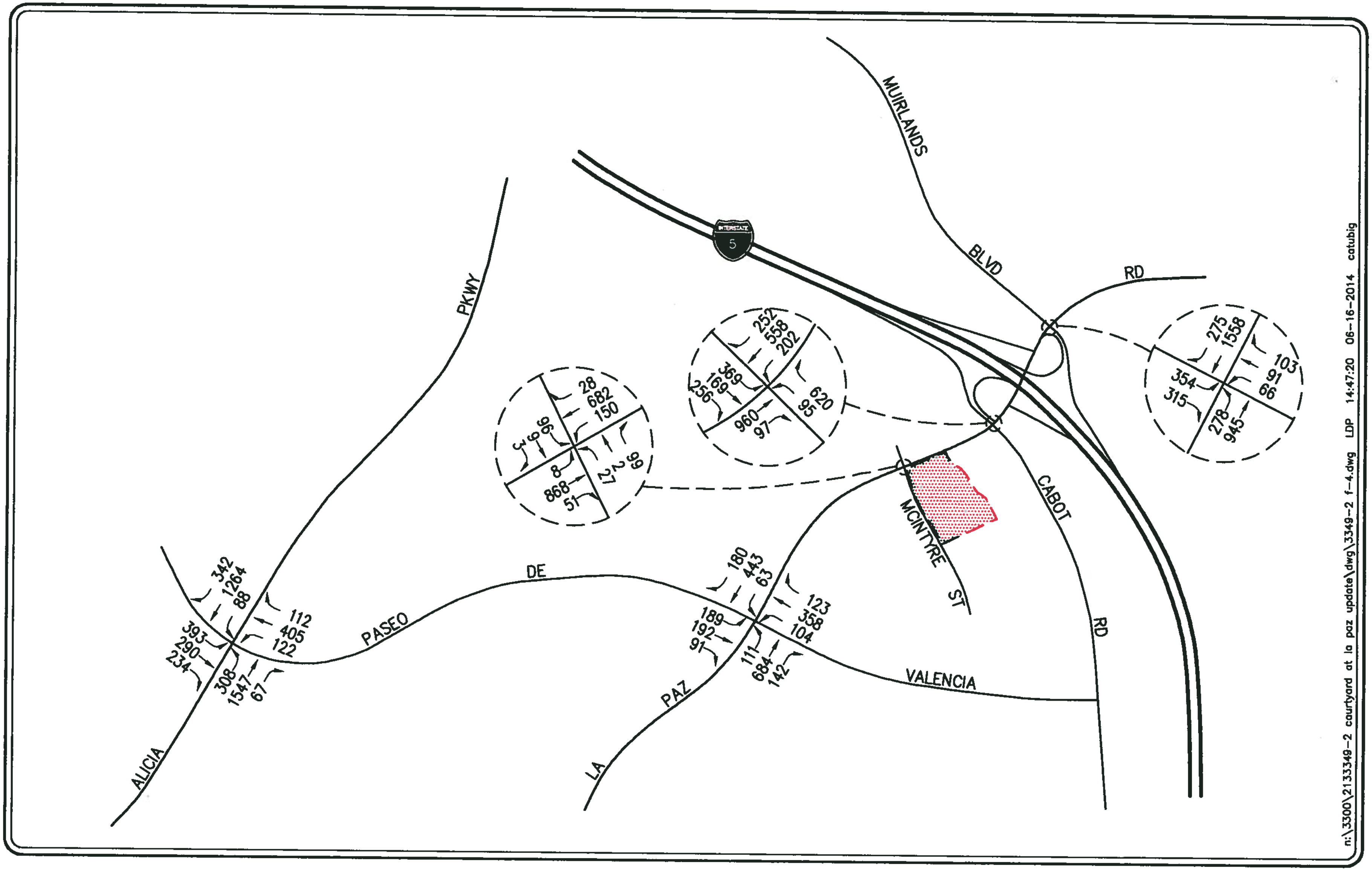
N
NO SCALE

KEY
- = APPROACH LANE ASSIGNMENT
- ● = TRAFFIC SIGNAL
- P = PARKING, NP = NO PARKING
- U = UNDIVIDED, D = DIVIDED
- 2 = NUMBER OF TRAVEL LANES
- (XX) = POSTED SPEED LIMIT (MPH)
- OL = OVERLAP, F = FREE RIGHT
- = PROJECT SITE

