

March 7, 2024

MEMO TO: Stanislaus County Planning Commission

FROM: Department of Planning and Community Development

SUBJECT: CANCELLATION OF THE DEVELOPMENT AGREEMENT FOR USE PERMIT AND DEVELOPMENT AGREEMENT NO. PLN2020-0036 – THE PEOPLE’S REMEDY (TPR)

PROJECT DESCRIPTION

This is a request to cancel the adopted Development Agreement (DA) for a commercial cannabis retail business, located at 1119 Lone Pam Avenue, between Woodland and Kansas Avenues, west of State Route 99, in the Modesto area. The DA was approved by the Board of Supervisors on August 25, 2020 as part of the Use Permit (UP) approval allowing for the use to be conducted. The cancellation of the adopted DA is due to the operator’s nonpayment of fees required under the terms of the DA.

A detailed description of the approved UP and adopted DA (UP & DA No. PLN2020-0036 – The People’s Remedy) are provided in the August 25, 2020 Board of Supervisors Report, which is available online at: <https://www.stancounty.com/bos/agenda/2020/20200825/PH02.pdf>.

DISCUSSION

As required by Section 6.78.060(A)(2) of the Stanislaus County Code, prior to operating in the County, permittees of each commercial cannabis activity are required to enter into a DA, as specified in Title 22 of the Stanislaus County Code, with the County setting forth the terms and conditions under which the commercial cannabis activity will operate. Without a valid DA, commercial cannabis permittees cannot operate within the County. Title 22 specifies that the Planning Commission shall consider a DA and provide a recommendation to the Board of Supervisors. The recommendation shall include the Planning Commission’s determination on whether or not the DA:

- a. Is consistent with the General Plan and any applicable specific plan.
- b. Is compatible with the uses authorized in, and the regulations prescribed for, the land use district in which the real property is or will be located.
- c. Is in conformity with and will promote public convenience, general welfare, and good land use practice.
- d. Will be detrimental to health, safety, and general welfare.

- e. Will adversely affect the orderly development of property or the preservation of property values.
- f. Will promote and encourage the orderly development of the proposed project by providing a greater degree of requisite certainty.

The DA includes a requirement for The People's Remedy (TPR) to pay two separate fee types: one is the Community Benefit Rate (CBR) fee, which varies in amount based on the type and quantity of the proposed commercial cannabis activities and is collected for the purpose of funding the enforcement of illegal cannabis activities throughout the County; and the second is the Community Benefit Contribution (CBC) fee, which varies in amount based on the projected revenues of the operation and is collected for the purpose of funding local community charities and public improvement projects. TPR's Community Benefit Rates were required to be paid in quarterly installments and included the following fee structures for the permitted commercial cannabis retail activity (see Exhibit 2 – *Recorded Development Agreement*):

- Retail activities – ranged from \$600,000, starting in 2020, to \$700,000 annually over the first five years or 8% of gross receipts, whichever is greater.

Between August 2020 and January 2022, TPR paid a total of \$1,251,688 in CBR fees.

TPR's CBC ranged from \$61,200 to \$71,800 over the five-year DA period, which have been paid in full, totaling \$110,869, through 2022. At the direction of the Board of Supervisors in 2022, collection of the CBC fee ceased. In October of 2023, the Board approved a new contribution program that allowed commercial cannabis operators to meet their CBC obligations using one of the following methods: 1) distribute funds directly to entities affiliated with nonprofits and education; 2) completion of improvements to their local area; or 3) a minimum payment to the County of \$5,000 to be directed toward impacts of cannabis use into the community. TPR would be still subject to compliance with the CBC requirements for 2023 even if the DA is cancelled.

After Quarter 1 of 2022, at the request of TPR due to poor market conditions, the County and TPR agreed to mutually amend the DA. The amendment, considered by the Planning Commission on June 16, 2022 and adopted by the Board on July 26, 2022, removed the requirement to pay the CBC fee from the DA (as the CBC fee is now subject to the County's new adopted program) and lowered the CBR fee, based on analysis of the operations gross receipts, for retail activities in 2020 and 2021, to \$331,270 or 8% of gross receipts, whichever is greater (see Exhibit 3 – *Recorded First Amendment to the Development Agreement*).

Following the amendment, TPR has made a partial CBR payment in each quarter since Quarter 2 of 2022. The last partial payment was made on January 29, 2024. Each partial payment gets applied to outstanding balances in previous quarters. TPR's current balance owed to the County for CBR fees is \$231,885.

In accordance with Section 15 – Default of the adopted DA, the operator has been notified of their failure to pay for each quarter (see Exhibit 4 – *Notices to the Operator*), and is now in a state of default, having been referred to the Planning Director for action in accordance with Section 15.6.2 – Termination or Modification of the Development Agreement and County Code

Section 22.08.020 – Cancellation by the County. In accordance with Title 22 of the Stanislaus County Code, and Government Code Section 65865.1, a DA may be cancelled by the County provided a public hearing is noticed and held by both the Planning Commission and the jurisdiction's Legislative Body (Board of Supervisors) in conformance with Government Code Sections 65090 and 65091. As stated in Section 22.08.020 of the County Code, at the public hearing the operator shall demonstrate compliance with the terms of the DA. If compliance is not shown, the Planning Commission shall recommend to the Board of Supervisors to begin cancellation proceedings or recommend new terms and conditions to remedy the noncompliance. Once presented, the Board of Supervisors has the authority to cancel the DA immediately or impose new terms and conditions intended to remedy the noncompliance.

The cancellation was originally scheduled to be heard by the Planning Commission on February 15, 2024. It was continued to March 7, 2024 to allow staff additional time to consider a proposal from the operator to cure the outstanding debt owed to the County. Since the February 15th continuance, County staff has reviewed the operator's written proposal and determined to not accept the proposal.

Based on the failure to make full quarterly payments as required by the provisions of the DA, and with no agreed upon method to remedy the debt in full, staff recommends that the Planning Commission recommend that the Board of Supervisors cancel the DA for TPR subject to closure within 30 days of repeal of the ordinance, No. C.S. 1281. Outstanding fees owed to the County by the operator, including additional fees for Quarter 1 of 2024, would still be required to be paid unless other arrangements, agreed to by the County, are made.

ENVIRONMENTAL REVIEW

Under California law, the project was subject to review under the California Environmental Quality Act (CEQA) and a CEQA determination was adopted at the time of project approval. The CEQA Guidelines provide that, where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. As the DA cancellation will remove authority for development from the parcel, no impacts are anticipated, thus the action of cancellation is not subject to CEQA.

RECOMMENDATION

Recommend the Board of Supervisors:

1. Find that The People's Remedy is in material breach of the terms of the Development Agreement (DA) for Use Permit (UP) No. PLN2020 - 0036 – The People's Remedy.
2. Find that the cancellation of the adopted DA for UP No. PLN2020-0036 – The People's Remedy is in conformance with Government Code Section 65865.1 and Stanislaus County Code Section 22.08.020

3. Approve the cancellation of the DA for UP No. PLN2020-0036 – The People’s Remedy, ordering closure of all components of the operation within 30 days of the repeal of ordinance Nos. C.S. 1281 and 1332, subject to inspection by the County.
4. Introduce, waive the reading, and adopt an ordinance to rescind ordinance No. C.S. 1281.
5. Order the filing of a notice of DA Cancellation for the adopted DA for UP No. PLN2020-0036 – The People’s Remedy with the Stanislaus County Clerk-Recorder’s Office.

Contact Person: Jeremy Ballard, Senior Planner, (209) 525-6330

PROPERTY OWNER AND REPRESENTATIVE INFORMATION

Applicant/Business Owner:	The People’s Remedy (Mark Ponticelli)
Property Owner:	Duke Leffler Trust (Hilary Leffler, trustee)
Agent:	Zach Drivon, Drivon Consulting, Inc.






Attachments:

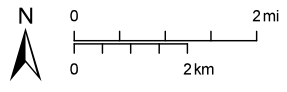
- Exhibit 1 – Project Area Map
- Exhibit 2 – Recorded Development Agreement
- Exhibit 3 – Recorded First Amendment to the Development Agreement
- Exhibit 4 – Notices to the Operator
- Exhibit 5 – Recorded Notice of Administrative Conditions and Restrictions
- Exhibit 6 – Campaign Contribution (Levine Act) Disclosures

**THE PEOPLES
REMEDY**
UP & DA
PLN2020-0036

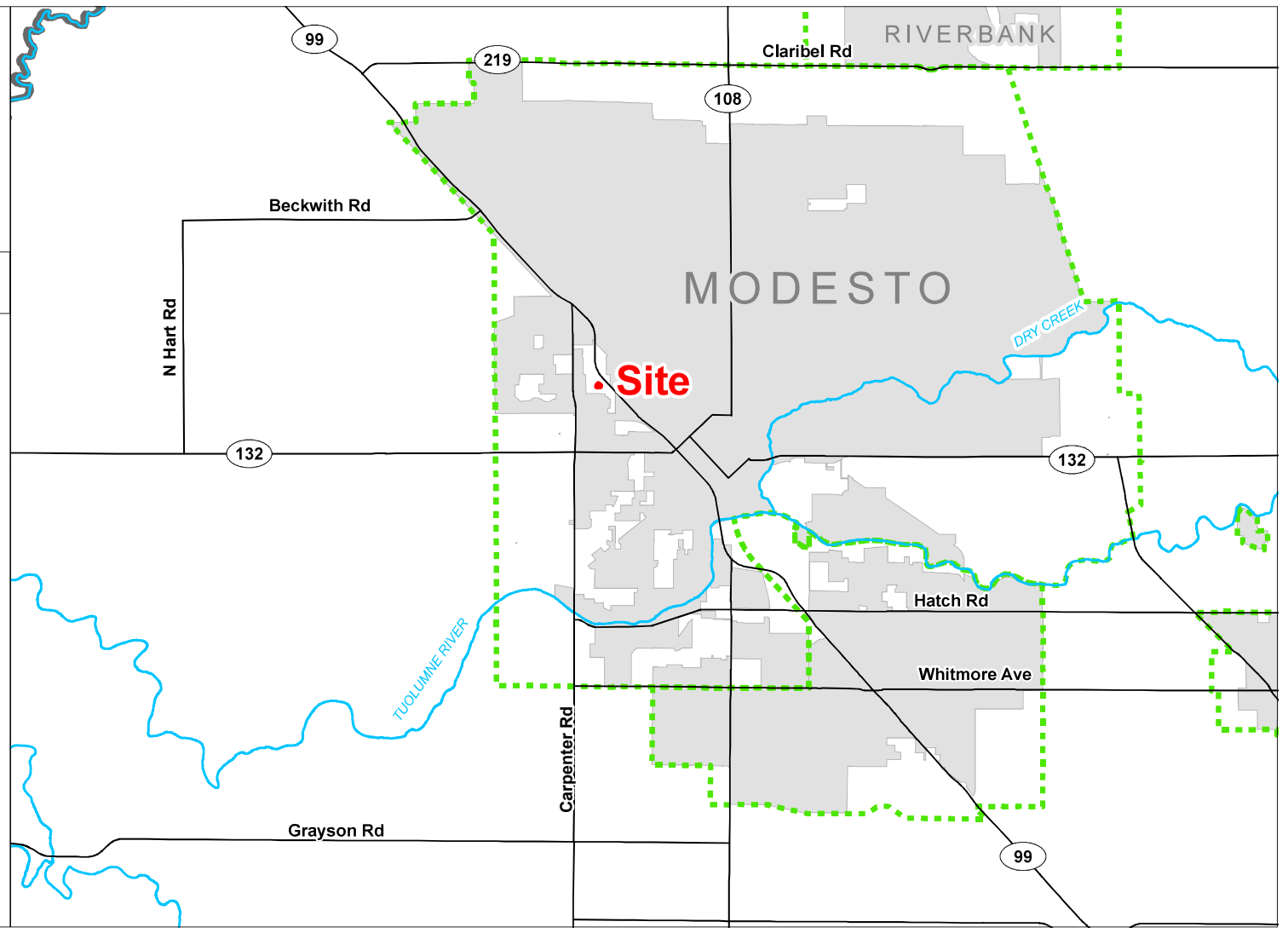
AREA MAP

LEGEND

-  Project Site
-  Sphere of Influence
-  City
-  Road
-  River



Source: Planning Department GIS Date: 4/10/2020





Stanislaus, County Recorder
Donna Linder Co Recorder Office
DOC- 2020-0074752-00

Acct 402-Counter Customers
Tuesday, SEP 29, 2020 14:19:30
Ttl Pd \$0.00 Rcpt # 0004486577
OJC/R2/1-99

RECORDING REQUESTED BY:

**COUNTY OF STANISLAUS
BOARD OF SUPERVISORS**

When Recorded Mail To:

County of Stanislaus
Department of Planning & Community Development
1010 10th Street, Suite 3400
Modesto, CA 95354

Fee Waived per GC 27383

Space above this line for Recorder's use

DEVELOPMENT AGREEMENT

BETWEEN THE

COUNTY OF STANISLAUS

AND

MDS BUSINESS SERVICES, LLC (dba The People's Remedy)
1119 LONE PALM AVE., MODESTO

99JC

THIS DEVELOPMENT AGREEMENT (this "Agreement" or this "Development Agreement") is made and entered in the County of Stanislaus on this 25th day of August, 2020, by and between Stanislaus County, a body corporate and a political subdivision of the State of California (hereafter "County") and MDS Business Services, LLC., a limited liability company (hereafter "Permittee") pursuant to the authority of §§ 65864 *et seq.*, of the California Government Code and Stanislaus County Code, Title 22. County and Permittee are, from time-to-time, individually referred to in this Agreement as a "Party," and are collectively referred to as "Parties."

List of Attachments:

Attachment A "Project Description"

Attachment B "Legal Description/Property Description"

Attachment C "Operating Conditions"

Attachment D "Community Benefits"

Attachment E "Lease Agreement"

RECITALS

A. The Legislature of the State of California adopted the Development Agreement Act, Government Code §§65864 *et seq.*, which authorizes the County to enter into a property development agreement with any person having legal or equitable interest in real property for development of such property.

B. Pursuant to the Development Agreement Act, the County adopted the Development Agreement Ordinance, Title 22 of the Stanislaus County Code (hereafter "Title 22"), establishing procedures and requirements under which the County may enter into a Development Agreement for the development of real property with any person having a legal or equitable interest in such property in order to establish certain development rights in such property.

C. Permittee retains a legal or equitable interest in certain real property located property located at 1119 Lone Palm Ave., in the Modesto area, California, also known as Stanislaus County Assessor Parcel Number 029-011-075 and that is more particularly described in Attachment B attached hereto and is incorporated herein by reference. ("the Property") Permittee has leased the Property for the purpose of carrying out the Project from the owner Duke Thomas Leffler Trust, ("Property Owner"). A copy of the lease is attached hereto as Attachment E.

D. Chapter 6.78 of the Stanislaus County Code (hereafter "Chapter 6.78") establishes a regulatory permit for Commercial Cannabis Activities ("Commercial Cannabis Activities Permit") and prohibits all Commercial Cannabis Activities in all zoning areas without first obtaining a permit.

E. Permittee proposes to develop the Property to be used for the commercial cannabis activity described in Attachment A ("the Project").

F. To ensure that the County remains responsive and accountable to its residents while pursuing the benefits of this development agreement, the County accepts the restraints on its police powers contained in this Agreement only to the extent and for the duration required to achieve the County's objectives and to offset such restraints, seeks public benefits from the Permittee that go beyond those obtained by traditional County controls and conditions imposed on development project applications.

G. The County Board of Supervisors has found that, among other things, this Development Agreement is consistent with its General Plan and has been reviewed and evaluated in accordance with the Development Agreement Statute and Title 22.

H. County and Permittee desire the timely, efficient, orderly and proper development of the Project.

I. County and Permittee have reached agreement and desire to express herein a Development Agreement that shall facilitate development of the Project in conformance with Title 22 and subject to conditions set forth herein.

J. In addition, the parties intend that this Agreement satisfy the requirements of Chapter 6.78, which requires those operating a commercial cannabis activity to enter into a "development agreement" setting forth "the terms and conditions under which the Commercial Cannabis Activity will operate that are in addition to the requirements of this chapter, including, but not limited to, public outreach and education, community service, payment of fees and other charges as mutually agreed, and such other terms and conditions that will protect and promote the public health, safety, and welfare."

K. On July 16, 2020, the Stanislaus County Planning Commission, serving as the planning agency for purposes of Government Code section 65867, held a duly noticed public hearing on this Agreement and Related Project Approvals. Following the public hearing, the Planning Commission, determined that the Project, the Initial Project Approvals, and the Agreement are, as a whole and taken in their entirety, consistent with the County's General Plan and the Zoning Code. The Planning Commission recommended approval of the Project, including this Agreement, to the Board of Supervisors.

L. On August 25, 2020, the County Board of Supervisors of the County of Stanislaus having receive the recommendations of the Planning commission, held a duly notice public hearing on this Agreement and the related initial Project Approvals.

Following the public hearing, the board adopted Ordinance No. C.S. 1281 (the "Enacting Ordinance"), approving this Agreement and authorizing the Chairman of the Board of Supervisors to execute this Agreement and found that the Agreement is consistent with the General Plan and Zoning Code in accordance with Government Code section 65867.5 and determined that the Project as defined herein required no further analysis under CEQA, pursuant to CEQA Guidelines Section 15183 (Consistency with a General Plan or Zoning for which an EIR was prepared).

M. Permittee will implement public benefits, above and beyond the necessary mitigation for the Project, including the creation of new jobs, funding for various community improvements, and payment of the benefit fees as set forth in this Agreement and these public benefits serve as the consideration upon which the County bases its decision to enter into this Agreement.

NOW, THEREFORE, with reference to the foregoing recitals and in consideration of the mutual promises, obligations and covenants herein contained, County and Permittee agree as follows:

AGREEMENT

1. Incorporation of Recitals. The Recitals and all defined terms set forth above are hereby incorporated into this Agreement as if set forth herein in full.
2. Definitions.
 - 2.1. "Agreement" means this Development Agreement and all amendments and modifications thereto.
 - 2.2. "Enacting Ordinance" means Ordinance No. C.S.1281 adopted by the Board of Supervisors on August 25, 2020, approving this Agreement and authorizing the Chairwoman of the Board of Supervisors to execute this Agreement.
 - 2.3. "Initial Project Approvals" means those land use approvals and entitlements relating to the Project that were approved by the Board of Supervisors concurrently with this Agreement, which include the Use Permit, and CEQA determination.
 - 2.4. "Regulatory Permit" means the permit required by Stanislaus County Code Chapter 6.78 to conduct Commercial Cannabis Activities.
 - 2.5. "Development Agreement Act" means Article 2.5 of Chapter 4 of Division 1 of Title 7 (section 65864 through 65869.5) of the California government Code.
 - 2.6. "Development Agreement Ordinance" means Title 22 of the Stanislaus County Code.

2.7. "Effective Date" is the date on which the Agreement shall be effective in accordance with section 7.1 hereof.

2.8. "Rules, Regulations and Official Policies" means the County rules, regulations, ordinances, laws, and officially adopted policies governing development, including, without limitation, density and intensity of use, permitted uses, the maximum height and size of proposed buildings, the provision for the reservation or dedication of land, if any, for public purposes, the construction, installation, and extension of public improvements, environmental review, and other criteria relating to development or use of real property and which are generally applicable to the Property.

2.9. "Uniform Codes" means those building, electrical, mechanical, plumbing, fire, and other similar regulations of a Countywide adopted scope that are based on recommendations of the California Building Standards Commission and that become applicable throughout the County, such as, but not limited to, the California Uniform Building Code, the California Uniform Electrical Code, the California Uniform Mechanical Code, California Uniform Plumbing Code, or the California Uniform Fire Code (including those amendments to the promulgated California Uniform codes that reflect local modification adopted pursuant to the applicable process provided in state law for a local jurisdiction to modify such uniform codes and that are applicable Countywide).

3. Description of the Project. The Project consist of the use of the Property for the Commercial Cannabis Activities set forth in Attachment A attached hereto and in the Initial Project Approvals.
4. Description of Property. The Property that is the subject of this Agreement is described in Attachment B attached hereto.
5. Interest of Permittee. The Permittee has a legal interest in the Property in that it is the Lessee of the property.
6. Relationship of County and Permittee. It is understood that this Agreement is a contract that has been negotiated and voluntarily entered into by the County and Permittee and that the Permittee is not an agent of the County. The County and Permittee hereby renounce the existence of any form of joint venture or partnership between them and agree that nothing contained herein or in any document executed in connection herewith shall be construed as making the County and Permittee joint venture's or partners.
7. Effective Date and Term.

7.1. Effective Date. The Effective Date of this Agreement shall be the date on which the Enacting Ordinance becomes effective. The Enacting Ordinance is effective 30 days after the date of approval (“the Effective Date”).

7.2. Term. The term of this Agreement shall commence on the Effective Date and extend five (5) years thereafter, unless said term is otherwise terminated or amended by circumstances set forth in this Agreement or Permittee no longer has a legal interest in the property or has ceased operations on the property for a period of 30 consecutive days.

8. Development of the Property.

8.1. Right to Develop. This Agreement is entered into by the Parties for the limited purpose of setting forth the terms concerning the development and use of the Property by Permittee for Commercial Cannabis Activities. Accordingly:

8.1.1. Vested Rights. Permittee waives any and all “vested rights” (as that term is used in California land use law) the Permittee may have or later acquire, in law or equity, concerning the Property or the Project except those specifically stated herein. Nothing contained in this Agreement, nor in any of the permits, approvals, plans, inspections, certificates, documents, licenses, or any other actions taken by the County regarding the Project shall be construed to grant Permittee any vesting of rights for future development or use of the Property or to conduct commercial cannabis activities except as specifically stated herein; and

8.1.2. Project Subject to Rules in Effect at Time of Development. Permittee agrees that any and all development and use of the Property shall be governed by the County’s fees, taxes, rules, regulations, ordinances, laws, and officially adopted policies governing the development and use of the Property, including, without limitation, impact fees, processing fees, regulatory fees and permits, density and intensity of use, permitted uses, the maximum height and size of proposed buildings, the provision for the reservation or dedication of land, if any, for public purposes, the construction, installation, and extension of public improvements, environmental review, and other criteria relating to development or use of real property and which are generally applicable to the Property in effect at the time of the development or use.

8.1.3. New Rules and Regulations. During the term of this Agreement, the County may apply new or modified ordinances, resolutions, rules, regulations and official policies of the County to the Property to ensure that the operation of the Commercial Cannabis Activity is consistent with the protection of the health, safety and welfare of the community and will not adversely affect the surrounding uses.

8.1.4. Future Approvals. Nothing in this Agreement shall prevent the County from denying or conditionally approving any subsequent land use permit or authorization for the Project on the basis of such new or modified ordinances, resolutions, rules, regulations and policies except that such subsequent actions shall be subject to any conditions, terms, restrictions, and requirements expressly set forth herein.

8.1.5. Application of State and Local Regulatory Laws Governing Commercial Cannabis Activities. The operation of Commercial Cannabis Activities is a highly regulated business activity, and it is subject to various state and local laws and regulations. This Agreement does not, and the County cannot and does not intend to, give Permittee the right to continue its operations without complying with applicable state and local laws governing its operations. Permittee shall be responsible for obtaining all applicable state permits, approvals and consents, even if the applicable state laws and regulations are altered following the Effective Date.

8.1.6. Uniform Codes Applicable. The Project shall be constructed in accordance with the provisions of the California Building, Mechanical, Plumbing, Electrical and Fire Codes and Title 24 of the California Code of Regulations, relating to Building Standards, in effect at the time of approval of the appropriate building, grading, or other construction permits for the Project.

8.1.7. Maintaining Regulatory Permit. Permittee shall continuously maintain its Regulatory Permit. Permittee agrees that it has an obligation to annually renew its Regulatory Permit pursuant to the terms of Stanislaus County Code Chapter 6.78. Nothing in this Agreement shall prevent the County from denying or conditionally approving the renewal of a Commercial Cannabis Business Regulatory Permit, revoking such permit, or amending Chapter 6.78 or its implementing regulations in a manner that would impose stricter requirements on existing or to-be-issued Regulatory Permits.

8.1.8. Timing of Development. Permittee shall complete Project improvements pursuant to the schedule set forth in Attachment G of this Agreement.

8.2. Permitted Uses. The permitted uses of the Property, the density and intensity of use, the maximum height, bulk and size of proposed buildings, provisions for reservation or dedication of land for public purposes and location and maintenance of on-site and off-site improvements, and other terms and conditions of development applicable to the Property, shall be those set forth in this Agreement, the Initial Project Approvals, any amendments to this Agreement, and any subsequent land use entitlements.

8.2.1. Although Chapter 6.78 - Commercial Cannabis Activities, of the Stanislaus County Code does not specifically identify Commercial Cannabis Activities as allowed uses in any specific zoning district, Stanislaus County Code Title 21 identifies zoning districts where commercial cannabis activities are permitted, when a Use Permit is obtained.

9. Public Benefits

9.1. Community Benefits. Permittee shall perform the Community Benefits identified in Attachment E to the Agreement.

10. Fees & Subsequently Enacted or Revised Fees, Assessments and Taxes.

10.1. Fees. Permittee agrees to pay all permit fees and charges required by Stanislaus County, including but not limited to permit application and permit issuance fees, annual operating fees, amended registration fees, and regulatory renewal fees. Permittee shall pay such fees in an amount determined by the County Board of Supervisors.

10.2. Amended Application Fees. Any existing application, processing, renewal and registration fees that are amended during the term of this Agreement shall apply to the Project.

10.3. New Taxes. Any subsequently enacted County taxes shall apply to the Project.

10.4. Assessments. Nothing herein shall be construed to relieve the Property from assessments levied against it by the County pursuant to any statutory procedure for the assessment of property to pay for infrastructure and/or services which benefit the Property.

10.5. Vote on Future Assessments and Fees. In the event that any assessment, fee or charge which is applicable to the Property is subject to Article XIID of the Constitution and Permittee does not return its ballot, Permittee agrees, on behalf of itself and its successors that the County may count Permittee's ballot as affirmatively voting in favor of such assessment, fee or charge.

11. Compliance with Chapter 6.78 of the Stanislaus County Code.

11.1. The parties intend this Agreement as the instrument to satisfy the requirements of Stanislaus County Code section 6.78.060 (A)(2), which provides as follows:

“Development Agreement. Prior to operating in the county and as a condition of issuance of the CCA permit, the permittee of each commercial cannabis activity shall enter into a development agreement, as specified in Title 22 of the Stanislaus County Code, with the county setting forth the terms and conditions under which the commercial cannabis activity will operate that are in addition to the requirements of this chapter, and such other terms and conditions that will protect and promote the public health, safety and welfare.”

12. Compliance with Conditions of Approval and Regulatory Permits.

12.1. Permittee agrees to operate the Commercial Cannabis Activity on the Property pursuant to the terms and conditions set forth in the Operating Conditions attached hereto as Attachment D and incorporated herein by reference. Failure to strictly comply with the terms and conditions of the Operating Conditions shall constitute a default under this Agreement, which shall be subject to termination pursuant to paragraph 15 below.

12.2. Permittee agrees that its failure to strictly comply with all the requirements set out in Attachment D shall be a material breach of this agreement and subject to default under paragraph 15 below.

12.3. The provisions of this Agreement require a close degree of cooperation between County and Permittee. It is anticipated during the term of this Agreement that refinements to the manner in which the Permittee operates may be appropriate with respect to the Project. To the extent allowable by law, the Parties shall retain a certain degree of flexibility as provided herein with respect to all matters, items and provisions covered in general under this Agreement. When and if the Parties find it necessary or appropriate to make changes, adjustments or clarifications, the Parties shall enter into memoranda (“Operating Memoranda”) approved by the Parties in writing, which reference this Section of the Agreement. Operating Memoranda are not intended to constitute an amendment to this Agreement but mere ministerial clarifications; therefore, public notices and hearings shall not be required. The Stanislaus County Chief Executive Officer shall be authorized upon consultation with the County Counsel, to determine whether a requested clarification may be effectuated pursuant to this Section or whether the requested clarification is of such character to constitute an amendment to the Agreement which requires compliance with the provision of this Agreement pertaining to amendments. The authority to enter into such Operating Memoranda is hereby delegated to the Chief Executive Officer, who is hereby authorized to execute any Operating Memoranda hereunder without further Board of Supervisor action.

13. Amendment or Cancellation.

13.1. Amendment Because of Conflict with State or Federal Laws. In the event that state or federal laws or regulations enacted after the Effective Date of this Agreement prevent or preclude compliance with one or more provisions of this Agreement or require changes in plans, maps or permits approved by the County, the parties shall meet and confer in good faith in a reasonable attempt to modify this Agreement to comply with such federal or state law or regulation. Any such amendment or suspension of the Agreement shall be subject to approval by the County Board of Supervisors in accordance with Stanislaus County Code, Title 22.

13.2. Amendment by Mutual Consent. This Agreement may be amended in writing from time to time by mutual consent of the parties hereto and in accordance with the procedures of State law and permitted uses.

13.3. Insubstantial Amendments. Notwithstanding the provisions of the preceding Section 13.2, any amendments to this Agreement which do not relate to (a) the term of the Agreement; (b) the permitted uses of the Property; (c) provisions for "significant" reservation or dedication of land; (d) conditions, terms, restrictions or requirements for subsequent discretionary actions; (e) the density or intensity of use of the Project; (f) the maximum height or size of proposed buildings; or (g) monetary contributions by Permittee as provided in this Agreement, shall not, except to the extent otherwise required by law, require notice or public hearing before either the Planning Commission or the County Board of Supervisors before the parties may execute an amendment hereto. The County Chief Executive Officer, or his/her designee, shall determine whether a reservation or dedication is "significant".

13.4. Amendment of Project Approvals. Any amendment of Project Approvals relating to: (a) the permitted use of the Property; (b) provision for reservation or dedication of land; (c) conditions, terms, restrictions or requirements for subsequent discretionary actions; (d) the density or intensity of use of the Project; (e) the maximum height or size of proposed buildings; (f) monetary contributions by the Permittee; or (g) public improvements to be constructed by Permittee shall require an amendment of this Agreement. Such amendment shall be limited to those provisions of this Agreement which are implicated by the amendment of the Project Approval. Any other amendment of the Project Approvals, or any of them, shall not require amendment of this Agreement unless the amendment of the Project Approval(s) relates specifically to some provision of this Agreement.

14. Annual Review.

14.1. Review Date. Annual review of the Property Owner's good faith compliance with the terms of this Agreement shall take place on an annual basis beginning 12 months after the Effective Date of this Agreement and continuing to occur annually

thereafter on the yearly anniversary of the Effective Date ("Annual Review") until termination of the Agreement.

14.2. Initiation of Review. The County Chief Executive Officer, or designee, shall initiate the annual review, as required under Chapter 22.07 of the Stanislaus County Code, by giving to Permittee thirty (30) days written notice that the County intends to undertake such review. Permittee shall provide evidence to the County Chief Executive Officer, or designee, prior to the hearing on the annual review, as and when reasonably determined necessary by the County Chief Executive Officer, or designee, to demonstrate good faith compliance with the provisions of the Agreement. The burden of proof by substantial evidence of compliance is upon the Permittee.

14.2.1. Appeal of the Chief Executive Officer's, or designee's, findings regarding compliance shall be made in accordance with Stanislaus County Chapter 22.07, except that the County Chief Executive Officer, or designee, shall replace all instances where the planning director is indicated.

14.3. Staff Reports. To the extent practical, the County shall deposit in the mail and fax to Permittee a copy of all staff reports, and related Attachments concerning contract performance at least ten (10) days prior to any annual review.

14.4. Costs. Costs reasonably incurred by the County in connection with the annual review shall be paid by Permittee in accordance with the County's schedule of fees in effect at the time of review.

15. Default.

15.1. Permittee's Default. The occurrence of any of the following shall constitute a default by Permittee under this Agreement.

15.1.1. Failure or unreasonable delay to perform any material provision of this Agreement.

15.1.2. Permittee's failure to pay when due any fee, tax, or payment required to be paid under this Agreement, County Ordinance or Resolution, or California State Law, if the failure to pay continues for three (3) days after written notice of the failure from County.

15.1.3. Permittee's abandonment of the Property, including Permittee's absence from the Property for thirty 30 consecutive days.

15.1.4. Permittee's failure to strictly comply with all the requirements set out in Attachment D.

15.1.5. Permittee's failure to make the contributions or community Benefit Rate Payments set out in Attachment E.

15.2. County's Default. Failure to perform any material provision of this agreement, or any intentional or unreasonable delay to perform or in performance of any material provision of this Agreement.

15.3. Other Remedies Available. Upon the occurrence of an event of default, the parties may pursue all other remedies at law or in equity which are not otherwise provided for in this Agreement or in the County's regulations governing development agreements, expressly including the remedy of specific performance of this Agreement.

15.4. Notice and Cure. Upon the occurrence of an event of default by either party, the non-defaulting party shall serve written notice of such default upon the defaulting party ("Notice of Default"). Failure to give notice shall not constitute a waiver of any default. Upon delivery of notice, the parties shall meet and confer in good faith to address the alleged default and attempt to cure such default within a reasonable time or modify the Agreement to remedy such default.

15.5. Cure Period. The defaulting Party shall respond within 5 business days of the date of the Notice of Default, and shall provide reasonable evidence that it was never, in fact, in default or shall state that it will immediately commence to cure the identified default and shall cure the identified default within 30 days of the Notice of Default, unless the Parties extend such time by mutual written consent. In the case of a dispute as to whether a default exist or whether the defaulting Party has cured the default, the Parties may submit the matter to dispute resolution pursuant to section 16 of this Agreement.

