



**REPORT TO THE CITY COUNCIL**

**REPORT TO THE REDEVELOPMENT AGENCY**

AGENDA ITEM NO.:	11:00am "B"
COUNCIL MEETING:	October 16, 2007
APPROVED BY	
EXECUTIVE DIRECTOR	
CITY MANAGER	<i>Bruce Rudolf</i>

October 16, 2007

FROM: ANDREW T. SOUZA, CITY MANAGER  
City Manager's Office

SUBJECT: RECOMMEND APPROVAL OF THE MATERIAL TERMS OF A GROUND LEASE BETWEEN CITY OF FRESNO AND LREG PARTNERS, L.P. (DEVELOPER) TO DEVELOP A MIXED USE PROJECT (THE PROJECT) AS FURTHER DESCRIBED IN A DISPOSITION AND DEVELOPMENT AGREEMENT

**KEY RESULT AREA**

Economic Development

**RECOMMENDATION**

Staff recommends that the City Council approve the terms of the ground lease by the City of Fresno (Lessor) and LREG Partners, L.P. a California limited liability partnership (Lessee),

**EXECUTIVE SUMMARY**

The Lessee is proposing a mixed use project for the Selland Arena parking lot which was approved by the Housing and Community Development Commission on September 26, 2007. A Disposition and Development Agreement (DDA) is scheduled for the joint meeting between the City and Redevelopment Agency on October 16, 2007. The Lessee desires to lease the property currently the Selland Arena parking lot for the project.

**BACKGROUND**

The Lessee has proposed by a DDA for the development of a \$43 million mixed use project east of Selland Arena, currently a parking lot. The proposal includes a 225,000 square foot development consisting of a 40,000 square foot ice rink. The project will also include 160 urban designed apartment units, a public ice rink and over 73,000 square feet of retail, restaurant and office space. The project developers foresee high end restaurants, boutique retailers, dry cleaning services, nightclubs, deli/markets and various other tenants. The project will also include solar panels to offset the utility costs. The property to be developed is currently under a single APN with the Convention Center.

The Lessee proposes to lease the property as a separate legal parcel. The lease is entered for the purpose of developing the mixed use project as referenced above. The lease is conditioned upon approval of the mixed use project's DDA and a lease agreement for use of Selland Arena between the City of Fresno, SMG and the Fresno Hockey Club LLC. The term of the lease shall be for 50 years unless terminated as provided by this lease.

**FISCAL IMPACT**

The minimum monthly rent will be determined by a property appraisal to establish fair market value, and applying a factor of 6% for annual rent; one twelfth of the annual rent shall be the minimum monthly rent. The annual rent will be evaluated based on the consumer price index published by the United States Department of Labor and Bureau Statistics. In no case will the rent be adjusted below the original calculation of the minimum monthly rent.

**Attachments**

Ground Lease

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE COUNCIL OF THE CITY OF FRESNO, CALIFORNIA, TO APPROVE THE MATERIAL TERMS OF A GROUND LEASE BETWEEN THE CITY OF FRESNO AND LREG PARTNERS, L.P. (DEVELOPER) TO DEVELOP A MIXED USE PROJECT (THE PROJECT) AS FURTHER DESCRIBED IN A DISPOSITION AND DEVELOPMENT AGREEMENT, AUTHORIZING THE CITY MANAGER AND CITY ATTORNEY'S OFFICE TO COMPLETE THE LEASE, AND AUTHORIZING THE EXECUTION AND DELIVERY OF THE LEASE, AND RELATED DOCUMENTS, AND TAKING ALL NECESSARY ACTION RELATED TO THE TRANSACTION, CONSISTENT WITH THE RESOLUTION.

WHEREAS, LREG Partners, L.P. has negotiated a Ground Lease ("Lease") with the City of Fresno to lease property on the east side of Selland Arena, currently a parking lot to develop a mixed use project ("Project"); and

WHEREAS, the Project will include an ice rink for public use, office, retail and 160 apartment units of which 22 will be set aside as affordable low-income housing; and

WHEREAS, the Project will have a positive impact on the City of Fresno's downtown revitalization efforts; and

WHEREAS, the Project has not yet been environmentally assessed as required by the California Environmental Quality Act ("CEQA"), and CEQA compliance is a condition precedent to any obligation of the City or Developer under the Lease; and

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Fresno as follows:

Section 1. The City finds and determines that the foregoing recitals are true and correct.

Section 2. The Council finds and declares that the actions authorized hereby constitute and are with respect to municipal affairs of the City and the statements, findings, and determinations of the Council set forth herein are true and correct.

Section 3. The material terms of the Lease attached to this Resolution are approved, with final documentation thereof as the City Manager, or his respective designee, may negotiate and determine consistent with this Resolution, and with approval as to form and direction by the City Attorney.

Section 4. The City Manager, or his respective designee, is individually or collectively authorized and directed to take all steps necessary to negotiate and finalize the Lease and related documents all as substantively consistent with this resolution and the draft Lease, and to take any other actions and execute any other documents that are reasonably required to carry out the

agreements, all as consistent with this resolution.

Section 5. This Resolution shall take effect from and after its adoption.

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STATE OF CALIFORNIA )  
COUNTY OF FRESNO ) ss.  
CITY OF FRESNO )

I, REBECCA E. KLISCH, City Clerk of the City of Fresno, certify that the foregoing resolution was adopted by the Council of the City of Fresno, at a regular meeting held on the \_\_\_\_\_ day of \_\_\_\_\_, 2007.

AYES :  
NOES :  
ABSENT :  
ABSTAIN :

Mayor Approval: \_\_\_\_\_, 2007

Mayor Approval/No Return: \_\_\_\_\_, 2007

Mayor Veto: \_\_\_\_\_, 2007

Council Override Vote: \_\_\_\_\_, 2007

REBECCA E. KLISCH  
City Clerk

BY: \_\_\_\_\_  
Deputy

APPROVED AS TO FORM:  
CITY ATTORNEY'S OFFICE

BY:   
Laurie A. Avedisian  
Deputy City Attorney

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GROUND LEASE

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This GROUND LEASE (the "Lease") is entered into as of \_\_\_\_\_, 2007 (the "Effective Date"), by the CITY OF FRESNO, a municipal corporation, referred to in this lease as either "Lessor" or the "City", and LREG PARTNERS, L.P., a California limited partnership, referred to in this Lease as "Lessee".

RECITALS

A. Lessor is the owner of certain real property in the County of Fresno, State of California, described on Exhibit A, which is attached and made a part of this Lease (referred to as the "Lessor's Real Property").

B. Lessee desires to lease a portion of the Lessor's Real Property (together with certain appurtenant rights and easements) prior to and in anticipation of the completion of a pending lot split (the "Lot Split") through which the Premises will be established as a separate legal parcel. The Lease is entered into for the purpose of allowing the private development and construction of multi-family residential units, office space, commercial space, an ice rink/recreational facility, and other related uses and improvements (collectively referred to in this Lease as the "Improvements" or the "Project") on the Premises in accordance with the agreement of the parties as set forth in this Lease.

C. The portion of the Lessor's Real Property being leased to Lessee is \_\_\_\_\_ (the "Premises") described on Exhibit B. Reference to the "Premises" is to the described land exclusive of any Improvements now or subsequently located on the Premises.

D. The City, Redevelopment Agency, and Lessee have entered into that certain Disposition and Development Agreement dated \_\_\_\_\_, 2007 relating to the leasing of the Premises to Lessee and Lessee's development and construction of the Improvements (the "DDA").