FIGURE 3

EXISTING ROADWAY CONDITIONS AND INTERSECTION CONTROLS

COURTYARD AT LA PAZ, LAGUNA HILLS



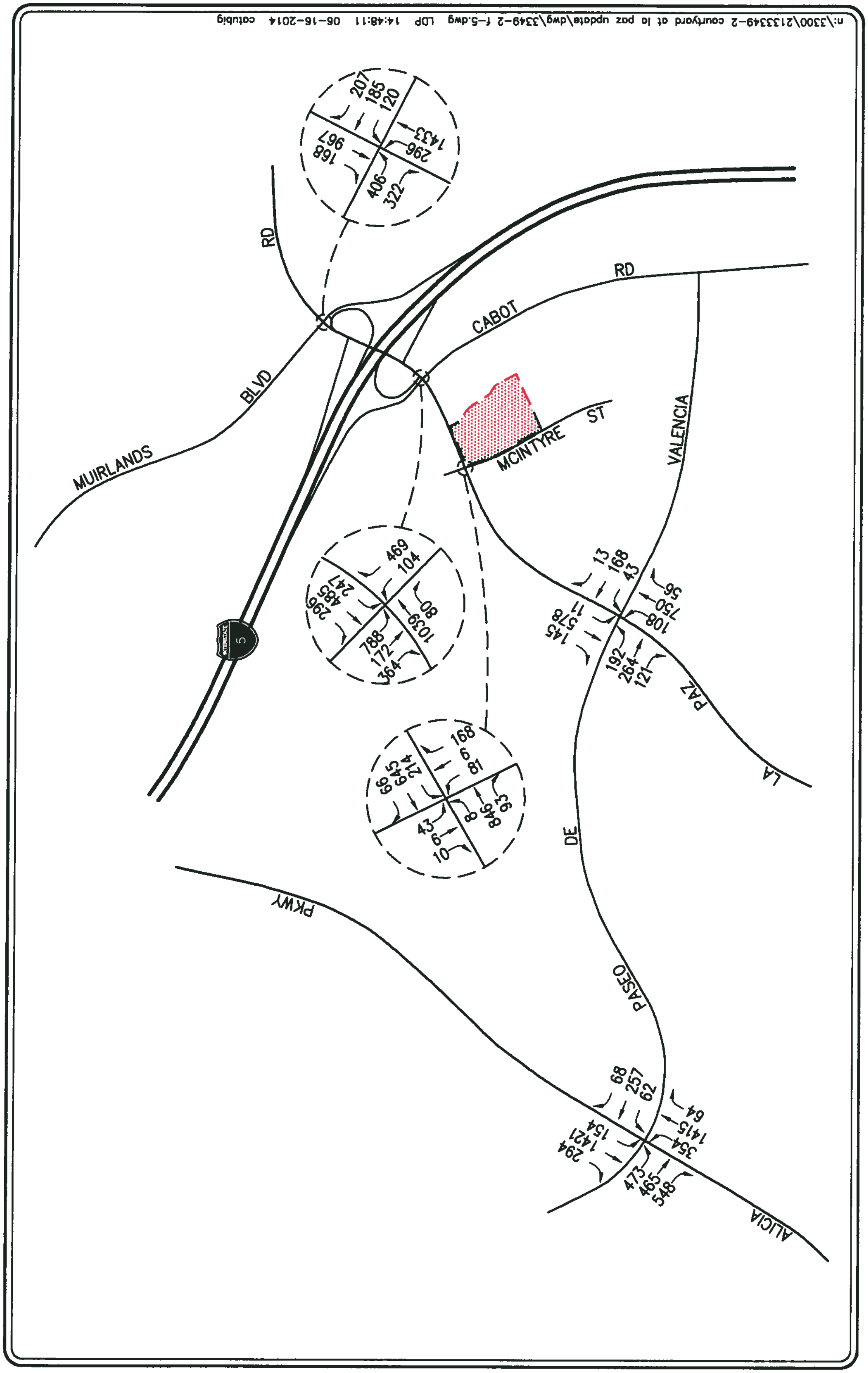
LINSCOTT LAW & GREENSPAN engineers

N NO SCALE

KEY
= PROJECT SITE

FIGURE 4

EXISTING AM PEAK HOUR TRAFFIC VOLUMES
COURTYARD AT LA PAZ, LAGUNA HILLS



KEY
= PROJECT SITE

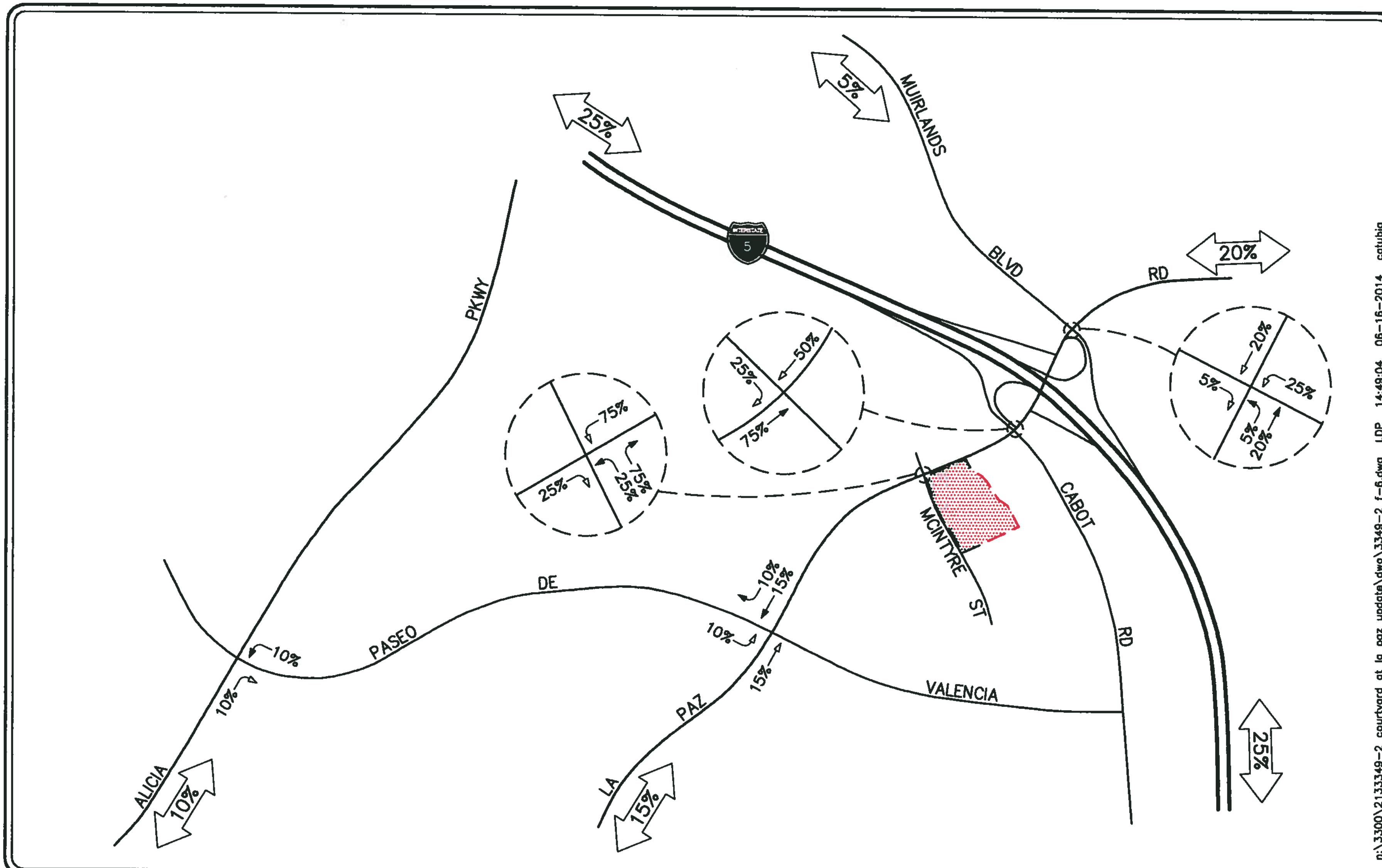
NO SCALE

LINSCOTT LAW & GREENSPAN engineers

FIGURE 5

EXISTING PM PEAK HOUR TRAFFIC VOLUMES