15.6. Remedies for Default.

15.6.1. Permittee Default; If the Permittee remains in default after the cure period, and the alleged default is not the subject of a dispute resolution pursuant to Section 16 of this Agreement, the County shall have all rights and remedies provided by this Agreement, including, without limitation, the right to terminate or modify this Agreement subject to the provisions set forth below. The County shall, in addition to any other remedy available at law or in equity, also have the right to compel specific performance of the obligations of Property Owner under this Agreement, including, without limitation, the right to compel specific performance of the Community Benefits set forth in Attachment E to this Agreement.

15.6.2. Termination or Modification. If the Director of Planning finds and determines that Permittee remains in default after the cure period, if the

alleged default is not the subject of dispute resolution pursuant to Section 16 of this Agreement, and if the County intends to terminate or modify this Agreement, the Director of Planning shall set the matter for a hearing by the Planning Commission in accordance with the provisions of the Development Agreement Ordinance (County Code Chapter 22.08). If after such public hearing, the Planning Commission finds that Property Owner is in violation of this Agreement, the Planning Commission shall notify the Board of Supervisors of its findings and recommend such action as it deems appropriate. If the Planning Commission reports a violation of the Development Agreement to the Board of Supervisors pursuant to this Section, the Board of Supervisors may take one of the following actions: (a) approve the recommendation of the Planning Commission instructing that action be taken as indicated therein in cases other than a recommendation to terminate or modify the Agreement; (b) refer the matter back to the Planning Commission for further proceedings with or without instructions; or (c) schedule the matter for hearing before the Board of Supervisors if termination or modification of the Agreement is recommended. There shall be no termination or modifications of this Agreement unless the Board of Supervisors acts pursuant to the provisions set forth in Government Code Sections 65865.1, et seq., and Stanislaus County Code chapter 22.08. Pursuant to Government Code §65865., if as a result of the Annual Review, the County determines, on the basis of substantial evidence, that Permittee has not complied in good faith with terms or conditions of this Agreement, the County may terminate or modify the Agreement; provided, however, that if Permittee does not agree to the modification the County's only remedy shall be to terminate the Agreement. Further, if the County seeks to terminate or modify the Agreement for any other reason, such action shall be subject to the requirements of Government Code § 65868, including the requirement for the mutual consent of the Parties.

15.6.3. County Default. If the County remains in default after the cure period and the alleged default is not the subject of dispute resolution pursuant to Section 16 of this Agreement, Permittee shall have all rights and remedies provided by this Agreement, including, without limitation, the right to compel specific performance of the County's obligations under this Agreement. Permittee also has the right to initiate amendment or cancellation of this Agreement subject to the provisions set forth in the Development Agreement Act and Development Agreement Ordinance, which include, but are not limited to, the requirement for mutual consent of the Parties to the amendment or cancellation.

15.6.4. No Monetary Damages Against County. Notwithstanding anything to the contrary contained herein, in no event shall monetary damages be awarded against the County upon an event of default or upon termination of this Agreement.

16. Dispute Resolution. In addition to, and not by way of limitation of, all other remedies available to the Parties under the terms of this Agreement, the Parties may choose to use the informal dispute resolution and/or arbitration processes in this Section.

16.1. Informal Dispute Resolution Process. The Parties may agree to informal dispute resolution proceedings to fairly and expeditiously resolve disputes related to the interpretation or enforcement of, or compliance with, the provision of this Agreement ("Disputes"). These dispute resolution proceedings may include: (a) procedures developed by the County for expeditious interpretation of questions arising under development agreements; or (b) any other manner of dispute resolution that is mutually agreed upon by the Parties.

16.2. Non-Binding Arbitration. The Parties may agree to use nonbinding arbitration to resolve any Dispute arising under this Agreement. The arbitration shall be conducted by an arbitrator who must be a former judge of the Stanislaus County Superior Court, Appellate Justice of the Fifth District Court of Appeals, or Justice of the California Supreme Court. This arbitrator shall be selected by mutual agreement of the Parties.

16.3. Non-Binding Arbitration Procedures. Upon appointment of the arbitrator, the Dispute shall be set for arbitration at a time not less than thirty (30) nor more than ninety (90) days from the effective date of the appointment of the arbitrator. The arbitration shall be conducted under procedures that are mutually agreed upon by the Parties in writing prior to the commencement of arbitration.

17. Termination or cancellation. In addition to the procedures set forth in Section 15.6, above, this Agreement is also subject to the following termination provisions:

17.1. Termination Upon Expiration of Term. This Agreement shall terminate upon expiration of the Term set forth in Section 7.2 unless otherwise extended or modified by mutual consent of the Parties. Upon termination of this Agreement, the County Registrar-Recorder/County Clerk may cause a notice of such termination in a form satisfactory to the County to be duly recorded in the official records of the County.

17.2. Cancellation by Mutual Consent. This Agreement may be cancelled by mutual consent of the Parties, subject to the procedures set forth in the Development Agreement Act and the Development Agreement Ordinance.

17.3. Enforced Delay; Extension of Time of Performance. In addition to specific provisions of this Agreement, performance by any Party hereunder shall not be deemed to be in default where a delay is enforced due to: war, insurrection, strikes, walkouts, riots, floods, earthquakes, fires, casualties, acts of God, third-party litigation, restrictions imposed or mandated by other governmental entities,

enactment of conflicting state or federal laws or regulations, judicial decisions, or similar basis for excused performance that is not within the reasonable control of the Party to be excused, and the cause of the enforced delay actually prevents or unreasonably interferes with such Party's ability to comply with this Agreement; provided, however, that the Parties agree that a delay that results solely from unforeseen economic circumstances shall not constitute an enforced delay for purposes of this Section. This Section shall not be applicable to any proceedings with respect to bankruptcy or receivership initiated by or on behalf of Permittee, or by any third parties against Permittee if such third-party proceedings are not dismissed within ninety (90) days. If written notice of an enforced delay is given to either Party within forty-five (45) days of the commencement of such enforced delay, an extension of time for such cause will be granted in writing for the period of the enforced delay, or longer as may be mutually agreed upon.

18. Estoppel Certificate.

18.1. Either party may, at any time, and from time to time, request written notice from the other party requesting such party to certify in writing that, (a) this Agreement is in full force and effect and a binding obligation of the parties, (b) this Agreement has not been amended or modified either orally or in writing, or if so amended, identifying the amendments, and (c) to the knowledge of the certifying party the requesting party is not in default in the performance of its obligations under this Agreement, or if in default, to describe therein the nature and amount of any such defaults. A party receiving a request hereunder shall execute and return such certificate within thirty (30) days following the receipt thereof, or such longer period as may reasonably be agreed to by the parties. Chief Executive Officer of the County shall be authorized to execute any certificate requested by Permittee. Should the party receiving the request not execute and return such certificate within the applicable period, this shall not be deemed to be a default, provided that such party shall be deemed to have certified that the statements in clauses (a) through (c) of this section are true, and any party may rely on such deemed certification.

19. Severability.

19.1. The unenforceability, invalidity or illegality of any provisions, covenant, condition or term of this Agreement shall not render the other provisions unenforceable, invalid or illegal.

20. Attorneys' Fees and Costs.

20.1. If the County or Permittee initiates any action at law or in equity to enforce or interpret the terms and conditions of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs in addition to any other relief to which it may otherwise be entitled. If any person or entity not a party to

this Agreement initiates an action at law or in equity to challenge the validity of any provision of this Agreement or the Project Approvals, the parties shall cooperate in defending such action. Permittee shall bear its own costs of defense as a real party in interest in any such action and shall reimburse the County for all reasonable court costs and attorneys' fees expended by the County in defense of any such action or other proceeding.

21. Transfers and Assignments.

21.1. The Permittee shall not transfer, delegate, or assign its interest, rights, duties, and obligations under this Agreement without the prior written consent of the County. Any assignment, delegation, or assignment without the prior written County consent of the other parties to this Agreement shall be null and void. Any transfer, delegation, or assignment by the Permittee as authorized herein shall be effective only if and upon the party to whom such transfer, delegation, or assignment is made is issued a Regulatory Permit as required under chapter 6.78 of the Stanislaus County Code.

21.2. No change in Permittee's ownership or in the composition of the Permittee's ownership shall be made, and no transfer or sub-lease of the lease Agreement shall be made, without providing the County with 30 days prior written notice. If the change, transfer or sub-lease changes Control over the use of the Property, the operations of Permittee, or the actions or activities of Permittee, then the prior written consent of the County must be obtained 30 days before the change, transfer or sub-lease.

21.3. Notwithstanding the above, the County Chief Executive Officer (CEO) shall evaluate in good faith any request for a transfer of rights to a third party under this Agreement, and shall not unreasonably withhold approval of such request. The CEO's evaluation may take into consideration the experience of and resources available to the prospective transferee relative to their ability to competently assume the commercial cannabis business operation, and applicable background information of the third party, including but not limited to a background check for criminal activity, a history of legal actions such as filing for bankruptcy, civil lawsuits involving claims of fraud or related actions. Additionally, the CEO may, at his or her discretion, deny a transfer request for any of the reasons contemplated in California Code of Regulations, tit. 16, sections 5017-5018.

21.3.1. Successor in Interest. Permittee shall have the right to name a successor in interest who may assume ownership of the Cannabis Business Project and permits thereunder in the event of the permittee or it's principal's death or incapacity, provided the CEO has conducted a background check of the named successor in interest, subject to the provisions for assignments to third parties set forth above, and there are no issues related to his or her background that would preclude eligibility to operate the

Cannabis Business Project. Permittee shall designate its successor in interest in writing and provide notice to the County as set forth below.

22. Bankruptcy.

The obligations of this Agreement shall not be dischargeable in bankruptcy.

23. Indemnification.

23.1. Permittee hereby agrees to and shall indemnify, save, hold harmless, and, if requested by the County, defend the County from any claim, action, or proceeding brought by a third party (i) to challenge, attack, set aside, void, or annul this Agreement or the Initial Project Approvals, or (ii) for claims, costs, and liability for any damages, personal injury, or death, which may arise in connection with The Project or this Agreement. Directly or indirectly from the negotiation, formation, execution, enforcement, or termination of this Agreement. Nothing in this Section shall be construed to mean that Permittee shall hold the County harmless and/or defend it from any claims arising from, or alleged to arise from, the negligent acts, negligent failure to act, or intentional acts on the part of the County. The County agrees that it shall reasonably cooperate with Permittee in the defense of any matter in which Permittee is defending, indemnifying, and/or holding the County harmless. The County may make all reasonable decisions with respect to its representation in any legal proceeding. In the event any claim, action, or proceeding as described above is filed by a third party against the County, Permittee shall, within 10 days of being notified of the filing, make an initial deposit with the County in the amount of \$5,000, from which actual costs and expenses shall be billed and deducted for purposes of defraying the costs and/or expenses involved in the County's cooperation in the defense, including, but not limited to, depositions, testimony, and other assistance provided to Permittee or Permittee's counsel. If during the litigation process actual costs or expenses incurred reach 80 percent of the amount on deposit, Permittee shall deposit additional funds to bring the balance up to the amount of \$5,000. There is no limit to the number of supplemental deposits that may be required during the course of litigation. At the sole discretion of Permittee, the amount of the initial or any supplemental deposit may exceed the minimum amounts specified herein. Additionally, the cost for collection and duplication of records, including the reasonable costs of staff time necessary to collect, review, and/or duplicate such records in connection with the preparation of any administrative record or otherwise in relation to litigation, shall be paid by Permittee. Upon Permittee's initial \$5,000.00 deposit to cover the County's costs and expenses pursuant to this section, Permittee shall have the right to a monthly, itemized accounting of such expenses, which County shall provide upon Permittee's request within 5 days of such request, but no sooner than 30 days after Permittee's initial deposit.

24. Insurance.

24.1. Public Liability and Property Damage Insurance. During the term of this Agreement, Permittee shall maintain in effect a policy of comprehensive general liability insurance with a per-occurrence combined single limit of not less than two million dollars (\$2,000,000.00) with a one hundred thousand dollar (\$100,000) self-insurance retention per claim. The policy so maintained by Permittee shall name the County as an additional insured and shall include either a severability of interest clause or cross-liability endorsement.

24.2. Workers Compensation Insurance. During the term of this Agreement Permittee shall maintain Worker's Compensation insurance for all persons employed by Permittee for work at the Project site. Permittee shall require each contractor and subcontractor similarly to provide Worker's Compensation insurance for its respective employees. Permittee agrees to indemnify the County for any damage resulting from Permittee's failure to maintain any such insurance.

24.3. Evidence of Insurance. Prior to the County Board of Supervisors approval of this Agreement, Permittee shall furnish the County satisfactory evidence of the insurance required in Sections 24.1 and 24.2 and evidence that the carrier is required to give the County at least fifteen days prior written notice of the cancellation or reduction in coverage of a policy. The insurance shall extend to the County, its elective and appointive boards, commissions, officers, agents, employees and representatives and to Permittee performing work on the Project.

25. Notices.

25.1. All notices required or provided for under this Agreement shall be in writing. Notices required to be given to the County shall be addressed as follows:

County Chief Executive Officer
County of Stanislaus
1010 10th Street, Suite 6800
Modesto, CA 95354

Notices required to be given to Permittee shall be addressed as follows:

MDS Business Services, LLC
1119 Lone Palm Ave.
Modesto, CA 95351
ATTN: Mak Ponticelli

A party may change address by giving notice in writing to the other party and thereafter all notices shall be addressed and transmitted to the new address. Notices shall be deemed given and received upon personal delivery, or if mailed, upon the

expiration of 48 hours after being deposited in the United States Mail. Notices may also be given by overnight courier which shall be deemed given the following day or by facsimile transmission which shall be deemed given upon verification of receipt.

26. Agreement is Entire Understanding.

This Agreement constitutes the entire understanding and agreement of the parties.

27. Attachments.

The following documents are referred to in this Agreement and are attached hereto and incorporated herein as though set forth in full:

Attachment A "Project Description"
Attachment B "Legal Description/Property Description"
Attachment C "Operating Conditions"
Attachment D "Community Benefits"
Attachment E "Lease Agreement"

28. Counterparts.

This Agreement is executed in three (3) duplicate originals, each of which is deemed to be an original.

29. Recordation.

The County shall record a copy of this Agreement within ten (10) days following execution by all parties.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date and year first above written.

COUNTY

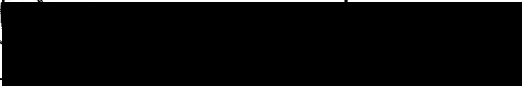
County of Stanislaus

By:


Kristin Olsen
Chairwoman of the Board of Supervisors

Attest:

Clerk of the Board of Supervisors


Deputy Clerk

Approved as to form:

Thomas E. Boze

County Counsel


Thomas E. Boze

PERMITTEE

MDS Business Services, LLC

By:


Mark Ponticelli, CEO

Dated:

8-11-20

By:


Marlowe Mercado, CFO

Dated:

8-11-20

(NOTARIZATION ATTACHED)

CALIFORNIA ALL- PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }

County of Stanislaus }

On August 11, 2020 before me, Karyn A. Watson, Notary Public,
(Here insert name and title of the officer)

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

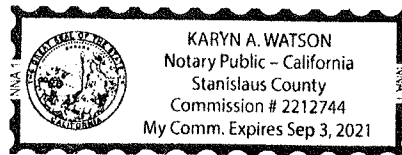
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Notary Public Signature

(Notary Public Seal)



ADDITIONAL OPTIONAL INFORMATION

DESCRIPTION OF THE ATTACHED DOCUMENT

Development Agreement
(Title or description of attached document)

MDS Business Services LLC
(Title or description of attached document continued)

Number of Pages 97 Document Date 7-16-2020

CAPACITY CLAIMED BY THE SIGNER

- Individual (s)
 Corporate Officer
CEO & CFO
(Title)
 Partner(s)
 Attorney-in-Fact
 Trustee(s)
 Other _____

INSTRUCTIONS FOR COMPLETING THIS FORM

This form complies with current California statutes regarding notary wording and, if needed, should be completed and attached to the document. Acknowledgments from other states may be completed for documents being sent to that state so long as the wording does not require the California notary to violate California notary law.

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. ~~he/she/they~~, is /are) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
 - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
 - ❖ Indicate title or type of attached document, number of pages and date.
 - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document with a staple.

CALIFORNIA ALL- PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }

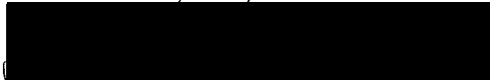
County of Stanislaus }

On September 29, 2020 before me, Karyn A. Watson, Notary Public,
(Here insert name and title of the officer)

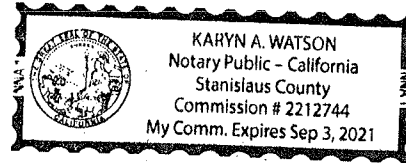
personally appeared Kristin Olson,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s)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

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

WITNESS my hand and official seal.



Notary Public Signature



(Notary Public Seal)

ADDITIONAL OPTIONAL INFORMATION

DESCRIPTION OF THE ATTACHED DOCUMENT
Development Agreement
(Title or description of attached document)
MDS Business Services - Peoples Remedy
(Title or description of attached document continued)
Number of Pages 1 Document Date 8-11-2020

CAPACITY CLAIMED BY THE SIGNER

- Individual (s)
 Corporate Officer

(Title)
 Partner(s)
 Attorney-in-Fact
 Trustee(s)
 Other Chairwoman of BOS

INSTRUCTIONS FOR COMPLETING THIS FORM

This form complies with current California statutes regarding notary wording and, if needed, should be completed and attached to the document. Acknowledgments from other states may be completed for documents being sent to that state so long as the wording does not require the California notary to violate California notary law.

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- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. ~~he/she/they~~, is /are) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
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- Signature of the notary public must match the signature on file with the office of the county clerk.
 - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
 - ❖ Indicate title or type of attached document, number of pages and date.
 - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document with a staple.

ATTACHMENT A

PROJECT DESCRIPTION

Project Description: TO ESTABLISH A COMMERCIAL CANNABIS RETAIL STOREFRONT BUSINESS INCLUDING DELIVERY SERVICES WITHIN A PORTION OF AN EXISTING 12,000 SQUARE-FOOT BUILDING IN THE M (INDUSTRIAL) ZONING DISTRICT.

UP DA PLN2020-0036
Development Agreement
July 16, 2020
Page 22

ATTACHMENT B

LEGAL DESCRIPTION

Real property in the County of Stanislaus, State of California, described as follows:

PARCEL 5 AS SHOWN ON PARCEL MAPS FILED FOR RECORD APRIL 13, 2014 IN BOOK 57 OF PARCEL MAPS, AT PAGE 13, STANISLAUS COUNTY RECORDS

ATTACHMENT C

OPERATING CONDITIONS

1. Compliance with Laws. Permittee shall operate in accordance with all applicable State and local laws, and any regulations promulgated thereunder.
2. Compliance with Conditions of Approval/Development Standards/Mitigation Measures. Permittee shall operate in compliance with all conditions of approval/development standards/mitigation measures associated with the Initial Project Approvals and any subsequent approvals issued by the County or any other regulatory agency.
3. Compliance with License Regulations. Permittee shall operate in strict compliance with the regulations contained in Chapter 6.78 of the Stanislaus County Code.
4. Hours of operation. A licensed Retailer shall only sell cannabis goods during the hours of 8:00 a.m. Pacific Time to 8:00 p.m. Pacific Time, and shall not otherwise be open to the public outside of those hours.
5. Exception to Stanislaus County Ordinance Chapter 6.78 Commercial Cannabis Activities, 6.78.120 General Operational Standards, Section A(7), which states "Commercial Cannabis Activities shall not be located within a 600-foot radius of any day care center, youth center (including parks), or school, as defined in this Chapter, existing at the time of initial permitting, and as required by State law.

ATTACHMENT D

COMMUNITY BENEFITS

Permittee agrees that its participation in commercial cannabis activities negatively impacts the residents of Stanislaus County and that by entering into this Development Agreement Permittee is agreeing to contribute greater public benefits than could otherwise be required and that Permittee does so freely and with full knowledge and consent.

Permittee agrees to provide the following public benefits and specifically consents to the payment or provision of these public benefits. Permittee agrees that these public benefits are not a tax and do not constitute a taking of Permittee's property for the public's benefit and Permittee waives any and all claims, actions, causes of action, liabilities, damages, demands, attorneys' fees, expenses and costs (including without limitation court costs) of any kind or nature whatsoever, whether known or unknown, suspected or unsuspected, which may arise by reason of payment or provision of the community benefits stated herein.

A. Community Benefit Contribution.

Permittee shall pay to the County a Community Benefit Contribution in the amount of \$61,200 in 2020, \$65,000 in 2021, \$68,150 in 2022, and \$71,800 in 2023 and 2024. Permittee shall deliver the Community Benefit Contribution in quarterly installments in the same manner as Benefit Rate Payments described in section B.

The Community Benefit Contribution may be used for the general governmental purposes of the County and not for the purposes of regulation or of raising revenues for regulatory purposes. All of the Community Benefit Contribution proceeds received from Permittee shall be placed in the County's general fund and used for the usual current expenses of the County and is a separate and distinct payment from the Community Benefit Rate Payment below. The County intends, but is not obligated, to distribute these funds to local community charities for their use and for public improvement projects.

B. Community Benefit Rate Payments:

1. Permittee shall provide funding as described below for the general governmental purposes of the County, including the enforcement of illegal commercial cannabis activities, and not for the purposes of regulation or of

raising revenues for regulatory purposes. All of the proceeds received from Permittee shall be placed in the County's general fund and used for the usual current expenses of the County.

2. Definitions.

2.1. "Canopy" means all of the following:

2.1.1. The designated area(s) at a licensed premises that will contain cannabis plants at any point in time;

2.1.2. Canopy shall be calculated in square feet and measured using clearly identifiable boundaries of all area(s) that will contain cannabis plants at any point in time, including all of the space(s) within the boundaries;

2.1.3. Canopy may be noncontiguous but each unique area included in the total canopy calculation shall be separated by an identifiable boundary such as an interior wall or by at least ten feet of open space; and

2.1.4. If cannabis plants are being cultivated using a shelving system, the surface area of each level shall be included in the total canopy calculation.

2.2. "Designated area(s)" means the entirety of the enclosed area measured in square feet without regard to any portion of the enclosed area that does not or will not contain cannabis plants.

2.3. "Gross Receipts," except as otherwise specifically provided, means the total amount actually received or receivable from all sales or transfers; the total amount or compensation actually received or receivable for the performance of any act or service, of whatever nature it may be, for which a charge is made or credit allowed, whether or not such act or service is done as a part of or in connection with the sale of materials, goods, wares or merchandise; discounts, rents, royalties, fees, commissions, dividends, and gains realized from trading in stocks or bonds, however designated. Included in "gross receipts" shall be all receipts, cash, credits and property of any kind or nature, without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service costs, interest paid or payable, or losses or other expenses whatsoever, except that the following shall be excluded therefrom:

2.3.1. Cash discounts allowed and taken on sales;

2.3.2. Credit allowed on property accepted as part of the purchase price and which property may later be sold, at which time the sales price shall be included as gross receipts;

2.3.3. Any tax required by law to be included in or added to the purchase price and collected from the consumer or purchaser;

2.3.4. Such part of the sale price of any property returned by purchasers to the seller as refunded by the seller by way of cash or credit allowances or return of refundable deposits previously included in gross receipts;

2.3.5. Receipts from investments where the holder of the investment receives only interest and/or dividends, royalties, annuities and gains from the sale or exchange of stock or securities solely for a person's own account, not derived in the ordinary course of a business;

2.3.6. Receipts derived from the occasional sale of used, obsolete or surplus trade fixtures, machinery or other equipment used by the Permittee in the regular course of the Permittee's business;

2.3.7. Cash value of sales, trades or transactions between departments or units of the same business;

2.3.8. Whenever there are included within the gross receipts amounts which reflect sales for which credit is extended and such amount proved uncollectible in a subsequent year, those amounts may be excluded from the gross receipts in the year they prove to be uncollectible; provided, however, if the whole or portion of such amounts excluded as uncollectible are subsequently collected, they shall be included in the amount of gross receipts for the period when they are recovered;

2.3.9. Transactions between a partnership and its partners;

2.3.10. Receipts from services or sales in transactions between affiliated corporations. An affiliated corporation is a corporation:

A. The voting and nonvoting stock of which is owned at least 80 percent by such other corporation with which such transaction is had; or

B. Which owns at least 80 percent of the voting and nonvoting stock of such other corporation; or

C. At least 80 percent of the voting and nonvoting stock of which is owned by a common parent corporation which also has such ownership of the corporation with which such transaction is had.

2.3.11. Transactions between a limited liability company and its member(s), provided the limited liability company has elected to file as a Subchapter K entity under the Internal Revenue Code and that such transaction(s) shall be treated the same as between a partnership and its partner(s) as specified in subsection (E)(9) of this section;

2.3.12. Receipts of refundable deposits, except that such deposits when forfeited and taken into income of the business shall not be excluded when in excess of \$1.00;

2.3.13. Amounts collected for others where the business is acting as an agent or trustee and to the extent that such amounts are paid to those for whom collected. These agents or trustees must provide the names and the addresses of the others and the amounts paid to them. This exclusion shall not apply to any fees, percentages, or other payments retained by the agent or trustees.

2.4. "Sell," "sale," and "to sell" include any transaction whereby, for any consideration, title to cannabis is transferred from one person to another, and includes the delivery of cannabis or cannabis products pursuant to an order placed for the purchase of the same and soliciting or receiving an order for the same, but does not include the return of cannabis or cannabis products by a licensee to the licensee from whom such cannabis or cannabis product was purchased.

3. Amount of Community Benefit Rate Payment.

3.1. Retail. Permittee shall pay the County:

3.1.1. In Year 2020, the greater of \$600,000 or 8% of Gross Receipts, to be paid in quarterly installments on April 30, July 30, October 30, and January 30.

3.1.2. Subsequent years to be paid in quarterly installments on April 30, July 30, October 30, and January 30, as follows:

A. In Year 2021 the greater of \$635,000 or 8% of Gross Receipts;

B. In Year 2022, the greater of \$665,000 or 8% of Gross Receipts;

C. In Years 2023 and 2024, the greater of \$700,000 or 8% of Gross Receipts.

4. Payment Location. Permittee shall make the Community Benefit Rate Payment at the Offices of the County Treasurer-Tax Collector. The Community Benefit Rate Payment may be paid in legal tender or in money receivable in payment of taxes by the United States. The County Treasurer-Tax Collector shall have the right to refuse the payment in coins. The County Treasurer-Tax Collector may, in his or her discretion, accept electronic funds transfers in payment of the Community Benefit Rate Payment in the same way it would accept the payment of taxes in accordance with section 2503.2 of the Revenue and Taxation Code.

5. Payment Due.

5.1. The Community Benefit Rate Payment shall be due and payable as follows:

5.1.1. Permittee shall on or before the last day of the period designated by and at the discretion of the County Treasurer-Tax Collector, prepare and deliver a Community Benefit Rate Payment statement to the County Treasurer-Tax Collector of the total gross receipts and the amount of Community Benefit Rate Payment owed for the preceding designated period. At the time the Community Benefit Rate Payment statement is filed, the full amount of the Community Benefit Rate Payment owed for the preceding designated period shall be remitted to the County Treasurer-Tax Collector.

5.1.2. All Community Benefit Rate Payment statements shall be completed on forms provided by the County Treasurer-Tax Collector.

5.1.3. Community Benefit Rate Payment statements and payments for all outstanding Community Benefit Rate Payment owed the County are immediately due to the County Treasurer-Tax Collector upon cessation of business for any reason.

6. Payments and Communications Made by Mail—Proof of Timely Submittal. Community Benefit Rate Payments made shall be deemed timely if submitted in accordance with Revenue and Taxation Code sections 2512 and 2513.

7. Payment—When Deemed Late.

7.1. The Community Benefit Rate Payments required to be paid pursuant to this Agreement shall be deemed late if not paid on or before the due date specified in this Attachment E.

7.2. The County is not required to send a late or other notice or bill to the Permittee.

8. Payment—Returned Checks. Whenever a check is submitted in payment of and the check is subsequently returned unpaid by the bank upon which the check is drawn, and the check is not redeemed prior to the due date, the Permittee, in addition to the amount due, pay a return check fee as established by the Board of Supervisors.

9. Payment —Interest on Late Payments. If Permittee fails to remit the Community Benefit Rate Payment at the time due shall pay interest at the rate of one-half of one percent per month or fraction thereof on the amount of the Community Benefit Rate Payment, from the date on which the remittance first became delinquent until paid. All such interest as accrues shall become a part of the Community Benefit Rate Payment required to be paid. Only payments for the full amount due shall be accepted. Partial payments shall not be accepted.

10. Refunds.

10.1. Whenever the amount of Community Benefit Rate Payment or interest has been overpaid, paid more than once, or has been erroneously

collected or received by the County under this Agreement, it may be refunded to the Permittee; provided, that a written claim for refund is filed with the County Treasurer-Tax Collector within three years of the date the Community Benefit Rate Payment was originally due and payable.

10.2. The County Treasurer-Tax Collector or the County Treasurer-Tax Collector's authorized agent shall have the right to examine and audit all the books and business records of the Permittee in order to determine the eligibility of the Permittee to the claimed refund. No claim for refund shall be allowed if the Permittee refuses to allow such examination of Permittee's books and business records after request by the County Treasurer-Tax Collector to do so.

10.3. In the event that the Community Benefit Rate Payment was erroneously paid and the error is attributable to the County, the entire amount of the Community Benefit Rate Payment erroneously paid shall be refunded to the claimant. If the error is attributable to the Permittee, the County shall retain the amount set forth in the schedule of fees and charges established by resolution of the Board of Supervisors from the amount to be refunded to cover expenses.

11. Audit and Examination of Records and Equipment.

11.1. The County Treasurer-Tax Collector shall have the power to audit and examine all books and records of the Permittee, including both State and Federal income tax returns, California sales tax returns, or other evidence documenting the gross receipts of the Permittee, and, where necessary, all equipment of Permittee, for the purpose of ascertaining the gross receipts to determine the amount of Community Benefit Rate Payment, if any, required to be paid by this Agreement, and for the purpose of verifying any statements or any item thereof when filed by the Permittee. If such person, after written demand by the County Treasurer-Tax Collector, refuses to make available for audit, examination or verification such books, records or equipment as the County Treasurer-Tax Collector requests, the County Treasurer-Tax Collector may, after full consideration of all information within his or her knowledge concerning the cannabis business and activities of the person so refusing, make an assessment in the manner provided in this Chapter of any Benefit Rate Payment estimated to be due.

11.2. Permittee shall keep and preserve, for a period of at least three years, all records as may be necessary to determine the amount of the

Community Benefit Rate Payment, which records the County Treasurer-Tax Collector shall have the right to inspect at all reasonable times.

12. Deficiency Determination. If the County Treasurer-Tax Collector is not satisfied that any statement filed as required under the provisions of this Agreement is correct, or that the amount of Community Benefit Rate Payment is correctly computed, the Treasurer-Tax Collector may compute and determine the amount to be paid and make a deficiency determination upon the basis of the facts contained in the statement or upon the basis of any information in their possession or that may come into their possession within three years of the date the Community Benefit Rate Payment was originally due and payable. One or more deficiency determinations of the amount of Community Benefit Rate Payment due for a period or periods may be made. If Permittee discontinues the permitted commercial cannabis activity, a deficiency determination may be made at any time within three years thereafter as to any liability arising from engaging in such business whether or not a deficiency determination is issued prior to the date the Community Benefit Rate Payment would otherwise be due. Whenever a deficiency determination is made, a notice shall be given to the Permittee concerned in the same manner as notices under this Agreement.
13. Subsequently Enacted Tax. In the event Stanislaus County enacts a tax applicable to the Project following the execution of this agreement, Permittee's obligation to pay Community Benefit Rates under this Section shall be reduced by the amount to which Permittee would be obligated to pay under the subsequently enacted tax.

[End of Attachment D.]

ATTACHMENT E
LEASE

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STANDARD INDUSTRIAL/COMMERCIAL SINGLE-TENANT LEASE - NET
(DO NOT USE THIS FORM FOR MULTI-TENANT BUILDINGS)

1. Basic Provisions ("Basic Provisions").

1.1 Parties: This Lease ("Lease"), dated for reference purposes only April 15, 2020, is made by and between DUKE THOMAS LEFFLER, TRUSTEE, PAULA ZAGARIS LEFFLER, TRUSTEES OF THEIR RESPECTIVE TRUSTS. SEE PARA. 51A. ("Lessor") and MDS BUSINESS SERVICES LLC. ("Lessee"), MARK PONTICELLI AND MARLOWE MERCADO (collectively the "Parties," or individually a "Party").

1.2 Premises: That certain real property, including all improvements therein or to be provided by Lessor under the terms of this Lease, commonly known as (street address, city, state, zip): 1119 LONE PALM AVE. MODESTO CA 95351

("Premises"). The Premises are located in the County of STANISLAUS, and are generally described as (describe briefly the nature of the property and, if applicable, the "Project", if the property is located within a Project): APPROX. 12,000 SQUARE FOOT COMMERCIAL/INDUSTRIAL BUILDING SITUATED ON AN APPROX. 29,620 SQUARE FOOT PARCEL.