E. This Lease is conditioned on and the commencement of its term is effective as of the date and time that (i) the DDA and (ii) a Lease Agreement for the use of Selland Arena between the City of Fresno, SMG and Fresno Hockey Club, LLC, all become effective (the "Effective Time").

F. The Project has not yet been environmentally assessed as required by the California Environmental Quality Act ("CEQA"). CEQA compliance is a condition precedent to any obligation of the City or Lessee under this Lease.

ARTICLE 1  
LEASE OF PREMISES AND TERM OF LEASE

1.1 Agreement to Lease. Subject to the conditions set forth in Recital E above, and in consideration of the rents to be paid and covenants to be performed by Lessee under this Lease, Lessor agrees to lease the Premises to Lessee, and Lessee agrees to lease the Premises from Lessor, on the terms and conditions set forth in this Lease.

1.2 Status of Title. Title to the leasehold estate created by this Lease is subject to all exceptions, easements, rights, rights-of-way, and other matters of record set forth on the Preliminary Report issued by Chicago Title Company, dated not earlier than ten (10) business days prior to the Effective Date of this Lease, a copy of which is attached as Exhibit C.

1.3 Term of Lease. The term of this Lease shall be for a period of fifty (50) years, commencing on the Effective Time, unless terminated earlier as provided in this Lease (the "Term").

ARTICLE 2  
RENT

2.1 Rent. Lessee agrees to pay rent to Lessor without notice or demand during Term the Minimum Monthly Rent which shall be prorated for any partial calendar month at the commencement and end of the Term, payable in advance on or before the fifth (5<sup>th</sup>) day of each month. The Minimum Monthly Rent shall initially be determined by having the Property appraised for fair market value ("FMV"), then applying a factor of 6% for the annual rent; one twelfth of the annual rent shall be the Minimum Monthly Rent.

2.2 Periodic Cost-of-Living Adjustment. The Minimum Monthly Rent shall be subject to adjustment upward or downward on the date of the second anniversary of the Rent Commencement Date (as defined in Section 2.3) and that anniversary date each year thereafter (each an "Adjustment Date") to reflect the increases in the same percentage that the Consumer Price Index published by the United States Department of Labor, Bureau of Labor Statistics (the "Bureau") for All Urban Consumers U.S. City Average, All Items (base years 1982-84 = 100) (the "Index") for the calendar month that is nearest the Adjustment Date increased over the Index that is published for the month nearest the date of the commencement of the Term. Lessor will use reasonable efforts to calculate and give Lessee written notice of any increase in the Minimum Monthly Rent before each Adjustment Date. The Minimum Monthly Rent, as adjusted, will be in effect until the next Adjustment Date. In no case shall the rent as adjusted be less than the Minimum Monthly Rent.

If the Bureau discontinues the publication of the Index, publishes the Index less frequently, or alters the Index in some other manner, the most nearly comparable index or procedure as selected by Lessor and Lessee will be substituted for the Index.

2.3 Exception to Rent Payment. Despite any provisions of this ARTICLE 2 to the contrary, Lessee shall not be required to pay Minimum Monthly Rent for the period from the date the Term commences and continuing through the date Lessee completes construction of the Improvements (the "Rent Commencement Date").

ARTICLE 3  
USE OF PREMISES

3.1 Permitted Use. Lessee may use the Premises for any lawful purpose.

3.2 Compliance With Laws. Lessee shall, at Lessee's own cost and expense, comply with all statutes, ordinances, regulations, and requirements of all governmental entities, both federal and state and county or municipal, including those requiring capital improvements to the Premises or Improvements, relating to any use and occupancy of the Premises (and specifically not limited to any particular use or occupancy by Lessee), whether those statutes, ordinances, regulations, and requirements are now in force or are subsequently enacted. If any license, permit, or other governmental authorization is required for the lawful use or occupancy of the Premises or any portion of the Premises, Lessee shall procure and maintain it throughout the Term.

3.3 Prohibited Uses. Lessee shall not use or permit the Premises or any portion of the Premises to be improved, developed, used, or occupied in any manner or for any purpose that is in any way in violation of any valid law, ordinance, or regulation of any federal, state, county, or local governmental agency, body, or entity. Furthermore, Lessee shall not maintain, commit, or permit the maintenance or commission of any nuisance as now or hereafter defined by any statutory or decisional law applicable to the Premises or any part of the Premises.

3.4 Land Use Matters. Lessor and Lessee acknowledge that in order for Lessee to carry out its intended use of the Premises, it may be necessary, desirable, or required to obtain additional use, zoning, subdivision, or other land use permits or approvals relating to any part of the Premises, including without limitation, permits relating to the development and construction of multi-family residential units, office space, commercial space, and an ice rink/recreational facility (collectively, the "Land Use Permits"). Lessor agrees, from time to time on the request of Lessee, to execute such documents and authorizations as may be appropriate or required from Lessor as the owner of the Premises in order to seek and obtain such Land Use Permits. As Lessor, including its commissions and Council, is also the governmental authority that will consider and may have discretionary approval authority over the Land Use Permits, this Section is not intended to, and does not, limit the City's discretion in the permit and approval process for any such Land Use Permits. However, the City shall use best efforts to help Lessee obtain any appropriate or necessary discretionary governmental permits or approvals from the City or other governmental authority.

3.5 Acceptance of Surrounding Noise and Activities. Lessee, (including any subsequent owner of the Improvements and the Premises, if the option to purchase provided for in ARTICLE 12 is exercised) shall require all tenants, including subtenants, if any, to accept the noise and activities from uses at Selland Arena, Convention Center, and Saroyan Theater. This provision shall survive termination of the Lease.

3.6 Parking Agreement with the City. Lessee, (including any subsequent owner of the Improvements and the Premises, if the option to purchase provided for in ARTICLE 12 is exercised) shall be entitled to lease one hundred sixty (160) parking spaces from the City in the parking facility owned by the City adjacent to the Premises and located on the

southwest corner of Inyo and "O" Street. Lessee and any subsequent owner shall pay charges for such parking spaces at the standard City rates in effect from time to time.

3.7 Ice Rink Use by City. Lessee and the City agree that the City through its Parks, Recreation and Community Services Department, or any successor department (the "Department"), shall be entitled to use the ice rink to be constructed on the Premises by Lessee on the terms set forth in this Section (the "Ice Rink"). This use shall be for public recreational purpose in keeping with the stated goals of the Department from time to time existing. This right of use shall be for a term of thirty (30) years from the Rent Commencement Date (the "City Use Term") with the City having the right of use for thirty-five (35) hours each month during the City Use Term at such times as agreed to by the parties with an equitable distribution of hours between prime and non-prime hours. There will be no carry over of unused hours in any month. The City is obligated through out the City Use Term to pay a minimum fee of \$7,000 per month to Lessee (including any subsequent owner of the Improvements and the Premises, if the option to purchase provided for in ARTICLE 12 is exercised) with the fee subject to adjustment on an annual basis determined in the same manner as set forth in Section 2.2.