COURTYARD AT LA PAZ, LAGUNA HILLS



LINSCOTT LAW & GREENSPAN engineers

NO SCALE

KEY

= INBOUND PERCENTAGE

= OUTBOUND PERCENTAGE

= PROJECT SITE

FIGURE 6

PROJECT TRIP DISTRIBUTION PATTERN

COURTYARD AT LA PAZ, LAGUNA HILLS

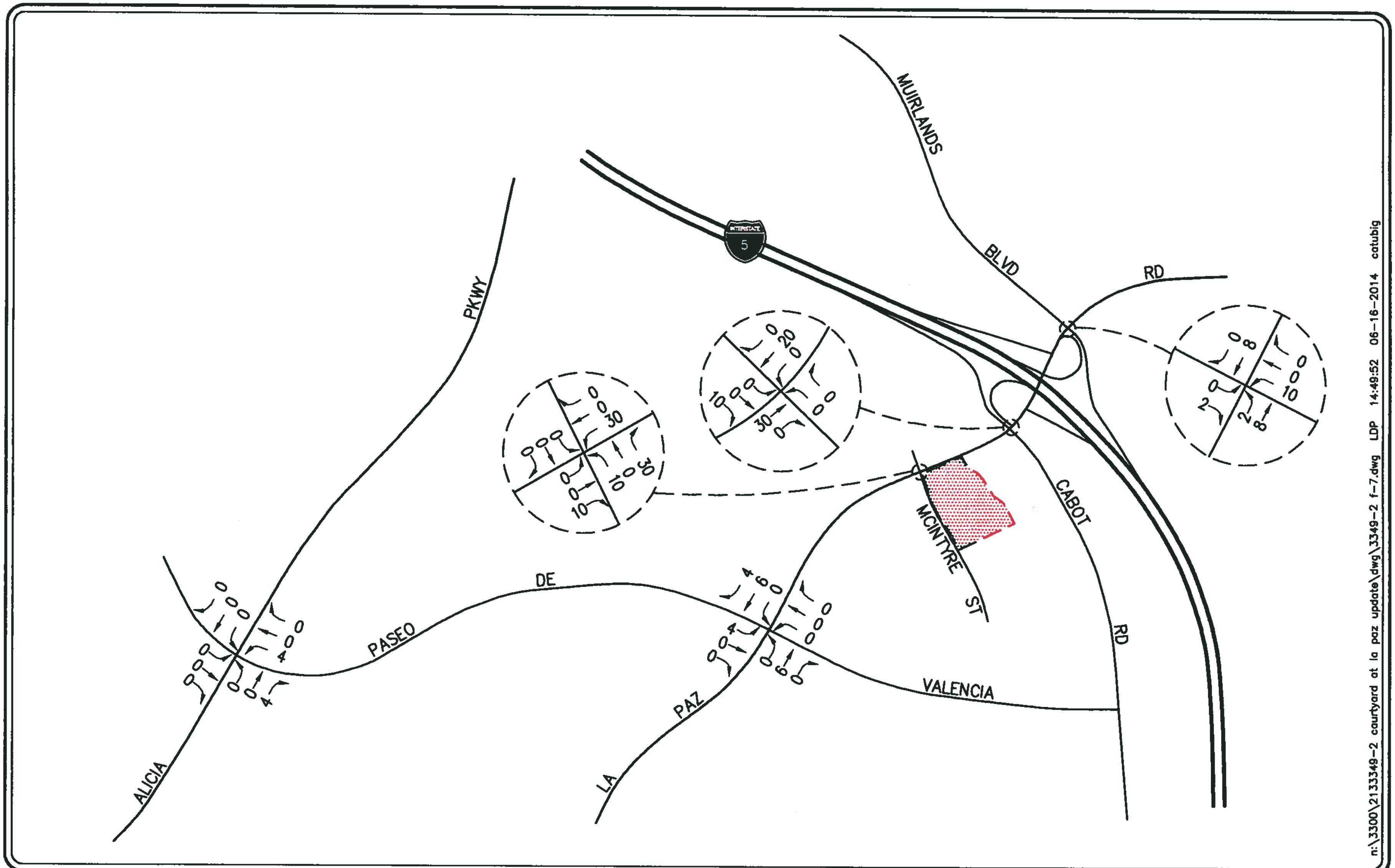


FIGURE 7

AM PEAK HOUR PROJECT TRAFFIC VOLUMES

COURTYARD AT LA PAZ, LAGUNA HILLS

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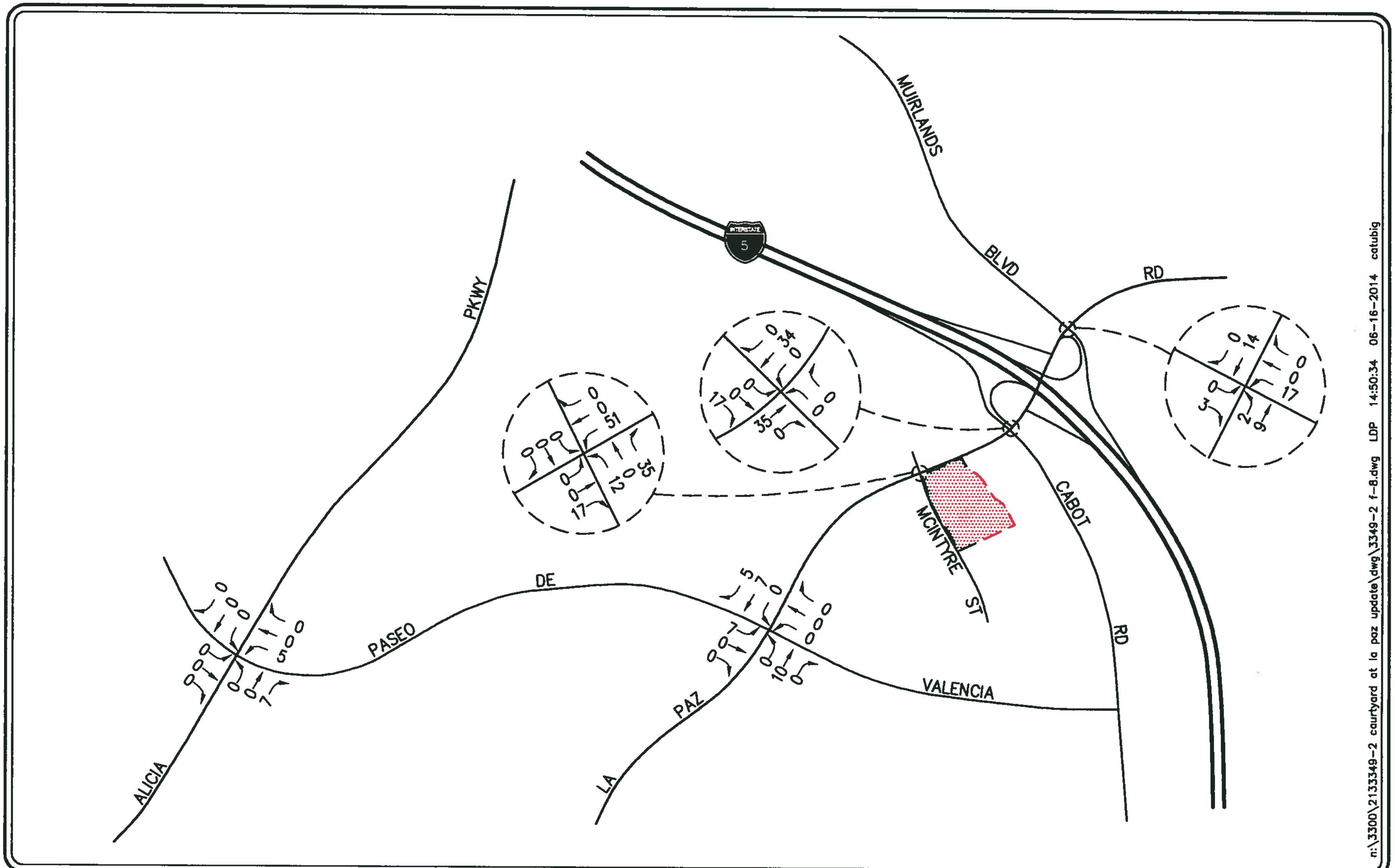