1.3 Term: 10 years and 0 months ("Original Term") commencing SEE PARA. 51D ("Commencement Date") and ending SEE PARA. 51D ("Expiration Date"). (See also Paragraph 2)

1.4 Early Possession: If the Premises are available Lessee may have non-exclusive possession of the Premises commencing UPON CURRENT TENANT VACATING THE PREMISES ("Early Possession Date"). (See also Paragraphs 3.2 and 3.3)

1.5 Base Rent: \$ 12,000.00 per month ("Base Rent"), payable on the 7TH day of each month commencing SEE PARA. 51D. (See also Paragraph 4)

If this box is checked, there are provisions in this Lease for the Base Rent to be adjusted. See Paragraph 52

1.6 Base Rent and Other Monies Paid Upon Execution:

(a) Base Rent: \$ 12,000.00 for the period FIRST MONTH'S RENT.

(b) Security Deposit: \$ 14,986.36 ("Security Deposit"). (See also Paragraph 5)

(c) Association Fees: \$ 380.00 for the period FIRST MONTH

(d) Other: \$ 14,986.36 for FINAL MONTH'S RENT

(e) Total Due Upon Execution of this Lease: \$ 42,352.72

1.7 Agreed Use: AS APPROVED BY STANISLAUS COUNTY AND THE STATE OF CALIFORNIA. (See also Paragraph 6)

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

1.9 Real Estate Brokers: (See also Paragraph 16 and 25)

(e) Representation: Each Party acknowledges receiving a Disclosure Regarding Real Estate Agency Relationship, confirms and consents to the following agency relationships in this Lease with the following real estate brokers ("Broker(s)") and/or their agents ("Agent(s)"): Lessor's Brokerage Firm NONE

License No. _____ is the broker of (check one): the Lessor, or both the Lessee and Lessor (dual agent).

License No. _____ is the Lessor's Agent

License No. _____ is (check one): the Lessor's Agent (self person or broker associate); or both the Lessee's Agent and the Lessor's Agent (dual agent).

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PMZ Commercial, 1120 Scenic Dr. Modesto CA 95350
Phone: 209.491.3414 Fax: 209.527.4820

Duke Leffler

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STN-27.20, Revised 01-01-2019

1119LonePalmAve.

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Lessee's Brokerage Firm NONE
License No. _____ to the broker of (check one): the Lessee; or both the Lessee and Lessor (dual agent).
Lessee's Agent _____
License No. _____ to (check one): the Lessee's Agent (each person or broker associate); or both the Lessee's Agent and the Lessor's Agent (dual agent).

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

1.10 Guarantor. The obligations of the Lessee under this Lease are to be guaranteed by MARK PONTICELLI AND MARLOWE MERCADO, JOINTLY AND SEVERALLY ("Guarantor"). (See also Paragraph 37)

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

- an Addendum consisting of Paragraphs 51 through 54;
- a plot plan depicting the Premises;
- a current set of the Rules and Regulations;
- a Work Letter;
- other (specify): OPTION TO EXTEND, FLOOR PLAN, PARKING DIAGRAM & CC&RS. LESSEE MUST ADHERE TO THE RULES FOR THE "INDUSTRIAL BUSINESS PARK" AS DELINEATED IN THE CC&RS.

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 broom clean and free of debris on the Commencement Date or the Early Possession Date, whichever first occurs ("Start Date"), and, so long as the required service contracts described in Paragraph 7.1(b) below are obtained by Lessee and in effect within thirty days following the Start Date, warrants that the existing electrical, plumbing, fire sprinkler, lighting, heating, ventilating and air conditioning systems ("HVAC"), loading doors, sump pumps, if any, and all other such elements in the Premises, other than those constructed by Lessee, shall be in good operating condition on said date, that the structural elements of the roof, bearing walls and foundation of any buildings on the Premises (the "Building") shall be free of material defects, and that the Premises do not contain hazardous levels of any mold or fungi defined as toxic under applicable state or federal law. If a non-compliance with said warranty exists as of the Start Date, or if one of such systems or elements should malfunction or fail within the appropriate warranty period, Lessor shall, as Lessor's sole obligation with respect to such matter, except as otherwise provided in this Lease, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, malfunction or failure, rectify same at Lessor's expense. The warranty periods shall be as follows: (i) 6 months as to the HVAC systems, and (ii) 30 days as to the remaining systems and other elements of the Building. If Lessee does not give Lessor the required notice within the appropriate warranty period, correction of any such non-compliance, malfunction or failure shall be the obligation of Lessee at Lessee's sole cost and expense. Lessor also warrants, that unless otherwise specified in writing, Lessor is unaware of (i) any recorded Notices of Default affecting the Premise; (ii) any delinquent amounts due under any loan secured by the Premises; and (iii) any bankruptcy proceeding affecting the Premises.

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

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

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

2.4 Acknowledgements. Lessee acknowledges that: (a) it has been given an opportunity to inspect and measure the Premises, (b) it 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 the Americans with Disabilities Act), 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.

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 Real Property Taxes and insurance premiums and to maintain the Premises) shall be in effect during such period. Any such Early Possession shall not affect the Expiration Date.

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

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

4. Rent.

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

4.2 Payment. Lessee shall cause payment of Rent to be received by Lessor in lawful money of the United States, without offset or deduction (except as specifically permitted in this Lease), on or before the day on which it is due. 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

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to Lessor the sum of \$25 in addition to any Late Charge and Lessor, at its option, may require all future Rent be paid by cashier's check. Payments will be applied first to accrued late charges and attorney's fees, second to accrued interest, then to Base Rent, Insurance and Real Property Taxes, and any remaining amount to any other outstanding charges or costs.

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

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

6. **Use.**

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

6.2 **Hazardous Substances.**

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

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(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' fees arising out of or involving any Hazardous Substance brought onto the Premises by or for Lessee, or any third party (provided, however, that Lessee shall have no liability under this Lease with respect to underground migration of any Hazardous Substance under the Premises from adjacent properties not caused or contributed to by Lessee). Lessee's obligations shall include, but not be limited to, the effects of any contamination or injury to person, property or the environment created or suffered by Lessee, and the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease. No termination, cancellation or release agreement entered into by Lessor and Lessee shall release Lessee from its obligations under this Lease with respect to Hazardous Substances, unless specifically so agreed by Lessor in writing at the time of such agreement.

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

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

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

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

6.4 **Inspection; Compliance.** Lessor and Lessor's "Lender" (as defined in Paragraph 30) and consultants authorized by Lessor shall have the right to enter into Premises at any time, in the case of an emergency, and otherwise at reasonable times after reasonable notice, for the purpose of inspecting and/or testing the condition of the Premises and/or for verifying compliance by Lessee with this Lease. The cost of any such inspections shall be paid by Lessor, unless a violation of Applicable Requirements, or a Hazardous Substance Condition (see paragraph 9.1) is found to exist or be imminent, or the inspection is requested or ordered by a governmental authority. In such case, Lessee shall upon request reimburse Lessor for the cost of such inspection, so long as such inspection is reasonably related to the violation or contamination. In addition, Lessee shall provide copies of all relevant material safety data sheets (MSDS) to Lessor within 10 days of the receipt of a written request therefor. Lessee acknowledges that any failure on its part to allow such inspections or testing will expose Lessor to risks and potentially cause Lessor to incur costs not contemplated by this Lease, the extent of which will be extremely difficult to ascertain. Accordingly, should the Lessee fail to allow such inspections and/or testing in a timely fashion the Base Rent shall be automatically increased, without any requirement for notice to Lessee, by an amount equal to 10% of the then existing Base Rent or \$100, whichever is greater for the remainder 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 allow such inspection and/or testing. Such increase in Base Rent shall in no event constitute a waiver of Lessee's Default or Breach with respect to such failure nor prevent the exercise of any of the other rights and remedies granted hereunder.

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

7.1 Lessee's Obligations.

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

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

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

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

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

7.3 Utility Installations; Trade Fixtures; Alterations.

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

(b) **Consent.** Lessee shall not make any Alterations or Utility Installations to the Premises without Lessor's prior written consent. Lessee may, however, make non-structural 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 or any existing walls, will not affect the electrical, plumbing, HVAC, and/or life safety systems, do not trigger the requirement for additional modifications and/or Improvements to the Premises resulting from Applicable Requirements, such as compliance with Title 24, and the cumulative cost thereof during this Lease as extended does not exceed a sum equal to 3 month's Base Rent in the aggregate or a sum equal to one month's Base Rent in any one year. Notwithstanding the foregoing, Lessee shall not make or permit any roof penetrations and/or install anything on the roof without the prior written approval of Lessor. Lessor may, as a precondition to granting such approval, require Lessee to utilize a contractor chosen and/or approved by Lessor. Any Alterations or Utility Installations that Lessee shall desire to make and which require the consent of the Lessor shall be presented to Lessor in written form with detailed plans. Consent shall be deemed conditioned upon Lessee's: (i) acquiring all applicable governmental permits, (ii) furnishing Lessor with copies of both the permits and the plans and specifications prior to commencement of the work, and (iii) compliance with all conditions of said permits and other Applicable Requirements in a prompt and expeditious manner. Any Alterations or Utility Installations shall be performed in a workmanlike manner with good and sufficient materials. Lessee shall promptly upon completion furnish Lessor with as-built plans and specifications. For work which costs an amount in excess of one month's Base Rent, Lessor may condition its consent upon Lessee providing a lien and completion bond in an amount equal to 150% of the estimated cost of such Alteration or Utility Installation and/or upon Lessee's posting an additional Security Deposit with Lessor.

(c) **Lien; Bonds.** Lessee shall pay, when due, all claims for labor or materials furnished or alleged to have been furnished to or

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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 broom clean and free of debris, and in good operating order, condition and state of repair, ordinary wear and tear excepted. "Ordinary wear and tear" shall not include any damage or deterioration that would have been prevented by good maintenance practice. Notwithstanding the foregoing and the provisions of Paragraph 7.1(a), if the Lessee occupies the Premises for 12 months or less, then Lessee shall surrender the Premises in the same condition as delivered to Lessee on the Start Date with NO allowance for ordinary wear and tear. Lessee shall repair any damage occasioned by the installation, maintenance or removal of Trade Fixtures, Lessee owned Alterations and/or Utility Installations, furnishings, and equipment as well as the removal of any storage tank installed by or for Lessee. Lessee shall remove from the Premises any and all Hazardous Substances brought onto the Premises by or for Lessee, or any third party (except Hazardous Substances which were deposited via underground migration from areas outside of the Premises) to the level specified in Applicable Requirements. Trade Fixtures shall remain the property of Lessee and shall be removed by Lessee. Any personal property of Lessee not removed on or before the Expiration Date or any earlier termination date shall be deemed to have been abandoned by Lessee and may be disposed of or retained by Lessor as Lessor may desire. The failure by Lessee to timely vacate the Premises pursuant to this Paragraph 7.4(c) without the express written consent of Lessor shall constitute a holdover under the provisions of Paragraph 26 below.

8. Insurance; Indemnity.

8.1 **Payment For Insurance.** Lessee shall pay for all insurance required under Paragraph 8 except to the extent of the cost attributable to liability insurance carried by Lessor under Paragraph 8.2(b) in excess of \$2,000,000 per occurrence. Premiums for policy periods commencing prior to or extending beyond the Lease term shall be prorated to correspond to the Lease term. Payment shall be made by Lessee to Lessor within 10 days following receipt of an invoice.

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. 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.** The Insuring Party shall obtain and keep in force a policy or policies in the name of Lessor, with loss payable to Lessor, any ground-lessor, and to any Lender insuring loss or damage to the Premises. The amount of such insurance shall be equal to the full insurable replacement cost of the Premises, as the same shall exist from time to time, or the amount required by any Lender, but in no event more than the commercially reasonable and available insurable value thereof. 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, and Lessee shall be liable for such deductible amount in the event of an Insured Loss.

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(b) **Rental Value.** The Insuring Party shall 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. Lessee shall be liable for any deductible amount in the event of such loss.

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

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

(c) **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.

(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 30 days prior written notice to Lessor. Lessee shall, at least 10 days prior to the expiration of such policies, furnish Lessor with evidence of renewals or "insurance binders" evidencing renewal thereof, or Lessor may increase his liability insurance coverage and charge the cost thereof to Lessee, which amount shall be payable by Lessee to Lessor upon demand. Such policies shall be for a term of at least one year, or the length of the remaining term of this Lease, whichever is less. If either Party shall fail to procure and maintain the insurance required to be carried by it, the other Party may, but shall not be required to, procure and maintain the same.

8.6 Waiver of Subrogation. Without affecting any other rights or remedies, Lessee and Lessor each hereby release and relieve the other, and waive their entire right to recover damages against the other, for loss of or damage to its property arising out of or incident to the perils 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 of which the Premises are a part, 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.

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9. Damage or Destruction.

9.1 Definitions.

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

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

(c) "Insured Loss" shall mean damage or destruction to improvements on the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which was caused by an event required to be covered by the insurance described in Paragraph 8.3(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 remediation.

9.2 Partial Damage - Insured Loss. If a Premises Partial Damage that is an Insured Loss occurs, then Lessor shall, at Lessor's expense, repair such damage (but not Lessee's Trade Fixtures or Lessee Owned Alterations and Utility Installations) as soon as reasonably possible and this Lease shall continue in full force and effect; provided, however, that Lessee shall, at Lessor's election, make the repair of any damage or destruction the total cost to repair of which is \$10,000 or less, and, in such event, Lessor shall make any applicable insurance proceeds available to Lessee on a reasonable basis for that purpose. Notwithstanding the foregoing, if the required insurance was not in force or the insurance proceeds are not sufficient to effect such repair, the Insuring Party shall promptly contribute the shortage in proceeds (except as to the deductible which is Lessee's responsibility) as and when required to complete said repairs. In the event, however, such shortage was due to the fact that, by reason of the unique nature of the improvements, full replacement cost insurance coverage was not commercially reasonable and available, Lessor shall have no obligation to pay for the shortage in insurance proceeds or to fully restore the unique aspects of the Premises unless Lessee provides Lessor with the funds to cover same, or adequate assurance thereof, within 10 days following receipt of written notice of such shortage and request 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 8.6.

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

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

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

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

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

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

Within fifteen days of Lessor's written request, Lessee agrees to deliver to Lessor such information, documents and/or authorization as Lessor needs in order for Lessor to comply with new or existing Applicable Requirements relating to commercial building energy usage, ratings, and/or the reporting thereof.

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

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

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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 therefor 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 atton to Lessor, in which event Lessor shall undertake the obligations of the sublessor under such sublease from the time of the exercise of said option to the expiration of such sublease; provided, however, Lessor shall not be liable for any prepaid rents or security deposit paid by such sublessee to such sublessor or for any prior Defaults or Breaches of such sublessor.

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

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

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

13. Default; Breach; Remedies.

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

(a) The abandonment of the Premises; or the vacating of the Premises without providing a commercially reasonable level of security, or where the coverage of the property insurance described in Paragraph 8.3 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,

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

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

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

(e) A Default by Lessee as to the terms, covenants, conditions or provisions of this Lease, or of the rules adopted under Paragraph 40 hereof, other than those described in subparagraphs 13.1(a), (b), (c) or (d), 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.

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

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

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

13.6 Breach by Lessor.

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

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

14. Condemnation. If the Premises or any portion thereof are taken under the power of eminent domain or sold under the threat of the exercise of said power (collectively "Condemnation"), this Lease shall terminate as to the part taken as of the date the condemning authority takes title or possession, whichever first occurs. If more than 10% of the Building, or more than 25% of that portion of the Premises not occupied by any building, is taken by Condemnation, Lessee may, at Lessee's option, to be exercised in writing within 10 days after Lessor shall have given Lessee written notice of such taking (or in the absence of such notice, within 10 days after the condemning authority shall have taken possession) terminate this Lease as of the date the condemning authority takes such possession. If Lessee does not terminate this Lease in accordance with the foregoing, this Lease shall remain in full force and effect as to the portion of the Premises remaining, except that the Base Rent shall be reduced in proportion to the reduction in utility of the Premises caused by such Condemnation. Condemnation awards and/or payments shall be the property of Lessor, whether such award shall be made as compensation for diminution in value of the leasehold, the value of the part taken, or for severance damages; provided, however, that Lessee shall be entitled to any compensation 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 1.9 above, Lessor agrees that: (a) if Lessee exercises any Option, (b) if Lessee or anyone affiliated with Lessee acquires any rights to the Premises or other premises owned by Lessor and located within the same Project, if any, within which the Premises is located, (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 1.9, 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

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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, agent or finder (other than the Brokers and Agents, if any) in connection with this Lease, and that no one other than said named Brokers and Agents 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 AIR Commercial Real Estate Association, plus such additional information, confirmation and/or statements as may be reasonably requested by the Requesting Party.

(b) If the Responding Party shall fail to execute or deliver the Estoppel Certificate within such 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 Premises, and to no other assets of Lessor, for the satisfaction of any liability of Lessor with respect to this Lease, and shall not seek recourse against Lessor's partners, members, directors, officers or shareholders, or any of their personal assets for such satisfaction.

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

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

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.

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

24. **Waivers.**

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

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

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

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

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

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

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

(iii) Agent Representing Both Lessor and Lessee. A real estate agent, either acting directly or through one or more associate licenses, can legally be the agent of both the Lessor and the Lessee in a transaction, but only with the knowledge and consent of both the Lessor and the Lessee. In a dual agency situation, the agent has the following affirmative obligations to both the Lessor and the Lessee: a. A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either Lessor or the Lessee. b. Other duties to the Lessor and the Lessee as stated above in subparagraphs (i) or (ii). In representing both Lessor and Lessee, the agent may not, without the express permission of the respective Party, disclose to the other Party confidential information, including, but not limited to, facts relating to either Lessee's or Lessor's financial position, motivations, bargaining position, or other personal information that may impact rent, including Lessor's willingness to accept a rent less than the listing rent or Lessee's willingness to pay rent greater than the rent offered. The above duties of the agent in a real estate transaction do not relieve a Lessor or Lessee from the responsibility to protect their own interests. Lessor and Lessee should carefully read all agreements to assure that they adequately express their understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional. Both Lessor and Lessee should strongly consider obtaining tax advice from a competent professional because the federal and state tax consequences of a transaction can be complex and subject to change.

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

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

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

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

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

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

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

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

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

30.3 **Non-Disturbance.** With respect to Security Devices entered into by Lessor after the execution of this Lease, Lessee's subordination of this Lease shall be subject to receiving a commercially reasonable non-disturbance agreement (a "Non-Disturbance Agreement") from the Lender which Non-Disturbance Agreement provides that Lessee's possession of the Premises, and this Lease, including any options to extend the term hereof, will not be disturbed so long as Lessee is not in Breach hereof and attorns to the record owner of the Premises. Further, within 60 days after the execution of this Lease, Lessor shall, if requested by Lessee, use its commercially reasonable efforts to obtain a Non-Disturbance Agreement from the holder of any pre-existing Security Device which is secured by the Premises. In the event that Lessor is unable to provide the Non-Disturbance Agreement within said 60 days, then Lessee may, at Lessee's option, directly contact Lender and attempt to negotiate for the execution and delivery of a Non-Disturbance Agreement.

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 to Lessee's use of the Premises. All such activities shall be without abatement of rent or liability to Lessee.

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

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

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

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

37. **Guarantor.**

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

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

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

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

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

41. **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.

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

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

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44. 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.

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

46. 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.

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

48. 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.

49. 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.

50. Accessibility; Americans with Disabilities Act.

(a) The Premises:

Have not undergone an inspection by a Certified Access Specialist (CASp). Note: A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises.

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. Lessee acknowledges that it received a copy of the inspection report at least 48 hours prior to executing this Lease and agrees to keep such report confidential.

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. Lessee acknowledges that it received a copy of the inspection report at least 48 hours prior to executing this Lease and agrees to keep such report confidential except as necessary to complete repairs and corrections of violations of construction related accessibility standards.

In the event that the Premises have been issued an inspection report by a CASp the Lessor shall provide a copy of the disability access inspection certificate to Lessee within 7 days of the execution of this Lease.

(b) Since compliance with the Americans with Disabilities Act (ADA) and other state and local accessibility statutes are 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 compliance with ADA or other accessibility statutes, Lessee agrees to make any such necessary modifications and/or additions at Lessee's expense.

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

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

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

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

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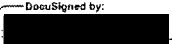
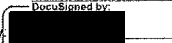
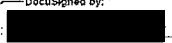
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The parties hereto have executed this Lease at the place and on the dates specified above their respective signatures.

Executed at: MODESTO, CA Executed at: MODESTO, CA
On: April 15, 2020 On: April 15, 2020

By LESSOR: By LESSEE:
DUKE THOMAS LEFFLER, TRUSTEE, PAULA ZAGARIS LEFFLER MDS BUSINESS SERVICES LLC.

DocuSigned by: By:  Name Printed: <u>DUKE THOMAS LEFFLER</u> Title: _____ Phone: <u>(209) 602-7513</u> Fax: _____ Email: <u>DUKELEFFLER@GMAIL.COM</u>	DocuSigned by: By:  Name Printed: <u>MARK PONTICELLI</u> Title: _____ Phone: <u>(209) 672-9088</u> Fax: _____ Email: <u>MARK@PEOPLESREMEDY.COM</u>
DocuSigned by: By:  Name Printed: <u>PAULA ZAGARIS LEFFLER</u> Title: _____ Phone: _____ Fax: _____ Email: _____	DocuSigned by: By:  Name Printed: <u>MARLOWE MERCADO</u> Title: _____ Phone: <u>(408) 648-7378</u> Fax: _____ Email: <u>MARLOWE@PEOPLESREMEDY.COM</u>
Address: <u>1120 SCENIC DRIVE</u> <u>MODESTO, CA 95350</u> Federal ID No.: _____	Address: <u>8265 LAKE WILLOW WAY</u> <u>ELK GROVE, CA 95758</u> Federal ID No.: _____

BROKER **BROKER**
NONE NONE

Att: _____ Title: _____ Address: _____ Phone: _____ Fax: _____ Email: _____ Federal ID No.: _____ Broker/Agent DRE License #: _____	Att: _____ Title: <u>MARK ADDRESS:</u> Address: <u>3901 ZAKESSIAN COURT</u> <u>MODESTO, CA 95356</u> Phone: _____ Fax: _____ Email: _____ Federal ID No.: _____ Broker/Agent DRE License #: _____
--	---

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ADDENDUM

Date: April 15, 2020

By and Between

Lessor: DUKE THOMAS LEFFLER, TRUSTEE, PAULA ZAGARIS LEFFLER
Lessee: MDS BUSINESS SERVICES LLC.

Property Address: 1119 LONE PALM AVE.
MODESTO CA 95351
(street address, city, state, zip)

Paragraph 51

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

A) LESSOR IS AS FOLLOWS: "DUKE THOMAS LEFFLER, TRUSTEE OF THE DUKE THOMAS LEFFLER SEPARATE PROPERTY TRUST DATED AUGUST 9, 2015 AND RESTATED APRIL 13, 2017 AND PAULA ZAGARIS LEFFLER, TRUSTEE OF THE PAULA ZAGARIS LEFFLER SEPARATE PROPERTY TRUST DATED AUGUST 14, 2014".

B) THIS LEASE AND POSSESSION OF THE PROPERTY BY LESSEE IS SUBJECT TO THE PROPERTY BEING VACATED BY THE CURRENT LESSEE, FLOWER'S BAKING COMPANY ("FBC"), ON OR BEFORE MAY 31, 2020.

C) THIS LEASE AND POSSESSION OF THE PROPERTY BY LESSEE IS SUBJECT TO LESSEE OBTAINING THE NECESSARY APPROVALS AND PERMITS FOR LESSEE'S INTENDED USE OF THE PROPERTY ON OR PRIOR TO AUGUST 1, 2020 OR A MUTUALLY AGREEABLE EXTENSION THEREOF AS WELL AS NO OBJECTION BY THE "INDUSTRIAL BUSINESS PARK" OWNERS OF ADJACENT PROPERTIES. SHOULD LESSEE FAIL TO OBTAIN THE NECESSARY APPROVALS AND PERMITS, LESSOR SHALL REFUND THE \$42,352.72 TO LESSEE THAT WAS DEPOSITED UPON EXECUTION OF THIS LEASE AND LESSEE AND LESSOR SHALL HAVE NO FURTHER OBLIGATION TO THE EACH OTHER.

D) UPON "FBC" VACATING THE PREMISES, LESSEE MAY OCCUPY THE PREMISES AND SHALL PAY "OPTION RENT" TO LESSOR IN THE AMOUNT OF \$6,000.00 PER MONTH UNTIL AT SUCH TIME THE APPROVALS AND PERMITS FOR LESSEE'S USE IS GRANTED BY GOVERNMENTAL AGENCIES, AT WHICH TIME, THE LEASE SHALL COMMENCE ON THE FIRST DAY OF THE NEXT CALENDAR MONTH FOR A PERIOD OF 120 MONTHS AT THE INITIAL AMOUNT OF \$12,000.00 PER MONTH PLUS THE MONTHLY ASSOCIATION FEE OF \$380.00, PROPERTY TAXES, INSURANCE AND OTHER EXPENSES PURSUANT TO THE LEASE.

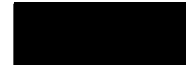
E) PARA. 1.8 - "LESSEE" IS THE INSURING PARTY UNDER THIS LEASE AND SHALL PROVIDE OR REIMBURSE LESSOR FOR THE COST OF THE INSURANCE PURSUANT TO PARA. 8 OF THE LEASE AGREEMENT.

F) LESSEE IS HEREBY MADE AWARE THAT DUKE THOMAS LEFFLER AND PAULA ZAGARIS LEFFLER ARE REAL ESTATE AGENTS LICENSED IN THE STATE OF CALIFORNIA.

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Phone: 209.491.3414

Fax: 209.527.4820

Duke Leffler

1119LonePalmAve.

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AIR CRE
RENT ADJUSTMENT(S)
STANDARD LEASE ADDENDUM

Dated April 15, 2020

By and Between

Lessor: DUKE THOMAS LEFFLER, TRUSTEE, PAULA ZAGARIS LEFFLER
Lessee: MDS BUSINESS SERVICES LLC.

Property Address: 1119 LONE PALM AVE.
MODESTO CA 95351
(street address, city, state, zip)

Paragraph 52

A. RENT ADJUSTMENTS:

The monthly rent for each month of the adjustment period(s) specified below shall be increased using the method(s) indicated below:

(Check Method(s) to be Used and Fill in Appropriately)

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

a. On (Fill in COLA Dates): _____

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

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

b. The monthly rent payable in accordance with paragraph A.I.a. of this Addendum shall be calculated as follows: the Base Rent set forth in paragraph 1.5 of the attached Lease, shall be multiplied by a fraction the numerator of which shall be the CPI of the calendar month 2 months prior to the month(s) specified in paragraph A.I.a. above during which the adjustment is to take effect, and the denominator of which shall be the CPI of the calendar month which is 2 months prior to (select one): the first month of the term of this Lease as set forth in paragraph 1.3 ("Base Month") or (Fill in Other "Base Month"): _____. The sum so calculated shall constitute the new monthly rent hereunder, but in no event, shall any such new monthly rent be less than the rent payable for the month immediately preceding the rent adjustment.

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

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

a. On (Fill in MRV Adjustment Date(s): _____

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

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

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

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

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

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

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

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

2) When determining MRV, the Lessor, Lessee and Consultants shall consider the terms of comparable market transactions which shall include, but no limited to, rent, rental adjustments, abated rent, lease term and financial condition of tenants.

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

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

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

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

III. Fixed Rental Adjustment(s) (FRA)

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

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

THE RENT SHALL INCREASE IN THE
AMOUNT OF 2.5% PER ANNUM FOR
THE INITIAL LEASE TERM AND
ANY EXTENSION THEREOF.

The New Base Rent shall be:

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**OPTION(S) TO EXTEND
STANDARD LEASE ADDENDUM**

Dated: April 15, 2020

By and Between

Lessor: DUKE THOMAS LEFFLER, TRUSTEE, PAULA ZAGARIS LEFFLER

Lessee: MDS BUSINESS SERVICES LLC.

Property Address: 1119 LONE PALM AVE.
MODESTO CA 95351
(street address, city, state, zip)

Paragraph 53

A. OPTION(S) TO EXTEND:

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

- (i) In order to exercise an option to extend, Lessee must give written notice of such election to Lessor and Lessor must receive the same at least 3 but not more than 6 months prior to the date that the option period would commence, time being of the essence. If proper notification of the exercise of an option is not given and/or received, such option shall automatically expire. Options (if there are more than one) may only be exercised consecutively.
- (ii) The provisions of paragraph 39, including those relating to Lessee's Default set forth in paragraph 39.4 of this Lease, are conditions of this Option.
- (iii) Except for the provisions of this Lease granting an option or options to extend the term, all of the terms and conditions of this Lease except where specifically modified by this option shall apply.
- (iv) This Option is personal to the original Lessee, and cannot be assigned or exercised by anyone other than said original Lessee and only while the original Lessee is in full possession of the Premises and without the intention of thereafter assigning or subletting.
- (v) The monthly rent for each month of the option period shall be calculated as follows, using the method(s) indicated below:

(Check Method(s) to be Used and Fill in Appropriately)

- I. Cost of Living Adjustment(s) (COLA)
 - a. On (Fill in COLA Dates): _____

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

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

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

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

[Redacted Signature]

[Redacted Signature]

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Duke Leffler

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

- II. Market Rental Value Adjustment(s) (MRV)
a. On (Fill in MRV Adjustment Date(s)) _____

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

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

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

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

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

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

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

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

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

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

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

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

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

- III. Fixed Rental Adjustment(s) (FRA)

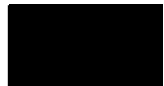
The Base Rent shall be increased to the following amounts on the dates set forth below:

On (Fill in FRA Adjustment Date(s)):
THE RENT SHALL INCREASE IN THE
AMOUNT OF 2.5% GREATER THAN
THE FINAL YEAR OF THE INITIAL
LEASE TERM AND EACH SUBSEQUENT
YEAR.

The New Base Rent shall be:

- IV. Initial Term Adjustments.

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



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B. NOTICE:

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

C. BROKER'S FEE:

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

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ARBITRATION AGREEMENT
Standard Lease Addendum

Dated: April 15, 2020

By and Between

Lessor: DUKE THOMAS LEFFLER, TRUSTEE, PAULA ZAGARIS LEFFLER
Lessee: MDS BUSINESS SERVICES LLC.

Property Address: 1119 LONE PALM AVE.
MODESTO CA 95351
(street address, city, state, zip)

Paragraph 54

A. ARBITRATION OF DISPUTES:

Except as provided in Paragraph B below, the Parties agree to resolve any and all claims, disputes or disagreements arising under this Lease, including, but not limited to any matter relating to Lessor's failure to approve an assignment, sublease or other transfer of Lessee's interest in the Lease under Paragraph 12 of this Lease, any other defaults by Lessor, or any defaults by Lessee by and through arbitration as provided below and irrevocably waive any and all rights to the contrary. The Parties agree to at all times conduct themselves in strict, full, complete and timely accordance with the terms hereof and that any attempt to circumvent the terms of this Arbitration Agreement shall be absolutely null and void and of no force or effect whatsoever.

B. DISPUTES EXCLUDED FROM ARBITRATION:

The following claims, disputes or disagreements under this Lease are expressly excluded from the arbitration procedures set forth herein: 1. Disputes for which a different resolution determination is specifically set forth in this Lease, 2. All claims by either party which (a) seek anything other than enforcement or determination of rights under this Lease, or (b) are primarily founded upon matters of fraud, willful misconduct, bad faith or any other allegations of tortious action, and seek the award of punitive or exemplary damages, 3. Claims relating to (a) Lessor's exercise of any unlawful detainer rights pursuant to applicable law or (b) rights or remedies used by Lessor to gain possession of the Premises or terminate Lessee's right of possession to the Premises, all of which disputes shall be resolved by suit filed in the applicable court of jurisdiction, the decision of which court shall be subject to appeal pursuant to applicable law 4. Any claim or dispute that is within the jurisdiction of the Small Claims Court and 5. All claims arising under Paragraph 39 of this Lease.

C. APPOINTMENT OF AN ARBITRATOR:

All disputes subject to this Arbitration Agreement, shall be determined by binding arbitration before: a retired judge of the applicable court of jurisdiction (e.g., the Superior Court of the State of California) affiliated with Judicial Arbitration & Mediation Services, Inc. ("JAMS"), the American Arbitration Association ("AAA") under its commercial arbitration rules,

, or as may be otherwise mutually agreed by Lessor and Lessee (the "Arbitrator"). In the event that the parties elect to use an arbitrator other than one affiliated with JAMS or AAA then such arbitrator shall be obligated to comply with the Code of Ethics for Arbitrators in Commercial Disputes (see: http://www.adr.org/aaa/ShowProperty?nodeId=/UCM/ADRSTG_003887). Such arbitration shall be initiated by the Parties, or either of them, within ten (10) days after either party sends written notice (the "Arbitration Notice") of a demand to arbitrate by registered or certified mail to the other party and to the Arbitrator. The Arbitration Notice shall contain a description of the subject matter of the arbitration, the dispute with respect thereto, the amount involved, if any, and the remedy or determination sought. If the Parties have agreed to use JAMS they may agree on a retired judge from the JAMS panel. If they are unable to agree within ten days, JAMS will provide a list of three available judges and each party may strike one. The remaining judge (or if there are two, the one selected by JAMS) will serve as the Arbitrator. If the Parties have elected to utilize AAA or some other organization, the Arbitrator shall be selected in accordance with said organization's rules. In the event the Arbitrator is not selected as provided for above for any reason, the party initiating arbitration shall apply to the appropriate Court for the appointment of a qualified retired judge to act as the Arbitrator.