3.8 Joint Use of Ice Chilling System. Lessee, (including any subsequent owner of the Improvements and the Premises, if the option to purchase provided for in ARTICLE 12 is exercised) shall be entitled to the joint use of the ice chilling system to be installed in Selland Arena by the City (the "Ice System") in order to operate the Ice Rink and maintain the ice inside the Ice Rink. Lessee shall be responsible for paying the cost of (i) running all necessary pipes and lines from the Ice System to the Ice Rink and (ii) hook up connections at the Ice Rink. Lessee shall pay all utility costs arising out of its use of the Ice System and shall arrange for the separate metering of those utilities. Lessee shall also pay on a calendar year basis its pro rata share of all maintenance, repair, and replacement costs for the Ice System based on the ratio of its utility charges for use of the Ice System to the total utility charges for use of the Ice System, all for the calendar year in question. Replacement costs shall be paid on an amortized basis (with a reasonable interest factor) over their useful life as reasonably determined in good faith by the City and Lessee. In the event Lessee's use of the utilities cannot be separately metered, the parties will make a good faith determination of an equitable formula for the proration to Lessee of its share of utility (monthly) and maintenance (annually) costs for its use of the Ice System. Each time the City requests payment from Lessee under this Section, the City shall furnish Lessee with statements and information in sufficient detail showing the total amount of costs that are to be prorated and the manner of determining the proration to Lessee. Lessee shall have the right from time to time at reasonable intervals during normal business hours to review the books and records of the City covering maintenance, repair and replacement costs and costs of utilities, if not separately metered.

The City and Lessee understand and acknowledge that the cost of the Ice System has not yet been determined. As part of the determination of such cost, the City shall determine whether any additions to or enhancements of the Ice System over and above that needed for the use of the system for events to be held at Selland Arena are required in order to provide for Lessee's joint use of the Ice System as provided in this Section 7.8 (the "Additions"). If it is determined that any such Additions are required, the City shall notify Lessee of such requirements and the related specifications and cost of the Additions within ten (10) business days after the City has received such information. Lessee shall then have the right, exercisable

within thirty (30) days after receiving the notice and related information from the City, to elect to agree to the joint use of the enhanced Ice System as provided in this Section 7.8, or to acquire its own ice chilling system in which event the joint use provisions of this Section 7.8 will not be applicable. In the event Lessee agrees to the joint use of the enhanced Ice System, the costs attributable to the Additions as set forth in the City's notice shall be paid by Lessee on an amortized basis (with a reasonable interest factor) over their useful life as reasonably determined in good faith by the City and Lessee.

#### ARTICLE 4 TAXES AND UTILITIES

4.1 Lessee to Pay Taxes. Lessee shall pay during the Term, without abatement, deduction, or offset, any and all real and personal property taxes (including on any possessory interest), general and special assessments, and other charges (including any increase caused by a change in the tax rate or by a change in assessed valuation) of any description levied or assessed during the Term by any governmental agency or entity on or against the Premises, the Improvements located on the Premises, personal property located on or in the Premises or the Improvements, and the leasehold estate created by this Lease. This property interest may be subject to property taxation if created, and the party in whom the possessory interest is vested may be subject to the payment of property taxes levied on the interest.

4.2 Proration of First and Last Year Taxes. Notwithstanding the provisions of Section 4.1 of this Lease, all taxes, assessments, or other charges levied or assessed during the tax years in which the Term commences and ends shall be prorated between Lessor and Lessee as of 12:01 A.M. on the date the Term commences and on the date the Term ends, respectively, on the basis of tax years that commence on July 1 and end on June 30 of each year. Lessor shall pay the taxes, assessments, or other charges for the year in which the Term commences and Lessee shall promptly, on service of written request by Lessor, reimburse Lessor for Lessee's share of those taxes, assessments, or other charges. Lessee shall pay the taxes, assessments, and other charges for the year in which this Lease is to end; and Lessor shall promptly, on service of written request by Lessee, reimburse Lessee for Lessor's share of those taxes, assessments, and other charges.

4.3 Separate Assessment of Leased Premises. Should the Premises be assessed and taxed with or as part of other property owned by Lessor before the commencement of the Term, Lessor shall arrange with the taxing authorities to have the Premises taxed and assessed as a separate parcel distinct from any other real or personal property owned by Lessor. Should the Premises be assessed and taxed for the year in which this Lease is to commence with or as part of other property owned by Lessor, the share of the taxes, assessments, or other charges for which Lessee is liable to pay under Section 4.1 shall be determined as follows: Lessee shall pay an amount equal to that portion of the taxes, assessments, and other charges that bears the same ratio to the total of the taxes, assessments, and other charges as the ground area of the Premises bears to the ground area of the total taxed property.

4.4 Payment Before Delinquency. Any and all taxes and assessments and installments of taxes and assessments required to be paid by Lessee under this Lease shall be paid by Lessee before each such tax, assessment, or installment of tax or assessment becomes

delinquent. On the written request of Lessor, Lessee shall deliver to Lessor the official and original receipt evidencing the payment of any taxes, assessments, and other charges required under this Article.

4.5 Taxes Payable in Installments. Should any special tax or assessment be levied on or assessed against the Premises that may be either paid in full before a delinquency date within the Term or paid in installments over a period either within or extending beyond this Lease, Lessee shall have the option of paying the special tax or assessment in installments. The fact that the exercise of the option to pay the tax or assessment in installments will cause the Premises to be encumbered with bonds or will cause interest to accrue on the tax or assessment is immaterial and shall not interfere with the free exercise of the option by Lessee. Should Lessee exercise the option to pay any such tax or assessment in installments, Lessee shall be liable to pay only those installments becoming due during the Term. Lessor shall cooperate with Lessee and on written request of Lessee execute or join with Lessee in executing any instruments required to permit any such special tax or assessment to be paid in installments.

4.6 Contest of Tax. Lessee shall have the right to contest, oppose, or object to the amount or validity of any tax, assessment, or other charge levied on or assessed against the Premises or any part of the Premises; provided, however, that the contest, opposition, or objection must be filed before the tax, assessment, or other charge at which it is directed becomes delinquent and that written notice of the contest, opposition, or objection must be given to Lessor before the date the tax, assessment, or other charge becomes delinquent. Lessor shall, on written request of Lessee, join in any such contest, opposition, or objection if Lessee determines that joinder is necessary or convenient for the proper prosecution of the proceedings. Lessee shall be responsible for and shall pay all costs and expenses in any contest or legal proceeding instituted by Lessee. In no event shall Lessor be subjected to any liability for costs or expenses connected to any contest by Lessee, and Lessee agrees to indemnify and hold Lessor harmless from any such costs and expenses.

4.7 Tax Returns and Statements. Lessee shall, as between Lessor and Lessee, have the duty of attending to, preparing, making, and filing any statement, return, report, or other instrument required or permitted by law in connection with the determination, equalization, reduction, or payment of any taxes, assessments, or other charges that are or may be levied on or assessed against the Premises, the Improvements, personal property located on or in the Premises or the Improvements, and the leasehold estate created by this Lease.

4.8 Tax Hold-Harmless Clause. Lessee shall indemnify and hold Lessor and Lessor's property, including the Premises and any Improvements now or subsequently located on the Premises, free and harmless from any liability, loss, or damage resulting from any taxes, assessments, or other charges required by this Article to be paid by Lessee and from all interest, penalties, and other sums imposed thereon and from any sales or other proceedings to enforce collection of any such taxes, assessments, or other charges.

4.9 Utilities. Lessee shall pay or cause to be paid, and hold Lessor and the Premises free and harmless from, all charges for the furnishing of gas, water, electricity, telephone service, and other public utilities to the Premises during the Term and for the removal of garbage and rubbish from the Premises during the Term.