KEY

= PROJECT SITE

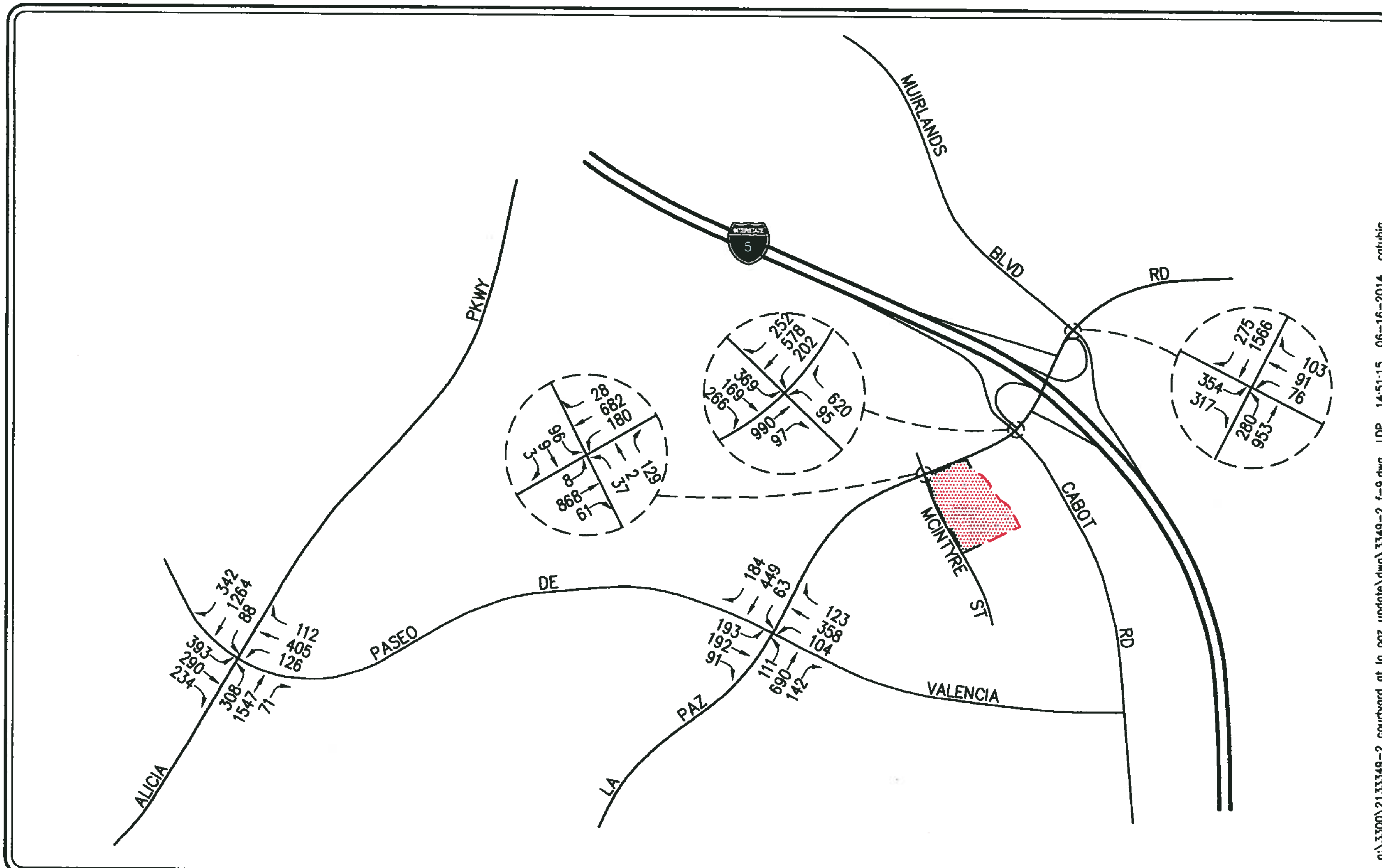
NO SCALE

FIGURE 8

PM PEAK HOUR PROJECT TRAFFIC VOLUMES

COURTYARD AT LA PAZ, LAGUNA HILLS

LINSCOTT LAW & GREENSPAN engineers



LINSCOTT LAW & GREENSPAN engineers

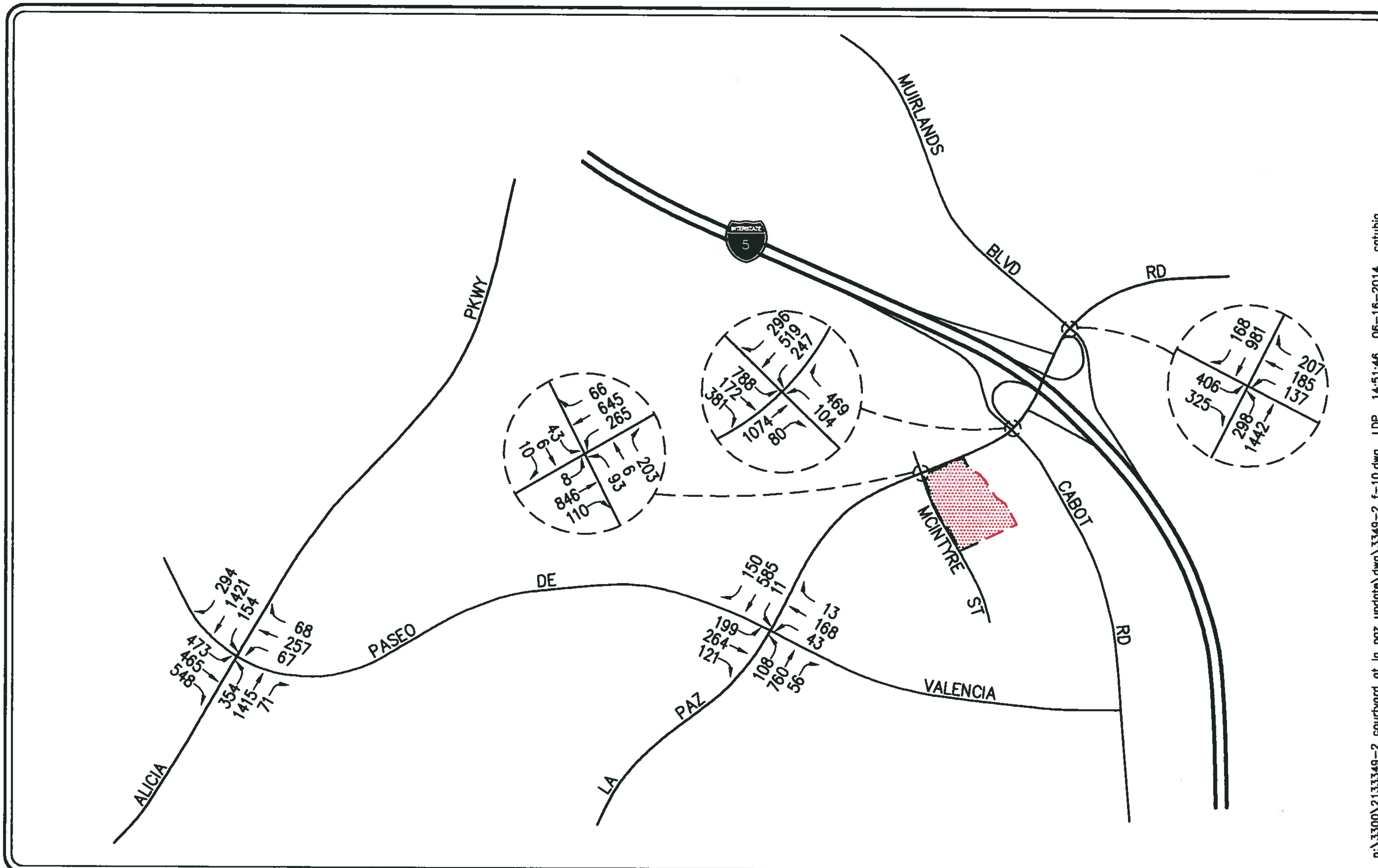
N NO SCALE

KEY
= PROJECT SITE

FIGURE 9

EXISTING PLUS PROJECT AM PEAK HOUR TRAFFIC VOLUMES

COURTYARD AT LA PAZ, LAGUNA HILLS



LINSCOTT LAW & GREENSPAN engineers

N NO SCALE

KEY
= PROJECT SITE

FIGURE 10

EXISTING PLUS PROJECT PM PEAK HOUR TRAFFIC VOLUMES
COURTYARD AT LA PAZ, LAGUNA HILLS

Appendix A

Intersection Level of Service Calculation Worksheets

LINSCOTT, LAW & GREENSPAN, ENGINEERS
1580 Corporate Drive, Suite 122, Costa Mesa CA 92626
(714) 641-1587

INTERSECTION CAPACITY UTILIZATION

Intersection: 1.
N-S St: La Paz Road
E-W St: Muirlands Boulevard/I-5 NB Ramps
Project: LLG Traffic Impact Analysis Report
File: 3349-2.xls
Control Type: 4Ø Traffic Signal   Split: Yes   N/S Split? No
E/W Split? Yes

La Paz Road at Muirlands Boulevard/I-5 NB Ramps
Peak Hour: AM
Annual Growth: 1.00%

Date: 06/17/14
Date of Count: 2014
Projection Year: 2014

	2014 EXISTING TRAFFIC				2014 WITH AMBIENT GROWTH				
Movement	Volume	Lanes	Capacity	V/C Ratio	Added Volume	Total Volume	Lanes	Capacity	V/C Ratio
Nb Left	278	2	3400	0.082 *	0	278	2	3400	0.082 *
Nb Thru	945	2	3400	0.278	0	945	2	3400	0.278
Nb Right	0	0	0	-	0	0	0	0	-
Sb Left	0	0	0	0.000	0	0	0	0	0.000
Sb Thru	1558	3	5100	0.359 *	0	1558	3	5100	0.359 *
Sb Right	275	0	0	-	0	275	0	0	-
Eb Left	354	2	3400	0.104 *	0	354	2	3400	0.104 *
Eb Thru	0	0	0	0.000	0	0	0	0	0.000
Eb Right	315	2	3400	0.093	0	315	2	3400	0.093
Wb Left	66	1.5	2550	0.026	0	66	1.5	2550	0.026
Wb Thru	91	1.0	1700	0.054 *	0	91	1.0	1700	0.054 *
Wb Right	103	1.5	2550	0.040	0	103	1.5	2550	0.040
Yellow Allowance:				0.050 *					0.050 *
ICU				0.649					0.649
LOS				B					B
Total Vol.	3985				0	3985			

	2014 WITH CUMULATIVE PROJECTS				
Movement	Added Volume	Total Volume	Lanes	Capacity	V/C Ratio
Nb Left	0	278	2	3400	0.082 *
Nb Thru	0	945	2	3400	0.278
Nb Right	0	0	0	0	-
Sb Left	0	0	0	0	0.000
Sb Thru	0	1558	3	5100	0.359 *
Sb Right	0	275	0	0	-
Eb Left	0	354	2	3400	0.104 *
Eb Thru	0	0	0	0	0.000
Eb Right	0	315	2	3400	0.093
Wb Left	0	66	1.5	2550	0.026
Wb Thru	0	91	1.0	1700	0.054 *
Wb Right	0	103	1.5	2550	0.040
Yellow Allowance:					0.050 *
ICU					0.649
LOS					B
Total Vol.	0	3985			

	2014 WITH PROJECT TRAFFIC					2014 WITH MITIGATION				
Movement	Added Volume	Total Volume	Lanes	Capacity	V/C Ratio	Added Volume	Total Volume	Lanes	Capacity	V/C Ratio
Nb Left	2	280	2	3400	0.082 *	0	280	2	3400	0.082 *
Nb Thru	8	953	2	3400	0.280	0	953	2	3400	0.280
Nb Right	0	0	0	0	-	0	0	0	0	-
Sb Left	0	0	0	0	0.000	0	0	0	0	0.000
Sb Thru	8	1566	3	5100	0.361 *	0	1566	3	5100	0.361 *
Sb Right	0	275	0	0	-	0	275	0	0	-
Eb Left	0	354	2	3400	0.104 *	0	354	2	3400	0.104 *
Eb Thru	0	0	0	0	0.000	0	0	0	0	0.000
Eb Right	2	317	2	3400	0.093	0	317	2	3400	0.093
Wb Left	10	76	1.5	2550	0.030	0	76	1.5	2550	0.030
Wb Thru	0	91	1.0	1700	0.054 *	0	91	1.0	1700	0.054 *
Wb Right	0	103	1.5	2550	0.040	0	103	1.5	2550	0.040
Yellow Allowance:					0.050 *					0.050 *
ICU					0.651					0.651
LOS					B					B
Total Vol.	30	4015				0	4015			

* Key conflicting movement as a part of ICU.
** Functions as a separate turn lane, however, is not striped as such.
Counts conducted by: NDS
Capacity expressed in vehicles per hour of green.

Project ICU Impact: 0.002
Significant Impact: No

Area Traffic Mitigation:

LINSCOTT, LAW & GREENSPAN, ENGINEERS
1580 Corporate Drive, Suite 122, Costa Mesa CA 92626
(714) 641-1587

INTERSECTION CAPACITY UTILIZATION

Intersection: 1.
N-S St: La Paz Road
E-W St: Muirlands Boulevard/I-5 NB Ramps
Project: LLG Traffic Impact Analysis Report
File: 3349-2.xls
Control Type: 4Ø Traffic Signal

La Paz Road at Muirlands Boulevard/I-5 NB Ramps
Peak Hour: PM
Annual Growth: 1.00%