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PMZ Commercial, 1120 Scenic Dr, Modesto CA 95350
Phonc: 209.491.3414 Fax: 209.527.4820

Duke Leffler

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Page 58

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D. ARBITRATION PROCEDURE:

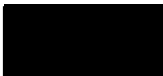
1. **PRE-HEARING ACTIONS.** The Arbitrator shall schedule a pre-hearing conference to resolve procedural matters, arrange for the exchange of information, obtain stipulations, and narrow the issues. The Parties will submit proposed discovery schedules to the Arbitrator at the pre-hearing conference. The scope and duration of discovery will be within the sole discretion of the Arbitrator. The Arbitrator shall have the discretion to order a pre-hearing exchange of information by the Parties, including, without limitation, production of requested documents, exchange of summaries of testimony of proposed witnesses, and examination by deposition of parties and third-party witnesses. This discretion shall be exercised in favor of discovery reasonable under the circumstances. The Arbitrator shall issue subpoenas and subpoenas duces tecum as provided for in the applicable statutory or case law (e.g., in California Code of Civil Procedure Section 1282.6).

2. **THE DECISION.** The arbitration shall be conducted in the city or county within which the Premises are located at a reasonably convenient site. Any Party may be represented by counsel or other authorized representative. In rendering a decision(s), the Arbitrator shall determine the rights and obligations of the Parties according to the substantive laws and the terms and provisions of this Lease. The Arbitrator's decision shall be based on the evidence introduced at the hearing, including all logical and reasonable inferences therefrom. The Arbitrator may make any determination and/or grant any remedy or relief that is just and equitable. The decision must be based on, and accompanied by, a written statement of decision explaining the factual and legal basis for the decision as to each of the principal controverted issues. The decision shall be conclusive and binding, and it may thereafter be confirmed as a judgment by the court of applicable jurisdiction, subject only to challenge on the grounds set forth in the applicable statutory or case law (e.g., in California Code of Civil Procedure Section 1286.2). The validity and enforceability of the Arbitrator's decision is to be determined exclusively by the court of appropriate jurisdiction pursuant to the provisions of this Lease. The Arbitrator may award costs, including without limitation, Arbitrator's fees and costs, attorneys' fees, and expert and witness costs, to the prevailing party, if any, as determined by the Arbitrator in his discretion.

Whenever a matter which has been submitted to arbitration involves a dispute as to whether or not a particular act or omission (other than a failure to pay money) constitutes a Default, the time to commence or cease such action shall be tolled from the date that the Notice of Arbitration is served through and until the date the Arbitrator renders his or her decision. Provided, however, that this provision shall NOT apply in the event that the Arbitrator determines that the Arbitration Notice was prepared in bad faith.

Whenever a dispute arises between the Parties concerning whether or not the failure to make a payment of money constitutes a default, the service of an Arbitration Notice shall NOT toll the time period in which to pay the money. The Party allegedly obligated to pay the money may, however, elect to pay the money "under protest" by accompanying said payment with a written statement setting forth the reasons for such protest. If thereafter, the Arbitrator determines that the Party who received said money was not entitled to such payment, said money shall be promptly returned to the Party who paid such money under protest together with interest thereon as defined in Paragraph 13.5. If a Party makes a payment "under protest" but no Notice of Arbitration is filed within thirty days, then such protest shall be deemed waived. (See also Paragraph 42 or 43)

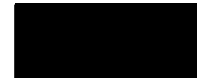
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GUARANTY OF LEASE

WHEREAS, DUKE THOMAS LEFFLER, TRUSTEE, PAULA ZAGARIS LEFFLER, hereinafter "Lessor", and MDS BUSINESS SERVICES LLC, hereinafter "Lessee", are about to execute a document entitled "Lease" dated April 15, 2020 concerning the premises commonly known as 1119 LONE PALM AVE. wherein Lessor will lease the premises to Lessee, and

WHEREAS, MARK PONTICELLI AND MARLOWE MERCADO 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.



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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 CRE, 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.

GUARANTORS
MARK PONTICELLI
MARLOWE MERCADO
DocuSigned by:
By: [Redacted]
Name Printed: MARK PONTICELLI
Title:
Address: 3901 ZAKESSIAN COURT
MODESTO, CA 95356

Executed at: MODESTO, CA
On: April 15, 2020
DocuSigned by:
By: [Redacted]
Name Printed: MARLOWE MERCADO
Title:
Address: 8265 LAKE WILLOW WAY
ELK GROVE, CA 95758

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PLEASE COMPLETE THE INFORMATION BELOW

RECORDED AT THE REQUEST OF:

ARG Investments, LLC

WHEN RECORDED, MAIL TO:

Name: Brekke Real Estate

Address: 1500 Standiford Ave., Bldg. D

City & State: Modesto, CA

Zip: 95350



Stanislaus, County Recorder
Lee Lundrigan Co Recorder Office
DOC- 2015-0026597-00
Acct 402-Counter Customers
Monday, APR 13, 2015 12:22:14
Ttl Pd \$151.00 Rcpt # 0003647804
MGC/R2/2-40

(Print the title of the document in this area exactly as it appears on the original)

**GRANT OF EASEMENTS AND DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS**

by

**ARG Investments, LLC,
a Washington limited liability company**

**INDUSTRIAL BUSINESS PARK
MODESTO, CALIFORNIA**

40MC

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**GRANT OF EASEMENTS
AND DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
(Modesto, California)**

This Grant of Easements and Declaration of Covenants, Conditions and Restrictions running with the land (this "Declaration") is made and entered into this 27th day of February, 2015, by **ARG Investments, LLC, a Washington limited liability company** (hereinafter designated and referred to as both a "Declarant" and the "Developer")

RECITALS

This Declaration is made in contemplation of and with reference to the following facts, understandings and intentions of the parties:

A. Declarant is the owner of contiguous parcels (which parcels are individually referred to as a "Parcel") and collectively referred to as the "Parcels") of real property (the "Property") situated in the City of Modesto, County of Stanislaus, State of California, identified as Parcels 1 through 6 as shown on that certain Parcel Map filed ~~_____~~ 5/18/15, in Book 51, of Parcel Maps at Page 13, Official Records of Stanislaus County, a copy of which Parcel Map is attached hereto as Exhibit "A" and incorporated herein. The Developer, as well as any other owner of a Parcel within the Industrial Business Park (as defined below), are sometimes hereinafter called, individually "Declarant" or "Owner" and, collectively the "Declarants" or "Owners".

B. It is the purpose and intent of the Declarants to maintain and operate all of the respective Parcels as a light industrial business park (the "Industrial Business Park" or "IBP") in the manner set forth herein, including, without limitation, the common road that serves all Parcels (the "Common Road") as depicted on Exhibit "B" attached hereto and incorporated herein (the "Site Plan").

C. The party, or parties, hereto intend that the easements and servitudes under this Declaration shall bind and inure to the benefit of the Parcels and any portion into which such lands may be divided, and of the parties and their assigns and successors in interest, as covenants running with the land pursuant to California Civil Code Section 1460, and shall be deemed double covenants pursuant to California Civil Code Section 1468.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein set forth, the following encumbrances shall be binding upon the Developer and Declarant and all future Parcel Owners and shall attach to, and run with, their respective Parcel or Parcels and shall be for the benefit of and shall be limitations upon any future Owner or Owners of the Parcels, and each easement granted herein shall be appurtenant to the dominant estate, and all promises, covenants, conditions, restrictions, and encumbrances shall be covenants running with each and every portion of the land comprising the Industrial Business Park.

ARTICLE 1

USE AND OPERATION

1.1 Permitted Uses. Neither the Industrial Business Park nor any part thereof shall be used, and no building or other improvement shall be constructed, maintained or used for any purpose other than light industrial, wholesale, retail (to the extent allowed under applicable zoning ordinance and land use

regulations), general storage, office/warehouse and general office of the type common to a first-class industrial business park, including, without limitation, parts warehouse and distribution, packaged food storage and distribution, companies engaged in construction, development, engineering, environmental, property maintenance or security, services and similar service businesses.

1.2 Prohibitions.

(a) No portion of the Industrial Business Park shall be used for the purposes of any manufacturing, auto repair, auto body and/or paint shop, cabinetry shop, welding, entertainment or recreational facility, or training or educational facility without the prior written consent of the majority of the Declarants. As used herein "entertainment or recreational facility" includes, but is not limited to, a night club, kid's play or party center, health studio or gym, or other place of similar character. "Training or educational facility" includes, but is not limited to, any place of instruction or any other operation catering primarily to students or trainees rather than to customers of the Industrial Business Park.

(b) No noxious or offensive activity shall be carried on upon any Parcel nor shall anything be done or placed thereon which is or may become a nuisance or which is or may become a public or private nuisance or which is or may cause an unreasonable embarrassment, disturbance or annoyance to others.

(c) No light shall be emitted from any Parcel or improvements thereon which is unreasonably bright or causes unreasonable glare, and no sound or odor shall be emitted from any portion of the Property, which would reasonably be found by others to be disruptive, noxious or offensive.

(d) No obnoxious, toxic, caustic or corrosive chemicals, fuel, or gasoline, except general supplies and those typically used in the ordinary course of business, such as adhesives, ink and cleaning solvents, for use in the manner for which they were designed, in such amounts as may be normal for permitted business operations in the Industrial Business Park.

(e) No dust, dirt or fly ash in excessive quantities.

(f) No mobile home or trailer court, junkyard, or kennel.

(g) No commercial disposal, incineration or reduction of garbage or refuse;

(h) No living quarters, sleeping apartment or lodging rooms.

(i) No activity shall be conducted, and no improvements shall be constructed, on any Parcel, which is or might be unsafe or hazardous to any person or the Property.

(j) All facilities, objects, equipment and unsightly conditions, shall be enclosed within a building structure or behind solid or visually screened fencing.

(k) No refuse, garbage, trash, lumber, grass, shrub or tree clippings, plant waste, compost, metal, scrap, refuse or debris of any kind shall be kept, stored or allowed to accumulate on any Parcel except that any container containing such materials may be placed outside at proper times for garbage or trash pickup.

(l) Except for construction trailers (which may be placed on Parcels during construction or re-construction of improvements), or temporary facilities necessary for a Declarant to conduct its business operation should there be an alteration or repair of Declarant's building, no tent, shack, temporary structure or temporary building shall be placed upon any Parcel except with the prior written consent of the majority of the Declarants, which consent shall not be unreasonably withheld.

(m) Pipes for water, gas, sewer, drainage or other purposes, and wires, poles, antennae and other facilities for the transmission or reception of audio, visual or other electromagnetic signals or electricity, and utility meters or other utility facilities shall be kept and maintained underground or within an enclosed structure. No exterior radio antenna, television antenna, or other antenna of any type (including satellite dishes) shall be erected or maintained on any Parcel, except that an Owner may erect an antenna if:

- (i) such antenna is convenient or necessary to carry on the business conducted by the Owner (or Owner's tenant) on the Parcel and such antennae is not visible from Emerald Ave. or the Common Roadway; or
- (ii) Common Area Manager gives its consent to the erection of such an antenna, where such consent shall not be unreasonably withheld, conditioned, or delayed.

Should an antenna be erected, the erection of such antenna shall not be located upon Common Area and shall be in compliance with all applicable statutes, ordinances, regulations and conditions of approval from the other Declarants.

(n) There shall be no interference with the established drainage pattern over any property within the Property, except as approved in writing by the Common Area Manager. Approval shall not be granted unless provision is made for adequate alternate drainage. The "established drainage pattern" shall mean the drainage pattern which exists as of the date first written above.

(o) Nothing shall be done or kept on any Parcel in violation of any law, ordinance, rule or regulation of any governmental authority having jurisdiction.

(p) No Owner shall use, or allow the use of, "Hazardous Materials" (defined below) on, about, under or in its Parcel, or the Industrial Business Park, except as part of the ordinary course of business operation conducted therein in accordance with the standards of this Declaration. In the event of a release in, about, under or on the Industrial Business Park, or any portion thereof, of any "Hazardous Materials" (defined below), the Owner responsible for such release (which includes releases caused by the Owner, or the occupant or tenant on Owner's Parcel, or their employees, agents, customers, invitees or guests) shall immediately take such remedial actions as may be necessary to clean up the same in accordance with the requirements of all Environmental Laws. Each Owner shall use, handle and store any Hazardous Materials hereunder in accordance with the applicable requirements of Environmental Laws. Each Owner shall notify the other Owners of any such release of Hazardous Materials of which it gains knowledge or receives notice, and of any violation of Environmental Laws of which it receives notice from any governmental agency having jurisdiction. Each Owner shall indemnify, defend, protect and hold the other Owners harmless from and against any and all claims, actions, proceedings, losses, suits, liabilities, damages, deficiencies, fines, penalties, costs or expense (including without limitation sums paid in settlement of claims, reasonable attorneys' fees, consultants' fees, investigation and laboratory fees, court costs and litigation expenses), which arise out of or in connection with the indemnifying Owner's breach of the provisions of this Section 1.2(p).

For purposes of this Section 1.2(p), the following terms shall have the following meanings: (a) "Environmental Laws" shall mean all present and future statutes, ordinances, orders, rules and regulations of all federal, state or local governmental agencies relating to the use, generation, manufacture, installation, release, discharge, storage or disposal of Hazardous Materials; and (b) "Hazardous Materials" shall mean petroleum, petroleum products, asbestos, polychlorinated biphenyls, radioactive materials, radon gas and any chemical, material or substance now or hereafter defined as or included in the definition of "hazardous substances," "hazardous wastes", "hazardous materials", "extremely hazardous waste", "restricted hazardous waste" or "toxic substances", or words of similar import, under any Environmental Law, or listed or identified, in, or regulated by, any Environmental Law.

1.3 Non-Interference With Common Area. In order to provide for the orderly operation of the Industrial Business Park:

(a) No Declarant shall permit any display, sale, storage or placement of any item, product or material, including without limitation, portable signs or other objects belonging to an occupant of any Declarant's Parcel, outside the defined exterior walls, roof and permanent doorways of any building, except behind solid or visually screened fencing.

(b) No Declarant shall permit any occupant of any Declarant's Parcel to carry any merchandise or substance or to perform any activity in relation to the use of any Declarant's Parcel which would (i) cause or threaten the cancellation of any insurance covering any portion of the Industrial Business Park or (ii) increase the insurance rates applicable to other Declarant's Parcel(s) over the rates which would otherwise be assessed.

(c) Each Declarant shall use all reasonable efforts to cause the employees, guests and invitees of all occupants of its Parcel to park in the parking area located on its respective Parcel.

ARTICLE 2

BUILDING TYPE, APPROVAL AND CONSTRUCTION

2.1 Quality of Improvements. Except as provided hereinafter, each building to be erected in the Industrial Business Park from the date of this Declaration, and any reconstruction, exterior remodeling, coloring or alteration of any building within the Industrial Business Park, shall be of first quality construction and architecturally designed so that the exterior building elevations (including materials and colors) and any exterior signs will be aesthetically compatible and architecturally harmonious in all material respects with all other buildings in the Industrial Business Park, the design criteria imposed by the City of Modesto or County of Stanislaus, if any, and the written consent of the majority of Declarants, which consent shall not be unreasonably withheld or delayed.

2.2 Exterior Appearance of Improvements. Any alteration, addition, remodeling, or reconstruction of said buildings which involves any change in the exterior appearance thereof, including, without limitation, elevations, height, coloring, canopy design or any material change in height of building, shall be subject to the prior written approval of the majority of Declarants, which approval shall not be unreasonably withheld or delayed. Once the exterior elevations have been approved, said building shall be constructed only in accordance with the plans and specifications which effectuate such approved elevations.

2.3 Construction of Improvements. All construction, alteration, or repair work undertaken by the Owner of any Parcel shall be accomplished in the most expeditious manner possible and in compliance with all applicable laws, regulations, and ordinances of any governing public agency with

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jurisdiction. All construction shall utilize new materials, and shall be performed in a good, safe, workmanlike manner. The party undertaking such work shall take all necessary measures to minimize any damage, disruption, inconvenience or adverse effect which might be caused by such work to the other parties and/or the Parcel on which the work is being accomplished. The party undertaking such work shall repair in a timely manner at its own cost and expense any and all damage caused by such work and shall restore the affected portion of the Parcel upon which such work is performed to a condition which is equal to or better than the condition which existed prior to the beginning of such work. In addition, the party undertaking such work shall pay all costs and expenses associated therewith and shall indemnify, defend and hold the other parties harmless from all claims, damages, losses, liabilities, actions, proceedings and costs (including reasonable attorneys' fees and costs of suit), including liens, and any accident, injury or loss or damage whatsoever occurring to any individual or to the property of any individual arising out of or resulting from any construction activities performed or authorized by such indemnifying Owner. Notice of the work to be undertaken shall be given only when such construction will interfere with, disrupt or inconvenience other Owners or their tenants or suppliers. Where the prior written approval of the exterior elevations of such work is required by any other provision hereof, such exterior elevations shall be included with such notice. Each Owner further agrees that its construction activities shall not:

- (a) Cause any unreasonable cost of construction, alterations, repair or maintenance upon another Owner's Parcel;
- (b) Unreasonably interfere with construction work being performed on any other part of the Industrial Business Park;
- (c) Unreasonably interfere with the use, occupancy or enjoyment of any part of the remainder of the Industrial Business Park by any other Owner or its permitted users;
- (d) Cause any improvement located on another Parcel to be in violation of any law, rule, regulation, order or ordinance of any governmental agency with jurisdiction.

2.4 Fire Rating. Each building constructed or rebuilt as set forth in this Declaration, shall meet all the governmental codes for fire safety and standards of the Insurance Services Office, Inc., or other similar local organizations having jurisdiction over the Property or shall be constructed in such a manner as not to adversely affect the fire rating of any building built upon any other Parcel in the Industrial Business Park. The purpose of this Section 2.4 is to allow buildings built on each Parcel to be fire rated as separate and distinct units without deficiency charge. In addition, no building shall be built in such a manner as to adversely affect the structural integrity of any other building on the Industrial Business Park.

ARTICLE 3

SIGNS

3.1 Sign Approval. All signs for the Industrial Business Park shall comply with all governmental requirements applicable thereto; provided, however, that in no event shall there be any rooftop, flashing or audible signs in the Industrial Business Park. Subject to the foregoing and the approval of applicable governmental authorities, each party as grantor hereby grants to the other parties for the benefit of the other parties, easements under, through and across the "Common Area" (as each is hereinafter defined) for the purpose of installing and maintaining signs. All of the Industrial Business Park's monument, identification and directional signs shall conform to sign criteria approved by the Developer and be approved in advance and in writing by the Developer, which approval shall not be unreasonably withheld or delayed. The criteria of all such signs that exist as of the first written above in this Declaration are hereby

deemed approved by the Developer in all respects, including, without limitation, height, material, color, location and power source.

3.2 Exterior Building Signs. Signs placed on the exterior of buildings in the Industrial Business Park shall only identify and /or describe the operation of the occupant or occupants of the buildings, or individual units within such building, on which the signs are located. Developer, or Common Area Manager, may establish a master sign program setting forth the criteria for exterior building signs for the Owners or occupants of the Industrial Business Park. At any times when such sign program has not been established or is not then in effect, an Owner may erect any signs on the exterior of its building which are first approved in writing by the Developer or Common Area Manager, which approval shall not be unreasonably withheld or delayed and shall take into consideration the similarity to other building fascia signs then being used within the Industrial Business Park. The cost of installing, maintaining and replacing a building fascia sign which advertises only the presence of the business of any Owner or tenant of the Industrial Business Park shall be borne solely by each such Owner and/or tenant.

3.3 Monument Sign on Parcel 1.

(a) As of the date first written above, an eight foot (8'-0") high x ten foot (10'-0") wide monument sign is located on Parcel 1 (as identified on Exhibit "C") near the main access to and from the Common Road that contains multiple sign panels which exclusively identify tenants or occupants of the Industrial Business Park other than the tenant(s) or occupant(s) of Parcel One (the "Monument Sign"). A schematic diagram of the Monument Sign and its location on Parcel One is attached hereto and incorporated herein as Exhibit "D". The parties hereto agree the Monument Sign, or any replacement thereof, shall at all times be permitted by the Parcel 1 Owner and the Parcel 1 Owner shall not in any way alter, disrupt or impair the existence, appearance, placement, operation or visibility of the Monument Sign without the prior written consent of Developer or Common Area Manager (as hereinafter defined). Notwithstanding anything to the contrary stated herein, the Monument Sign shall be deemed a permanent improvement of "Common Area" (as hereinafter defined) and the Developer or Common Area Manager shall be solely responsible for its maintenance, repair and replacement, including, without limitation, the equitable allocation and assessment of repair, maintenance and replacement costs to the Owners and/or tenants represented on such sign. The Parcel 1 Owner, or any tenant or occupant of Parcel 1, shall not be permitted to use the Monument Sign and the Parcel 1 Owner shall not be assessed or liable for any Common Area Expenses related to the repair, maintenance or replacement of the Monument Sign.

(b) The initial cost of design, construction and installation of all sign monuments in the Industrial Business Park shall be borne on a pro rata basis by the Owners or tenants of the Industrial Business Park represented, or to be represented, on such signs, and shall be paid by such Owners and/or tenants promptly upon demand by Developer or Common Area Manager. For example, if a monument sign will carry identification signs of two (2) Owners and one (1) tenant, each of the represented Owners would pay one-third (1/3rd) of the cost of the design, construction and installation of the monument, and said tenant would pay the remaining one-third (1/3rd). The cost for maintaining and repairing all monument signs in the Industrial Business Park which identify the Industrial Business Park by its name shall be subject to reimbursement pursuant to Section 5.5, however, adjusted to exclude Parcel 1 and its Owner.

3.4 Exclusive Use Signs. Each Owner of Parcels 1 and 6, at its sole expense and subject to City of Modesto or County of Stanislaus approval, shall be permitted to have, maintain, repair and replace a free standing sign, or in the case of the Parcel 1 Owner two freestanding signs, located in the Common Area outside of its respective building and facing, or visibly oriented to, Lone Palm Avenue and/or State Highway 99 ("Exclusive Use Sign"). Such Exclusive Use Signs shall generally conform to the descriptions

stated in Exhibit "C" attached hereto and shall advertise only the name(s) of Owner and/or occupant(s) of Parcels 1 and 6. The Owner/occupants of Parcel 1 and 6, at their sole cost and expense, shall each at all times maintain its Exclusive Use Sign in good condition, operation and appearance, including, without limitation, all cleaning, repairs, graffiti removal, sign panel replacements and electricity supplied (if applicable) to the signs. The location, type or size, of the Exclusive Use Signs shall not be changed from that shown on Exhibit "C" without the prior written consent of the majority of the Declarants.

ARTICLE 4

BUILDING LOCATION, MAINTENANCE & OPERATION

4.1 Location of Buildings. Subject to the restrictions set forth in this Declaration, all buildings and structures shall be placed or constructed upon those areas designated "Building Area" on the Site Plan (the "Building Area") and further, no buildings or structures shall be placed or constructed in the Industrial Business Park within the "Common Area" (as hereinafter defined) except trash bins, monument signs, directional signs, bumper guards or curbs, landscape planters, lighting standards, and any other landscaping improvements as may be required under applicable controls and regulations of the City of Modesto or County of Stanislaus without the prior written approval of the majority of the Declarants.

4.2 Permitted Encroachments. Each Declarant with respect to its Parcel hereby grants to the other Declarants for the benefit of the other Declarants and their respective Parcels, non-exclusive easements to, over, under and across the Common Area of each such respective Parcel, if any, for the purpose of the construction or alterations of any buildings or structures on each Declarant's Parcel, pursuant to the provisions of this Declaration; and for any portion of any buildings or structures on any Parcel which may encroach into or over an adjoining Parcel; and for the construction, reconstruction, erection, removal and maintenance on, to, over, under and across each such respective Parcel of (i) footings, foundations, supports and common walls to a maximum lateral distance of six (6) feet, (ii) canopies, flagpoles, roof and building overhangs, awnings, lights and lighting devices and other similar appurtenances to the building, to a maximum lateral distance of six (6) feet, and (iii) electrical or similar vaults and shafts below the surface of such Parcels, to a maximum lateral distance of twelve (12) feet, as any of the foregoing are shown in the working drawings for such building, which drawings have been approved by the Declarants. Each Declarant covenants and agrees, respectively, that its exercise of such easements shall not result in damage or injury to the buildings or other improvements of any other Declarant, and shall not interfere with the business operation conducted by any other Declarant in the Industrial Business Park. The easements granted in this Section 4.2 shall survive this Declaration and shall last so long as the encroaching building is standing following its initial construction or following a reconstruction where such building is substantially restored to its prior condition following a casualty or condemnation. No Declarant shall grant an easement or easements of the types set forth in this Section 4.2 for the benefit of any property not within the Industrial Business Park without the prior written approval of the majority of the other Declarants. Each Declarant hereby agrees to cooperate to obtain a boundary line adjustment to any then existing Parcel to reflect the actual location of the buildings.

4.3 Maintenance and Operation of Buildings. Each party shall be solely responsible for the upkeep, repair and maintenance of any and all buildings and improvements located in the Building Area of each party's parcel, including, without limitation, roof, exterior and structural walls, foundations, painting, plate glass, utility lines, and connections, and all interior walls and fixtures, to assure that the Industrial Business Park and each part thereof is maintained in a first-class manner and retains at all times the appearance of a first-class light industrial business park and in compliance with all laws, rules, regulations, orders and ordinances of governmental agencies exercising jurisdiction thereover. Each party further agrees to store all trash and garbage in adequate containers maintained in a neat and clean condition,

to keep such containers in a special area designated therefor, and to arrange for regular removal of such trash and garbage. Each Owner shall, at all times and at its sole expense, have and maintain lighting in, on or around the exterior of its building, or buildings, in good operating condition. Unless otherwise restricted by any applicable law, statute, or ordinance then in effect, such lighting shall be operated regularly by each Owner during all non-daylight hours and at reasonable levels that are typical of like-kind properties in the region, that illuminates the Common Area adjacent to the building and are for purpose of safety and security. The minimum acceptable level of lighting in, on or around exterior of each building in the Project shall be that which existed as of the date first written hereinabove. Any substantive change to exterior color of any building which existed as of the date first written hereinabove shall be approved in advance and in writing by the majority of the Declarants, such approval not to be unreasonably withheld.

ARTICLE 5
COMMON AREA

5.1 Definition of Common Area. The term "Common Area" shall mean all of the parking areas, roadways, pedestrian ramps, walkways, stairwells, landscape areas, and service areas delineated on Site Plan Exhibit "B". The Common Area shall also include Common Area facilities and utilities, directional signs, perimeter walls and fences. The Common Area shall not include buildings and related building canopies, support columns, pilasters, overhangs, footings and appurtenant truck loading or delivery docks or areas, truck/vehicle ramps, truck wells located within Building Areas or projecting into the Common Area which are specific to a particular tenant or occupant's use or fenced yard areas. Any enlargement of or addition to the Common Area as provided herein shall be included in the definition of Common Area for purposes of this Declaration and subject to approval as set forth in Section 5.2.

5.2 Changes in Common Area.

(a) Additional Common Area may be established only by recorded instrument executed by the Owner of the Parcel thereof designating the area as Common Area under this Declaration, provided that no Common Area shall be created or altered without the written consent of the majority of the Declarants, which consent shall be at the sole discretion of each and every Declarant.

(b) The parties hereto acknowledge that the Building Areas have been developed to full building capacity as shown on the Site Plan and agree that no building located on any parcel may be extended beyond the boundaries of the Building Areas as shown on the Site Plan nor may a building be enlarged in such a manner that will create more gross floor area and/or reduce parking area, such as additions extending over present Common Areas, without the prior written consent of the majority of the Declarants. The parties hereto agree that there shall be no decrease in the parking ratio or change in parking layout or pattern of traffic flow for the Industrial Business Park from that shown on the Site Plan without the prior written consent of the majority of the Declarants.

5.3 Permitted Uses of Common Area. The following uses shall be permitted on the Common Area and the public streets adjacent thereto:

(a) The parking in designated areas of passenger vehicles, and the pedestrian and vehicular traffic of Declarants, and their respective heirs, successors, assigns, grantees, employees, mortgagees, tenants and subtenants, employees of tenants and subtenants and other licensees (collectively the "Permittees") on the respective Parcel owned or occupied, in whole or part, by one or more of the Permittees.

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(b) The parking without charge in designated areas of passenger vehicles, and the pedestrian and vehicular traffic of the customers, visitors and invitees of any of the Permittees (collectively the "Visitors");

(c) The ingress and egress without charge of the above designated persons, and the vehicles thereof, to and from any portion of the Common Area and the public streets adjacent thereto;

(d) The temporary parking of delivery trucks for loading and unloading thereof provided that any such use shall be confined to the amount of time which is reasonably necessary;

(e) The installation, operation, repair, replacement and maintenance of public utilities services together with vaults, manholes, meters, pipelines, valves, hydrants, conduits, poles and related facilities and sewage facilities, serving the Building Areas, all of which (except hydrants and poles) shall be even with or below the surface; provided, however, that any poles or other above-surface installations shall be located so that there shall be an unimpeded access for vehicles and trucks to and from the public streets from and to all of the Building Area, and all cross-arms, pole racks and the like attached thereto shall be at least twenty-five (25) feet above the surface;

(f) The ingress and egress, without charge, of delivery and service trucks and vehicles to and from any portion of the Industrial Business Park and the public streets adjacent thereto, for the delivery of goods, wares, merchandise and the rendition of services to the Declarants, and the Permittees, and the officers, directors, concessionaires, agents, employees, and licensees of any of them;

(g) The provision of other common facilities such as mail boxes for the convenience of the Permittees of business establishments located, or to be located, upon the Building Area or any portion thereof, subject to the reasonable approval of the Declarants;

(h) Subject to Section 5.2, the construction, maintenance, repair, replacement, rearrangement and reconstruction of parking sites or stalls, private streets, sidewalks, pedestrian ramps, driveways, lanes, curbs, gutters, traffic control areas, traffic and parking lighting facilities, garbage container storage areas, underground public utilities and underground sewage facilities;

(i) The temporary parking or standing of trucks, tractors, trailers and other delivery vehicles used in conjunction with the exercise of any of the activities described in Section 5.3(e); and

(j) The construction, maintenance, repair, replacement and reconstruction of any, wall or landscaped area, including planters, planting boxes, edgers, irrigation controllers, sprinklers and valves.

All the uses permitted within the Common Area shall be used with reason and judgment so as not to interfere with the primary use of the Common Area, namely the serving and supplying of the loading facilities of the Building Area. Notwithstanding any other provision of this Declaration to the contrary, the Owner of each Parcel, or in the alternative its tenant(s), shall be solely responsible for the operation and maintenance, and any costs and expenses thereof, for that portion of the Common Area (such as loading docks) used exclusively by such Owner or tenant(s).

5.4 Common Area Use Monitoring and Restrictions.

(a) Declarants shall monitor use of all parking areas which are subject to this Declaration from time to time to assure that use of such parking areas is not made by persons not authorized

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to do so by this Declaration and otherwise conforms with the requirements of this Section of the Declaration, and shall take such actions as are necessary or advisable, as reasonably determined by Declarants, to prevent any such unauthorized or nonconforming use. There shall be:

- (i) No abandoned or inoperable vehicles of any kind shall be stored or parked on any Parcel; and
 - (ii) No activity such as, but not limited to, maintenance, repair, rebuilding, dismantling, painting or servicing any kind of vehicle shall take place on any Parcel.
- (b) The Common Area shall not at any time be used for daily or long-term parking of delivery trucks.

5.5 Common Area Operation and Maintenance.

(a) The Developer is hereby approved as manager of the Common Area (hereinafter "Common Area Manager"). The Common Area Manager shall have and is hereby given the full right and authority of operation, control, security, repair, replacement and maintenance of the entire Common Area, to include the establishment of reasonable rules and regulations (subject to the reasonable approval of the Declarants) for use and operation of the Common Area, including without limitation employee parking, and to incur all reasonable costs and expenses related thereto, including, without limitation, costs and expenses relating to driveways, sidewalks, parking areas, delivery ways, loading areas (except loading ramps and docks) and landscaped areas. The Common Area Manager agrees to repair, replace and maintain or cause to be repaired, replaced and maintained the Common Areas in good and clean condition and repair, the same as other first class light industrial business parks in the Stanislaus County geographical area, said maintenance to include, but not be limited to, adequate lighting, water, electricity and other utilities, sweeping, trash removal, striping, restriping, painting, gardening, day porter services, insurance, repairs to and replacing of asphalt paving and sidewalks, so as to maintain an even surface, bumpers, light bulbs, signs (except as provided herein) light standards and sprinkler systems, sewer utilities which service substantially all of the Building Area, planting areas and other items of repair, replacement and/or maintenance that may be needed from time to time to properly maintain said Common Areas, and at all times comply with all applicable governmental rules and regulations. In the event Common Area Manager fails to adequately and properly maintain the Common Area, the Owner, or Owners, of other Parcel(s) shall have the right to enforce such obligations through all available methods, including arbitration and/or the judicial process. However, in no event may a Parcel Owner withhold payment of its share of "Common Area Expenses" (as hereinafter defined).