4.10 Payment by Lessor. Should Lessee fail to pay within the time specified in this Article any taxes, assessments, or other charges required by this Article to be paid by Lessee, Lessor may, without notice to or demand on Lessee, pay, discharge, or adjust that tax, assessment, or other charge for the benefit of Lessee. In that event, Lessee shall promptly on written demand of Lessor reimburse Lessor for the full amount paid by Lessor in paying, discharging, or adjusting that tax, assessment, or other charge together with interest thereon at the then-maximum legal rate from the date of payment by Lessor until the date of repayment by Lessee. If this Article does not specify the time within which Lessee must pay any charge required by this Article, Lessee shall pay that charge before it becomes delinquent.

## ARTICLE 5 CONSTRUCTION BY LESSEE

5.1 Right to Construct. Lessee may construct (or cause to be constructed) the Improvements on the Premises. Lessor and Lessee covenant for themselves and all persons claiming under them that the Improvements are real property. Construction of the Improvements shall comply with the terms and conditions set forth in the DDA.

5.2 Ownership of Improvements. Title to all Improvements to be constructed on the Premises by Lessee shall be owned by Lessee. At the normal expiration of the Term, and without further compensation to Lessor, the Improvements shall then become Lessor's property free and clear of any claims to or against them by Lessee.

5.3 Lessee's Right to Grant Easements. Lessor hereby grants Lessee the right to grant to public entities or public service corporations for the purpose of serving the Premises rights of way or easements on or over the Premises relating to telephone, electricity, water, sewers, coaxial cable and other utilities and municipal or special district services.

## ARTICLE 6 ENCUMBRANCE OF LEASEHOLD ESTATE

6.1 Lessee's Right to Encumber. Lessee may, at any time and from time to time during the Term, encumber to any lender (referred to in this Lease as "Lender"), by deed of trust or mortgage or other security instrument, all of Lessee's interest under this Lease, the leasehold estate hereby created in Lessee, and the Improvements (collectively, a "Leasehold Encumbrance") for any purpose or purposes without the consent of Lessor. However, no Leasehold Encumbrance incurred by Lessee in accordance with this Section shall, and Lessee shall not have power to incur any encumbrance that will constitute in any way a lien or encumbrance on Lessor's fee interest in the Premises. Any Leasehold Encumbrance shall be subject to all covenants, conditions, and restrictions set forth in this Lease and to all rights and interests of Lessor, except as is otherwise provided in this Lease. Lessee shall give Lessor prior written notice of any Leasehold Encumbrance, together with a copy of the deed of trust, mortgage, or other security interest evidencing the Leasehold Encumbrance.

6.2 Notice to and Service on Lender. Lessor shall mail to any Lender who has given Lessor written notice of its name and address, a duplicate copy of any and all notices Lessor may from time to time give to or serve on Lessee in accordance with or relating to this

Lease, including but not limited to any notice of default, notice of termination, or notice regarding any matter on which Lessor may predicate or claim a default. Any notices or other communications permitted by this or any other section of this Lease or by law to be served on or given to Lender by Lessor shall be deemed duly served on or given to Lender when deposited in the United States mail, first-class postage prepaid, addressed to Lender at the last mailing address for Lender furnished in writing by Lender to Lessor.

6.3 No Modification Without Lender's Consent. For as long as there is any Leasehold Encumbrance in effect, Lessee and Lessor hereby expressly stipulate and agree that they will not modify this Lease in any way nor cancel this Lease by mutual agreement without the written consent of Lender holding that Leasehold Encumbrance.

6.4 Right of Lender to Realize on Security. A Lender with a Leasehold Encumbrance shall have the right at any time during the Term and the existence of the encumbrance to do both of the following:

6.4.1 Any act or thing required of Lessee under this Lease, and any such act or thing done and performed by Lender shall be as effective to prevent a forfeiture of Lessee's rights under this Lease as if done by Lessee;

6.4.2 Realize on the security afforded by the leasehold estate by foreclosure proceedings, accepting an assignment in lieu of foreclosure, or other remedy afforded in law or in equity or by the security instrument evidencing the Leasehold Encumbrance (the "Security Instrument"); and

6.4.2.1 To transfer, convey, or assign the title of Lessee to the leasehold estate created by this Lease to any purchaser at any foreclosure sale, whether the foreclosure sale is conducted under court order or a power of sale contained in the Security Instrument, or to an assignee under an assignment in lieu of foreclosure; and

6.4.2.2 To acquire and succeed to the interest of Lessee under this Lease by virtue of any foreclosure sale, whether the foreclosure sale is conducted under a court order or a power of sale contained in the Security Instrument, or by virtue of an assignment in lieu of foreclosure.

The Lender or any person or entity acquiring the leasehold estate shall be liable to perform Lessee's obligations under this Lease only during the period, if any, in which that entity or person has ownership of the leasehold estate or possession of the Premises.

6.5 Right of Lender to Cure Defaults. For as long as there is in effect any Leasehold Encumbrance, before Lessor may terminate this Lease because of any default under or breach of this Lease by Lessee, Lessor must give written notice of the default or breach to Lender and afford Lender the opportunity after service of the notice to do one of the following:

6.5.1 Cure the breach or default within twenty (20) days after expiration of the time period granted to Lessee under this Lease for curing a default, when the default can be cured by the payment of money to Lessor or some other person;

6.5.2 Cure the breach or default within twenty (20) days after expiration of the time period granted to Lessee under this Lease for curing a default, when the breach or default must be cured by something other than the payment of money and can be cured within that time; or

6.5.3 Cure the breach or default in any reasonable time that may be required when something other than money is required to cure the breach or default and cannot be performed within twenty (20) days after expiration of the time period granted to the tenant under this Lease for curing a default, provided that acts to cure the breach or default are commenced within that time period after service of notice of default on Lender by Lessor and are thereafter diligently continued by Lender.

6.6 Foreclosure in Lieu of Curing Default. Despite any other provision of this Lease to the contrary, a Lender under a Leasehold Encumbrance may forestall termination of this Lease by Lessor for a default under or breach of this Lease by Lessee by commencing proceedings to foreclose the Leasehold Encumbrance. The proceedings so commenced may be for foreclosure of the Leasehold Encumbrance by order of court or for foreclosure of the Leasehold Encumbrance under a power of sale contained in the Security Instrument. The proceedings shall not, however, forestall termination of this Lease by Lessor for the default or breach by Lessee unless all of the following conditions are met:

6.6.1 The proceedings are commenced within thirty (30) days after service on Lender of the notice described in Section 6.5 of this Lease;

6.6.2 The proceedings are, after having been commenced, diligently pursued in the manner required by law to completion; and

6.6.3 Lender keeps and performs all of the terms, covenants, and conditions of this Lease requiring the payment or expenditure of money by Lessee until the foreclosure proceedings are complete or are discharged by redemption, satisfaction, payment, or conveyance of the leasehold estate to Lender.