Date: 06/17/14
Date of Count: 2014
Projection Year: 2014

	2014 EXISTING TRAFFIC				2014 WITH AMBIENT GROWTH					2014 WITH CUMULATIVE PROJECTS					2014 WITH PROJECT TRAFFIC					2014 WITH MITIGATION				
Movement	Volume	Lanes	Capacity	V/C Ratio	Added Volume	Total Volume	Lanes	Capacity	V/C Ratio	Added Volume	Total Volume	Lanes	Capacity	V/C Ratio	Added Volume	Total Volume	Lanes	Capacity	V/C Ratio	Added Volume	Total Volume	Lanes	Capacity	V/C Ratio
Nb Left	296	2	3400	0.087	0	296	2	3400	0.087	0	296	2	3400	0.087	2	298	2	3400	0.088	0	298	2	3400	0.088
Nb Thru	1433	2	3400	0.421 *	0	1433	2	3400	0.421 *	0	1433	2	3400	0.421 *	9	1442	2	3400	0.424 *	0	1442	2	3400	0.424 *
Nb Right	0	0	0	-	0	0	0	0	-	0	0	0	0	-	0	0	0	0	-	0	0	0	0	-
Sb Left	0	0	0	0.000 *	0	0	0	0	0.000 *	0	0	0	0	0.000 *	0	0	0	0	0.000 *	0	0	0	0	0.000 *
Sb Thru	967	3	5100	0.223	0	967	3	5100	0.223	0	967	3	5100	0.223	14	981	3	5100	0.225	0	981	3	5100	0.225
Sb Right	168	0	0	-	0	168	0	0	-	0	168	0	0	-	0	168	0	0	-	0	168	0	0	-
Eb Left	406	2	3400	0.119 *	0	406	2	3400	0.119 *	0	406	2	3400	0.119 *	0	406	2	3400	0.119 *	0	406	2	3400	0.119 *
Eb Thru	0	0	0	0.000	0	0	0	0	0.000	0	0	0	0	0.000	0	0	0	0	0.000	0	0	0	0	0.000
Eb Right	322	2	3400	0.095	0	322	2	3400	0.095	0	322	2	3400	0.095	3	325	2	3400	0.096	0	325	2	3400	0.096
Wb Left	120	1.5	2550	0.047	0	120	1.5	2550	0.047	0	120	1.5	2550	0.047	17	137	1.5	2550	0.054	0	137	1.5	2550	0.054
Wb Thru	185	1.0	1700	0.109 *	0	185	1.0	1700	0.109 *	0	185	1.0	1700	0.109 *	0	185	1.0	1700	0.109 *	0	185	1.0	1700	0.109 *
Wb Right	207	1.5	2550	0.081	0	207	1.5	2550	0.081	0	207	1.5	2550	0.081	0	207	1.5	2550	0.081	0	207	1.5	2550	0.081
Yellow Allowance:				0.050 *					0.050 *					0.050 *					0.050 *					0.050 *
ICU				0.699					0.699					0.699					0.702					0.702
LOS				B					B					B					C					C

* Key conflicting movement as a part of ICU.
** Functions as a separate turn lane, however, is not striped as such.
Counts conducted by: NDS
Capacity expressed in vehicles per hour of green.

Project ICU Impact: 0.003
Significant Impact: No

Area Traffic Mitigation:

Total Vol.	*4104*	*0*	*4104*	*0*	*4104*	*45*	*4149*	*0*	*4149*

LINSCOTT, LAW & GREENSPAN, ENGINEERS
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(714) 641-1587

INTERSECTION CAPACITY UTILIZATION

Intersection: 2
N-S St: La Paz Road
E-W St: I-5 SB Ramps-Cabot Road
Project: LLG Traffic Impact Analysis Report
File: 3349-2.xls
Control Type: 4Ø Traffic Signal   Split: Yes   N/S Split? No   E/W Split? Yes

La Paz Road at I-5 SB Ramps-Cabot Road
Peak Hour: AM
Annual Growth: 1.00%

Date: 06/17/14
Date of Count: 2014
Projection Year: 2014

	2014 EXISTING TRAFFIC				2014 WITH AMBIENT GROWTH				
Movement	Volume	Lanes	Capacity	V/C Ratio	Added Volume	Total Volume	Lanes	Capacity	V/C Ratio
Nb Left	0	0	0	0.000	0	0	0	0	0.000
Nb Thru	960	2	3400	0.282 *	0	960	2	3400	0.282 *
Nb Right	97	1	1700	0.057	0	97	1	1700	0.057
Sb Left	202	2	3400	0.059 *	0	202	2	3400	0.059 *
Sb Thru	558	2	3400	0.164	0	558	2	3400	0.164
Sb Right	252	Free	999999	0.000	0	252	Free	999999	0.000
Eb Left	369	2.0	3400	0.109	0	369	2.0	3400	0.109
Eb Thru	169	0.5	850	0.199 *	0	169	0.5	850	0.199 *
Eb Right	256	1.5	2550	0.100	0	256	1.5	2550	0.100
Wb Left	95	1	1700	0.056	0	95	1	1700	0.056
Wb Thru	0	0	0	0.000	0	0	0	0	0.000
Wb Right	620	2	3400	0.182 *	0	620	2	3400	0.182 *
Yellow Allowance:				0.050 *					0.050 *
ICU				0.713					0.713
LOS				C					C
Total Vol.	3578				0	3578			

	2014 WITH CUMULATIVE PROJECTS					2014 WITH PROJECT TRAFFIC					2014 WITH MITIGATION				
Movement	Added Volume	Total Volume	Lanes	Capacity	V/C Ratio	Added Volume	Total Volume	Lanes	Capacity	V/C Ratio	Added Volume	Total Volume	Lanes	Capacity	V/C Ratio
Nb Left	0	0	0	0	0.000	0	0	0	0	0.000	0	0	0	0	0.000
Nb Thru	0	960	2	3400	0.282 *	30	990	2	3400	0.291 *	0	990	2	3400	0.291 *
Nb Right	0	97	1	1700	0.057	0	97	1	1700	0.057	0	97	1	1700	0.057
Sb Left	0	202	2	3400	0.059 *	0	202	2	3400	0.059 *	0	202	2	3400	0.059 *
Sb Thru	0	558	2	3400	0.164	20	578	2	3400	0.170	0	578	2	3400	0.170
Sb Right	0	252	Free	999999	0.000	0	252	Free	999999	0.000	0	252	Free	999999	0.000
Eb Left	0	369	2.0	3400	0.109	0	369	2.0	3400	0.109	0	369	2.0	3400	0.109
Eb Thru	0	169	0.5	850	0.199 *	0	169	0.5	850	0.199 *	0	169	0.5	850	0.199 *
Eb Right	0	256	1.5	2550	0.100	10	266	1.5	2550	0.104	0	266	1.5	2550	0.104
Wb Left	0	95	1	1700	0.056	0	95	1	1700	0.056	0	96	1	1700	0.056
Wb Thru	0	0	0	0	0.000	0	0	0	0	0.000	0	0	0	0	0.000
Wb Right	0	620	2	3400	0.182 *	0	620	2	3400	0.182 *	0	620	2	3400	0.182 *
Yellow Allowance:					0.050 *					0.050 *					0.050 *
ICU					0.713					0.722					0.722
LOS					C					C					C
Total Vol.	0	3578				60	3638				0	3638			

* Key conflicting movement as a part of ICU.
** Functions as a separate turn lane, however, is not striped as such.
Counts conducted by: NDS
Capacity expressed in vehicles per hour of green.

Project ICU Impact: 0.009
Significant Impact: No

Area Traffic Mitigation:

LINSCOTT, LAW & GREENSPAN, ENGINEERS
1580 Corporate Drive, Suite 122, Costa Mesa CA 92626
(714) 641-1587

INTERSECTION CAPACITY UTILIZATION

Intersection: 2.
N-S St: La Paz Road
E-W St: I-5 SB Ramps-Cabot Road
Project: LLG Traffic Impact Analysis Report
File: 3349-2.xls
Control Type: 4Ø Traffic Signal

La Paz Road at I-5 SB Ramps-Cabot Road
Peak Hour: PM
Annual Growth: 1.00%

Date: 06/17/14
Date of Count: 2014
Projection Year: 2014

Movement	2014 EXISTING TRAFFIC Volume	Lanes	Capacity	V/C Ratio	2014 WITH AMBIENT GROWTH Added Volume	Total Volume	Lanes	Capacity	V/C Ratio
Nb Left	0	0	0	0.000	0	0	0	0	0.000
Nb Thru	1039	2	3400	0.306 *	0	1039	2	3400	0.306 *
Nb Right	80	1	1700	0.047	0	80	1	1700	0.047
Sb Left	247	2	3400	0.073	0	247	2	3400	0.073
Sb Thru	485	2	3400	0.143	0	485	2	3400	0.143
Sb Right	296	Free	999999	0.000	0	296	Free	999999	0.000
Eb Left	788	2.0	3400	0.232 *	0	788	2.0	3400	0.232 *
Eb Thru	172	0.5	850	0.202	0	172	0.5	850	0.202
Eb Right	364	1.5	2550	0.143	0	364	1.5	2550	0.143
Wb Left	104	1	1700	0.061	0	104	1	1700	0.061
Wb Thru	0	0	0	0.000	0	0	0	0	0.000
Wb Right	469	2	3400	0.138 *	0	469	2	3400	0.138 *
Yellow Allowance:				0.050 *					0.050 *
ICU				0.726					0.726
LOS				C					C
Total Vol.	4044				0	4044			