(b) Developer may continue as Common Area Manager so long as it is the Owner of any Parcel or any portion or interest of any Parcel within the Industrial Business Park, however, the Common Area Manager may cause an affiliate or an independent party or entity perform some or all of the obligations of the Common Area Manager provided for in this Declaration; provided that if an affiliate is hired, it shall be at a fair market price for the local area. At such time as Developer is no longer the Owner of any portion or interest of any Parcel within the Industrial Business Park, the Owners of not less than sixty-five percent (65%) of the Building Area in the Industrial Business Park shall have the authority to appoint a Common Area Manager. All references to Common Area Manager as herein set forth shall apply to any successor Common Area Manager. Notwithstanding anything in this Section 5.5(b) to the contrary, Developer may be replaced as Common Area Manager in the event of incompetence, gross negligence or fraud. The Common Area Manager's fee shall be as defined below in Section 5.5(e). The rights and

authority granted herein to the Common Area Manager shall continue until the earlier to occur of the termination of this Declaration or the resignation or removal of the Common Area Manager. The Common Area Manager may resign at any time by giving at least ninety (90) days' prior notice in writing to the Owners. In the event that a majority of all Owners at any time are reasonably dissatisfied with the Common Area Manager's performance of its obligations, or the cost thereof, then such Owner's shall have the right to give the Common Area Manager thirty (30) days' written notice of such dissatisfaction, specifying the particulars in respect of which the Common Area Manager's performance is deemed unsatisfactory. If, after thirty (30) days following the date such performance notice was given, the Common Area Manager's performance continues to be unsatisfactory and not reasonably cured, the notifying party shall have the right to cause the duties of the Common Area Manager to be taken over by a new individual or entity approved by the majority of all Owners, effective on the first day of the next succeeding calendar month. In the event that the Common Area Manager resigns or is removed as provided in this Section, the Common Area Manager shall, within sixty (60) days after the effective date of its termination as Common Area Manager, provide to all of the Owners a written statement of all costs, fees and expenses, if any, which are to be reimbursed to the former Common Area Manager pursuant to the terms hereof. Such sums shall be payable by the Owners to the former Common Area Manager within fifteen (15) days after the delivery of such statement; provided that the Owners may, at their expense, conduct an audit of the former Common Area Manager's books and records to verify the sums due so long as such audit is commenced and completed within ninety (90) days after the delivery of the aforementioned statement. Any new Common Area Manager will, after its appointment in accordance with the terms hereof, perform the maintenance, management and operation obligations of the Common Area Manager set forth in this Declaration throughout the remainder of the term of this Declaration, or until resignation or removal in accordance with the terms of this Declaration.

(c) If at any time there ceases to be a Common Area Manager, any Parcel Owner performing repairs or replacements of Common Area improvements which are damaged on its Parcel(s) shall be entitled to collect from the Owners of each Parcel a prorata share of the costs of such repair and replacement (but not the costs of insurance, management or maintenance) to the extent such repair or replacement restores the damaged Common Area improvements to the specifications approved by the parties hereto, which prorata share shall be determined in the same manner as provided in Section 5.6(c) hereof and shall be paid within twenty (20) days of written request therefor. If an Owner fails to timely make such reimbursement the billing party shall have all rights possessed by the Common Area Manager to collect such amount with interest (as set forth in Section 5.6 hereof) together with a ten percent (10%) service charge (which 10% shall not apply to non-recurring single expenditures to the extent such expenditures exceed Ten Thousand Dollars (\$10,000.00) per item), including without limitation the lien rights in Section 5.6 hereof. The portion of said expenditures under \$10,000.00 shall be subject to the 10% service charge.

(d) Notwithstanding any provisions of this Section 5.5 which may be contrary:

(i) Each Common Area Manager shall save and hold harmless the preceding Common Area Manager of and from any and all claims, demands, costs, fees, expenses, liabilities and damages arising or occurring subsequent to the date said new Common Area Manager assumes its duties, except for the intentional misconduct or negligence of said preceding Common Area Manager or that of its employees or agents. Said preceding Common Area Manager shall save and hold harmless the new Common Area Manager of and from any and all claims, demands, costs, fees, expenses, liabilities and damages arising or occurring prior to the date the new Common Area Manager assumes its duties, except for the intentional or negligent misconduct of said new Common Area Manager or that of its employees or agents.

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(ii) In any event, at such times as any Common Area Manager ceases to have an obligation to perform the duties and obligations described herein, said Common Area Manager shall cease to have any liability or responsibility for any acts, events or circumstances occurring subsequent to and not as a result of its performance or non-performance of its duties or obligations while Common Area Manager.

(iii) The Common Area Manager may make and in such event shall act reasonably to attempt to enforce or cause to be enforced, reasonable rules and regulations of general application for the supervision, control and use of the Common Area. Any rules and regulations promulgated by the Common Area Manager shall be submitted to the Owners for their approval and/or amendment prior to the effective date of such rules and regulations. All new, or changed, rules and regulations must be approved by a majority of all the Owners, which approval shall not be unreasonably withheld or delayed.

(iv) During any period of time when no person is obligated to perform the duties of Common Area Manager, each Owner of a Parcel of the Industrial Business Park shall have the obligation to maintain its Parcel or Parcels in a manner consistent with the provisions of this Declaration.

(e) The Common Area Manager is hereby authorized to contract for and pay for, on behalf of the fee Owners of the Industrial Business Park, all of the repair, replacement and maintenance and operating costs and expenses for the Common Area operation and maintenance, and shall receive a service charge of fifteen percent (15%) of such costs and expenses, excluding from such costs and expenses the portion of single capital expenditures in excess of Fifteen Thousand Dollars (\$15,000.00) (said amount to be subject to revision by reference to the CPI as applied at five (5) year intervals in the manner provided in Exhibit "E" attached hereto and incorporated herein by this reference). The Common Area Manager shall hire qualified vendor(s) or contractor(s) at fair and competitive pricing to make any and all repairs. The Common Area Manager shall keep accurate books and records in the State of California, and agrees to allow the Owners, at no expense to the Common Area Manager, copies of all records pertaining to the Common Area. The Common Area Manager also agrees to hold expenses to a reasonable level consistent with the operation and maintenance of comparable industrial business parks in the area. The Common Area Manager is hereby authorized to contract for periods not in excess of one (1) year containing provision for the Common Area Manager or its successor to cancel such contract upon thirty (30) days' notice and is authorized to pay for, on behalf of the Owners of the Industrial Business Park, all of the Common Area Expenses incurred to comply with this Declaration, including Common Area Manager's 15% service charge as stated above.

(f) As a part of said operation, the Common Area Manager shall procure and maintain comprehensive general liability insurance against claims for personal injury, death or property damage occurring in, upon or about the Common Areas in accordance with Section 9.5 below.

(g) The Common Area Manager agrees to indemnify, defend, and hold harmless all Owners, and their respective Parcels, from and against any mechanics', materialmens' and/or laborers' liens, and all costs, expenses and liabilities in connection therewith, including attorneys' fees, arising out of the maintenance performed by Common Area Manager in respect to the Common Area, pursuant to the provisions of this Section 5.5. In the event that the Parcel of any Declarant shall become subject to any such lien, the Common Area Manager shall at the request of such Declarant promptly cause such lien to be released and discharged of record, either by paying the indebtedness which gave rise to such lien, or posting such bond or other securities as shall be required by law to obtain such release and discharge.

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5.6 Payment of Common Area Expenses. The expenses of the operation, maintenance, repair and replacement of the Common Area (the "Common Area Expenses") shall be paid to the Common Area Manager by the Owners of each of the parcels comprising the Industrial Business Park as follows:

(a) The Owner of each Parcel shall pay to the Common Area Manager, on the first day of each calendar month, an amount reasonably estimated by the Common Area Manager to be that Parcel Owner's prorata share (as provided in subparagraph (iii) below) of Common Area Expenses for such month. The foregoing estimated monthly charge may be adjusted by the Common Area Manager at the end of any calendar year on the basis of the Common Area Manager's experience and reasonably anticipated costs.

(b) Promptly following the end of each calendar year, the Common Area Manager shall furnish to each Parcel Owner a statement covering the calendar year just expired showing the total of the Common Area Expenses, the amount of each Parcel Owner's prorata share of the Common Area Expenses for such calendar year and the payments made by each Parcel Owner with respect to such period as set forth in subparagraph (i) above. Each Parcel Owner shall have the right to audit any such statements in accordance with subparagraph (v) below. If a Parcel Owner's prorata share of the Common Area Expenses exceeds such Parcel Owner's payments so made, such Parcel Owner shall pay to the Common Area Manager the deficiency within thirty (30) days after receipt of such statement. If said payments exceed such Parcel Owner's prorata share of the Common Area Expenses, such Parcel Owner shall be entitled to offset the excess against payments next thereafter to become due to the Common Area Manager as set forth in subparagraph (i) above.

(c) A Parcel Owner's prorata share of the Common Area Expenses for the previous calendar year shall be that portion of all Common Area Expenses which is equal to the proportion thereof which the number of square feet of Floor Area (as hereinafter defined) located on that Owner's Parcel bears to the total number of square feet of Floor Area in the Industrial Business Park constructed as shown on the attached Exhibit "B", which the parties hereto agree to be Sixty-One Thousand (61,000) square feet (the "Total Project Floor Area") as shown on the attached Exhibit "B". If, however, from time to time a constructed building, or buildings, on any Parcel contain(s) more or less Floor Area than as shown on Exhibit "B", appropriate and timely adjustment shall be made to that Parcel's Floor Area, the Total Project Floor Area and all Parcel Owners' prorata share of the Common Area Expenses. As used in this Declaration, the term "Floor Area" shall mean the aggregate number of square feet of floor area in all floors in any structure within the Industrial Business Park, as shown on the Site Plan, whether actually constructed or not, whether or not actually occupied, measured from the exterior faces or the exterior lines of the exterior walls. The term "Floor Area" shall not include any of the following: (A) the upper levels of any multi-deck stock areas created for convenience to increase the usability of space for stock purposes; (B) areas, whether physically separated or whether otherwise required by building codes, which are used exclusively to house mechanical, electrical, telephone, telecommunications, and HVAC equipment, and other such building operating equipment; (C) all truck loading areas, and truck parking, turn around and dock areas and ramps; (D) all Common Area; and (E) basement space and subterranean areas, balcony or mezzanine space.

(d) Any Common Area Expense owed to the Common Area Manager hereunder which is more than ten (10) days past due shall be subject to a late payment penalty of five percent (5%). In addition, for so long as such amounts owing to the Common Area Manager remain unpaid, such unpaid amount shall bear interest at the rate which is the lesser of (i) two percent (2%) in excess of Wells Fargo Bank's prime rate in effect at the time of such delinquency or (ii) the maximum interest rate permitted by law. Any such penalties or interest which are paid by such delinquent Parcel Owner or Owners shall be placed in a fund (the "Common Area Fund") which Common Area Fund shall be established and controlled by the Common Area Manager and shall be utilized by the Common Area Manager to pay for unrecovered

costs associated with the operation of the Common Area in accordance with this Declaration. Each Parcel Owner acknowledges that the late payment of any monthly installment will cause the Common Area Manager to incur certain costs and expenses not otherwise contemplated, the exact amount of such costs being extremely difficult and impractical to fix. Such costs and expenses will include, without limitation, administrative and collection costs, processing and accounting expenses and other costs and expenses necessary and incidental thereto. It is, therefore, agreed that this late charge represents a reasonable estimate of such costs and expenses and is fair compensation to the Common Area Manager for its loss suffered by such nonpayment. The late charge provisions contained herein are in addition to and do not diminish or represent a substitute for any or all of the Common Area Manager's other rights to enforce the provisions of this Declaration.

(e) Within three (3) years after receipt of any Common Area Expense statement, any Parcel Owner may audit such statement. If it shall be determined as a result of such audit that the auditing Parcel Owner has paid in excess of the amount required pursuant to this Declaration, then such overpayment shall be credited toward the next installment that would otherwise be due from such auditing Parcel Owner. In addition, if the Common Area Expense Statement required such Parcel Owner to pay in excess of four percent (4%) over the amount that such Parcel Owner should have paid (as determined by the approved audit), then the Common Area Manager shall pay all of the auditing Parcel Owner's costs and expenses connected with such audit.

(f) If any Owner defaults under this Declaration on its obligation to pay its prorata share of Common Area Expenses, any other Owner and/or the Common Area Manager may institute legal action against the defaulting Owner for specific performance, declaratory relief, damages or other available remedy. In addition to recovery of the sum or sums expended on behalf of the defaulting Owner, the prevailing Owner and/or Common Area Manager shall be entitled to receive from the defaulting Owner such amount as the Court may adjudge to be reasonable attorney fees, including without limitation, attorney fees incurred in executing upon or appealing any judgment. Any and all delinquent amounts together with said interest shall be a lien and charge upon all of the Parcel or Parcels of such Owner subject to, and junior to, and shall in no way impair or defeat the lien or charge of any bona fide mortgage or deed of trust upon the same or any part thereof at any time given or made. The liens provided for hereinabove may be filed for record by the party entitled thereto as a claim of lien against the defaulting Owner in the Office of the County Recorder of Stanislaus County, signed and verified, which shall contain at least:

- (i) A statement of the unpaid amount of costs and expenses;
- (ii) A description sufficient for identification of that portion of the property of the defaulting Owner which is the subject of the lien; and
- (iii) The name of the Owner or reputed Owner of the Parcel which is the subject of the alleged lien. Such lien, when so established against the real property described in said lien, shall be prior and superior to any right, title, interest, lien or claim which may be or has been acquired or attached to such real property after the time of filing of such lien. Such lien shall be for the use and benefit of the person filing same, and may be enforced and foreclosed in a suit or action brought in any Court of competent jurisdiction. Within thirty (30) days following the filing of such lien, the party filing the lien shall send a copy thereof to the fee Owner of the Parcel which is subject to the lien which copy shall show recorder's stamp (with recording date and book and page number) from the Stanislaus County Recorder's Office.

(g) In the event all of the Common Area lighting on any Parcel within the Industrial Business Park is metered through a separate meter of the Owner or a tenant of said Parcel, said Owner or tenant shall be responsible for the electricity, light bulbs and ballasts used by said portion of the Common

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Areas, and said Owner's or tenant's share of the Common Area costs with respect to electricity, light bulbs and ballasts used in the remainder of the Industrial Business Park shall be equitably modified taking into account the lighting separately metered to the Owner or tenant of such Parcel. Such separately metered area shall be lighted for at least the period the remaining portion of the Common Area is kept lighted by the Common Area Manager.

5.7 Common Area Damage. In the event any of the Common Area is damaged or destroyed by any cause whatsoever, whether insured or uninsured, the Common Area Manager shall repair or restore such Common Area in accordance with the provisions of this Section 5.7. Except as hereinafter provided, the cost and expense of such repair and restoration shall constitute a Common Area Expense, and the Owners shall pay such cost and expenses on a progress payments basis as such repair and restoration proceeds, based on the proportionate share of each Owner's Building Area as specified in Section 5.6(c) above. All insurance proceeds, if any, paid to an Owner on account of damage or destruction to the Common Area shall be made available by the Owner receiving the same by deposit into a trust account approved by the Developer or Common Area Manager for use by Common Area Manager in payment of the costs of repair and restoration of the Common Area on that Owner's Parcel. If the cost to repair and restore the Common Area hereunder, after application of all insurance proceeds available on account of such damage or destruction (or which would have been available except for elections relating to deductibles or self-insurance for which the affected Owner shall be responsible to contribute), exceeds ten percent (10%) of the total Common Area Expenses anticipated for the year, after deduction of any available insurance proceeds, the Common Area Manager shall have no obligation to proceed with repair and restoration of the Common Area hereunder, unless the Owners agree to fund such excess amount and provide reasonable assurances to Common Area Manager of the availability of funding of such payments; provided, however, that notwithstanding the foregoing, Common Area Manager shall repair and restore, and the Owners shall be required to pay their proportionate shares of the cost of, all Common Area located on the Parcels that is necessary or required in order for the continuance of the Industrial Business Park's operations, including driveways, common utility lines, sidewalks, curbs, roads and perimeter landscaping areas. Except to the extent limited by Section 9.5 hereof, in the event such damage or destruction of Common Area is caused in whole or in part by an Owner or third party, each other Owner reserves and retains the right to proceed against such Owner or third party for indemnity, contribution and/or damages.

ARTICLE 6

TAXES

6.1 Payment of Taxes by Declarants. The Declarants shall, with respect to each Parcel owned or occupied by them, pay or cause their tenants or occupants to pay, prior to delinquency, all taxes and bonds and assessments of any kind whatsoever when due on their respective Parcel which includes Common Area and Building Area owned or occupied by them. In the event any federal, state or local governmental entity imposes any tax, fee or charge on the operation and use of the Industrial Business Park and/or the Common Area, then the Declarants, or any successor-in-interest thereto, shall pay or cause their tenants or occupants to pay said tax, fee or charge with respect to any Parcel owned or occupied by them.

6.2 Declarant's Right to Cure. If any Declarant, or any successor, shall fail to pay any taxes and assessments when due, any other Declarant or its successors, as the case may be, may elect, upon thirty (30) days' prior written notice to the defaulting party, to pay said taxes, as required. The curing party may then bill the defaulting party for the expenses incurred, plus interest at the rate which is two (2) percentage points over the prime rate charged by a major California financial institution selected by the curing party, and secure such obligation by placing a lien on the defaulting Owner's Parcel.

6.3 Compliance with Laws. Each Declarant and its successors-in-interest agrees to implement and comply with any and all laws of the United States of America, the State of California or the ordinances, regulations and requirements of the City of Modesto, County of Stanislaus or other appropriate governmental authority with respect to the use and occupancy of the Industrial Business Park.

6.4 Contest of Taxes. If any Declarant shall deem the taxes and/or assessments, or any part thereof, to be paid by such Declarant, to be excessive or illegal, such Declarant shall have the right to contest the same at its own cost and expense, and shall have the further right to defer payment thereof so long as the validity or the amount thereof is contested in good faith; provided, however, that if at any time payment of the whole or any part thereof shall be necessary to prevent the sale of the Property for nonpayment of taxes, then the contesting Declarant shall pay or cause to be paid the same in time to prevent such sale. Any such payment may be paid under protest.

ARTICLE 7

MUTUAL RELEASE

Each Owner of a Parcel in the Industrial Business Park, for itself, and, to the extent it is legally possible for it to do so, on behalf of its fire and extended coverage insurer, releases the other Owners and their respective occupants from any liability for (i) any loss or damage to the property of each Owner and its respective occupants located upon or in the Industrial Business Park, (ii) any loss or damage to buildings or other improvements in the Industrial Business Park or the contents hereof, (iii) any other direct or indirect loss or damage caused by fire or other risks, which loss or damage under items (i), (ii), or (iii) is of the type generally covered by standard fire and extended coverage in the State of California or is otherwise insured. Each Owner will, to the extent such insurance endorsement is available, obtain for the benefit of the other Owners and their respective occupants a waiver of any such right of subrogation that the fire and extended coverage insurer of such Owner may acquire against the other Owners and their respective occupants by virtue of the payment of any such loss covered by such insurance. The foregoing waiver and release (i) shall be in addition to, and not in limitation or derogation of, any other waiver or release regarding any loss of, or damage to, the said property of any Owner, and (ii) will be operative only so long as the same will not preclude any Owner from obtaining insurance, and will have no effect to the extent it diminishes, reduces, or impairs the liability of any insurer or the scope of any coverage under any policy applicable to any portion of the Industrial Business Park or any buildings thereon or increases the cost of any insurance. Inasmuch as the said mutual waivers will preclude the assignment of any such claim by way of subrogation (or otherwise) to an insurance company (or any other person, firm or corporation), each Owner shall give to each insurance company which has issued to it policies of fire and extended coverage insurance, written notice of the terms of said mutual waivers, and shall have said insurance policies properly endorsed, if necessary, to prevent invalidation of said insurance coverage by reason of said waivers. If an Owner is unable to obtain a waiver of subrogation for any of these reasons, it will notify the other Owners in writing. In that case, the release in this Section 7 will be void as to that Owner. No release shall be given where the negligent or purposeful action of an Owner results in the loss or damage of another's property.

ARTICLE 8

EASEMENTS

8.1 Grant of Easements. Each party hereto, as grantor, hereby grants to the other party for the benefit of said other party, its successors, assigns, tenants, customers, and invitees, and the customers and invitees of such tenants, and for the benefit of the parcel or parcels belonging to the other party, as grantees, the following:

(a) A non-exclusive easement for ingress and egress by vehicular and pedestrian traffic and vehicle parking upon, over, and across that portion of the Common Area lying within the grantor's parcel or parcels. Without limiting the above, upon the expiration or prior termination of this Declaration, Developer and all other Owners, respectively, shall have a perpetual non-exclusive easement for vehicular parking upon, over and across the Common Area. Following the expiration or prior termination of this Declaration, the maintenance and repair of the Common Area shall be the obligation of the Declarant owning and occupying the Parcel most directly benefited by such Common Area. In addition, upon the expiration or prior termination of this Declaration, Developer and all other Owners, respectively, shall have a perpetual non-exclusive easement for ingress and egress, which easement shall be limited solely to the purpose of providing reasonably necessary access to the benefited Parcel over the burdened Parcel from adjacent public streets or for necessary utility connections to the benefited Parcel over the burdened Parcel. Following the expiration or prior termination of this Declaration any necessary maintenance or repair for the continued use of such utility connections and right of ingress and egress shall be the obligation of the Declarant owning or occupying the Parcel benefited by such utility connections and right of ingress and egress; and

(b) Non-exclusive easements under, through, and across that portion of the Common Area within the grantor's parcel or parcels for the installation, maintenance, removal, and replacement of water drainage systems or structures, water mains, sewers, water sprinkler system lines, telephones, or electrical conduits or systems, gas mains, and other public utilities and service easements; provided, however, following the expiration or prior termination of this Declaration, Developer and all other Owners, respectively, shall have a perpetual non-exclusive easement under, through, and across that portion of the Common Area within the grantor's parcel or parcels for the installation, maintenance, removal and replacement, at the grantee's sole cost and expense, of water drainage systems or structures, water mains, sewers, water sprinkler system lines, telephones or electrical conduits or systems, gas mains, and other public utilities and service easements affecting Developer's and other Owners' Parcel. All such systems, structures, mains, sewers, conduits, lines, and other public utility instrumentalities shall be installed and maintained below the ground level or surface of the Industrial Business Park, except where the instrumentality of the particular utility involved is not amenable to being placed underground (such as, but not limited to, transformers and risers). In the event that it is necessary for any party hereto to cause the installation of a storm drain, utility line, or sewer across that Common Area subsequent to the initial paving and improving of said Common Area, the parties agree not to unreasonably withhold the granting of an additional easement or easements provided that the grant thereof does not unreasonably interfere with the normal operation of any business in the Industrial Business Park and no affirmative monetary obligation is imposed upon the grantor.

8.2 Utility Easements. All storm drains, utility lines, transformers, and meters of Developer, their successors, assigns, and tenants shall be maintained in a safe condition. No grantee of a utility easement under this Section 8.2 shall in the use, construction, reconstruction, operation, maintenance, or repair of any storm drains, utility lines, transformers, and meters in any way interfere, obstruct, or delay the grantor of said easements, business, or the public access to and from said business, or interfere, obstruct, or delay in any way the receiving of merchandise by said grantor or in the grantor's location, construction, reconstruction, and maintenance, use, or repair of its service facility area.

8.3 Construction Easements. In addition to the foregoing and in connection with the work performed within the Building Areas, the parties hereto agree that incidental encroachments upon Common Areas may occur as a result of the use of ladders, scaffolding, storefront barricades, and similar facilities resulting in temporary obstruction of portions of the Common Area, all of which are permitted hereunder

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so long as their use is kept within reasonable requirements of construction work expeditiously pursued. Common Areas may be utilized for ingress and egress of vehicles transporting construction materials, equipment, and persons employed in connection with any work provided for herein and temporary storage of material and vehicles being utilized in connection with such construction, subject to all of the other terms in this Declaration.

8.4 Unimpeded Access Between Parcels. No walls, fences, or barriers of any sort or kind shall be constructed or maintained in the Industrial Business Park, or any portion thereof, by an Owner which shall prevent or impair the use or exercise of any of the easements granted herein, or the free access and movement, including without limitation, pedestrian and vehicular traffic between the various parcels except (a) fenced outdoor areas delineated on the Site Plan as "Exclusive Use Area" and used exclusively by the Owner of tenant of the building adjacent thereto on the same Parcel (b) such as may be necessary to protect members of the public from construction or excavation activities; and (c) reasonable traffic controls as may be necessary to guide and control the orderly flow of traffic which may be installed so long as access driveways to the parking area in the Industrial Business Park are not closed or blocked and the traffic circulation pattern of the Common Area, as shown on the Site Plan, is not changed or affected in any way without the prior written consent of the majority of the Declarants.

8.5 Relocation of Utilities. When utility facilities have been installed, Developer and only Developer or its designee may relocate such utility facilities within the Industrial Business Park from time to time. Any relocation of any such utility facilities shall be made at the sole cost and expense of the party or parties requesting such relocation.

8.6 Unauthorized Use and Closure of Common Area. Developer hereby reserves the right to eject or cause the ejection from the Common Area any person or persons not authorized, empowered or privileged to use the Common Area pursuant to this Declaration. Developer also reserves the right to close off the Common Area for such reasonable period or periods of time as may be legally necessary to prevent the acquisition of prescriptive rights by anyone; provided, however, that prior to closing off any portion of the Common Area, as herein provided, Developer shall give at least thirty (30) days' prior written notice to the other Declarants of its intention to do so, and shall coordinate such closing with the other Declarants so that no unreasonable interference with the operation of the Industrial Business Park shall occur and to minimize the disruption to all occupants.

8.7 Rules and Regulations. The Common Area Manager may adopt reasonable rules and regulations ("Rules and Regulations") pertaining to the use of the Common Area by the Permittees of the Industrial Business Park, provided that all such Rules and Regulations and other matters affecting the users of the Common Area (a) will apply equally and without discrimination to all Permittees, (b) comply with City of Modesto or County of Stanislaus ordinances, and (c) are otherwise consistent with this Declaration. The Declarants hereby adopt the "Rules and Regulations" attached hereto as Exhibit "F", as the same may be amended from time to time by the Developer and approved by the other Declarants, which approval shall not be unreasonably withheld or delayed. An amendment of such Rules and Regulations shall not be deemed to be nor shall it require, an amendment to this Declaration, but must be approved by the majority of the Declarants prior to its effect.

ARTICLE 9

INDEMNITY AND INSURANCE

9.1 Building Area Indemnity. Each Owner shall indemnify, defend, and hold the other Owner(s) harmless from and against all claims, expenses, liabilities, loss, damage, and costs, including any

actions or proceedings in connection therewith and including reasonable attorneys' fees, incurred in connection with, arising from, due to or as a result of the death of or any accident, injury, loss, or damage, howsoever caused, to any person or loss or damage to the property of any person as shall occur in Building Area located on each Owner's parcel, except claims resulting from the negligence or willful act or omission of the indemnified Owner or any occupant of any such Owner's parcel, or the agent, servants, or employees of such indemnified Owner, wherever the same may occur. Notwithstanding any of the provisions of this Section 9.1 to the contrary, each Owner hereto waives any right of recovery against the other Owner(s) for any loss, damage, or injury to the extent the same is covered by insurance provided for by this Declaration.

9.2 Casualty Insurance. Each Owner shall carry, or will cause the occupant of its Parcel to carry, fire insurance with extended coverage, vandalism, and malicious mischief endorsements upon all buildings and other improvements located upon its Parcel and (including Common Area improvements) in an amount not less than one hundred percent (100%) of the full replacement cost thereof (excluding foundations, footings and excavations). Such insurance shall be carried with a financially responsible insurance company or companies with a Best's rating of at least B+ VII. Each Owner shall have the power to adjust and settle any loss with its insurer. Each Owner shall, upon written request of any other Owner, furnish certificates of such insurance or other satisfactory written evidence of such insurance at any time during the term hereof.

9.3 Declarants' Liability Insurance. Each Owner shall at all times during the term of this Declaration, maintain in full force and effect and at its expense, commercial general liability insurance covering its Parcel, including the Common Area, written by one or more insurance companies licensed to do business in the State of California with a Best's rating of A-/IX or better covering such Owner's Parcel and insuring against the risks of bodily injury, property damage, and personal injury liability and providing contractual liability coverage for the indemnity obligations described in Section 8.1 with liability limits of not less than Two Million Dollars (\$2,000,000) combined single limit coverage for personal injury, death and/or property damage arising out of any single occurrence. All such insurance will be primary and non-contributory, provide for severability of interests and shall afford coverage for all claims based on acts, omissions, injury and damage which occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period. The limits of coverage specified in this Section 9.2 may be adjusted at five (5) year intervals by the consent of the majority of all Owners to reflect the decrease of the value of the dollar and the increase in risk occurring after the date of this Declaration.

9.4 Common Area Coverage.

(a) At all times during the term of this Declaration on behalf, and for the benefit, of all Owners, the Common Area Manager shall continuously maintain, or cause to be maintained, in force and effect commercial general liability insurance written by one or more insurance companies licensed to do business in the State of California with a Best's rating of A-/IX or better insuring all Owners or occupants who now or hereafter own or hold any Parcel or any leasehold estate or other interest therein as their respective interests may appear, provided that the Manager is give prior written notice of such interest, against claims for personal injury, death or property damage occurring in, upon or about the Common Area. All such insurance shall be primary coverage naming all Owners and the Common Area Manager as additional insureds and shall not require that any other insurance be called upon to contribute to a loss under such coverage, shall provide for severability of interests, shall afford coverage for all claims based on acts, omissions, injury and damage that occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period, and shall have liability limits of not less than Two Million Dollars (\$2,000,000.00) combined single limit coverage for personal injury, death and/or property damage arising

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out of any single occurrence. Such insurance shall include blanket contractual coverage or coverage which shall specifically include the obligation of indemnification required of the Common Area Manager under Section 5.5(g). All Owners and other parties named as additional insureds shall be provided with a certificate of insurance evidencing such insurance and which is otherwise in compliance with Section 9.8 below. The limit of coverage specified in this Section 9.4(a) may be adjusted at five (5) year intervals by the consent of the Owners to reflect the decrease of the value of the dollar and the increase in risk occurring after the date of this Declaration.

(b) The Common Area Manager is hereby designated the agent of each and every Owner for the purpose of obtaining such insurance. The premiums for said policy shall be apportioned among the others in the proportion set forth in Section 5.6(c). Any policy required hereunder shall provide that said policy shall not be cancelled without at least ten (10) days' prior notice to each Owner.

9.5 Construction Coverage. Prior to commencing any construction activities within the Industrial Business Park each Owner shall obtain or require its contractor to obtain and thereafter maintain so long as such construction activity is occurring, at least the minimum insurance coverages (as may be adjusted by the Common Area Manager from time to time to reflect commercial standards then in effect) set forth below:

- (a) Worker's Compensation statutory limits
- (b) Employer's Liability \$500,000.00
- (c) Commercial General Liability and Business Auto Liability as follows:
 - (i) Bodily Injury - \$1,000,000.00 per occurrence
 - (ii) Property damage - \$1,000,000.00 per occurrence
 - (iii) Independent Contractors Liability; same coverage as set forth in (a) and (b) above.
 - (iv) Products/Completed Operations Coverage which shall be kept in effect for two (2) years after completion of work;
 - (v) "XCU" Hazardous Endorsement, if applicable;
 - (vi) "Broad Form" Property Damage Endorsement;
 - (vii) "Personal Injury" Endorsements;
 - (viii) "Blanket Contractual Liability" Endorsement.

If the construction activity involves the use of another Owner's Parcel, then such other Owner shall be an additional insured only under Section 9.5 above, and such insurance shall provide that the same shall not be canceled, or reduced in amount or coverage below the requirements of this Declaration, without at least thirty (30) days prior written notice to the named insureds and each additional insured. If such insurance is canceled or expires then the constructing Owner shall immediately stop all work on or use of the other Owner's Parcel until either the required insurance is reinstated or replacement insurance obtained. The foregoing insurance requirements shall not apply to routine maintenance of the Common Area by Common Area Manager or its agents, or to construction in the Common Area by Common Area Manager, or its agents, if the cost of such construction work is less than twenty percent (20%) of the total annual expenses for Common Area Expenses.

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9.6 Umbrella Coverage. To the extent an Owner is required under this Article 9 to maintain insurance in excess of One Million Dollars (\$1,000,000.00), such insurance may be obtained through the use of an excess liability or umbrella policy of such Owner.

9.7 Blanket Coverage. Any policy required to be maintained by an Owner may be maintained under a so-called "blanket policy" insuring other persons and other locations so long as the amount and type of insurance required to be provided under this Declaration is not thereby diminished nor materially changed.

9.8 Other Insurance Requirements. Any policy of insurance required to be carried by an Owner under this Declaration will provide an undertaking by the insurer to notify the other Owners at least thirty (30) days before cancellation or modification of such policy. Each Owner will give the other Owners on or before the effective date of any policy of insurance required to be carried under this Declaration, a certificate thereof stating that such insurance is in full force and effect; that the premiums therefor have been paid; that the other Owners (and any other person required to be so named) have been named additional insureds where required; evidencing, if applicable, that the policy contains the required waivers of subrogation and that such insurance may not be canceled or modified without at least thirty (30) days prior written notice to the other Owners.