6.7 Assignment Without Consent on Foreclosure. A transfer of Lessee's leasehold interest under this Lease to any of the following shall not require the prior consent of Lessor:

6.7.1 A purchaser at a foreclosure sale of the Leasehold Encumbrance, whether the foreclosure sale is conducted under court order or a power of sale in the instrument creating the encumbrance, provided Lender under the Leasehold Encumbrance gives Lessor written notice of the transfer, including the name and address of the purchaser and the effective date of the transfer;

6.7.2 An assignee of the leasehold estate of Lessee under an assignment in lieu of foreclosure, provided Lender under the Leasehold Encumbrance gives Lessor written notice of the transfer, including the name and address of the assignee and the effective date of the assignment; or

6.7.3 A purchaser or assignee of the purchaser at a foreclosure sale of the Leasehold Encumbrance or of the assignee of the leasehold estate of Lessee acquired under an assignment in lieu of foreclosure, provided the purchaser or assignee delivers to Lessor its written agreement to be bound by all of the provisions of this Lease.

6.8 New Lease to Lender. Despite any other provision of this Lease to the contrary, should this Lease terminate because of any default under or breach of this Lease by Lessee, Lessor agrees to enter into a new lease for the Premises with Lender under a Leasehold Encumbrance, as Lessee, provided all of the following conditions are satisfied:

6.8.1 A written request for the new lease is served on Lessor by Lender within thirty (30) days after service on Lender of the notice described in Section 6.5 of this Lease;

6.8.2 The new lease

6.8.2.1 Is for a term ending on the same date the Term would have ended had this Lease not been terminated;

6.8.2.2 Provides for the payment of rent at the same rate that would have been payable under this Lease during the remaining Term had this Lease not been terminated; and

6.8.2.3 Contains the same terms, covenants, conditions, and provisions as are contained in this Lease (except those that have already been fulfilled or are no longer applicable);

6.8.3 Lender, on execution of the new lease by Lessor, shall pay any and all sums that would at the time of the execution of the new lease be due under this Lease but for its termination and shall otherwise fully remedy, or agree in writing to remedy, any other defaults under or breaches of this Lease committed by Lessee that can be remedied;

6.8.4 Lender, on execution of the new lease, shall pay all reasonable costs and expenses, including attorneys' fees and court costs, incurred in terminating this Lease, recovering possession of the Premises from Lessee or the representative of Lessee, and preparing the new lease;

6.8.5 The new lease shall be subject to all existing subleases between Lessee and subtenants, provided that for any sublease, the subtenant agrees in writing to attorn to Lender (or its assignee); and

6.8.6 The new lease shall be assignable by Lender but not by any assignee of Lender without the prior written consent of Lessor.

6.9 No Merger of Leasehold and Fee Estates. For as long as any Leasehold Encumbrance is in existence, there shall be no merger of the leasehold estate created by this Lease and the fee estate of Lessor in the Premises merely because both estates have been

acquired or become vested in the same person or entity, unless Lender otherwise consents in writing.

6.10 Lender as Assignee of Lease. No Lender under any Leasehold Encumbrance shall be liable to Lessor as an assignee of this Lease unless and until Lender acquires all rights of Lessee under this Lease through foreclosure, an assignment in lieu of foreclosure, or as a result of some other action or remedy provided by law or by the instrument creating the Leasehold Encumbrance.

6.11 Lender as Including Subsequent Security Holders. Except for purposes of Section 6.8, the term "Lender" as used in this Lease shall mean not only the lender that loaned money to Lessee and is named as beneficiary, mortgagee, secured party, or security holder in the Security Instrument creating any Leasehold Encumbrance, but also all subsequent purchasers or assignees of the leasehold interest secured by the Leasehold Encumbrance.

## ARTICLE 7 REPAIRS AND RESTORATION

7.1 Maintenance by Lessee. At all times during the Term, Lessee shall, at Lessee's own cost and expense, keep and maintain the Premises, all Improvements, and all appurtenances now or hereafter on the Premises in good order and repair, ordinary wear and tear excepted.

7.2 Requirements of Governmental Agencies. At all times during the Term, Lessee, at Lessee's own cost and expense, shall do all of the following:

7.2.1 Make all alterations, additions, or repairs to the Premises or the Improvements on the Premises required by any valid law, ordinance, statute, order, or regulation now or hereafter made or issued by any federal, state, county, local, or other governmental agency or entity;

7.2.2 Observe and comply with all valid laws, ordinances, statutes, orders, and regulations now or hereafter made or issued respecting the Premises or the Improvements on the Premises by any federal, state, county, local, or other governmental agency or entity;

7.2.3 Contest if Lessee, in Lessee's sole discretion, desires by appropriate legal proceedings brought in good faith and diligently prosecuted in the name of Lessee, or in the names of Lessee and Lessor when appropriate or required, the validity or applicability to the Premises of any law, ordinance, statute, order, or regulation now or hereafter made or issued by any federal, state, county, local, or other governmental agency or entity; provided, however, that any such contest or proceeding, though maintained in the names of Lessee and Lessor, shall be without cost to Lessor, and Lessee shall protect the Premises and Lessor from Lessee's failure to observe or comply during the contest with the contested law, ordinance, statute, order, or regulation; and

7.2.4 Indemnify and hold Lessor and the property of Lessor, including the Premises, free and harmless from any and all liability, loss, damages, fines, penalties, claims,

and actions resulting from Lessee's failure to comply with and perform the requirements of this Section.

7.3 Lessee's Duty to Restore Premises. If at any time during the Term, any Improvements are destroyed in whole or in part from a risk or risks covered by the insurance described in Section 8.3, Lessee shall repair and restore the Improvements to substantially the same condition as they were in immediately before destruction, if the insurance proceeds actually paid (the "Insurance Proceeds") are sufficient to cover the actual cost of the repair and restoration. If the cost of the work so required exceeds the Insurance Proceeds, or if the damage is caused by a risk not covered by the insurance described in Section 8.3, Lessee may so repair and restore the Improvements, or may by notice to Lessor elect instead to raze the Improvements damaged or destroyed. Within thirty (30) days after any such notice, Lessor may by notice to Lessee elect to so repair and restore the Improvements at its sole cost, and Lessee shall not raze until the expiration of the time for Lessor's notice of election.

7.4 Option to Terminate Lease. Lessee shall have the right to terminate this Lease if (i) the Improvements are damaged or destroyed by a casualty for which Lessee is not required under this Lease to carry insurance, or if covered by insurance, the Insurance Proceeds are insufficient to cover the actual cost of repair and restoration, and (ii) the cost to repair and restore the damaged or destroyed Improvements exceeds fifty percent (50%) of the replacement value of the Improvements immediately before the damage or destruction.

7.5 Application of Insurance Proceeds. Any and all fire or other insurance proceeds that become payable at any time during the Term because of damage to or destruction of any Improvements shall be paid to Lessee and applied by Lessee toward the cost of repairing and restoring the damaged or destroyed Improvements in the manner permitted by Section 7.3 of this Lease, or, if this Lease is terminated under Section 7.4, applied by Lessee toward payment of the Leasehold Encumbrance(s). If Lessee terminates the Lease pursuant to Section 7.4, insurance proceeds shall first be used to restore the Property to the condition it was in prior to Lease commencement.

## ARTICLE 8 INDEMNITY AND INSURANCE

8.1 Indemnity Agreement. Lessee shall indemnify, defend and hold harmless Lessor, and each of its officers, officials, employees and agents, from any and all loss, liability, claims, damages or expenses (collectively, "Liability"), for damage or injury to person or property on or about the Premises resulting from Lessee's occupation and use of the Premises, except for any Liability caused by the negligent acts or omissions, or by the willful misconduct, of Lessor or any of its officers, officials, employees and agents.