Movement	2014 WITH CUMULATIVE PROJECTS Added Volume	Total Volume	Lanes	Capacity	V/C Ratio	2014 WITH PROJECT TRAFFIC Added Volume	Total Volume	Lanes	Capacity	V/C Ratio
Nb Left	0	0	0	0	0.000	0	0	0	0	0.000
Nb Thru	0	1039	2	3400	0.306 *	35	1074	2	3400	0.316 *
Nb Right	0	80	1	1700	0.047	0	80	1	1700	0.047
Sb Left	0	247	2	3400	0.073	0	247	2	3400	0.073
Sb Thru	0	485	2	3400	0.143	34	519	2	3400	0.153
Sb Right	0	296	Free	999999	0.000	0	296	Free	999999	0.000
Eb Left	0	788	2.0	3400	0.232 *	0	788	2.0	3400	0.232 *
Eb Thru	0	172	0.5	850	0.202	0	172	0.5	850	0.202
Eb Right	0	364	1.5	2550	0.143	17	381	1.5	2550	0.149
Wb Left	0	104	1	1700	0.061	0	104	1	1700	0.061
Wb Thru	0	0	0	0	0.000	0	0	0	0	0.000
Wb Right	0	469	2	3400	0.138 *	0	469	2	3400	0.138 *
Yellow Allowance:					0.050 *					0.050 *
ICU					0.726					0.736
LOS					C					C
Total Vol.	0	4044				86	4130			

Movement	2014 WITH MITIGATION Added Volume	Total Volume	Lanes	Capacity	V/C Ratio
Nb Left	0	0	0	0	0.000
Nb Thru	0	1074	2	3400	0.316 *
Nb Right	0	80	1	1700	0.047
Sb Left	0	247	2	3400	0.073
Sb Thru	0	519	2	3400	0.153
Sb Right	0	296	Free	999999	0.000
Eb Left	0	788	2.0	3400	0.232 *
Eb Thru	0	172	0.5	850	0.202
Eb Right	0	381	1.5	2550	0.149
Wb Left	0	104	1	1700	0.061
Wb Thru	0	0	0	0	0.000
Wb Right	0	469	2	3400	0.138 *
Yellow Allowance:					0.050 *
ICU					0.736
LOS					C
Total Vol.	0	4130			

* Key conflicting movement as a part of ICU.
** Functions as a separate turn lane, however, is not striped as such.
Counts conducted by: NDS
Capacity expressed in vehicles per hour of green.

Project ICU Impact: 0.010
Significant Impact: No

Area Traffic Mitigation:

LINSCOTT, LAW & GREENSPAN, ENGINEERS
1580 Corporate Drive, Suite 122, Costa Mesa CA 92626
(714) 641-1587

INTERSECTION CAPACITY UTILIZATION

Intersection: 3.
N-S St: La Paz Road
E-W St: McIntyre Street
Project: LLG Traffic Impact Analysis Report
File: 3349-2.xls
Control Type: 5Ø Traffic Signal Split: No N/S Split? No E/W Split? No

La Paz Road at McIntyre Street
Peak Hour: AM
Annual Growth: 1.00%

Date: 06/17/14
Date of Count: 2014
Projection Year: 2014

	2014 EXISTING TRAFFIC				2014 WITH AMBIENT GROWTH					2014 WITH CUMULATIVE PROJECTS				
Movement	Volume	Lanes	Capacity	V/C Ratio	Added Volume	Total Volume	Lanes	Capacity	V/C Ratio	Added Volume	Total Volume	Lanes	Capacity	V/C Ratio
Nb Left	8	1	1700	0.005	0	8	1	1700	0.005	0	8	1	1700	0.005
Nb Thru	868	2	3400	0.270 *	0	868	2	3400	0.270 *	0	868	2	3400	0.270 *
Nb Right	51	0	0	-	0	51	0	0	-	0	51	0	0	-
Sb Left	150	1	1700	0.088 *	0	150	1	1700	0.088 *	0	150	1	1700	0.088 *
Sb Thru	682	2	3400	0.209	0	682	2	3400	0.209	0	682	2	3400	0.209
Sb Right	28	0	0	-	0	28	0	0	-	0	28	0	0	-
Eb Left	96	0	0	0.000	0	96	0	0	0.000	0	96	0	0	0.000
Eb Thru	9	1	1700	0.062 *	0	9	1	1700	0.062 *	0	9	1	1700	0.062 *
Eb Right	3	1	1700	0.002	0	3	1	1700	0.002	0	3	1	1700	0.002
Wb Left	27	0	0	0.000 *	0	27	0	0	0.000 *	0	27	0	0	0.000 *
Wb Thru	2	1	1700	0.017	0	2	1	1700	0.017	0	2	1	1700	0.017
Wb Right	99	1	1700	0.058	0	99	1	1700	0.058	0	99	1	1700	0.058
Yellow Allowance:				0.050 *					0.050 *					0.050 *
ICU				0.470					0.470					0.470
LOS				A					A					A

	2014 WITH PROJECT TRAFFIC					2014 WITH MITIGATION				
Movement	Added Volume	Total Volume	Lanes	Capacity	V/C Ratio	Added Volume	Total Volume	Lanes	Capacity	V/C Ratio
Nb Left	0	8	1	1700	0.005	0	8	1	1700	0.005
Nb Thru	0	868	2	3400	0.273 *	0	868	2	3400	0.273 *
Nb Right	10	61	0	0	-	0	61	0	0	-
Sb Left	30	180	1	1700	0.106 *	0	180	1	1700	0.106 *
Sb Thru	0	682	2	3400	0.209	0	682	2	3400	0.209
Sb Right	0	28	0	0	-	0	28	0	0	-
Eb Left	0	96	0	0	0.000	0	96	0	0	0.000
Eb Thru	0	9	1	1700	0.062 *	0	9	1	1700	0.062 *
Eb Right	0	3	1	1700	0.002	0	3	1	1700	0.002
Wb Left	10	37	0	0	0.000 *	0	37	0	0	0.000 *
Wb Thru	0	2	1	1700	0.023	0	2	1	1700	0.023
Wb Right	30	129	1	1700	0.076	0	129	1	1700	0.076
Yellow Allowance:					0.050 *					0.050 *
ICU					0.491					0.491
LOS					A					A

* Key conflicting movement as a part of ICU.
** Functions as a separate turn lane, however, is not striped as such.
Counts conducted by: NDS
Capacity expressed in vehicles per hour of green.

Project ICU Impact: 0.021
Significant Impact: No

Area Traffic Mitigation:

Total Vol.	2023	0	2023	0	2023	80	2103	0	2103

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(714) 641-1587

INTERSECTION CAPACITY UTILIZATION

Intersection: 3.
N-S St: La Paz Road
E-W St: McIntyre Street
Project: LLG Traffic Impact Analysis Report
File: 3349-2.xls
Control Type: 5Ø Traffic Signal

La Paz Road at McIntyre Street
Peak Hour: PM
Annual Growth: 1.00%

Date: 08/17/14
Date of Count: 2014
Projection Year: 2014

	2014 EXISTING TRAFFIC				2014 WITH AMBIENT GROWTH					2014 WITH CUMULATIVE PROJECTS					2014 WITH PROJECT TRAFFIC					2014 WITH MITIGATION				
Movement	Volume	Lanes	Capacity	V/C Ratio	Added Volume	Total Volume	Lanes	Capacity	V/C Ratio	Added Volume	Total Volume	Lanes	Capacity	V/C Ratio	Added Volume	Total Volume	Lanes	Capacity	V/C Ratio	Added Volume	Total Volume	Lanes	Capacity	V/C Ratio
Nb Left	8	1	1700	0.005	0	8	1	1700	0.005	0	8	1	1700	0.005	0	8	1	1700	0.005	0	8	1	1700	0.005
Nb Thru	846	2	3400	0.276 *	0	846	2	3400	0.276 *	0	846	2	3400	0.276 *	0	846	2	3400	0.281 *	0	846	2	3400	0.281 *
Nb Right	93	0	0	-	0	93	0	0	-	0	93	0	0	-	17	110	0	0	-	0	110	0	0	-
Sb Left	214	1	1700	0.126 *	0	214	1	1700	0.126 *	0	214	1	1700	0.126 *	51	265	1	1700	0.156 *	0	265	1	1700	0.156 *
Sb Thru	645	2	3400	0.209	0	645	2	3400	0.209	0	645	2	3400	0.209	0	645	2	3400	0.209	0	645	2	3400	0.209
Sb Right	66	0	0	-	0	66	0	0	-	0	66	0	0	-	0	66	0	0	-	0	66	0	0	-
Eb Left	43	0	0	0.000 *	0	43	0	0	0.000 *	0	43	0	0	0.000 *	0	43	0	0	0.000 *	0	43	0	0	0.000 *
Eb Thru	6	1	1700	0.029	0	6	1	1700	0.029	0	6	1	1700	0.029	0	6	1	1700	0.029	0	6	1	1700	0.029
Eb Right	10	1	1700	0.006	0	10	1	1700	0.006	0	10	1	1700	0.006	0	10	1	1700	0.006	0	10	1	1700	0.006
Wb Left	81	0	0	0.000	0	81	0	0	0.000	0	81	0	0	0.000	12	93	0	0	0.000	0	93	0	0	0.000
Wb Thru	6	1	1700	0.051 *	0	6	1	1700	0.051 *	0	6	1	1700	0.051 *	0	6	1	1700	0.058 *	0	6	1	1700	0.058 *
Wb Right	168	1	1700	0.099	0	168	1	1700	0.099	0	168	1	1700	0.099	35	203	1	1700	0.119	0	203	1	1700	0.119
Yellow Allowance:				0.050 *					0.050 *					0.050 *					0.050 *					0.050 *
ICU				0.503					0.503					0.503					0.545					0.545
LOS				A					A					A					A					A

* Key conflicting movement as a part of ICU.
** Functions as a separate turn lane, however, is not striped as such.
Counts conducted by: NDS
Capacity expressed in vehicles per hour of green.