ARTICLE 10 CONDEMNATION

10.1 Condemnation. In the event any part of the Industrial Business Park shall be taken by eminent domain or any similar authority of law, the entire award for value of the land, buildings and improvements on any Parcel taken shall belong to the Owner of the Parcel so taken or its mortgagees as their interests may appear; and, no other Owner of land in the Industrial Business Park shall be entitled to any portion of such award by virtue of any interest created by this Declaration. However, the Owner of any Parcel in the Industrial Business Park shall have the right to seek an award or compensation for the loss of its easement rights, to the extent such award or compensation is allocated for said loss over and above the value of the land, building or improvements so taken to the extent of any damage suffered by such Owner resulting from the severance of such area taken. The Owner of the portion so condemned shall commence in a reasonable time the repair and restoration in a first-class manner, in accordance with this Declaration, the remaining portion of the Industrial Business Park as nearly as practicable to the condition existing just prior to such condemnation without contributions from the Owners of the areas not so affected; provided, however, that if in the exercise of such Owner's reasonable business judgment, such condemnation substantially adversely impairs said Owner's business and it is not economically or practically feasible to rebuild or reconstruct the building or improvements that were previously located on the Building Area, such Owner may elect not to rebuild or reconstruct such building or improvements, but in such event, such Owner shall immediately cause such building or improvements to be demolished and all debris resulting from such demolition to be removed from the Industrial Business Park. The Common Area Manager or other Owners shall have the right, but not the obligation to purchase the parcel. Under no circumstances shall the parcel be used for purposes contrary to this agreement.

10.2 Participation by Mortgagee. Nothing herein contained shall be deemed to prohibit any mortgagee from participating in any eminent domain proceedings on behalf of any party upon whose Parcel it has a mortgage, or in conjunction with any such party.

ARTICLE 11

DAMAGE AND DESTRUCTION

11.1 Restoration of Common Area. In the event of any damage or destruction to the Common Area, whether insured or uninsured, Developer shall restore, repair or rebuild such Common Area with all due diligence as nearly as possible to at least as good a condition as it was in immediately prior to such damage or destruction. The uninsured portion of the cost of such restoration, repair or rebuilding shall be a Common Area Expense.

11.2 Restoration of Buildings. In the case of "substantial damage or destruction" (as hereinafter defined) to any Owner's building, by fire or any other casualty whatsoever, said Owner shall, at its option, restore, repair, replace or rebuild the building, the commencement of which shall begin on or before ninety (90) days after such damage or destruction. In the event an Owner decides not to restore, repair, replace or rebuild the building, said Owner shall be required to "clear" said land and reasonably return it to as near its "unimproved" configuration as possible and Developer shall have the right, but not the obligation, to purchase such Owner's Parcel pursuant to the terms and conditions of Article 11; provided, however, that the Fair Market Value of the Parcel shall be based upon the permitted uses of such Parcel pursuant to the limitations set forth in this Declaration. Any restoration, repairs, replacements or modifications or rebuilding shall be commenced promptly and prosecuted with reasonable diligence.

11.3 Non-Substantial Damage. Notwithstanding Section 11.2 to the contrary, in the case of any non-substantial damage or destruction to any Owners' building, by fire or other casualty whatsoever, said Owner shall be required to, at its sole cost and expense, restore, repair, replace, rebuild or alter the same as nearly as possible to the value, condition and character immediately prior to such damage. Said Owner shall commence such restoration, repairs, replacements, rebuilding or alterations promptly, but in no event later than ninety (90) days after the occurrence of such damage or destruction.

11.4 Definitions. As used in this Section 11.4, the phrase "substantial damage or destruction" shall mean any damage or destruction greater than ten percent (10%) of the cost of repair or reconstruction of the affected Owner's building at the time of the casualty. The phrase "cost of repair or reconstruction" shall include all costs that would constitute the basis of a valid claim or claims under the mechanics' lien laws in effect at the time the work is commenced for any demolition and any removal of existing improvements or portions of improvements as well as for preparation, construction and completion of the new building. "Non-substantial damage or destruction" is that not defined as substantial damage or destruction above.

ARTICLE 12

MISCELLANEOUS

12.1 Modification. This Declaration may not be modified in any respect whatsoever, or rescinded, in whole or in part, except with the consent of the Owners of all Parcels in the Industrial Business Park, and then only by written instrument duly executed and acknowledged by said Owners duly recorded in the Office of the County Recorder of Stanislaus County.

12.2 Not a Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Industrial Business Park to the general public or for the general public or for any public purposes whatsoever, it being the intention of Declarants that this Declaration shall be strictly limited to and for the purposes herein expressed. The right of the public or any person to make any use whatsoever of the Industrial Business Park or any portion thereof (other than any use expressly allowed by a written or recorded map, agreement, deed or dedication) is by permission, and subject to control of the

Owner. Notwithstanding any other provisions herein to the contrary, the Owners of the Parcels by mutual agreement may periodically restrict ingress to, and egress from, the Industrial Business Park in order to prevent a prescriptive easement from arising by reason of continued public use.

12.3 **Breach Shall Not Permit Termination.** No breach of this Declaration shall entitle any Owner to cancel, rescind, or otherwise terminate this Declaration, but such limitation shall not affect in any manner any other rights or remedies which such Owner, or any tenant, may have hereunder by reason of any breach of this Declaration. Any breach of any of said covenants or restrictions, however, shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith for value, but such covenants or restrictions shall be binding upon and effective against such Owner of any Parcel, or any portion thereof, whose title thereto is acquired by foreclosure, trustee's sale, or otherwise.

12.4 **Severability.** If any clause, sentence or other portion of this Declaration shall become illegal, null, or void for any reason, or shall be held by any court of competent jurisdiction to be so, the remaining portions thereof shall remain in full force and effect.

12.5 **Enforcement and Remedies.** If any Owner of any portion of the Industrial Business Park shall, during the term of this Declaration, default in the full, faithful, and punctual performance of any obligation required hereunder, and if at the end of twenty-one (21) days (forty-eight (48) hours with respect to ingress, egress and access) after written notice from any other Owner of a portion of the Industrial Business Park, stating with particularity the nature and extent of such default, the defaulting Owner has failed to cure such default, or if a diligent effort is not then being made to cure such default, then any other Parcel Owner in the Industrial Business Park shall, in addition to all other remedies it may have at law or in equity, including, without limitation, the right to have the actual or threatened violation of any provision hereof restrained by any court of competent jurisdiction, have the right, but not the obligation, to perform such obligation of this Declaration on behalf of such defaulting Owner and immediately upon written demand therefore, be reimbursed by such defaulting Owner of the cost thereof together with interest at the maximum rate allowed by law. Any such claim for reimbursement, together with interest as aforesaid, shall be a secured right, and a lien therefor may attach to the portion of the Industrial Business Park and improvements thereon owned by the defaulting party effective upon recording of a notice of claim of lien in the Recorder's Office of Stanislaus County, State of California, signed and certified, stating the amount due, the name of the Owner, and the legal description of the parcel owned by such defaulting Owner. Such lien shall be subordinate to any first mortgage or deed of trust now or hereafter covering any portion of the Industrial Business Park and improvements thereon, and any purchaser at any foreclosure or trustee's sale (as well as any grantee by deed in lieu of foreclosure or trustee's sale) under any such first mortgage or deed of trust shall take title free and clear from any such then existing lien, but otherwise subject to the provisions of this Declaration. The failure of the Owner or Owners of the Parcels to insist in any one or more cases upon the strict performance of any of the promises, covenants, conditions, restrictions, or agreements of this Declaration shall not be construed as a waiver or relinquishment for the future breach of such provisions.

12.6 **Liens.** Each Owner of a Parcel or portion of the Industrial Business Park shall keep its Parcel or property free of any liens or claims of liens arising from any work performed, materials furnished or obligations incurred by said Owner, occupant or tenant or successor-in-interest thereto in connection with the Parcel or property. If a final judgment establishing the validity or existence of a lien for any amount is entered, said Owner shall pay and satisfy the same at once. If said Owner shall be in default in paying any charge for which a lien claim and suit to foreclose the lien have been filed, and shall not have given the other Owners security to protect the Parcel or property, which may be a portion of the Common Area, or the Industrial Business Park, or any portion thereof, within twenty-one (21) days after receipt of written

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notice therefor, then any other Owner may, but shall not be obligated to, pay said claim and any costs and fees related thereto, and the amounts so paid together with reasonable attorneys' fees incurred by said non-defaulting Owner in connection therewith, shall be immediately due and owing from the defaulting Owner to the curing Owner, which amount shall incur interest at two (2) percentage points over the prime rate charged by a major California financial institution selected by the non-defaulting Owner, until paid, not to exceed the maximum rate permitted by law in the State of California.

12.7 Court Costs. Should suit or legal action be instituted to enforce any of the foregoing terms, covenants, conditions, restrictions, and encumbrances, then the losing party, in addition to any judgment, order, or decree, agrees to pay the prevailing party its reasonable attorneys' fees and court costs as may be awarded by a court adjudging or decreeing such suit or action.

12.8 Force Majeure. Each party shall be excused from performing any obligation or undertaking provided in this Declaration, except any obligation to pay any sums of money under the applicable provisions hereof, in the event and so long as the performance of any such obligation is prevented or delayed, retarded or hindered by act of God, fire, earthquake, floods, explosion, actions of the elements, war, invasion, insurrection, riot, mob violence, sabotage, inability to procure or general shortage of labor, equipment, facilities, materials or supplies in the open market, failure of transportation, strikes, lockouts, action of labor unions, condemnation, requisition, laws, orders of governmental or civil or military or naval authorities, or any other cause, whether similar or dissimilar to the foregoing, not within the respective control of such party, other than the lack of or inability to obtain funds.

12.9 Judicial Reference Proceeding. Any controversy between the parties arising out of this Declaration may, at any party's election, be heard by a reference pursuant to the provisions of California Code of Civil Procedure Section 638, *et seq.* The parties shall agree on a single referee who shall then try all issues, whether of fact or law, and report a finding and judgment thereon. If the parties are unable to agree upon a referee, either party may seek to have one appointed, pursuant to California Code of Civil Procedure Section 640. The cost of such proceedings shall initially be borne equally by the parties. However, the prevailing party in such proceeding shall be entitled, in addition to all other costs, to recover its one-half (1/2) contribution for the cost of the reference as an item of damage or recoverable costs. If the parties elect not to have a dispute resolved by reference, then such dispute shall be decided by a court of competent jurisdiction.

12.10 Captions. The captions at the beginning of each paragraph of this Declaration are not part of and in no manner or way define, limit, amplify, change, or alter any term, covenant, or condition of this Declaration. For the purposes of this Declaration, the neuter gender includes the feminine or masculine, and the singular number includes the plural, and the word person includes corporation, partnership, firm, or association wherever the context so requires.

12.11 Notices. Notices made by the parties pursuant hereto shall be in writing and shall be served and deemed received after seven (7) days by depositing the same in the United States Mail, postage prepaid, certified or registered mail, return receipt requested, or upon the next business day after depositing the same with a nationally recognized delivery service (that maintains delivery records), or immediately if by personal delivery, addressed as follows:

To Developer: ARG Investments, LLC
c/o Brekke Real Estate
1500 Standiford Avenue, Building D
Modesto, CA 95350

DocuSign Envelope ID: 9730340E-11A3-48F8-AB8E-95AF93A9F610

To Declarant: ARG Investments, LLC
c/o Brekke Real Estate
1500 Standiford Avenue, Building D
Modesto, CA 95350

The foregoing addresses may be changed by written notice given pursuant to the provisions of this Section 12.11.

12.12 Breach - Effect on Mortgagee and Right to Cure. Notwithstanding any other provision in this Declaration for notices of default, the mortgagee of any party in default hereunder shall be entitled to notice of said default, in the same manner that other notices are required to be given under this Declaration; provided, however, that said mortgagee shall have, prior to the time of the default, notified the party hereto giving said notice of default of the mortgagee's mailing address. In the event that any notice shall be given of the default of a party and such defaulting party has failed to cure or commenced to cure such default as provided in this Declaration then and in that event the party giving such notice of default covenants to give such mortgagee (which has previously given the above-stated notice to such party) under any mortgage or deed of trust affecting the Parcel of the defaulting party an additional notice given in the manner provided above, that the defaulting party has failed to cure such default and such mortgagee shall be thirty (30) days after said additional notice to cure any such default, or, if such default cannot be cured within thirty (30) days, diligently to commence curing within such time and diligently pursue such cure to completion within a reasonable time thereafter. Giving of any notice of default or the failure to deliver a copy to any mortgagee shall in no event create any liability on the part of the party so declaring the default.

12.13 Governing Law. This Declaration shall be construed in accordance with the laws and decisions of the State of California.

12.14 Consent. Wherever the approval or consent of the Common Area Manager is required, such approval or consent shall not be unreasonably withheld, conditioned, or delayed. In any instance in which any party to this Declaration shall be requested to consent to or approve of any matter with respect to which such party's consent or approval is required by any of the provisions of this Declaration, such consent or approval or disapproval shall be given in writing, and shall not be unreasonably withheld, conditioned, or delayed, unless the provisions of this Declaration with respect to a particular consent or approval shall expressly provide that the same may be given or refused in the sole and absolute judgment of such party. In the event that a party to this Declaration fails to respond to a written request for consent or approval from another party to this Declaration within forty-five (45) days after receipt thereof (or within such other period of time if this Declaration provides for a specific time period for consent or approval), and the requesting party has notified the non-responding party in writing of its failure and provides to such non-responding party an additional ten (10) days thereafter to respond, then, in the event the non-responding party fails to respond within such additional ten (10) day period, such request shall be deemed granted.

12.15 Effect of Parcel Sale. If any Owner sells a Parcel owned by it, then such Owner shall have no further obligation under this Declaration with respect to the Parcel thus sold after the date of the conveyance, other than obligations arising prior to the date of the conveyance.

12.16 Estoppel Certificate. Each Owner and all other parties to this Declaration hereby severally covenant upon written request of any other Owner or party hereto, to issue to such other Owner or party or to any mortgagee or any other persons specified by such request, an estoppel certificate stating: (1) whether the Owner or party to whom the request has been directed knows of any default under this

Declaration and if there are known defaults, specify the nature thereof; (2) whether to its knowledge this Declaration has been assigned, modified or amended in any way (if it has, then stating the nature thereof); and (3) that to the Owner or parties knowledge, this Declaration as of that date is in full force and effect. Such statement shall act as a waiver of any claim by the Owner or party furnishing it to the extent such claim is based upon facts contrary to those asserted in the statement and to the extent the claim is asserted against a bona fide encumbrancer or purchaser who purchased for value without knowledge of facts to the contrary of those contained in the statement and who has acted in reasonable reliance upon the statement. However, such statement shall in no event subject the Owner, or party furnishing it, to any liability whatsoever, notwithstanding the negligent or otherwise inadvertent failure of such Owner or party to disclose correct and/or relevant facts and/or information.

12.17 No Partnership. Nothing herein contained nor any acts of the parties hereto shall be deemed or construed by the parties hereto, or any of them, or by any third person, to create the relationship of principal and agent, or of partnership, or of joint venture, or of any association between any of the parties to this Declaration.

12.18 Time of Essence. Time is of the essence with respect to the performance of each of the Restrictions, covenants and Declarations contained in this Declaration.

12.19 Waiver of Default. No waiver of any default by any party to this Declaration shall be implied from any omission by any other party to take any action in respect of such default if such default continues or is repeated. No express waiver of any default shall affect any default or cover any period of time other than the default and period of time specified in such express waiver. One or more waivers of any default in the performance of any term, provision or covenant contained in this Declaration shall not be deemed to be a waiver of any subsequent default in the performance of the same term, provision or covenant or any other term, provision or covenant contained in this Declaration. The consent or approval by any party to or of any act or request by any other party requiring consent or approval shall not be deemed to waive or render unnecessary the consent to or approval of any subsequent similar acts or requests. The rights and remedies given to any party by this Declaration shall be deemed to be cumulative and no one of such rights and remedies shall be exclusive of any of the others, or of any other right or remedy at law or in equity which any such party shall have by virtue of a default under this Declaration, and the exercise of one such right or remedy by any such party shall not impair such party's standing to exercise any other right or remedy.

12.20 Counterparts. This Declaration may be signed in several counterparts, each of which shall be deemed an original, and all such counterparts shall constitute one and the same instrument. The signature of a party to any counterpart may be removed and attached to any other counterpart. Any counterpart to which is attached the signatures of all parties shall constitute an original of this Declaration.

12.21 Binding Effect. All of the limitations, covenants, conditions, easements, and restrictions contained herein shall attach to and run with the Parcels, and shall benefit or be binding upon the successors and assigns of the respective Declarants. This Declaration and all of the terms, covenants and conditions herein contained shall be enforceable as equitable servitudes in favor of said Parcels and any portion thereof.

12.22 Conflict with Lease. Notwithstanding anything contained in this Declaration to the contrary, in the event that the provisions of a particular lease between an Owner and its tenant(s) are different from, or in conflict with, the provisions of this Declaration, the lease provisions shall prevail among said Owner and its tenant(s), but as among the Owners, this Declaration shall prevail.

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IN WITNESS WHEREOF, the parties hereto have hereunto set their respective authorized signature this day twenty seventh day of February, 2015.

"Developer"

ARG Investments, LLC
a Washington limited liability company

By: 
Allen R. Grant

Its: Sole Member

"Declarant"

ARG Investments, LLC
a Washington limited liability company

By: 
Allen R. Grant

Its: Sole Member

DocuSign Envelope ID: 9730340E-11A3-48F6-AB8E-95AF93A9F610

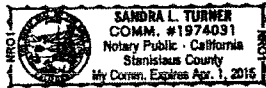
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Stanislaus)
On February 27, 2015 before me, Sandra L. Turner, notary public
Date Here Insert Name and Title of the Officer
personally appeared Allen R. Grant
Name(s) of Signer(s)

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



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

WITNESS my hand and official seal.

Signature [Redacted]
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: Grant of Easements & /Dec of Covenants Conditions & Restrictions
Document Date: February 27, 2015
Number of Pages: 38 Signer(s) Other Than Named Above:

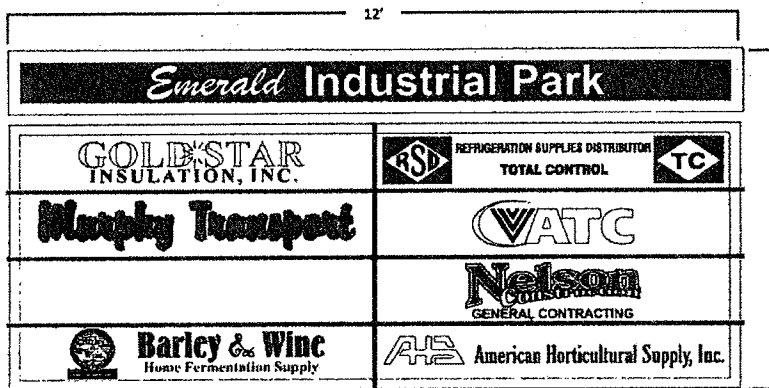
Capacity(ies) Claimed by Signer(s)

Signer's Name: Allen R. Grant
 Corporate Officer - Title(s):
 Partner - Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: LLC Sole Member
Signer Is Representing:

Signer's Name: Allen R. Grant
 Corporate Officer - Title(s):
 Partner - Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: LLC Sole Member
Signer Is Representing:

DocuSign Envelope ID: 9730340E-11A3-48F8-AB8E-95AF93A9F610

EXHIBIT "D"
MONUMENT SIGN



Frame Size: 119" x 46.5"

Cut Size: 118.5" x 46"

Visual Opening: 116" x 43.5"

Note: Names on sign panels above are for example purposes only and not as a representation of tenants or occupants of the Industrial Business Park

EXHIBIT "E"

SINGLE CAPITAL EXPENDITURES

The Fifteen Thousand Dollar (\$15,000) amount by which the portion of single capital expenditures in excess of such amount (the "Breakpoint Amount") are excluded from the Common Area Manager's service charge set forth in Section 5.5(e) shall be adjusted as of the first day of the 61st month after the recordation of the Declaration and as of the first day of each five (5) year anniversary date thereof during the term of the Declaration (each such date being hereinafter referred to as an "Adjustment Date") to reflect the change, if any, in the "CPI" (as defined below) between the date of recordation of the Declaration and each Adjustment Date. On each Adjustment Date, the Breakpoint Amount then in effect shall be adjusted by multiplying such Breakpoint Amount by a fraction, the numerator of which is the CPI published most recently before the applicable Adjustment Date and the denominator of which is the CPI published most recently before the next preceding Adjustment Date (or the date of recordation of the Declaration for the first Adjustment Date).

As used herein, "CPI" means the Consumer Price Index, All Items (All Urban Consumers) for the area in which the Industrial Business Park is located, published by the Bureau of Labor Statistics of the United States Department of Labor (base year 1982-84 = 100). If the Base Year for the CPI is changed, then the calculation hereunder shall be made by utilizing the appropriate conversion factor published by the Bureau of Labor Statistics or any successor agency to correlate to the base year. If no such conversion factor is published, or if publication of the CPI is discontinued, or if the basis for calculating the CPI is materially changed, then the term "CPI" shall mean (i) comparable statistics with respect to the purchasing power of the dollar, as a unit of currency, as computed by an agency of the United States Government performing a function similar to that performed by the Bureau of Labor Statistics as of the execution hereof, or (ii) if none, by a substantial and responsible periodical or publication of recognized authority most closely approximating the result which would have been achieved by the CPI in terms of indexing the purchasing power of the dollar as a unit of currency.

EXHIBIT "F"

RULES AND REGULATIONS

A. Common Area

1. The asphalt paving of the Common Area shall be inspected at regularly and maintained level and evenly covered with the type of surfacing material originally installed thereon, or such substitute thereof as shall be in all respects equal thereto in quality, appearance and durability.
2. All papers, debris, filth and refuse shall be removed regularly from the Industrial Business Park, and paved areas shall be washed or thoroughly swept as required. All sweeping shall be at intervals before the retail establishments within the Industrial Business Park shall be opened for business to the public, using motor driven parking lot vacuum cleaning vehicles where feasible.
3. All trash and rubbish containers located in the Common Area for the use of Permittees shall be emptied daily and shall be washed at intervals sufficient to maintain the same clean condition.
4. All landscaping shall be properly maintained, including removal of dead plants, weeds and foreign matter and such replanting and replacement as the occasion may require.
5. All hard-surfaced markings shall be inspected at regular intervals and promptly repainted as the same shall become unsightly or indistinct from wear and tear, or other cause.
6. All storm drain catch basins shall be cleaned on a schedule sufficient to maintain all storm drain lines in a free-flowing condition and all mechanical equipment related to storm drain and sanitary sewer facilities shall be regularly inspected and kept in proper working order.
7. All surface utility facilities servicing the Common Area, including, but not by way of limitation, hose bibs, standpipes, sprinklers and domestic water lines, shall be inspected at regular intervals and promptly repaired or replaced as the occasion may require, upon the occurrence of any defect or malfunctioning.
8. All Common Area amenities, benches, and institutional, directional, traffic and other signs shall be inspected at regular intervals, maintained in a clean and attractive surface condition and promptly repaired or replaced upon the occurrence of any defects or irregularities thereto.
9. All lamps shall be inspected at regular intervals and all lamps shall be promptly replaced when no longer properly functioning.
10. The improvements on and to the Common Area shall be repaired or replaced with materials, apparatus and facilities of quality at least equal to the quality of the materials, apparatus and facilities repaired or replaced.
11. The Common Area shall be illuminated in such areas as the Declarants shall determine, at least during such hours of darkness as any of the retail establishments in the Industrial Business Park

shall be open for business to the public, and for a reasonable period thereafter, in order to permit safe ingress to and egress from the Industrial Business Park by Permittees, and shall also be illuminated during such hours of darkness and in such manner as will afford reasonable security for the Owners, occupants and visitors.

12. The Common Area Manager shall use reasonable efforts to arrange with local police authorities to (a) patrol the Common Area at regular intervals, and (b) supervise traffic direction at entrances and exits to the Industrial Business Park as traffic conditions would reasonably require such supervision, and all Declarants shall cooperate and use their reasonable efforts to assist the Common Area Manager in arranging such activities.

13. The Declarants shall use reasonable efforts to require their respective Permittees to comply with all regulations with respect to the Common Area, including, but not by way of limitation, posted speed limits, directional markings and parking stall markings.

14. All of the Common Area shall be maintained free from any obstructions not required, including the prohibition of the sale or display of merchandise.

B. Floor Area

1. All Floor Area, including entrances and returns, doors, fixtures, windows and plate glass shall be maintained in safe, neat and clean condition.

2. All trash, refuse and waste materials shall be regularly removed from the premises of each retail establishment within the Industrial Business Park, and until removal shall be stored (a) in adequate containers, which containers shall be covered with lids and shall be located so as not to be visible to the general public shopping in the Industrial Business Park, and (b) so as not to constitute any health or fire hazard or nuisance to any Declarant.

3. Neither sidewalks nor walkways shall be used to display, store or place any merchandise, equipment or devices, except as otherwise provided for in Section 1.6(a) of this Declaration.

4. No advertising medium shall be utilized which can be heard or experienced outside of the Floor Area of any retail establishment, including, without limiting the generality of the foregoing, flashing lights, searchlights, loud speakers, phonographs, radios or televisions, however, nothing herein shall limit a tenant's or occupant's use of a loud speaker for communication between a retail building and an outdoor sales/storage area located immediately adjacent thereto. The volume of any such loud speaker system shall at all times be at the minimum level necessary to effectively communicate and there shall be no music played or continuous broadcasting from such loud speaker system(s).

5. No use shall be made of the Industrial Business Park or a portion or portions thereof which would (a) violate any law, ordinance or regulation, (b) constitute a nuisance, (c) constitute an extra-hazardous use, or (d) violate, suspend or void any policy or policies of insurance on the buildings in the Industrial Business Park.

6. The Declarants shall use their best efforts to require all trucks servicing their respective Parcels to load and unload such trucks (a) prior to the hours the Industrial Business Park is open for business to the general public, or (b) so as not to materially interfere with the operation of the other establishments within the Industrial Business Park.

7. The Declarants shall promptly upon receiving notice thereof, notify Developer or Developer's designated representative of any accident, loss, damage, destruction or any other situation which arises in or about their respective Parcels or the Common Area which could potentially result in a claim or other action against Developer.

C. Conduct of Persons

The Declarants hereto do hereby establish the following rules and regulations for the use of roadways, walkways, the Common Parking Area, and other common facilities provided or the use of Permittees:

1. No person shall use any roadway or walkway, except as a means of egress from or ingress to any Floor Area and the Common Parking Area within the Industrial Business Park, or adjacent public streets or such other uses as approved by the Declarants and except as otherwise provided for in paragraph B.5 above in this Exhibit "F". Such use shall be in an orderly manner, in accordance with the directional or other signs or guides. Roadways within the Industrial Business Park shall not be used at a speed in excess of fifteen (15) miles per hour and shall not be used for parking or stopping, except for designated loading and unloading areas and except for the immediate loading or unloading of passengers. No walkway shall be used for other than pedestrian travel or such other uses as approved by the Declarants, except as otherwise provided for in paragraph B.5 above in this Exhibit "F".

2. No person shall use the Common Parking Area except for the parking of motor vehicles during the period of time such person or the occupants of such vehicles are customers or business invitees of the retail establishments within the Industrial Business Park or except as otherwise provided for in Section 8.1 of the Declaration as amended. All motor vehicles shall be parked in an orderly manner within the painted lines defining the individual parking places. During peak periods of business activity, limitations may be imposed as to the length of time for parking use.

3. No person shall use any utility area, truck court or other area reserved for use in connection with the conduct of business, except for the specific purpose for which permission to use such area is given.

4. Developer shall have the right to supplement these Rules and Regulations with rules and regulations dealing with the public's right to engage in expressive activity in the Industrial Business Park ("Expressive Activities Regulations") which Expressive Activities Regulations shall comply with then current California law.

5. Subject to the Expressive Activities Regulations, no person shall, in or on any part of the Common Area:

(a) Vend, peddle or solicit orders for sale or distribution of any merchandise, device, service, periodical, book, pamphlet or other matter whatsoever.

(b) Exhibit any sign, placard, banner, notice or other written material.

(c) Distribute any circular, booklet, handbill, placard or other material.

(d) Solicit membership in any organization, group or association or contribution for any purpose.

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(e) Parade, rally, patrol, picket, demonstrate or engage in any conduct that might tend to interfere with or impede the use of any of the Common Area by any Permittee, create a disturbance, attract attention or harass, annoy, disparage or be detrimental to the interest of any of the retail establishments within the Industrial Business Park.

(f) Use any Common Area for any purpose when none of the retail establishments within the Industrial Business Park is open for business or employment.

(g) Throw, discard or deposit any paper, glass or extraneous matter of any kind, except in designated receptacles, or create litter or hazards of any kind.

(h) Use any sound-making device of any kind or create or produce in any manner noise or sound that is annoying, unpleasant, or distasteful to the Declarants or Permittees, except as otherwise provided for in paragraph B.6 above of this Exhibit "F".

(i) Deface, damage or demolish any sign, light standard or fixture, landscaping material or other improvement within the Industrial Business Park, or the property of customers, business invitees or employees situated within the Industrial Business Park.

The listing of specific items as being prohibited is not intended to be exclusive, but to indicate in general the manner in which the right to use the Common Area solely as a means of access and convenience in shopping at the retail establishments in the Industrial Business Park is limited and controlled by the Declarants in the Industrial Business Park.

Any Declarant shall have the right to remove or exclude from or to restrain (or take legal action to do so) any unauthorized person from, or from coming upon, the Industrial Business Park or any portion thereof, and prohibit, abate and recover damages arising from any unauthorized act, whether or not such act is in express violation of the prohibitions listed above. In so acting such Declarant is not the agent of other Declarants or tenants of the Industrial Business Park, unless expressly authorized or directed to do so by such Declarant or tenant in writing.



Stanislaus County Recorder
Donna Linder, County Clerk-Recorder
DOC - 2022-0058656
Tuesday, August 30, 2022 09:12:56
Customer: Public
Total Paid: \$0.00

Receipt #: 2022103481

KGS /CHKQZV2/1-10

RECORDING REQUESTED BY:

**COUNTY OF STANISLAUS
BOARD OF SUPERVISORS**

When Recorded Mail To:

Stanislaus County
Department of Planning & Community Development
1010 10th Street, Suite 3400
Modesto, CA 95354

Fee Waived per GC 27383

Space above this line for Recorder's use

FIRST AMENDMENT TO
DEVELOPMENT AGREEMENT
BETWEEN THE
COUNTY OF STANISLAUS

AND

MDS BUSINESS SERVICES, LLC (dba The People's Remedy)
1119 LONE PALM AVE., MODESTO

*Original agreement recorded in Stanislaus County on September 29, 2020.
Document No. 2020-0074752-00.

12

This First Amendment to Development Agreement ("First Amendment") is made and entered in County of Stanislaus on this 26th day of July, 2022, by and between Stanislaus County, a political subdivision of the State of California (hereafter "County") and MDS Business Services, LLC, a limited liability company (hereafter "Permittee"). County and Permittee may be individually referred to in this First Amendment as a "Party" and collectively as the "Parties."

RECITALS

A. Whereas the County and Permittee entered into that certain Development Agreement dated August 25, 2020 ("Development Agreement") regarding the property more particularly described on Exhibit A attached hereto and incorporated by this reference.

B. Whereas, Permittee is currently obligated to pay \$68,150 in 2022, \$71,800 in 2023 and \$71,800 in 2024 for its Public Benefit Contribution as set forth in the Development Agreement.

C. Whereas, Permittee is currently obligated to pay the greater of \$665,000 or 8% of its Gross Receipts in 2022, \$700,000 or 8% of its Gross Receipts in 2023 and \$700,000 or 8% of its Gross Receipts in 2024 for its Public Benefit Rate Payment as set forth in the Development Agreement.

D. Whereas, poor economic conditions have impacted Permittee's business and Permittee is requesting economic relief for its Public Benefit Contribution and its Public Benefit Rate Payment for the years 2022, 2023 and 2024.

E. Whereas, County is amenable to providing economic relief to Permittee by reducing the Public Benefit Rate Payment for the years 2022, 2023 and 2024.

F. Whereas, on May 3, 2022 the Board of Supervisors terminated the collection of the Community Benefit Contribution.

G. Whereas, Section 13.4 of the Development Agreement requires an amendment to the Development Agreement for any amendment to monetary contributions by the Permittee under the Development Agreement.

H. Whereas Section 12.2 of the Development Agreement provides that the Development Agreement may be amended in writing from time to time by mutual consent of the Parties thereto and in accordance with the procedures of State law and permitted uses.

NOW, THEREFORE, with reference to the foregoing recitals and in consideration of the mutual promises, obligations and covenants herein contained, County and Permittee agree as follows:

AGREEMENT

1. Incorporation of Recitals. The Recitals and all defined terms set forth above are hereby incorporated into this Agreement as if set forth herein in full.

2. Elimination of Permittee's Public Benefit Contribution Obligation.
 - 2.1. Community Benefits. Permittee's Community Benefit Contribution for the years 2022, 2023 and 2024 and thereafter is hereby eliminated.

 - 2.2. Elimination of Section A, Attachment E. Section A (Community Benefit Contribution) of Attachment E is hereby deleted in its entirety and not replaced.

"Permittee will participate in the amended Community Benefit Contribution Program as authorized by the Chief Executive Officer. Compliance will be verified during the annual inspection process."

3. Reduction in Permittee's Public Benefits Rate Payments.
 - 3.1. Community Benefits. Permittee's Community Benefit Rate Payments for the years 2022, 2023 and 2024 shall be the greater of \$331,200 or 8% of Gross Receipts.

 - 3.2. Revision to Attachment E, Section B. Paragraph 3.1.2 of Section B (Community Benefit Rate Payments) of Attachment E is deleted in its entirety and replaced by the following:

"3.1.2. Subsequent years to be paid in quarterly installments on April 30, July 30, October 30, and January 30, as follows:

 - A. In Year 2021, the greater of \$635,000 or 8% of Gross Receipts;
 - B. In Years 2022, 2023 and 2024, the greater of \$331,200 or 8% of Gross Receipts."