**This indemnity shall also cover, without limitation the following: (i) any act, error or omission of Lessee as to the City or any of its officers, employees, contractors, subcontractors, invitees, agents or representatives in connection with this Lease, the Project or the Property; (ii) any use of the Property, the Project by Lessee or any of its officers, employees, contractors, subcontractors, invitees, agents or representatives, successors or assigns; (iii) the design, construction, operation or maintenance of the**

Project, or (iv) failure of Lessee or any of its officers, employees, contractors, subcontractors, invitees, agents or representatives to comply with any Federal, State or local law, code, ordinance or regulation applicable to this Agreement or the Project, including, but not limited to, claims based upon failure to comply fully with prevailing wage laws as may be determined by any court or agency of the State of California or United States Government; with respect to any and all claims related to prevailing wage, Lessee, as provided herein and otherwise in this Agreement, assumes all responsibility for payment of prevailing wage and complying with prevailing wage laws, if required, and specifically waives any and all rights against the City, as well as City agents, employees, agencies, and consultants, pursuant to California Labor Code section 1726(c) and analogous federal law, if any, and agrees to defend and fully indemnify the City, as well as City agents, employees, agencies, and consultants, for any claims based upon failure to pay prevailing wage, including, without limitation, claims for damages, fines, penalties, litigation expenses, costs, attorneys' fees, and interest. Lessee and City have the right to contest or challenge any finding that prevailing wage applies.

8.2 Liability Insurance. Throughout the Term, at Lessee's own cost and expense, Lessee shall maintain broad form commercial general liability insurance with coverage limits of not less than the combined single limit for bodily injury, personal injury, death, and property damage liability per occurrence and per year of one million dollars (\$1,000,000) insuring against any and all liability of Lessee with respect to the Premises or arising out of the use or occupancy of the Premises and Improvements. All such liability insurance will specifically insure the performance by Lessee of the indemnity agreement as to liability for injury to or death of persons and injury or damage to property set forth in Section 8.1. All policies of insurance required under this Section 8.2 shall name and will be for the mutual and joint benefit and protection of Lessor and Lessee as additional insureds.

8.3 Fire and Casualty Insurance. Lessee, at all times from and after substantial completion of the Improvements, at Lessee's own cost and expense, shall maintain in effect during the Term a policy or policies of insurance covering the Improvements in an amount not less than ninety percent (90%) of the full replacement cost (exclusive of the cost of excavations, foundations, and footings) or the amount of insurance Lessee's Lender may require Lessee to maintain, whichever is the greater, providing protection against any peril generally included in the classification "Named Perils Coverage," loss of rental income insurance, and such other additional insurance as covered in an "all-risk" standard insurance policy.

8.4 Best Rating. The insurance coverages to be maintained pursuant to this Lease shall be obtained from insurance companies rated A-X or better by the then most current Best's Key Rating Guide (or if A-10 is not available at commercially reasonable rates, then the highest rating available at commercially reasonable rates) and that are admitted and qualified to do business in the State of California.

8.5 Notice of Cancellation of Insurance. Each insurance policy required under this ARTICLE 8 shall contain a provision that it cannot be cancelled for any reason unless at least ten (10) days' prior written notice of the cancellation is given to Lessor and to Lender in the manner required by this Lease for service of notices on Lessor by Lessee.



ARTICLE 9  
CONDEMNATION

9.1 Termination of Lease. In the event of a total or partial taking of the Premises, the Improvements, or the leasehold estate of Lessee, the rights of the parties with respect to the Term and the rent shall be according to the law applicable to the Premises in effect on the Effective Date.

9.2 Condemnation Award. Any compensation or damages awarded or payable because of the taking of all or any portion of the fee or the leasehold estate or both shall be distributed and disbursed in the following order of priority:

9.2.1 First, to Lessor a sum equal to the taking of any land that is part of the Premises, valued as unimproved land exclusive of improvements and unburdened by all leases and subleases.

9.2.2 Second, to Lessee the balance of the award.

9.3 Substantial Taking. If the taking is substantial, Lessee may elect to treat the taking as a total taking by giving a notice to Lessor within thirty (30) days after Lessee receives notice of intended taking. If Lessee does not so notify Lessor, the taking shall be deemed a partial taking.

9.4 Definitions. The following definitions apply in construing the provisions of this ARTICLE 9 relating to a taking of or damage to all or any part of the Premises or Improvements or any interest in them by eminent domain or inverse condemnation:

9.4.1 "Taking" means a taking or damaging, including severance damage, by eminent domain or by inverse condemnation or for any public or quasi-public use under any statute. The transfer of title may be either a transfer resulting from the recording of a final order in condemnation or a voluntary transfer or conveyance to the condemning agency or entity under a threat of condemnation, in avoidance of an exercise of eminent domain, or while condemnation proceedings are pending. The taking shall be considered to take place as of the later of (i) the date actual physical possession is taken by the condemnor or (ii) the date on which the right to compensation and damages accrues under the law applicable to the Premises.

9.4.2 "Substantial taking" means the taking of so much of the Premises or Improvements or both that the following condition results: the conduct of Lessee's management and business operations on or relating to the Premises would be substantially prevented or impaired.

ARTICLE 10  
ASSIGNMENT AND SUBLEASING

10.1 Assignment. Lessee may assign this Lease subject to the prior written consent of Lessor. Lessor may not unreasonably withhold or delay its consent.

10.2 Permitted Assignments. Despite the provisions of Section 10.1, Lessee may assign this Lease without the consent of Lessor, to:

10.2.1 An assignee who, in the reasonable determination of Lessee, is financially qualified and has, or contracts for management services with persons or entities that have, appropriate experience in the operation and management of property of the type comprising the Improvements to perform all the agreements, undertakings and covenants of this Lease. In the event of such an assignment, Lessee shall provide Lessor with such documentation and information upon which Lessee made its determination as to the qualifications of the assignee.

10.2.2 A successor of Lessee that is either (i) a corporation or other entity that controls or is controlled by Lessee; (ii) another entity in connection with a reorganization; (iii) the merger of Lessee into, or the consolidation of Lessee with, an other entity or entities; or (iv) any successor of all or substantially all of Lessee's business or assets.

10.3 Right to Sublet. Lessee shall have the absolute right to sublet all or any part of the Premises or Improvements, and to assign, encumber, extend, or renew any sublease, provided the following conditions are met:

10.3.1 The term of any sublease shall not extend beyond the Term;

10.3.2 Any and all subleases shall be expressly made subject to all of the term, covenants, and conditions of this Lease; and

10.3.3 Any subtenant shall be required to attorn to Lessor in the event of Lessee's default under this Lease.

10.4 Leasehold Encumbrances and Subsequent Transfers. Notwithstanding the provisions of Section 10.1 of this Lease, Lessee may without the prior written consent of Lessor transfer and assign all Lessee's interest under this Lease and Lessee's leasehold estate created under this Lease to a Lender under a Leasehold Encumbrance (as defined in Section 6.1 of this Lease). Any transfer, conveyance, or assignment resulting from a foreclosure or acceptance of a deed in lieu of foreclosure by any Lender (as defined in Section 6.1 of this Lease), or any transfer, conveyance, or assignment by any Lender following its acquisition of this Lease and the leasehold estate of Lessee created by this Lease as a result of foreclosure or acceptance of a deed in lieu of foreclosure shall not require the prior consent of Lessor.