Project ICU Impact: 0.042
Significant Impact: No

Area Traffic Mitigation:

Total Vol.	2186	0	2186	0	2186	115	2301	0	2301

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INTERSECTION CAPACITY UTILIZATION

Intersection: 4.
N-S St: La Paz Road
E-W St: Paseo De Valencia
Project: LLG Traffic Impact Analysis Report
File: 3349-2.xls
Control Type: 8Ø Traffic Signal Split: No N/S Split? No E/W Split? No

La Paz Road at Paseo De Valencia
Peak Hour: AM
Annual Growth: 1.00%

Date: 06/17/14
Date of Count: 2014
Projection Year: 2014

	2014 EXISTING TRAFFIC				2014 WITH AMBIENT GROWTH					2014 WITH CUMULATIVE PROJECTS					2014 WITH PROJECT TRAFFIC					2014 WITH MITIGATION				
Movement	Volume	Lanes	Capacity	V/C Ratio	Added Volume	Total Volume	Lanes	Capacity	V/C Ratio	Added Volume	Total Volume	Lanes	Capacity	V/C Ratio	Added Volume	Total Volume	Lanes	Capacity	V/C Ratio	Added Volume	Total Volume	Lanes	Capacity	V/C Ratio
Nb Left	111	1	1700	0.065 *	0	111	1	1700	0.065 *	0	111	1	1700	0.065 *	0	111	1	1700	0.065 *	0	111	1	1700	0.065 *
Nb Thru	684	2	3400	0.201	0	684	2	3400	0.201	0	684	2	3400	0.201	6	690	2	3400	0.203	0	690	2	3400	0.203
Nb Right	142	1	1700	0.084	0	142	1	1700	0.084	0	142	1	1700	0.084	0	142	1	1700	0.084	0	142	1	1700	0.084
Sb Left	63	1	1700	0.037	0	63	1	1700	0.037	0	63	1	1700	0.037	0	63	1	1700	0.037	0	63	1	1700	0.037
Sb Thru	443	2	3400	0.183 *	0	443	2	3400	0.183 *	0	443	2	3400	0.183 *	6	449	2	3400	0.186 *	0	449	2	3400	0.186 *
Sb Right	180	0	0	-	0	180	0	0	-	0	180	0	0	-	4	184	0	0	-	0	184	0	0	-
Eb Left	189	1	1700	0.111 *	0	189	1	1700	0.111 *	0	189	1	1700	0.111 *	4	193	1	1700	0.114 *	0	193	1	1700	0.114 *
Eb Thru	192	2	3400	0.056	0	192	2	3400	0.056	0	192	2	3400	0.056	0	192	2	3400	0.056	0	192	2	3400	0.056
Eb Right	91	1	1700	0.054	0	91	1	1700	0.054	0	91	1	1700	0.054	0	91	1	1700	0.054	0	91	1	1700	0.054
Wb Left	104	1	1700	0.061	0	104	1	1700	0.061	0	104	1	1700	0.061	0	104	1	1700	0.061	0	104	1	1700	0.061
Wb Thru	358	2	3400	0.105 *	0	358	2	3400	0.105 *	0	358	2	3400	0.105 *	0	358	2	3400	0.105 *	0	358	2	3400	0.105 *
Wb Right	123	1	1700	0.072	0	123	1	1700	0.072	0	123	1	1700	0.072	0	123	1	1700	0.072	0	123	1	1700	0.072
Yellow Allowance:				0.050 *					0.050 *					0.050 *					0.050 *					0.050 *
ICU				0.514					0.514					0.514					0.520					0.520
LOS				A					A					A					A					A

* Key conflicting movement as a part of ICU.
** Functions as a separate turn lane, however, is not striped as such.
Counts conducted by: NDS
Capacity expressed in vehicles per hour of green.

Project ICU Impact: 0.006
Significant Impact: No

Area Traffic Mitigation:

Total Vol.	2680	0	2680	0	2680	20	2700	0	2700

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INTERSECTION CAPACITY UTILIZATION

Intersection: 4.
N-S St: La Paz Road
E-W St: Paseo De Valencia
Project: LLG Traffic Impact Analysis Report
File: 3349-2.xls
Control Type: 8Ø Traffic Signal

La Paz Road at Paseo De Valencia
Peak Hour: PM
Annual Growth: 1.00%

Date: 06/17/14
Date of Count: 2014
Projection Year: 2014

2014 EXISTING TRAFFIC

Movement	Volume	Lanes	Capacity	V/C Ratio
Nb Left	108	1	1700	0.064 *
Nb Thru	750	2	3400	0.221
Nb Right	56	1	1700	0.033
Sb Left	11	1	1700	0.006
Sb Thru	578	2	3400	0.213 *
Sb Right	145	0	0	-
Eb Left	192	1	1700	0.113 *
Eb Thru	264	2	3400	0.078
Eb Right	121	1	1700	0.071
Wb Left	43	1	1700	0.025
Wb Thru	168	2	3400	0.049 *
Wb Right	13	1	1700	0.008
Yellow Allowance:				0.050 *
ICU				0.489
LOS				A
Total Vol.	2449			

2014 WITH AMBIENT GROWTH

Movement	Added Volume	Total Volume	Lanes	Capacity	V/C Ratio
Nb Left	0	108	1	1700	0.064 *
Nb Thru	0	750	2	3400	0.221
Nb Right	0	56	1	1700	0.033
Sb Left	0	11	1	1700	0.006
Sb Thru	0	578	2	3400	0.213 *
Sb Right	0	145	0	0	-
Eb Left	0	192	1	1700	0.113 *
Eb Thru	0	264	2	3400	0.078
Eb Right	0	121	1	1700	0.071
Wb Left	0	43	1	1700	0.025
Wb Thru	0	168	2	3400	0.049 *
Wb Right	0	13	1	1700	0.008
Yellow Allowance:					0.050 *
ICU					0.489
LOS					A
Total Vol.	0	2449			

2014 WITH CUMULATIVE PROJECTS

Movement	Added Volume	Total Volume	Lanes	Capacity	V/C Ratio
Nb Left	0	108	1	1700	0.064 *
Nb Thru	0	750	2	3400	0.221
Nb Right	0	56	1	1700	0.033
Sb Left	0	11	1	1700	0.006
Sb Thru	0	578	2	3400	0.213 *
Sb Right	0	145	0	0	-
Eb Left	0	192	1	1700	0.113 *
Eb Thru	0	264	2	3400	0.078
Eb Right	0	121	1	1700	0.071
Wb Left	0	43	1	1700	0.025
Wb Thru	0	168	2	3400	0.049 *
Wb Right	0	13	1	1700	0.008
Yellow Allowance:					0.050 *
ICU					0.489
LOS					A
Total Vol.	0	2449			

2014 WITH PROJECT TRAFFIC

Movement	Added Volume	Total Volume	Lanes	Capacity	V/C Ratio
Nb Left	0	108	1	1700	0.064 *
Nb Thru	10	760	2	3400	0.224
Nb Right	0	56	1	1700	0.033
Sb Left	0	11	1	1700	0.006
Sb Thru	7	585	2	3400	0.216 *
Sb Right	5	150	0	0	-
Eb Left	7	199	1	1700	0.117 *
Eb Thru	0	264	2	3400	0.078
Eb Right	0	121	1	1700	0.071
Wb Left	0	43	1	1700	0.025
Wb Thru	0	168	2	3400	0.049 *
Wb Right	0	13	1	1700	0.008
Yellow Allowance:					0.050 *
ICU					0.496
LOS					A
Total Vol.	29	2478			

2014 WITH MITIGATION

Movement	Added Volume	Total Volume	Lanes	Capacity	V/C Ratio
Nb Left	0	108	1	1700	0.064 *
Nb Thru	0	760	2	3400	0.224
Nb Right	0	56	1	1700	0.033
Sb Left	0	11	1	1700	0.006
Sb Thru	0	585	2	3400	0.216 *
Sb Right	0	150	0	0	-
Eb Left	0	199	1	1700	0.117 *
Eb Thru	0	264	2	3400	0.078
Eb Right	0	121	1	1700	0.071
Wb Left	0	43	1	1700	0.025
Wb Thru	0	168	2	3400	0.049 *
Wb Right	0	13	1	1700	0.008
Yellow Allowance:					0.050 *
ICU					0.496
LOS					A
Total Vol.	0	2478			

* Key conflicting movement as a part of ICU.
** Functions as a separate turn lane, however, is not striped as such.
Counts conducted by: NDS
Capacity expressed in vehicles per hour of green.