4. Ratification of Amended Development Agreement. Except as amended herein all other terms and conditions of the Development Agreement shall remain in full force and effect. In the event of a conflict between any provision of the Agreement and a provision of this Amendment, the provision of this Amendment shall control. The Development Agreement, as amended herein, is hereby ratified by the Parties.

5. Counterparts.

This Agreement is executed in three (3) duplicate originals, each of which is deemed to be an original.

6. Recordation.

The County shall record a copy of this First Amendment within ten (10) days following execution by all Parties.

[signatures appear on following page]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the date and year first above written.

COUNTY

County of Stanislaus

By:

[Redacted Signature]

Terrence P. Withrow
Chairman of the Board of Supervisors

PERMITTEE

MDS Business Services, LLC (dba The People's Remedy)

By:

[Redacted Signature]

Mark Ponticelli, CEO

Dated:

8/11/22

Attest:

Clerk of the Board of Supervisors

[Redacted Signature]

Deputy Clerk

Kelly Rodriguez

Approved as to Form:

Thomas E. Boze

County Counsel

By:

[Redacted Signature]

G. Michael Ziman
Deputy County Counsel

(NOTARIZATION ATTACHED)

CALIFORNIA ALL- PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }

County of Stanislaus }

On August 11, 2022 before me, Karyn A. Watson Notary Public,
(Here insert name and title of the officer)

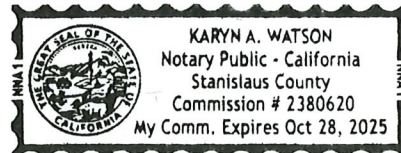
personally appeared Mark Ponticelli,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s)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

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

WITNESS my hand and official seal.

[Redacted Signature]

Notary Public Signature



(Notary Public Seal)

ADDITIONAL OPTIONAL INFORMATION

DESCRIPTION OF THE ATTACHED DOCUMENT

First Amendment Development
(Title or description of attached document)

Agreement MDS - Peoples Remedy
(Title or description of attached document continued)

Number of Pages 5 Document Date 8/11/22

CAPACITY CLAIMED BY THE SIGNER

- Individual (s)
 Corporate Officer

CEO
(Title)

- Partner(s)
 Attorney-in-Fact
 Trustee(s)
 Other _____

INSTRUCTIONS FOR COMPLETING THIS FORM

This form complies with current California statutes regarding notary wording and, if needed, should be completed and attached to the document. Acknowledgments from other states may be completed for documents being sent to that state so long as the wording does not require the California notary to violate California notary law.

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. ~~he/she/they~~, is /are) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
 - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
 - ❖ Indicate title or type of attached document, number of pages and date.
 - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document with a staple.

CALIFORNIA ALL- PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }

County of Stanislaus }

On August 25, 2022 before me, Karyn A. Watson, Notary Public,
(Here insert name and title of the officer)

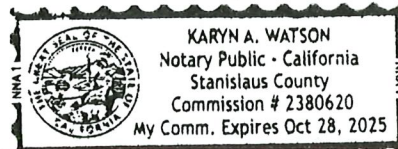
personally appeared Terrance P. Withrow,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s)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

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

WITNESS my hand and official seal.



Notary Public Signature



(Notary Public Seal)

ADDITIONAL OPTIONAL INFORMATION

DESCRIPTION OF THE ATTACHED DOCUMENT

First Amendment to Development
(Title or description of attached document)

Agreement - Peoples Remedy - MDS
(Title or description of attached document continued)

Number of Pages 5 Document Date 8/11/22

CAPACITY CLAIMED BY THE SIGNER

- Individual (s)
- Corporate Officer
Chairman of Board of Supervisors
(Title)
- Partner(s)
- Attorney-in-Fact
- Trustee(s)
- Other _____

INSTRUCTIONS FOR COMPLETING THIS FORM

This form complies with current California statutes regarding notary wording and, if needed, should be completed and attached to the document. Acknowledgments from other states may be completed for documents being sent to that state so long as the wording does not require the California notary to violate California notary law.

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- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. he/she/they, is /are) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
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 - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
 - ❖ Indicate title or type of attached document, number of pages and date.
 - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document with a staple.

ATTACHMENT A

LEGAL DESCRIPTION

Real property in the County of Stanislaus, State of California, described as follows:

PARCEL 5 AS SHOWN ON PARCEL MAPS FILED FOR RECORD APRIL 13, 2014 IN BOOK 57 OF PARCEL MAPS, AT PAGE 13, STANISLAUS COUNTY RECORDS



CHIEF EXECUTIVE OFFICE

Jody L. Hayes
CHIEF EXECUTIVE OFFICER

Patrice M. Dietrich
ASSISTANT EXECUTIVE OFFICER/
CHIEF OPERATIONS OFFICER

Tina M. Rocha
ASSISTANT EXECUTIVE OFFICER

Ruben Imperial
ASSISTANT EXECUTIVE OFFICER

NOTICE OF DEFAULT DUE TO NONPAYMENT

August 30, 2023

Mark Ponticelli
The People's Remedy
1119 Lone Palm Ave.
Modesto, CA 95351

Re: Development Agreement Non-Compliance Notice

You are hereby notified that MDS Business Services, LLC, (dba The People's Remedy) has remained non-compliant with the terms of the approved Development Agreement (Agreement), entered into and signed on August 25, 2020, between MDS Business Services, LLC, (dba The People's Remedy), and Stanislaus County (County).

Payment of Quarter 1 – 2023 Community Benefit Rate fees, in the amount of **\$82,800 or 8% of Gross Receipts, whichever is greater**, has not been received by the County, after several requests for payment.

Pursuant to Section 15.1.5 of your approved Agreement, "Permittee's failure to make the contributions or Community Benefit Rate payments set out in Attachment E," shall constitute a default by The People's Remedy. The following notices have been sent to you:

- May 2, 2023: Notice of Failure
- May 11, 2023: Notice of Default

Pursuant to Section 15.5 of your approved Agreement, the defaulting party shall respond within five (5) business days of the date of the Notice of Default, and shall provide reasonable evidence that it was never, in fact, in default or shall state that it will immediately commence to cure the identified default within thirty (30) days of the Notice of Default, unless the Parties extend such time by mutual written consent. As of August 30, 2023, MDS Business Services, LLC, (dba The People's Remedy), has not provided reasonable evidence that it was never in default, nor stated that it will immediately commence to cure the identified default.

As such, pursuant to Section 15.6.1 of your approved Agreement, the County shall have all rights and remedies provided by the Agreement, including, without limitation, the right to terminate the Agreement. The County also has the right to compel specific performance of the obligations of The People's Remedy under the Agreement, including, without limitation, the right to compel specific performance of the Community Benefits set forth in Attachment E of the Agreement.

Per Section 15.6.2 of your approved Agreement, this matter will now be referred to the Director of Planning and Community Development (Planning Director). If the Planning Director finds and determines that The People's Remedy remains in default after the cure period, if the alleged default is not the subject of dispute resolution pursuant to Section 16 of the Agreement, the Planning Director shall set the matter for a public hearing by the Planning Commission in accordance with the provisions of the Development Agreement Ordinance (County Code Chapter 22.08).

If after such public hearing, the Planning Commission finds that The People's Remedy is in violation of the Agreement, the Planning Commission shall notify the Board of Supervisors of its findings and recommend such action as it deems appropriate.

Pursuant to Section 15.6.2 of the Agreement, if the Planning Commission reports a violation of the Agreement to the Board of Supervisors, the Board of Supervisors may take one of the following actions:

- a) Approve the recommendation of the Planning Commission, instructing that action be taken as indicated therein in cases other than a recommendation to terminate or modify the Agreement; or
- b) Refer the matter back to the Planning Commission for further proceedings with or without instructions; or
- c) Schedule the matter for hearing before the Board of Supervisors if termination or modification of the Agreement is recommended.

Effective as of the date of this letter, this matter is now being referred to the Planning Director for her review. The Default to Comply with Agreement by MDS Business Services, LLC, (dba The People's Remedy), will be scheduled for public hearing with the Planning Commission at a date to be determined. Should the Planning Commission recommend termination of the Agreement, this matter will go before the Board of Supervisors in a duly noticed public hearing.

Because this matter has been referred to the Planning Director, it must now be resolved with the Planning and Community Development Department. Therefore, any and all questions and inquiries must be directed to Angela Freitas, angela@stancounty.com, or call (209) 525-6557.

Sincerely,



Erica May Inacio
Cannabis Program Manager

Enclosures: May 2, 2023: Notice of Failure
May 11, 2023: Notice of Default
The People's Remedy – Community Benefit Balance Detail

cc: Stanislaus County Planning & Community Development Department
Stanislaus County Treasurer-Tax Collector
Stanislaus County Counsel



CHIEF EXECUTIVE OFFICE

Jody L. Hayes
CHIEF EXECUTIVE OFFICER

Patrice M. Dietrich
ASSISTANT EXECUTIVE OFFICER/
CHIEF OPERATIONS OFFICER

Tina M. Rocha
ASSISTANT EXECUTIVE OFFICER

Ruben Imperial
ASSISTANT EXECUTIVE OFFICER

NOTICE OF FAILURE TO COMPLY WITH DEVELOPMENT AGREEMENT

May 2, 2023

Mark Ponticelli
The People's Remedy
1119 Lone Palm Ave.
Modesto, CA 95351

Re: Notice of Failure to Comply with Terms of Development Agreement Due to Nonpayment of Community Benefit Fees for Commercial Cannabis Business located at 1119 Lone Palm Ave., Modesto, CA 95351

You are hereby notified that MDS Business Services, LLC (dba The People's Remedy), has failed to comply with the terms of the Development Agreement (Agreement), entered and signed on August 25, 2020, between MDS Business Services, LLC (dba The People's Remedy), signed by Mark Ponticelli and Marlowe Mercado, and Stanislaus County (County).

Please be advised your Quarter 1 – 2023 payment of \$82,800 or 8% Gross Receipts, whichever is greater, for Community Benefit Rate, which was due on or before April 30, 2023, has not been received by Stanislaus County. The total outstanding balance due, including late penalties and interest, will be determined at the time that quarterly records are submitted.

You are hereby given an opportunity to cure said failure within three (3) business days, after which, the County will escalate the matter and send a Notice of Default. Failure to cure the outstanding balance may result in the County invoking further remedies through dispute resolution or hearing, including the accrual of late payment interest, request for specific performance, modification of the Agreement, termination of the Agreement, and/or any other remedies as prescribed by law.

If you have any questions, concerns, or would like to further discuss how you can cure this noncompliance, please contact cannabis@stancounty.com, or call (209) 525-6271.

Sincerely,

A handwritten signature in black ink, appearing to read "D.J. Martinez".

Damian J. Martinez
Stanislaus County Cannabis Program Manager

DJM:ws

cc: Stanislaus County Treasurer-Tax Collector
Stanislaus County Planning & Community Development
Stanislaus County Counsel



CHIEF EXECUTIVE OFFICE

Jody L. Hayes
CHIEF EXECUTIVE OFFICER

Patrice M. Dietrich
ASSISTANT EXECUTIVE OFFICER/
CHIEF OPERATIONS OFFICER

Tina M. Rocha
ASSISTANT EXECUTIVE OFFICER

Ruben Imperial
ASSISTANT EXECUTIVE OFFICER

NOTICE OF DEFAULT DUE TO NONPAYMENT OF FEES

May 11, 2023

Mark Ponticelli
The People's Remedy
1119 Lone Palm Ave.
Modesto, CA 95351

Re: Notice of Failure to Comply with Terms of Development Agreement Due to Nonpayment of Community Benefit Fees for Commercial Cannabis Business located at 1119 Lone Palm Ave., Modesto, CA 95351

Please be advised your Quarter 1 – 2023 payment of \$82,800 or 8% Gross Receipts, whichever is greater, for Community Benefit Rate, which was due on or before April 30, 2023, has not been received by Stanislaus County. The total outstanding balance due, including late penalties and interest, will be determined at the time that quarterly records are submitted.

You are hereby notified that MDS Business Services, LLC (dba The People's Remedy), has failed to comply with the terms of the Development Agreement (Agreement), entered and signed on August 25, 2020, between MDS Business Services, LLC (dba The People's Remedy), signed by Mark Ponticelli and Marlowe Mercado, and Stanislaus County (County).

Per the Agreement, after delivery of this Notice of Default, the parties, MDS Business Services, LLC (dba The People's Remedy), and County, must meet and confer in good faith to address the default and attempt to cure or modify the agreement to remedy said default within a reasonable time.

You have the right to cure the default before any further action is taken. You must respond within **five (5) business days** of service of this Notice of Default and provide reasonable evidence that: (1) you were never in fact in default, or (2) state that you will immediately commence to cure the default within thirty (30) days, unless there is mutual consent to extend the time.

Failure to take curative action may result in the County invoking further remedies through dispute resolution or hearing, including the accrual of late payment interest, request for specific performance, modification of the Agreement, termination of the Agreement, and/or any other remedies as prescribed by law.

If you have any questions, concerns, or would like to further discuss how you can cure this noncompliance, please contact cannabis@stancounty.com, or call (209) 525-6271.

Sincerely,

A handwritten signature in black ink, appearing to read "D.J. Martinez", written over a horizontal line.

Damian J. Martinez
Stanislaus County Cannabis Program Manager

DJM:ws

cc: Stanislaus County Treasurer-Tax Collector
Stanislaus County Planning & Community Development
Stanislaus County Counsel

The People's Remedy - Community Benefit Balance Detail

Period	^Gross Receipts	8% of GR	DA Flat Rate	Total CBR Fees	Interest	Subtotal	Payments	Credits*	Balance Due
Q3 2022	\$ 860,305.00	\$68,824	\$82,800	\$82,800		\$ 82,800.00	\$ 66,111.25	\$ 16,688.75	\$ -
Q4 2022	\$ 825,837.00	\$66,067	\$82,800	\$82,800	\$ 2,484.00	\$ 85,284.00	\$ 85,284.00	\$ -	\$ -
Q1 2023	\$ 735,187.00	\$58,815	\$82,800	\$82,800	\$ 1,656.00	\$ 84,456.00	\$ 22,157.32	\$ -	\$ 62,298.68
Q2 2023	\$ 748,914.00	\$59,913	\$82,800	\$82,800	\$ 414.00	\$ 83,214.00	\$ -	\$ 9,371.05	\$ 73,842.95
Total				\$ 165,600.00	\$ 2,484.00	\$ 168,084.00	\$ 173,552.57	\$ 16,688.75	\$ 136,141.63

*Credits \$16,688.75 reversal of penalties paid in Q3 2021
 \$9,371.05 prior penalties paid

^ Based on CDTFA quarterly returns



CHIEF EXECUTIVE OFFICE

Jody L. Hayes
CHIEF EXECUTIVE OFFICER

Patrice M. Dietrich
ASSISTANT EXECUTIVE OFFICER/
CHIEF OPERATIONS OFFICER

Tina M. Rocha
ASSISTANT EXECUTIVE OFFICER

Ruben Imperial
ASSISTANT EXECUTIVE OFFICER

NOTICE OF DEFAULT DUE TO NONPAYMENT

September 19, 2023

Mark Ponticelli
The People's Remedy
1119 Lone Palm Ave.
Modesto, CA 95351

Re: Development Agreement Non-Compliance Notice

You are hereby notified that MDS Business Services, LLC (dba The People's Remedy) has remained non-compliant with the terms of the approved Development Agreement (Agreement), entered into and signed on August 25, 2020, between MDS Business Services LLC (dba The People's Remedy) and Stanislaus County (County).

Payment of Community Benefit Rate Fees (CBR Fees) for Quarter 2 - 2023 in the amount of **\$82,800 or 8% of Gross Receipts, whichever is greater**, has not been received by Stanislaus County, after several requests for payment (please see attachments). Pursuant to Section 15.1.5 of your approved Agreement, "Permittee's failure to make the contributions or Community Benefit Rate payments set out in Attachment E," shall constitute a default by MDS Business Services, LLC (dba The People's Remedy) under the Agreement. The following notices have been sent to you:

- August 29, 2023: Notice of Failure
- September 11, 2023: Notice of Default

Pursuant to Section 15.5 of your approved Agreement, the defaulting party shall respond within 5 business days of the date of the Notice of Default, and shall provide reasonable evidence that it was never, in fact, in default or shall state that it will immediately commence to cure the identified default within 30 days of the Notice of Default, unless the Parties extend such time by mutual written consent. As of September 19, 2023, MDS Business Services, LLC (dba The People's Remedy) has not provided reasonable evidence that it was never in default, nor stated that it will immediately commence to cure the identified default within 30 days of the Notice of Default.

As such, pursuant to Section 15.6.1 of your approved Agreement, the County shall have all rights and remedies provided by the Agreement, including, without limitation, the right to terminate the Agreement. The County also has the right to compel specific performance of the obligations of MDS Business Services, LLC (dba The People's Remedy) under the Agreement, including, without limitation, the right to compel specific performance of the Community Benefits set forth in Attachment E of the Agreement.

Pursuant to Section 15.6.2 of your approved Agreement, this matter will now be referred to the Director of Planning and Community Development (Planning Director). If the Planning Director finds that the alleged default is not the subject of dispute resolution pursuant to Section 16 of the Agreement, the Planning Director shall set the matter for a public hearing by the Planning Commission in accordance with the provisions of the Development Agreement Ordinance (County Code Chapter 22.08).

If after such public hearing, the Planning Commission finds that MDS Business Services, LLC (dba The People's Remedy) is in violation of the Agreement, the Planning Commission shall notify the Board of Supervisors of its findings and recommend such action as it deems appropriate.

Pursuant to Section 15.6.2 of the Development Agreement, if the Planning Commission reports a violation of the Agreement to the Board of Supervisors pursuant to this section, the Board of Supervisors may take one of the following actions:

- a) Approve the recommendation of the Planning Commission, instructing that action be taken as indicated therein in cases other than a recommendation to terminate or modify the Agreement; or
- b) Refer the matter back to the Planning Commission for further proceedings with or without instructions; or
- c) Schedule the matter for hearing before the Board of Supervisors if termination or modification of the Agreement is recommended

Effective as of the date of this letter, this matter is now being referred to the Planning Director for her review. The Default to Comply with the Agreement by MDS Business Services, LLC (dba The People's Remedy) will be scheduled for public hearing with the Planning Commission at a date to be determined. Should the Planning Commission recommend termination of the Agreement, this matter will go before the Board of Supervisors in a duly noticed public hearing.

Because this matter has been referred to the Planning Director, it must now be resolved with the Planning and Community Development Department. Therefore, any and all questions and inquiries must be directed to Angela Freitas, angela@stancounty.com, or call (209) 525-6557.

Sincerely,



Erica May Inacio
Cannabis Program Manager

Enclosures: August 29, 2023: Notice of Failure
September 11, 2023: Notice of Default

cc: Stanislaus County Planning & Community Development Department
Stanislaus County Treasurer-Tax Collector
Stanislaus County Counsel



CHIEF EXECUTIVE OFFICE

Jody L. Hayes
CHIEF EXECUTIVE OFFICER

Patrice M. Dietrich
ASSISTANT EXECUTIVE OFFICER/
CHIEF OPERATIONS OFFICER

Tina M. Rocha
ASSISTANT EXECUTIVE OFFICER

Ruben Imperial
ASSISTANT EXECUTIVE OFFICER

NOTICE OF DEFAULT DUE TO NONPAYMENT OF FEES

September 11, 2023

Mark Ponticelli
The People's Remedy
1119 Lone Palm Ave.
Modesto, CA 95351

Re: Notice of Failure to Comply with Terms of Development Agreement Due to Nonpayment of Community Benefit Fees for Commercial Cannabis Business located at 1119 Lone Palm Ave., Modesto

You are hereby notified that MDS Business Services, LLC (dba The People's Remedy) is now in default with the terms and conditions of the Development Agreement (Agreement), entered and signed on August 25, 2020, between MDS Business Services (dba The People's Remedy) and Stanislaus County (County).

Please be advised that your payment of Quarter 2 – 2023 Community Benefit Rate fees, in the amount of \$82,800 or 8% of Gross Receipts, whichever is greater, was due on or before July 30, 2023, and has not been received by the County. The total outstanding balance due for Quarter 2 – 2023, including interest and application of a credit in the amount of \$9,371.05, is now **\$74,256.95**. (Please see attached Community Benefit Balance Detail.)

Pursuant to Section 15.4 of the Agreement, after delivery of this Notice of Default, the parties, MDS Business Services, LLC (dba The People's Remedy) and County, shall meet and confer in good faith to address the default and attempt to cure such default within a reasonable time or modify the Agreement to remedy such default.

Pursuant to Section 15.5 of the Agreement, the defaulting party shall respond within five (5) business days of the date of the Notice of Default, and shall provide reasonable evidence that it was never, in fact, in default or shall state that it will immediately commence to cure the identified default and shall cure the identified default within thirty (30) days of the Notice of Default, unless the parties extend such time by mutual written consent.

Failure to take curative action may result in the County invoking further remedies through dispute resolution or hearing, including, without limitation, the accrual of late payment interest, request for specific performance, modification of the Agreement, termination of the Agreement, and/or any other remedies as prescribed by law.

If you have any questions, concerns, or would like to further discuss how you can cure this noncompliance matter, please contact cannabis@stancounty.com, or call (209) 525-6271.

Sincerely,



Erica May Inacio
Cannabis Program Manager

Enclosure: August 29, 2023 - Notice of Failure
The People's Remedy - Community Benefit Balance Detail

cc: Stanislaus County Treasurer-Tax Collector
Stanislaus County Planning & Community Development
Stanislaus County Counsel



CHIEF EXECUTIVE OFFICE

Jody L. Hayes
CHIEF EXECUTIVE OFFICER

Patrice M. Dietrich
ASSISTANT EXECUTIVE OFFICER/
CHIEF OPERATIONS OFFICER

Tina M. Rocha
ASSISTANT EXECUTIVE OFFICER

Ruben Imperial
ASSISTANT EXECUTIVE OFFICER

NOTICE OF FAILURE TO COMPLY WITH DEVELOPMENT AGREEMENT

August 29, 2023

Mark Ponticelli
The People's Remedy
1119 Lone Palm Ave.
Modesto, CA 95351

Re: Notice of Failure to Comply with Terms of Development Agreement Due to Nonpayment of Community Benefit Fees for Commercial Cannabis Business located at 1119 Lone Palm Ave., Modesto, CA 95351

You are hereby notified that MDS Business Services, LLC (dba The People's Remedy), has failed to comply with the terms of the Development Agreement (Agreement), entered and signed on August 25, 2020, between MDS Business Services, LLC (dba The People's Remedy) and Stanislaus County (County).

Please be advised your Quarter 2 – 2023 payment of Community Benefit Rate Fees, in the amount of **\$82,800** or 8% Gross Receipts, whichever is greater, was due on or before July 30, 2023, and has not been received by the County. The total outstanding balance due for Quarter 2 - 2023, including interest and application of a credit in the amount of \$9,371.05 is now **\$73,842.95**. (Please see attached Community Benefit Balance Detail.)

You are hereby given an opportunity to cure said failure within three (3) business days, after which, the County will escalate the matter and send a Notice of Default. Failure to cure the outstanding balance may result in the County invoking further remedies through dispute resolution or hearing, including the accrual of late payment interest, request for specific performance, modification of the Agreement, termination of the Agreement, and/or any other remedies as prescribed by law.

If you have any questions, concerns, or would like to further discuss how you can cure this noncompliance, please contact cannabis@stancounty.com, or call (209) 525-6271.

Sincerely,

Erica May Inacio
Cannabis Program Manager

Enclosure: The People's Remedy – Community Benefit Balance Detail

cc: Stanislaus County Treasurer-Tax Collector
Stanislaus County Planning & Community Development
Stanislaus County Counsel

The People's Remedy - Community Benefit Balance Detail

Period	^Gross Receipts	8% of GR	DA Flat Rate	Total CBR Fees	Interest	Subtotal	Payments	Credits*	Balance Due
Q3 2022	\$ 860,305.00	\$68,824	\$82,800	\$82,800		\$ 82,800.00	\$ 66,111.25	\$ 16,688.75	\$ -
Q4 2022	\$ 825,837.00	\$66,067	\$82,800	\$82,800	\$ 2,484.00	\$ 85,284.00	\$ 85,284.00	\$ -	\$ -
Q1 2023	\$ 735,187.00	\$58,815	\$82,800	\$82,800	\$ 2,070.00	\$ 84,870.00	\$ 22,157.32	\$ -	\$ 62,712.68
Q2 2023	\$ 748,914.00	\$59,913	\$82,800	\$82,800	\$ 828.00	\$ 83,628.00	\$ -	\$ 9,371.05	\$ 74,256.95
Total				\$ 165,600.00	\$ 2,484.00	\$ 168,084.00	\$ 173,552.57	\$ 16,688.75	\$ 136,969.63

*Credits \$16,688.75 reversal of penalties paid in Q3 2021
 \$9,371.05 prior penalties paid

^ Based on CDTFA quarterly returns



CHIEF EXECUTIVE OFFICE

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CHIEF EXECUTIVE OFFICER

Patrice M. Dietrich
ASSISTANT EXECUTIVE OFFICER/
CHIEF OPERATIONS OFFICER

Tina M. Rocha
ASSISTANT EXECUTIVE OFFICER

Ruben Imperial
ASSISTANT EXECUTIVE OFFICER

NOTICE OF DEFAULT DUE TO NONPAYMENT

November 20, 2023

Mark Ponticelli
The People's Remedy
5272 Jerusalem Court
Modesto, CA 95356

Re: Development Agreement Non-Compliance Notice

You are hereby notified that The People's Remedy has remained non-compliant with the terms of the approved Development Agreement (Agreement), entered into and signed on August 25, 2020, between The People's Remedy and Stanislaus County (County).

Payment of Community Benefit Rate Fees (CBR Fees) for Quarter 3 - 2023 in the amount of **\$83,214** has not been received by Stanislaus County, after several requests for payment (please see attachments). Pursuant to Section 15.1.5 of your approved Agreement, "Permittee's failure to make the contributions or Community Benefit Rate payments set out in Attachment E," shall constitute a default by The People's Remedy under the Agreement. The following notices have been sent to you:

- 10/31/2023: Notice of Failure
- 11/8/2023: Notice of Default

Pursuant to Section 15.5 of your approved Agreement, the defaulting party shall respond within 5 business days of the date of the Notice of Default, and shall provide reasonable evidence that it was never, in fact, in default or shall state that it will immediately commence to cure the identified default within 30 days of the Notice of Default, unless the Parties extend such time by mutual written consent. As of 11/20/2023, The People's Remedy has not provided reasonable evidence that it was never in default, nor stated that it will immediately commence to cure the identified default within 30 days of the Notice of Default.

As such, pursuant to Section 15.6.1 of your approved Agreement, the County shall have all rights and remedies provided by the Agreement, including, without limitation, the right to terminate the Agreement. The County also has the right to compel specific performance of the obligations of The People's Remedy under the Agreement, including, without limitation, the right to compel specific performance of the Community Benefits set forth in Attachment E of the Agreement.

Pursuant to Section 15.6.2 of your approved Agreement, this matter will now be referred to the Director of Planning and Community Development (Planning Director). If the Planning Director finds that the alleged default is not the subject of dispute resolution pursuant to Section 16 of the Agreement, the Planning Director shall set the matter for a public hearing by the Planning Commission in accordance with the provisions of the Development Agreement Ordinance (County Code Chapter 22.08).

If after such public hearing, the Planning Commission finds that The People's Remedy is in violation of the Agreement, the Planning Commission shall notify the Board of Supervisors of its findings and recommend such action as it deems appropriate.

Pursuant to Section 15.6.2 of the Development Agreement, if the Planning Commission reports a violation of the Agreement to the Board of Supervisors pursuant to this section, the Board of Supervisors may take one of the following actions:

- a) Approve the recommendation of the Planning Commission, instructing that action be taken as indicated therein in cases other than a recommendation to terminate or modify the Agreement; or
- b) Refer the matter back to the Planning Commission for further proceedings with or without instructions; or
- c) Schedule the matter for hearing before the Board of Supervisors if termination or modification of the Agreement is recommended

Effective as of the date of this letter, this matter is now being referred to the Planning Director for her review. The Default to Comply with the Agreement by The People's Remedy will be scheduled for public hearing with the Planning Commission at a date to be determined. Should the Planning Commission recommend termination of the Agreement, this matter will go before the Board of Supervisors in a duly noticed public hearing.

Because this matter has been referred to the Planning Director, it must now be resolved with the Planning and Community Development Department. Therefore, any and all questions and inquiries must be directed to Angela Freitas, angela@stancounty.com, or call (209) 525-6330.

Sincerely,



Erica May Inacio
Cannabis Program Manager

Enclosures: 10/31/2023: Notice of Failure
11/8/2023: Notice of Default

cc: Stanislaus County Planning & Community Development Department
Stanislaus County Treasurer-Tax Collector
Stanislaus County Counsel



CHIEF EXECUTIVE OFFICE

Jody L. Hayes
CHIEF EXECUTIVE OFFICER

Patrice M. Dietrich
ASSISTANT EXECUTIVE OFFICER/
CHIEF OPERATIONS OFFICER

Tina M. Rocha
ASSISTANT EXECUTIVE OFFICER

Ruben Imperial
ASSISTANT EXECUTIVE OFFICER

NOTICE OF FAILURE TO COMPLY WITH DEVELOPMENT AGREEMENT

October 31, 2023

Mark Ponticelli
The People's Remedy
1119 Lone Palm Avenue
Modesto, CA 95351

RE: Notice of Failure to Comply with Terms of the Development Agreement Due to Nonpayment of Community Benefit Fees for the Commercial Cannabis Business located at 1119 Lone Palm Avenue, Modesto

You are hereby notified that The People's Remedy has failed to comply with the terms of the Development Agreement (Agreement), entered and signed on August 25, 2020, between The People's Remedy and Stanislaus County (County).

Please be advised that your Quarter 3 - 2023 payment of Community Benefit Rate fees, in the amount of **\$82,800 or 8% of Gross Receipts, whichever is greater**, was due on or before **October 30, 2023**, and has not been received by the County. The total outstanding balance due for Quarter 3 – 2023, including late payment interest, is **\$83,214.00**. (Please see attached Community Benefit Balance Detail.)

You are hereby given an opportunity to cure said failure within three (3) business days, after which the County will escalate the matter and send a Notice of Default. Failure to cure the outstanding balance, may result in the County invoking further remedies through dispute resolution or hearing, including the accrual of late payment interest, request for specific performance, modification of the Agreement, termination of the Agreement, and/or any other remedies as prescribed by law.

If you have any questions, concerns, or would like to further discuss how you can cure this noncompliance, please contact by email at cannabis@stancounty.com, or call (209) 525-6271.

Sincerely,

A handwritten signature in blue ink, appearing to read "Erica May Inacio".

Erica May Inacio
Cannabis Program Manager

Enclosure: The People's Remedy – Community Benefit Balance Detail

cc: Stanislaus County Treasurer-Tax Collector
Stanislaus County Planning & Community Development
Stanislaus County Counsel

From: [William Shirley](#)
To: [Mark Ponticelli](#)
Cc: [Erica Inacio](#)
Subject: Q3 2023 Community Benefit Rate Fees
Date: Monday, October 16, 2023 3:10:00 PM
Attachments: [image001.png](#)

Good afternoon,

This is a friendly reminder that The People's Remedy's Quarter 3 – 2023 Community Benefit Rate Fees are due by October 30, 2023. Please refer to the table below for the current balance:

Period	Retail Flat Rate	Gross Receipts	8% of Gross Receipts	Amount Due	Interest	Total Due	Credits	Payments	Balance Due
Q1 2023	\$82,800.00	\$735,187.00	\$58,814.96	\$82,800.00	\$2,484.00	\$85,284.00	\$0.00	\$65,065.45	\$20,218.55
Q2 2023	\$82,800.00	\$748,914.00	\$59,913.12	\$82,800.00	\$1,242.00	\$84,042.00	\$9,371.05	\$0.00	\$74,670.95
Q3 2023	\$82,800.00	\$536,353.58	\$42,908.29	\$82,800.00	\$0.00	\$82,800.00	\$0.00	\$0.00	\$82,800.00
Total									\$177,689.50

Please let us know if you have any questions.

Thanks,



William Shirley
Confidential Assistant IV
Stanislaus County Chief Executive Office
1010 10th Street, Suite 6800
Modesto, CA 95354
Desk: (209) 525-6271
Cell: (209) 652-1514
shirleyw@stancounty.com



CHIEF EXECUTIVE OFFICE

Jody L. Hayes
CHIEF EXECUTIVE OFFICER

Patrice M. Dietrich
ASSISTANT EXECUTIVE OFFICER/
CHIEF OPERATIONS OFFICER

Tina M. Rocha
ASSISTANT EXECUTIVE OFFICER

Ruben Imperial
ASSISTANT EXECUTIVE OFFICER

NOTICE OF DEFAULT DUE TO NONPAYMENT OF FEES

November 8, 2023

Mark Ponticelli
The People's Remedy
1119 Lone Palm Avenue
Modesto, CA 95351

Re: Notice of Failure to Comply with Terms of Development Agreement Due to Nonpayment of Community Benefit Fees for Commercial Cannabis Business located at 1119 Lone Palm Avenue, Modesto

You are hereby notified that The People's Remedy is now in default with the terms and conditions of the Development Agreement (Agreement), entered and signed on August 25, 2020, between The People's Remedy and Stanislaus County (County).