## ARTICLE 11 DEFAULT AND REMEDIES

11.1 Lessee's Default. Each of the following events shall be a default by Lessee and a breach of this Lease:

11.1.1 Lessee's failure or refusal to pay when due any installment of rent or any other sum required by this Lease to be paid by Lessee which failure is not cured within a period of thirty (30) days after written notice to Lessee;

11.1.2 Lessee is in sustained material breach of any other covenant or condition of this Lease and Lessor has given Lessee thirty (30) days prior of the breach and Lessee's right to cure within that 30-day period. Lessor shall set forth in its notice of breach the facts underlying its claim that Lessee is in sustained material breach of this Lease. However, with respect to defaults not reasonably curable within the thirty (30) day notice period, Lessee shall not be considered to be in default as the result of such failure, so long as Lessee is diligently and expeditiously attempting to cure such default and such default is curable within a reasonable period of time following the expiration of such thirty (30) day notice period; and with respect to noncurable defaults, Lessee has instituted and is diligently pursuing reasonable corrective or ameliorative acts;

11.1.3 Abandonment or surrender of the Premises or the leasehold estate by Lessee;

11.1.4 Lessee (i) applies for or consents to the appointment of a receiver of itself or of all or a substantial part of its property, (ii) makes a general assignment for the benefit of its creditors, (iii) commences a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or consents to any such relief or to the appointment of or taking possession of its property by any official in an involuntary case or other proceeding commenced against it, or (iv) takes any action for the purpose of effecting any of the preceding matters; and (v) any such matter is not released or terminated within ninety (90) days; and

11.1.5 Proceedings for the appointment of a receiver of Lessee or of all or a substantial part of its property, or an involuntary case or other proceedings seeking liquidation, reorganization or other relief with respect to Lessee or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect are commenced and an order for relief entered and such proceedings are not dismissed or discharged within ninety (90) days of commencement.

11.1.6 Any action taken by a Lender under ARTICLE 6 shall not be a default within the meaning of this Section 11.1.

11.2 Lessor's Remedies. In the event of Lessee's default under this Lease, Lessor has the following remedies:

11.2.1 Terminate this Lease by written notice to Lessee;

11.2.2 Reenter the Premises, and without terminating this Lease, at any time and from time to time relet the Premises and Improvements or any part of them for the account and in the name of Lessee; and

11.2.3 Any other remedies available at law or in equity.

11.3 Lessor's Default. Lessor shall not be considered to be in default under this Lease unless (i) Lessee has given notice specifying the default, and (ii) Lessor has failed for thirty (30) days to cure the default, if it is curable, or to institute and diligently pursue reasonable

corrective or ameliorative acts for noncurable defaults. Lessee shall have the right to terminate this Lease for Lessor's default only after notice to and consent by all Lenders then existing under the terms of this Lease.

11.4 Cumulative Remedies. The remedies in this Article shall not be exclusive but shall be cumulative with and in addition to all remedies now or hereafter allowed by law and elsewhere provided in this Lease.

## ARTICLE 12 OPTION TO PURCHASE

12.1 Option to Purchase Premises. Lessor grants to Lessee the option to purchase the Premises (the "Option") on the following terms and conditions and the terms and conditions of the purchase and sale agreement attached hereto as Exhibit D.

12.1.1 Lessee shall have the right to exercise the Option at any time during the Term and for a period of sixty (60) days after the termination of the Lease for any reason (the "Option Period").

12.1.2 The purchase price for the Premises shall be its fair market value on the date the Option Notice (as defined in Section 12.1.3) is given, determined as follows:

12.1.2.1 In determining the FMV of the Premises, (i) the Premises shall be valued as unimproved land exclusive of improvements, and (ii) the existence of this Lease and any subleases shall not be taken into consideration.

12.1.2.2 For a period of fifteen (15) days after the Option Notice is given, Lessee and Lessor shall negotiate in good faith with respect to the purchase price of the Premises. If, within that time period, Lessee and Lessor do not agree on a purchase price, then the fair market value of the Premises shall be set by appraisal by one (1) qualified real property appraiser having at least five (5) years full-time commercial real estate appraisal experience in the Fresno metropolitan area. The appraiser shall be jointly appointed by the parties, and the appraiser's decision shall be in writing and binding on the parties. If the parties cannot agree on a single appraiser within ten (10) days of a written demand by either party, Lessee and Lessor shall each appoint one (1) appraiser having the experience qualification set forth above within ten (10) days thereafter. Within a period of five (5) additional days, the two (2) appraisers shall agree upon and appoint an additional appraiser.

Within thirty (30) days after the appointment of the third appraiser, the three (3) appraisers shall determine the fair market value of the Premises in writing and submit their report to Lessee and Lessor. The fair market value shall be determined by disregarding the appraiser's valuation that deviates the greatest from each of the other two (2) appraisers' valuations, and the arithmetic mean of the remaining two (2) appraisers' valuations shall be the fair market value. If there is no valuation having the greatest divergence, the arithmetic mean of the three (3) appraisers' evaluations shall be the fair market value. Each of the parties shall pay for the services of the appraiser selected by it, plus one-half of the fee charged by the third appraiser, and one-half of all other costs relating to the determination of the fair market value.

12.1.3 Lessee shall exercise the Option by delivering to Lessor a signed, written notice ("Option Notice") at any time on or before the expiration of the Option Period. The Option Notice shall state that the Option is exercised without condition or qualification. The Option Notice shall be accompanied by two (2) copies of a purchase and sale agreement identical to the form attached as Exhibit D executed by Lessee and with all blank spaces relating to the designation of a closing date of the purchase completed by insertion of a date which is not less than sixty (60) nor more than one hundred twenty (120) days following the date the Option Notice is given.

12.1.4 If the purchase price for the Premises has been set by appraisal and Lessee objects to the purchase price, Lessee may elect not to purchase the Premises, as long as Lessee pays all costs of the appraisers. Lessee's election must be exercised within ten (10) business days after receipt of notice from the appraiser(s) of the purchase price.

12.1.5 Lessee may assign its interest in the Option in the same manner as provided for the assignment of this Lease in ARTICLE 10. Upon any such assignment, the assignee shall have all rights of Lessee under the Option, including without limitation the right to exercise the Option.

12.1.6 On close of escrow for the purchase of the Premises, this Lease shall terminate and the parties shall be released from all liabilities and obligations under it, except those provisions expressly stated to survive termination and those provisions which must, by their nature, survive termination.

12.1.7 After execution of this Lease, Lessee, at Lessor's expense, may obtain a current preliminary report on the Premises prepared by Chicago Title Company, together with copies of all documents identified as exceptions in the report.

12.1.8 Lessor agrees that on or after the Effective Date it has not and will not enter into any agreement of any type affecting or encumbering the Premises, or in any manner allow the imposition of any lien or encumbrance on the Premises, without Lessee's prior written consent.

12.2 Assignments Upon Exercise of Option. Upon an exercise of Lessee's option to purchase the Premises under this ARTICLE 12, the agreements, rights and obligations of the parties under Sections 3.5, 3.7 and 3.8 shall survive the termination of the Lease and will not be merged into the deed conveying the Premise to Lessee. Further, Lessee and any assignee or successor of Lessee (collectively referred to in this Section as "Lessee"), shall have the right to assign (including to Lessee itself as the new owner of the Premises), and the City shall (i) consent to Lessee's assignment of, all of Lessee's rights, title and interest to the agreements and obligations of the City under those Sections, including all rights to payments, and (ii) agree to recognize the assignee as the lawful successor to the assignor and establish direct privity of contract with the assignee, all conditioned on the assignee assuming and agreeing to perform all obligations of Lessee under those Sections.