Project ICU Impact: 0.007
Significant Impact: No

Area Traffic Mitigation:

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INTERSECTION CAPACITY UTILIZATION

Intersection: 5.
N-S St: Alicia Parkway
E-W St: Paseo De Valencia
Project: LLG Traffic Impact Analysis Report
File: 3349-2.xls
Control Type: 8Ø Traffic Signal Split: No N/S Split? No E/W Split? No

Alicia Parkway at Paseo De Valencia
Peak Hour: AM
Annual Growth: 1.00%

Date: 06/17/14
Date of Count: 2014
Projection Year: 2014

Movement	2014 EXISTING TRAFFIC Volume	Lanes	Capacity	V/C Ratio	
Nb Left	308	2	3400	0.091	
Nb Thru	1547	3	5100	0.316	*
Nb Right	67	0	0	-	
Sb Left	88	1	1700	0.052	*
Sb Thru	1264	3	5100	0.248	
Sb Right	342	1	1700	0.201	
Eb Left	393	2	3400	0.116	*
Eb Thru	290	2	3400	0.085	
Eb Right	234	2	3400	0.069	
Wb Left	122	2	3400	0.036	
Wb Thru	405	3	5100	0.079	*
Wb Right	112	1	1700	0.066	
Yellow Allowance:				0.050	*
ICU				0.613	
LOS				B	
Total Vol.	5172				

Movement	2014 WITH AMBIENT GROWTH Added Volume	Total Volume	Lanes	Capacity	V/C Ratio	
Nb Left	0	308	2	3400	0.091	
Nb Thru	0	1547	3	5100	0.316	*
Nb Right	0	67	0	0	-	
Sb Left	0	88	1	1700	0.052	*
Sb Thru	0	1264	3	5100	0.248	
Sb Right	0	342	1	1700	0.201	
Eb Left	0	393	2	3400	0.116	*
Eb Thru	0	290	2	3400	0.085	
Eb Right	0	234	2	3400	0.069	
Wb Left	0	122	2	3400	0.036	
Wb Thru	0	405	3	5100	0.079	*
Wb Right	0	112	1	1700	0.066	
Yellow Allowance:					0.050	*
ICU					0.613	
LOS					B	
Total Vol.	0	5172				

Movement	2014 WITH CUMULATIVE PROJECTS Added Volume	Total Volume	Lanes	Capacity	V/C Ratio	
Nb Left	0	308	2	3400	0.091	
Nb Thru	0	1547	3	5100	0.316	*
Nb Right	0	67	0	0	-	
Sb Left	0	88	1	1700	0.052	*
Sb Thru	0	1264	3	5100	0.248	
Sb Right	0	342	1	1700	0.201	
Eb Left	0	393	2	3400	0.116	*
Eb Thru	0	290	2	3400	0.085	
Eb Right	0	234	2	3400	0.069	
Wb Left	0	122	2	3400	0.036	
Wb Thru	0	405	3	5100	0.079	*
Wb Right	0	112	1	1700	0.066	
Yellow Allowance:					0.050	*
ICU					0.613	
LOS					B	
Total Vol.	0	5172				

Movement	2014 WITH PROJECT TRAFFIC Added Volume	Total Volume	Lanes	Capacity	V/C Ratio	
Nb Left	0	308	2	3400	0.091	
Nb Thru	0	1547	3	5100	0.317	*
Nb Right	4	71	0	0	-	
Sb Left	0	88	1	1700	0.052	*
Sb Thru	0	1264	3	5100	0.248	
Sb Right	0	342	1	1700	0.201	
Eb Left	0	393	2	3400	0.116	*
Eb Thru	0	290	2	3400	0.085	
Eb Right	0	234	2	3400	0.069	
Wb Left	4	126	2	3400	0.037	
Wb Thru	0	405	3	5100	0.079	*
Wb Right	0	112	1	1700	0.066	
Yellow Allowance:					0.050	*
ICU					0.614	
LOS					B	
Total Vol.	8	5180				

Movement	2014 WITH MITIGATION Added Volume	Total Volume	Lanes	Capacity	V/C Ratio	
Nb Left	0	308	2	3400	0.091	
Nb Thru	0	1547	3	5100	0.317	*
Nb Right	0	71	0	0	-	
Sb Left	0	88	1	1700	0.052	*
Sb Thru	0	1264	3	5100	0.248	
Sb Right	0	342	1	1700	0.201	
Eb Left	0	393	2	3400	0.116	*
Eb Thru	0	290	2	3400	0.085	
Eb Right	0	234	2	3400	0.069	
Wb Left	0	126	2	3400	0.037	
Wb Thru	0	405	3	5100	0.079	*
Wb Right	0	112	1	1700	0.066	
Yellow Allowance:					0.050	*
ICU					0.614	
LOS					B	
Total Vol.	0	5180				

* Key conflicting movement as a part of ICU.
** Functions as a separate turn lane, however, is not striped as such.
Counts conducted by: NDS
Capacity expressed in vehicles per hour of green.

Project ICU Impact: 0.001
Significant Impact: No

Area Traffic Mitigation:

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INTERSECTION CAPACITY UTILIZATION

Intersection: 5.
N-S St: Alicia Parkway
E-W St: Paseo De Valencia
Project: LLG Traffic Impact Analysis Report
File: 3349-2.xls
Control Type: 8Ø Traffic Signal

Alicia Parkway at Paseo De Valencia
Peak Hour: PM
Annual Growth: 1.00%

Date: 06/17/14
Date of Count: 2014
Projection Year: 2014

	2014 EXISTING TRAFFIC				2014 WITH AMBIENT GROWTH					2014 WITH CUMULATIVE PROJECTS					2014 WITH PROJECT TRAFFIC					2014 WITH MITIGATION				
Movement	Volume	Lanes	Capacity	V/C Ratio	Added Volume	Total Volume	Lanes	Capacity	V/C Ratio	Added Volume	Total Volume	Lanes	Capacity	V/C Ratio	Added Volume	Total Volume	Lanes	Capacity	V/C Ratio	Added Volume	Total Volume	Lanes	Capacity	V/C Ratio
Nb Left	354	2	3400	0.104 *	0	354	2	3400	0.104 *	0	354	2	3400	0.104 *	0	354	2	3400	0.104 *	0	354	2	3400	0.104 *
Nb Thru	1415	3	5100	0.290	0	1415	3	5100	0.290	0	1415	3	5100	0.290	0	1415	3	5100	0.291	0	1415	3	5100	0.291
Nb Right	64	0	0	-	0	64	0	0	-	0	64	0	0	-	7	71	0	0	-	0	71	0	0	-
Sb Left	154	1	1700	0.091	0	154	1	1700	0.091	0	154	1	1700	0.091	0	154	1	1700	0.091	0	154	1	1700	0.091
Sb Thru	1421	3	5100	0.279 *	0	1421	3	5100	0.279 *	0	1421	3	5100	0.279 *	0	1421	3	5100	0.279 *	0	1421	3	5100	0.279 *
Sb Right	294	1	1700	0.173	0	294	1	1700	0.173	0	294	1	1700	0.173	0	294	1	1700	0.173	0	294	1	1700	0.173
Eb Left	473	2	3400	0.139 *	0	473	2	3400	0.139 *	0	473	2	3400	0.139 *	0	473	2	3400	0.139 *	0	473	2	3400	0.139 *
Eb Thru	465	2	3400	0.137	0	465	2	3400	0.137	0	465	2	3400	0.137	0	465	2	3400	0.137	0	465	2	3400	0.137
Eb Right	548	2	3400	0.161	0	548	2	3400	0.161	0	548	2	3400	0.161	0	548	2	3400	0.161	0	548	2	3400	0.161
Wb Left	62	2	3400	0.018	0	62	2	3400	0.018	0	62	2	3400	0.018	5	67	2	3400	0.020	0	67	2	3400	0.020
Wb Thru	257	3	5100	0.050 *	0	257	3	5100	0.050 *	0	257	3	5100	0.050 *	0	257	3	5100	0.050 *	0	257	3	5100	0.050 *
Wb Right	68	1	1700	0.040	0	68	1	1700	0.040	0	68	1	1700	0.040	0	68	1	1700	0.040	0	68	1	1700	0.040
Yellow Allowance:				0.050 *					0.050 *					0.050 *					0.050 *					0.050 *
ICU				0.622					0.622					0.622					0.622					0.622
LOS				B					B					B					B					B

* Key conflicting movement as a part of ICU.
** Functions as a separate turn lane, however, is not striped as such.
Counts conducted by: NDS
Capacity expressed in vehicles per hour of green.

Project ICU Impact: 0.000
Significant Impact: No

Area Traffic Mitigation:

Total Vol.	*5575*	*0*	*5575*	*0*	*5575*	*12*	*5587*	*0*	*5587*