Please be advised that your payment of Quarter 3 – 2023 Community Benefit Rate fees, in the amount of **\$82,800 or 8% of Gross Receipts, whichever is greater**, was due on or before October 30, 2023, and has not been received by the County. The total outstanding balance due for Quarter 3 – 2023, including interest, is now **\$83,214.00** (Please see attached Community Benefit Balance Detail.)

Pursuant to Section 15.4 of the Agreement, after delivery of this Notice of Default, the parties, The People's Remedy and County, shall meet and confer in good faith to address the default and attempt to cure such default within a reasonable time or modify the Agreement to remedy such default.

Pursuant to Section 15.5 of the Agreement, the defaulting party shall respond within five (5) business days of the date of the Notice of Default, and shall provide reasonable evidence that it was never, in fact, in default or shall state that it will immediately commence to cure the identified default and shall cure the identified default within thirty (30) days of the Notice of Default, unless the parties extend such time by mutual written consent.

Failure to take curative action may result in the County invoking further remedies through dispute resolution or hearing, including, without limitation, the accrual of late payment interest, request for specific performance, modification of the Agreement, termination of the Agreement, and/or any other remedies as prescribed by law.

If you have any questions, concerns, or would like to further discuss how you can cure this noncompliance matter, please contact cannabis@stancounty.com, or call (209) 525-6271.

Sincerely,

A handwritten signature in black ink, appearing to read "Erica May Inacio". The signature is fluid and cursive, with the first name "Erica" being more prominent and the last name "Inacio" following in a similar style.

Erica May Inacio
Cannabis Program Manager

Enclosure: October 31, 2023 - Notice of Failure
 The People's Remedy - Community Benefit Balance Detail

cc: Stanislaus County Treasurer-Tax Collector
 Stanislaus County Planning & Community Development
 Stanislaus County Counsel

The People's Remedy - Community Benefit Balance Detail

Period	Payment Date	Gross Receipts	8% of GR	DA Flat Rate	Total CBR Fees	Interest	Subtotal	Payments	Credits*	Balance Due
Q1 2020	4/30/2020	\$ 1,386,858.00	\$110,948.64	\$150,000	\$150,000	\$ -	\$ 150,000.00	\$ 150,000.00	\$ -	\$ -
Q2 2020	7/30/2020	\$ 1,746,942.92	\$139,755.43	\$150,000	\$150,000	\$ -	\$ 150,000.00	\$ 150,000.00	\$ -	\$ -
Q3 2020	10/30/2020	\$1,667,696.88	\$133,415.75	\$150,000	\$150,000	\$ -	\$ 150,000.00	\$ 150,000.00	\$ -	\$ -
Q4 2020	1/29/2021	\$ 1,418,442.20	\$113,475.38	\$150,000	\$150,000	\$ -	\$ 150,000.00	\$ 150,000.00	\$ -	\$ -
Q1 2021	4/30/2021	\$ 1,568,392.00	\$125,471.36	\$158,750	\$158,750	\$ -	\$ 158,750.00	\$ 158,750.00	\$ -	\$ -
Q2 2021	7/30/2021	\$ 1,437,134.61	\$114,970.77	\$158,750	\$158,750	\$ -	\$ 158,750.00	\$ 158,750.00	\$ -	\$ -
Q3 2021	11/30/2021	\$ 1,481,805.83	\$118,544.47	\$158,750	\$158,750	\$ 16,688.75	\$ 175,438.75	\$ 175,438.75	\$ -	\$ -
Q4 2021	1/31/2022	\$ 756,305.21	\$60,504.42	\$158,750	\$158,750	\$ -	\$ 158,750.00	\$ 158,750.00	\$ -	\$ -
Q1 2022	4/29/2022	\$ 872,149.00	\$69,771.92	\$82,800	\$82,800	\$ -	\$ 82,800.00	\$ 51,267.36	\$ 17,037.50	\$ 14,495.14
	7/26/2022							\$ 14,495.14	\$ -	\$ -
Q2 2022	7/26/2022	\$ 909,853.00	\$72,788.24	\$82,800	\$82,800	\$ -	\$ 82,800.00	\$ 52,111.35	\$ -	\$ 30,688.65
	10/31/2022							\$ 30,688.65	\$ -	\$ -
Q3 2022	10/31/2022	\$ 860,305.00	\$68,824.40	\$82,800	\$82,800	\$ -	\$ 82,800.00	\$ 24,232.99	\$ 16,688.75	\$ 41,878.26
	2/9/2023							\$ 41,878.26	\$ -	\$ -
Q4 2022	2/9/2023	\$ 825,837.00	\$66,066.96	\$82,800	\$82,800	\$ 2,484.00	\$ 85,284.00	\$ 11,855.05	\$ -	\$ 73,428.95
	4/24/2023							\$ 47,299.60	\$ -	\$ 26,129.35
	7/20/2023							\$ 26,129.35	\$ -	\$ -
Q1 2023	7/20/2023	\$ 735,187.00	\$58,814.96	\$82,800	\$82,800	\$ 2,898.00	\$ 85,698.00	\$ 22,157.32	\$ -	\$ 63,540.68
	10/12/2023							\$ 42,908.13	\$ -	\$ 20,632.55
Q2 2023		\$ 748,914.00	\$59,913.12	\$82,800	\$82,800	\$ 1,656.00	\$ 84,456.00	\$ -	\$ 9,371.05	\$ 95,717.50
Q3 2023		\$ 536,353.58	\$42,908.29	\$82,800	\$82,800	\$ 414.00	\$ 83,214.00	\$ -	\$ -	\$ 178,931.50
		Total	\$1,356,174.10	\$1,814,600	\$1,814,600	\$ 24,140.75	\$1,838,740.75	\$ 1,616,711.95	\$ 43,097.30	\$ 178,931.50

*Credits

Q1 2022	\$17,037.50	CBC fees paid prior to cancellation retro to Q1 2022
Q3 2022	\$16,688.75	Refund of late payment penalty in Q3 2021, per Damian Martinez
Q2 2023	\$9,371.05	Refund of prior late payment penalties as approved by CEO's Office

Updated: 11/9/2023 - ws

Recording Requested By And For The Benefit Of
And, When Recorded, Mail To:



County of Stanislaus
Department of Planning and
Community Development
1010 Tenth Street, Suite 3400
Modesto, CA 95354



Stanislaus, County Recorder
Donna Linder Co Recorder Office
DOC- 2020-0064960-00
Friday, AUG 28, 2020 09:23:57
Ttl Pd \$0.00 Rcpt # 0004471789
RAB/R2/1-7

Space Above Reserved for Recorder's Use

NOTICE OF ADMINISTRATIVE CONDITIONS AND RESTRICTIONS

PLEASE TAKE NOTICE that the COUNTY OF STANISLAUS approved the land use development described below subject to administrative conditions and restrictions, copies of which are attached to this notice and incorporated herein by reference. The conditions and restrictions affect development of the property or parcels described below and are binding upon the named landowners and their successors in interest.

- Property Owner(s): Duke Thomas Leffler trustee of the Duke Thomas Leffler Trust
- Project Site Address: 1119 Lone Palm Avenue, between Woodland and Kansas Avenues, west of State Route 99, in the Modesto area.
- Assessor's Parcel Number(s): 029-011-075
- General Plan Designation: Industrial
- Zoning District: M (Industrial)
- Community Plan Designation: Not Applicable
- Project Name/Description: **Use Permit & Development Agreement Application No. PLN2020-0036 – The People's Remedy** – Request to establish a commercial cannabis retail storefront business including delivery services within a portion of an existing 12,000 square-foot building in the M (Industrial) zoning district.

The undersigned duly authorized officer of Stanislaus County declares that the foregoing is true and correct under penalty of perjury under the laws of the State of California.

August 25, 2020
Dated

R. Wyse
Rachel Wyse
Senior Planner, Stanislaus County,
Planning and Community Development
Department

ATTACHMENTS:

- 1. Conditions of Approval
- 2. Project Area Map (For Illustrative Purposes Only)

EXHIBIT 5

TRB

NOTE: Approval of this application is valid only if the following conditions are met. This permit shall expire unless activated within 18 months of the date of approval. In order to activate the permit, it must be signed by the applicant and one of the following actions must occur: (a) a valid building permit must be obtained to construct the necessary structures and appurtenances; or (b) the property must be used for the purpose for which the permit is granted. (Stanislaus County Ordinance 21.104.03)

CONDITIONS OF APPROVAL

USE PERMIT AND DEVELOPMENT AGREEMENT APPLICATION NO. PLN2020-0036 – THE PEOPLE’S REMEDY

Department of Planning and Community Development

1. Use(s) shall be conducted as described in the application and supporting information (including the plot plan) as approved by the Planning Commission and/or Board of Supervisors and in accordance with other laws and ordinances. All development standards adopted for the M zoning district and 57-PM-13 shall remain in effect. No expansion of any activities shall occur without approval of additional land use permits.
2. Commercial cannabis activities as authorized by Title 21 and Chapter 6.78 of the Stanislaus County Code shall be located and operated in compliance with all the requirements of Chapter 6.78 of the Stanislaus County Code and any other local requirements, and State Laws and regulations, applicable to commercial cannabis activities.
3. Within 60 days of project approval, a complete Commercial Cannabis Activity Permit (CCA permit) shall be submitted to the Treasurer/Tax Collector.
4. If the Development Agreement, CCA permit, or state licenses associated with this land use entitlement are revoked, expired, or otherwise deemed ineffective, all commercial cannabis activities on the project site shall cease, until all applicable permits and agreements have been reinstated.
5. Commercial cannabis activities which have obtained their CCA permit shall have six months from the effective date of issuance of the permit to obtain the required licenses from the State. If all state licenses and approvals required to operate the commercial cannabis activity are not obtained within the six-month period, the CCA permit shall not be renewed.
6. Developer shall pay all Public Facilities Impact Fees and Fire Facilities Fees as adopted by Resolution of the Board of Supervisors. The fees shall be payable at the time of issuance of a building permit for any construction in the development project and shall be based on the rates in effect at the time of building permit issuance.
7. The applicant/owner is required to defend, indemnify, or hold harmless the County, its officers, and employees from any claim, action, or proceedings against the County to set aside the approval of the project which is brought within the applicable statute of limitations. The County shall promptly notify the applicant of any claim, action, or proceeding to set aside the approval and shall cooperate fully in the defense.

8. Prior to issuance of a CCA permit, the permittee shall provide a security plan, in accordance with Section 6.78.120(C) of the County Code, to the Sheriff's Department for review and approval. The security plan shall be reviewed annually or as often as deemed necessary by the Sheriff's Department.
9. Prior to issuance of a CCA permit, operator shall designate two individuals who shall be available at all times to communicate with the County Sheriff's Department and Code Enforcement.
10. Prior to issuance of a CCA permit, operator shall designate two persons who shall be available at all times to respond to community inquiries and complaints.
11. The Clerk of the Board shall record the executed Development Agreement and the Department of Planning and Community Development shall record a Notice of Administrative Conditions and Restrictions (NOACR) with the County Clerk-Recorder's Office within 30 days of project approval. The NOACR includes Conditions of Approval/Development Standards and Schedule, any adopted mitigation measures, and a project area map.
12. Prior to issuance of any building permit for any alterations to the existing exterior lighting, a photometric lighting plan shall be submitted for review and approval by the Planning Department. All exterior lighting shall be designed (aimed down and toward the site) to provide adequate illumination without a glare effect. This shall include, but not be limited to, the use of shielded light fixtures to prevent skyglow (light spilling into the night sky) and the installation of shielded fixtures to prevent light trespass (glare and spill light that shines onto neighboring properties).
13. Any construction resulting from this project shall comply with standardized dust controls adopted by the San Joaquin Valley Air Pollution Control District (SJVAPCD) and may be subject to additional regulations/permits, as determined by the SJVAPCD.
14. All proposed advertising signage shall comply with the City of Modesto's design standards and shall be approved by the City, prior to submittal of a building permit to the County Building Permits Division.
15. Pursuant to State Water Resources Control Board Order 99-08-DWQ and National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000002, prior to construction, the developer shall be responsible for contacting the California Regional Water Quality Control Board to determine if a "Notice of Intent" is necessary, and shall prepare all appropriate documentation, including a Storm Water Pollution Prevention Plan (SWPPP). Once complete, and prior to construction, a copy of the SWPPP shall be submitted to the Stanislaus County Department of Public Works.
16. Should any archeological or human remains be discovered during development, work shall be immediately halted within 150 feet of the find until it can be evaluated by a qualified archaeologist. If the find is determined to be historically or culturally significant, appropriate mitigation measures to protect and preserve the resource shall be formulated and implemented. Construction activities shall not resume in the area until an on-site archeological mitigation program has been approved by a qualified archeologist. The Central California Information Center shall be notified if the find is deemed historically or culturally significant.

17. Prior to issuance of a building permit, an amended lease agreement including a minimum of 11 dedicated parking spaces shall be executed. The amended lease shall include all newly developed onsite parking spaces as exclusive to the building.

Department of Public Works

18. No parking, loading, or unloading of vehicles is permitted within the Lone Palm Avenue right-of-way. The developer shall install or pay for the installation of any off-site signs and/or markings, as required by Stanislaus County.
19. A grading, drainage, and erosion/sediment control plan for the project site shall be submitted for any applicable site work. The grading and drainage plan shall include the following information:
 - a) The plan shall contain drainage calculations and enough information to verify that runoff from project will not flow onto adjacent properties and Stanislaus County road right-of-way. Public Works will review and approve the drainage calculations.
 - b) For projects greater than one acre in size, the grading drainage and erosion/sediment control plan shall comply with the current State of California National Pollutant Discharge Elimination System (NPDES) General Construction Permit. A Waste Discharge Identification Number (WDID) and a copy of the Notice of Intent (NOI) and the project's Storm Water Pollution Prevention Plan (SWPPP) shall be provided prior to the approval of any grading, if applicable.
 - c) The applicant of the grading permit shall pay the current Stanislaus County Public Works weighted labor rate for review of the grading plan.
 - d) The applicant of the grading permit shall pay the current Stanislaus County Public Works weighted labor rate for all on-site inspections. The Public Works inspector shall be contacted 48 hours prior to the commencement of any grading or drainage work on-site.
20. The applicant shall comply with Stanislaus County Code, Chapter 14.14 Stormwater Management and Discharge.

Building Permits Division

21. Building permits are required, and the project must conform with the California Code of Regulations, Title 24. All unpermitted portions of existing buildings, including unpermitted interior improvements on compartmentalized portions of the existing structure, shall obtain building permits and shall comply with the provisions of the code set forth in the most current adopted California Code of Regulations Title 24 or be demolished. It shall be unlawful for any person, firm, or corporation to erect, construct, alter, or occupy any building or portions of any buildings where unpermitted work exists.
22. All indoor cultivation, distribution, and storage areas shall be considered S-1 occupancies in accordance to the most current adopted California Building Code, California Code of Regulations Title 24.

23. No change shall be made in the use or occupancy of any building unless such building is made to comply with the requirements of the most current adopted California Building Code, California Code of Regulations Title 24, Volumes 1 and 2 of Part 2.
24. Accessibility for existing buildings shall comply with Section 410 of the California Building Code, California Code of Regulations Title 24, Part 10.
25. Mercantile Occupancies with a total occupant load of 50 or less, including customers and employees, require one toilet facility, designed for use by no more than one person at a time, which shall be permitted for use by both sexes.
26. All plans submitted shall be reviewed and/or designed by a California licensed architect or engineer.

Modesto Irrigation District

27. High voltage is present within and adjacent to the project area. This includes 12,000 volts of underground primary and 12,000 volts overhead primary and secondary facilities. Use extreme caution when operating heavy equipment, using a crane, ladders, scaffolding, hand-held tools, or any other type of equipment near the existing MID electric lines and cables. Assume all overhead and underground electric facilities are energized at all times.
28. MID requires that any trenching maintain a 1:1 horizontal distance from any existing pole, determined by the depth of the trench. If trenching encroaches on this requirement, the Contractor needs to contact the MID Electric Engineering Department to brace any effected poles during the trenching process. The cost of any required pole bracing will be assumed by the requesting party. Estimates for bracing any existing poles will be supplied upon request.
29. Prior to any construction, the applicant shall submit a full set of construction plans to MID to determine if existing electrical services are adequate.

Central Valley Air Pollution Control District

30. Prior to the start of construction, the property owner/operator shall contact the District's Small Business Assistance Office to determine if any Air District permits or if any other District rules or permits are required, including but not limited to an Authority to Construct (ATC).

Central Valley Regional Water Quality Control Board

31. Prior to ground disturbance or issuance of a building permit, the Central Valley Regional Quality Control Board shall be consulted to obtain any necessary permits and to implement any necessary measures, including but not limited to Cannabis General Order, Construction Storm Water General Permit, Phase I and II Municipal Separate Storm Sewer System (MS4) Permits, Industrial Storm Water General Permit, Clean Water Act Section 404 Permit, Clean Water Act Section 401 Permit (Water Quality Certification), Waste Discharge Requirements, Dewatering Permit, Low or Limited Threat General NPDES Permit, NPDES Permit, or any other applicable Regional Water Quality Control Board permit.

UP DA PLN2020-0036
Conditions of Approval
July 16, 2020
Page 5






As Approved by the Board of Supervisors
August 25, 2020
As Recommended by the Planning Commission
July 16, 2020

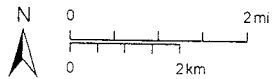
*Please note: If Conditions of Approval/Development Standards are amended by the Planning Commission or Board of Supervisors, such amendments will be noted in the upper right-hand corner of the Conditions of Approval/Development Standards; new wording is in **bold**, and deleted wording will have a ~~line-through~~ it.*

**THE PEOPLES
REMEDY
UP & DA
PLN2020-0036**

AREA MAP

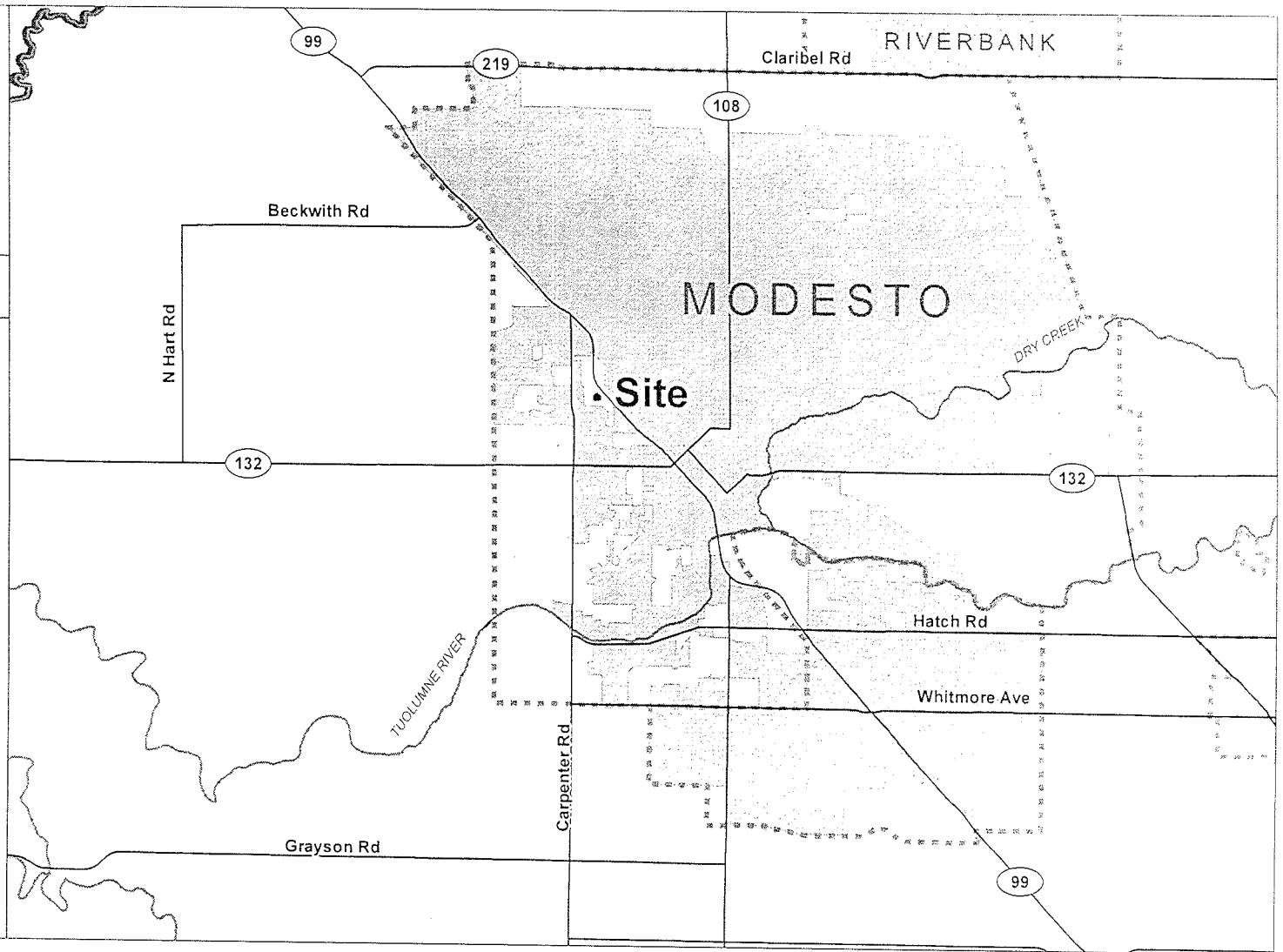
LEGEND

-  Project Site
-  Sphere of Influence
-  City
-  Road
-  River



Source: Planning Department GIS

Date: 4/10/2020



FOR ILLUSTRATIVE PURPOSES ONLY

**COUNTY OF STANISLAUS CAMPAIGN CONTRIBUTION DISCLOSURE FORM
PLANNING & COMMUNITY DEVELOPMENT DEPARTMENT**

Application Number: PLN2020-0036
Application Title: The Peoples Remedy
Application Address: 1119 Lone Palm 95351
Application APN: 029-011-075

Was a campaign contribution, regardless of the dollar amount, made to any member of a decision-making body involved in making a determination regarding the above application (i.e. Stanislaus County Board of Supervisors, Planning Commission, Airport Land Use Commission, or Building Code Appeals Board), hereinafter referred to as Member, during the 12-month period preceding the filing of the application, by the applicant, property owner, or, if applicable, any of the applicant's proposed subcontractors or the applicant's agent or lobbyist?

Yes No

If no, please sign and date below.

If yes, please provide the following information:

Applicant's Name: _____

Contributor or Contributor Firm's Name: _____

Contributor or Contributor Firm's Address: _____

Is the Contributor:

The Applicant	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
The Property Owner	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
The Subcontractor	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
The Applicant's Agent/ Lobbyist	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>

Note: Under California law as implemented by the Fair Political Practices Commission, campaign contributions made by the Applicant and the Applicant's agent/lobbyist who is representing the Applicant in this application or solicitation must be aggregated together to determine the total campaign contribution made by the Applicant.

Identify the Member(s) to whom you, the property owner, your subcontractors, and/or agent/lobbyist made campaign contributions during the 12-month period preceding the filing of the application, the name of the contributor, the dates of contribution(s) and dollar amount of the contribution. Each date must include the exact month, day, and year of the contribution.

Name of Member: _____

Name of Contributor: _____

Date(s) of Contribution(s): _____

Amount(s): _____

(Please add an additional sheet(s) to identify additional Member(s) to whom you, the property owner, your subconsultants, and/or agent/lobbyist made campaign contributions)

By signing below, I certify that the statements made herein are true and correct. I also agree to disclose to the County any future contributions made to Member(s) by the applicant, property owner, or, if applicable, any of the applicant's proposed subcontractors or the applicant's agent or lobbyist after the date of signing this disclosure form, and within 12 months following the approval, renewal, or extension of the requested license, permit, or entitlement to use.

2/8/2024

Date

 _____

Signature of Applicant

Drivon Consulting, Inc. for The People's Remedy

Print Firm Name if applicable

Zach Drivon, Attorney

Print Name of Applicant

**COUNTY OF STANISLAUS CAMPAIGN CONTRIBUTION DISCLOSURE FORM
PLANNING & COMMUNITY DEVELOPMENT DEPARTMENT**

Application Number: PLN2020-0036
Application Title: The Peoples Remedy
Application Address: 1119 Lone Palm 95351
Application APN: 029-011-075

Was a campaign contribution, regardless of the dollar amount, made to any member of a decision-making body involved in making a determination regarding the above application (i.e. Stanislaus County Board of Supervisors, Planning Commission, Airport Land Use Commission, or Building Code Appeals Board), hereinafter referred to as Member, during the 12-month period preceding the filing of the application, by the applicant, property owner, or, if applicable, any of the applicant's proposed subcontractors or the applicant's agent or lobbyist?

Yes No

If no, please sign and date below.

If yes, please provide the following information:

Applicant's Name: _____

Contributor or Contributor Firm's Name: _____

Contributor or Contributor Firm's Address: _____

Is the Contributor:

The Applicant	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
The Property Owner	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
The Subcontractor	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
The Applicant's Agent/ Lobbyist	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>

Note: Under California law as implemented by the Fair Political Practices Commission, campaign contributions made by the Applicant and the Applicant's agent/lobbyist who is representing the Applicant in this application or solicitation must be aggregated together to determine the total campaign contribution made by the Applicant.

Identify the Member(s) to whom you, the property owner, your subcontractors, and/or agent/lobbyist made campaign contributions during the 12-month period preceding the filing of the application, the name of the contributor, the dates of contribution(s) and dollar amount of the contribution. Each date must include the exact month, day, and year of the contribution.

Name of Member: _____

Name of Contributor: _____

Date(s) of Contribution(s): _____

Amount(s): _____

(Please add an additional sheet(s) to identify additional Member(s) to whom you, the property owner, your subconsultants, and/or agent/lobbyist made campaign contributions)

By signing below, I certify that the statements made herein are true and correct. I also agree to disclose to the County any future contributions made to Member(s) by the applicant, property owner, or, if applicable, any of the applicant's proposed subcontractors or the applicant's agent or lobbyist after the date of signing this disclosure form, and within 12 months following the approval, renewal, or extension of the requested license, permit, or entitlement to use.

2/8/2024

Date



Signature of Applicant

MDS Business Servies, LLC DBA The Peoples Remedy

Print Firm Name if applicable

Mark Ponticelli, CEO, MDS Business Services LLC

Print Name of Applicant

**CANCELLATION OF DA
FOR UP & DA NO.
PLN2020-0036 – THE
PEOPLES REMEDY (TPR)**

**Planning Commission
March 7, 2024**



Overview

- Cancel the adopted Development Agreement (DA) of a commercial cannabis retail business
 - Due to nonpayment of fees required under the terms of the DA

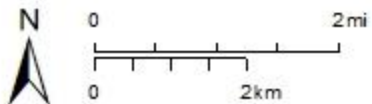
THE PEOPLES REMEDY

UP & DA PLN2020-0036

AREA MAP

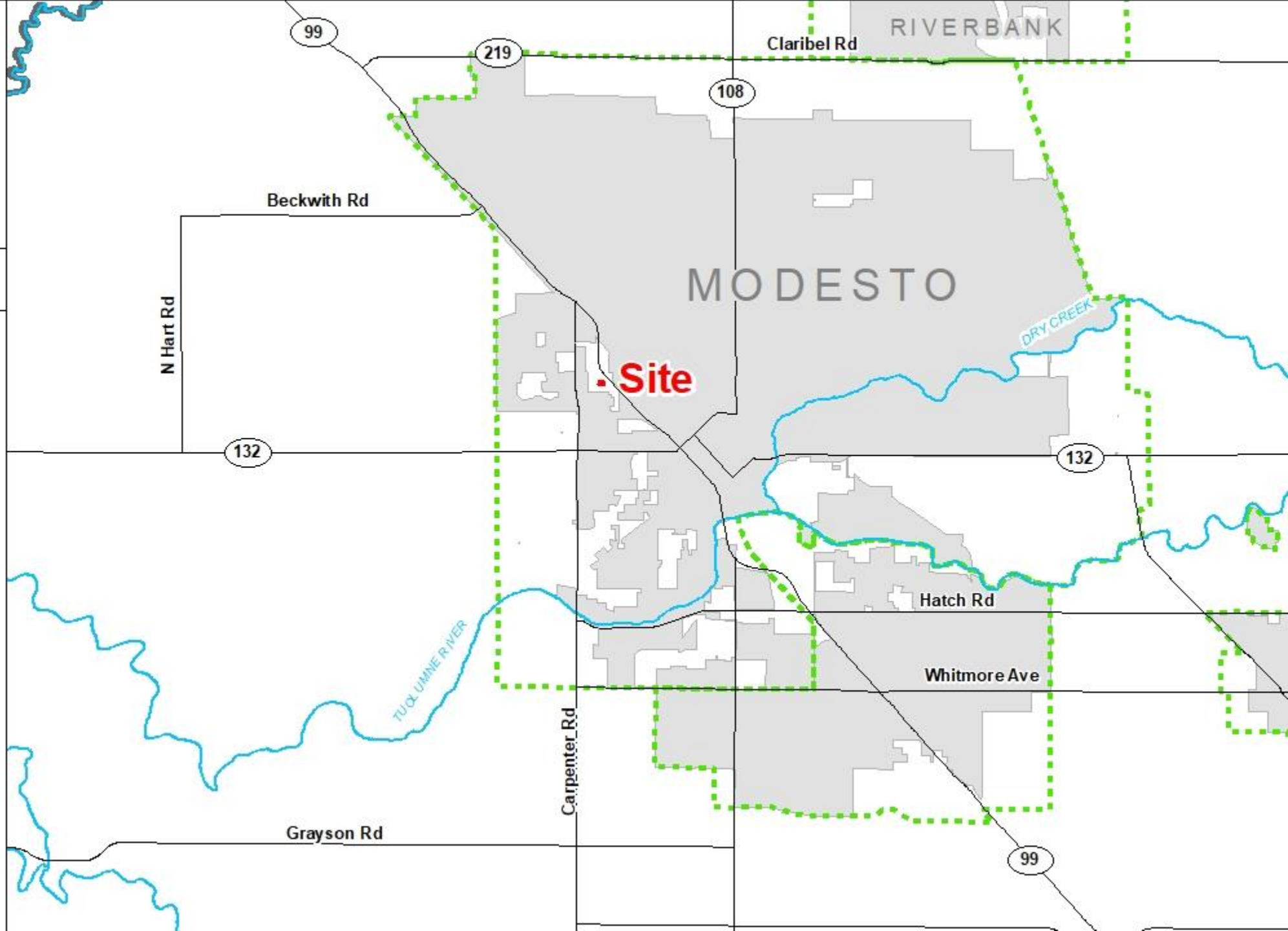
LEGEND

-  Project Site
-  Sphere of Influence
-  City
-  Road
-  River



Source: Planning Department GIS

Date: 4/10/2020



THE PEOPLES REMEDY

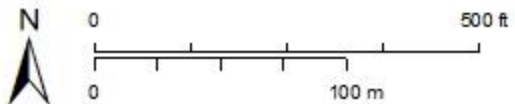
UP & DA PLN2020-0036

2017 AERIAL AREA MAP

LEGEND

 Project Site

 Road



Development Agreement (DA) for TPR

- **Community Benefit Rate**
 - Retail: ranged from \$600,000 to \$700,000 or 8% of gross receipts, whichever was greater through 2022
 - Paid \$1,251,688 to the County during this period
 - Amendment of the DA took place in July of 2022
 - Lowering flat rate amount to \$331,270 annually
- **Community Benefit Contribution**
 - Ranged from \$61,200 to \$71,800
 - Paid \$110,869 to the County

Development Agreement (DA) for TPR

- Subsequent to DA Amendment
 - Operator has made partial payments to County each quarter
 - From Quarter 2 of 2022 through Quarter 1 of 2024
 - Each partial payment gets applied to outstanding balances first
 - Last partial payment was made on January 29, 2024
 - Balance owed by TPR currently \$231,885

Default of the DA

- Operator now in a state of default with terms of DA
 - Current unpaid balance of \$231,885 for retail activities
 - Notified of failure to pay for each quarter delinquent, as required by Section 15 of the DA
 - Referred to the Planning Director for action in accordance with Title 22 of the County Code and adopted DA.

Cancellation of the DA

- Cancellation of Development Agreements
 - Chapter 22.08.020 of County Code allows for cancellation by the County of a DA due to noncompliance
 - Provided public hearings held in compliance with state law
 - Government Code 65865.1 also allows cancellation by County
 - Ability to terminate if terms not met by applicant
 - During public hearing operator must demonstrate compliance with DA
 - If not shown, Commission shall recommend to Board cancellation proceedings or terms and conditions to remedy the noncompliance
 - Staff is recommending that the DA be cancelled in total.

Continuance and Correspondence

- Originally scheduled for February 14, 2024 Planning Commission Meeting
 - Operator provided County with proposal to cure outstanding debt
 - Item continued to the March 7, 2024 Planning Commission Meeting
 - To allow for additional time for staff to consider
 - Staff has declined the proposal and continue forward with cancellation proceedings
- Correspondence received from operator on March 6, 2024
 - Outlined their proposal to staff

Environmental Review

- Original Use Permit & Development Agreement was found to be exempt from CEQA
 - Cancellation would remove authority for development
 - No impacts anticipated
 - Action of cancellation not subject to CEQA

Recommendation

- Staff Recommends that the Planning Commission Recommend Cancellation of the DA to the Board of Supervisors
 - Find TPR in material breach of the terms of the DA
 - Find the Cancellation of each operation is consistent with Chapter 22.08 of County Code and Government Code 65865.1
 - Closure within 30 days of repeal of the ordinance
 - File of a notice Development Agreement Cancellation

Questions