ARTICLE 13  
OTHER PROVISIONS

13.1 Incorporation of Recitals and Exhibits. The recital and exhibits hereto are incorporated into and made a part of this Lease for all purposes.

13.2 Performance of Lessee's Covenants by Others. Lessee may at Lessee's election delegate performance of any or all covenants to any one or more subtenants, and the performance so delegated shall be deemed Lessee's performance. This provision shall not be construed to permit or to broaden the right of assignment or subletting beyond the provisions of ARTICLE 10.

13.3 Force Majeure. If a party's performance under this Lease is prevented, restricted, interfered with or delayed due to any cause beyond the reasonable control of the party liable to perform, including, but not limited to, war, acts of God, acts of terrorism, civil disturbance, fire, flood, earthquake, epidemic, unusually severe weather, and strikes or other labor trouble (a "Force Majeure Event"), unless conclusive evidence to the contrary is provided, the party so affected shall be excused from its performance to the extent caused by such Force Majeure Event, provided that the affected party: (i) gives written notice of the Force Majeure Event to the other party within five (5) business days after its occurrence, (ii) uses its reasonable best efforts (including executing any disaster plan) to overcome, mitigate, avoid or remove the cause of the event preventing or delaying performance, (iii) continues the performance of all its obligation under this Lease that are not prevented or delayed, and (iv) upon cessation of the Force Majeure Event immediately performs or completes performance of the obligations that were prevented or delayed. When such circumstances arise, the parties shall discuss what, if any, modification of the terms of this Lease may be required in order to arrive at an equitable solution.

13.4 Attorneys' Fees. Should any litigation be commenced between the parties to this Lease concerning the Premises, this Lease, or the rights and duties of either in relation thereto, the party prevailing in that litigation shall be entitled, in addition to any other relief that may be granted in the litigation, to a reasonable sum as and for that party's attorneys' fees in that litigation that shall be determined by the court in that litigation or in a separate action brought for that purpose.

13.5 Notices. All notices, elections, requests, acceptances, demands, instructions or other communications ("notice" or "notices") to be given to any party under this Lease shall be in writing and shall be deemed to have been duly given (i) on the date of service if personally served on the party to whom notice is to be given; (ii) within forty-eight (48) hours after mailing, if mailed to the party to whom notice is to be given, by first class mail which is either registered or certified, postage prepaid, return receipt requested; (iii) within twenty-four (24) hours after being deposited with a recognized private courier service (e.g. Federal Express), if delivered by a private courier service to the party to whom notice is to be given, all charges prepaid; or (iv) when sent, if given by electronic format that provides verification of successful transmission. All notices shall be properly addressed to the party receiving notice as follows:

If to Lessee, to:

LREG Partners, L.P.

\_\_\_\_\_

Attention: \_\_\_\_\_

With a courtesy copy to:

Dowling, Aaron & Keeler  
8080 N. Palm Avenue, Third Floor  
Fresno, California 93711  
Attn: John C. Ganahl

If to Lessor, to:

City of Fresno  
2600 Fresno Street  
Fresno, California 93721  
Attention: City Manager

With a courtesy copy to:

Fresno City Attorney  
2600 Fresno Street  
Fresno, California 93721  
Attention: James Sanchez

And with a courtesy copy to:

Redevelopment Agency of City of Fresno  
2344 Tulare St., Suite 200  
Fresno, Ca. 93721  
Attention: Executive Director

The addresses for the purposes of this Section may be changed by giving written notice of such change.

13.6 Governing Law. This Lese shall be governed by and construed in accordance with the laws of the State of California without regard to the choice or conflicts of law provisions of the State of California or any other state. The parties agree that any legal

proceedings or arbitration arising out of or related to this Lease shall be brought or take place in the County of California, State of California.

13.7 Binding on Heirs and Successors. Subject to the provisions of ARTICLE 10, this Lease shall be binding on and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of the parties hereto.

13.8 Further Assurances. Each party agrees that it will execute and deliver such further instruments or take such other action as may be reasonably necessary in order to effectively discharge or perform or carry out any of the respective obligations and agreements hereunder.

13.9 Waiver. Failure to insist upon strict compliance with any of the terms, covenants, or conditions hereof shall not be deemed a waiver of such term, covenant or condition. No waiver by a party of any provision of this Lease shall be deemed a waiver of any other provision, or any subsequent breach of the same or any other provision, including the time for performance of any such provision, nor shall any waiver constitute a continuing waiver; and no waiver shall be binding unless contained in a writing specifically referring to this Lease and executed by the party making the waiver. The exercise by a party of any remedy provided for in this Lease or at law or at equity shall not prevent the exercise by that party of any other remedy provided for in this Lease or at law or in equity.

13.10 Estoppel Certificates. Each party agrees, on not less than twenty (20) days prior notice (the "Request Notice") by the other party, to execute, acknowledge and deliver to the requesting party, or to such other recipient as the requesting party may direct, an estoppel certificate certifying that this Lease is unmodified and in full force and effect, or, if there have been modifications, that it is in full force and effect as modified in the manner specified in the statement. The statement shall also state the dates to which the rent and any other charges have been paid in advance. The statement shall also contain such other information (i) reasonably requested by the requesting party, and (ii) reasonably required or requested by any existing or prospective Lender, auditor, creditor, commercial banker, or investment banker of the requesting party, or a prospective purchaser of the any part or interest in the Improvements (each a "Relying Person"). The failure of the responding party to deliver a timely estoppel certificate will constitute a breach of this Lease, so long as the requesting party has given the responding party a second notice and an additional period of three (3) business days within which to cure the default and deliver an executed and acknowledged estoppel certificate to the requesting party.

Further, such a default by the responding party shall constitute acknowledgment to all Relying Persons that this Lease is unmodified and in full force and effect and that the rent and other charges have been duly and fully paid to and including the respective due dates immediately preceding the date of the Request Notice and shall constitute a waiver with respect to all Relying Persons of any defaults that may exist before the date of the Request Notice.

13.11 Partial Invalidity. In the event any provision, clause, sentence, phrase, or word hereof, or the application thereof in any circumstances, is held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of

the remainder hereof, or of the application of any such provision, sentence, clause, phrase or word in any other circumstances.

13.12 Memorandum of Lease for Recording. Neither Lessor nor Lessee shall record this Lease without the written consent of the other. However, Lessor and Lessee shall, at the request of either at any time during the Term, execute a memorandum or "short form" of this Lease for purposes of, and in a form suitable for, recordation. The memorandum or "short form" of this Lease shall describe the parties, set forth a description of the leased premises, specify the Term, describe Lessee's option to purchase the Premises, incorporate this Lease by reference, and include any other provisions required by and Lender.

[SIGNATURE PAGE FOLLOWS.]

The parties have executed this Lease as of the date stated in the opening paragraph of this Lease.

LESSOR:

CITY OF FRESNO, a California municipal corporation

By: \_\_\_\_\_  
Andrew T. Souza, City Manager

LESSEE:

LREG PARTNERS, L.P., a California limited partnership

By: Legacy Real Estate Group, LLC, a California limited liability company, as General Partner

By: \_\_\_\_\_  
Christopher P. Cummings, Manager

ATTEST:  
CITY CLERK

APPROVED AS TO FORM:  
CITY ATTORNEY

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

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

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

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

