

TO: City Council
FROM: James L. App, City Manager *JL*
SUBJECT: Ground Lease Amendment - Depot Associates
DATE: December 7, 1999

NEEDS: For the City Council to consider amending its ground lease with Depot Associates to facilitate finalization of project financing.

- FACTS:**
1. The City Council authorized a ground lease of City property, located at the Multi-modal station, to Depot Associates for development of commercial buildings.
 2. The lease provided an initial two-year term with an automatic fifty-three year extension if the performance conditions of the initial term were satisfied.
 3. The performance conditions of the initial 2-year term included rehabilitation of the historic rail station, construction of a 3,030 square foot addition to the historic Station, construction of a 3,840 square foot new building, landscaping, and receipt of an Occupancy Permit for the listed improvements.
 4. Depot Associates has advised the City that their bank cannot finance the project with the lease as written because the bank is unable to lend on leased property with a term of less than ten years (see attached Depot Associates correspondence dated 11/10/99).
 5. Heritage Oaks Bank has confirmed that State Banking Regulations prohibit the Bank "from extending credit secured by a 1st Trust Deed on a leasehold under a lease which does not extend at a minimum of 10 years beyond the maturity date of the loan." (Reference attached 11/17/99 Heritage Oaks Bank correspondence).
 6. The performance condition/initial 2-year term was included in the lease as a means to assure the City that the project as described would be built/completed.
 7. Depot Associates has completed construction of both buildings' foundations, framing and roofing.
 8. Depot Associates has indicated that they cannot proceed with the project without bank financing and, therefore, request amendment of the lease to the full 55 year term so that they may secure the needed financing.
 9. The Council's Fiscal Committee has reviewed Depot Associates' request and recommends approval of a lease amendment to the full 55-year term.

**ANALYSIS &
CONCLUSION:**

Depot Associates was awarded the Multi-modal station property ground lease pursuant to a competitive proposal process initiated by the City. Their proposal was successful because it included rehabilitation of the historic portion of the existing rail station house and creation of new commercial space.

Depot Associates represents that they have completed foundation, framing and roofing work on the structures with their own cash resources, but now require outside private financing to complete the project. The desired financing cannot be achieved under the existing terms of the lease. And, as Depot Associates has indicated that they cannot complete the project without outside financing, it is in the City's best interest to amend the lease to facilitate the needed financing.

POLICY

REFERENCE: September 1999 Lease between the City and Depot Associates.

**FISCAL
IMPACT:**

No immediate financial impact. However, should Depot Associates not complete the structures, a loss of income potential could be expected (as the lease provides the City the promise of a share of future rents – reference Section 4 of the lease).

OPTIONS:

- A. Authorize the City Manager to Execute a Lease Amendment to Effect a Fifty-Five Year Lease Term.**
- B. Amend, Modify or Reject the Option Above.**

Attachments:

11/10/99 Depot Associates Correspondence
11/17/99 Heritage Oaks Bank Correspondence
Lease with Proposed Changes Noted



**HASTINGS
ENTERPRISES**

A Real Estate Company

Depot Associates

TO: Jim App City of Paso Robles

From: Newlin Hastings
SUBJECT: LEASE CHANGES
DATE: November 10, 1999

We are in the process of financing the Depot project and find a regulation which prohibits the Bank from making a loan on leased property unless the term of the lease is 10 years or longer.

Our lease for the Depot provides for a 24 month term, followed by a 53 year term

Upon review by our bank, we have found that financial institutions are unable to lend on leased property with a term of less than 10 years.. see attached "Laws" which makes this requirement known.

I would like to request that given our situation, we amend the lease to provide for a 55 year term beginning on September 22nd, 1999 and give up the 2 and 53 format.

We have also decided to utilize a general partnership instead of a Limited Liability Company but will use the same name, Depot Associates, a General Partnership

I would appreciate your prompt consideration to this request as we are trying to formalize our loan so as to continue "uninterrupted" in our construction.

Sincerely

Newlin Hastings, Jr.

cc Mr. John Seitz
phone 543-7272

FINANCIAL CODE

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1226. The limitations of Section 1221 shall not apply to the following and the following shall not be included among the obligations of a person for the purpose of applying such limitations:

(a) Loans secured by obligations of the United States or by obligations unconditionally guaranteed both as to principal and interest by the United States, having a market value at least 10 percent in excess of the loans secured thereby.

(b) Loans in an amount and of a type or class previously approved in writing by the commissioner which are secured by not less than a like amount of obligations of the United States or by obligations unconditionally guaranteed both as to principal and interest by the United States.

(c) Loans to the extent that they are covered by guarantees or by commitments to take over or to purchase without recourse made by (1) any Federal Reserve bank, (2) the United States, (3) any department, bureau, board, commission, agency, or establishment of the United States, including any corporation wholly owned directly or indirectly by the United States or (4) any small business development corporation, urban development corporation, or rural development corporation incorporated pursuant to the California Job Creation Law (Part 5 (commencing with Section 14000) of Division 3 of Title 1 of the Corporations Code).

(d) Drafts or bills of exchange drawn in good faith against actual existing values with negotiable bills of lading attached, whether or not accepted by the drawee.

(e) Bankers' acceptances of other banks which are eligible for rediscount with a Federal Reserve bank.

(f) Obligations resulting from daily clearances through any clearinghouse association.

(g) Obligations which are fully guaranteed or fully insured or covered by a commitment to fully guarantee or fully insure by the Federal Housing Administrator.

(h) Obligations described in Section 1336.

(Amended by Stats. 1996, Ch. 1064, Sec. 191. Effective January 1, 1997. Operative July 1, 1997.)

1227. A commercial bank may lend on the security of a first lien on real property or a first lien on a leasehold under a lease which does not expire, or which has been extended or renewed so that it does not expire, for at least 10 years beyond the maturity date of the loan, if:

(a) The term of the loan does not exceed 10 years and the amount does not exceed 60 percent of the sound market value of the property or leasehold, together with the improvements located on the property which are made subject to the lien, as determined by proper appraisal.

(b) The term of the loan does not exceed 30 years, is repayable in substantially equal installments not less often than monthly (or a variation therefrom as may be authorized under a loan executed pursuant to Section 1916.5 or 1916.8 of the Civil Code), with payments commencing not later than 60 days from the date of the loan or, in the case of a construction loan, commencing not later than one year from the date of the loan, and the amount does not exceed 90 percent of the sound market value of the property or leasehold, together with the improvements located on the property which are made subject to the lien, as determined by proper appraisal, provided, however, the loan may exceed 90 percent of the sound market value of the property or leasehold if that portion of the loan which is in excess of 90 percent is guaranteed or insured by a private insurer licensed by the Insurance Commissioner.

(c) The loan is made pursuant to and in conformance with regulations adopted under Section 1916.12 of the Civil Code.

(d) The loan is on a farm or productive agricultural lands, the term does not exceed 30 years, is repayable in substantially equal installments not less often than annually, and the amount does not exceed 90 percent of the sound market value of the property or leasehold, together with the improvements located on the property which are made subject to the lien, as determined by proper appraisal.

(e) The term of the loan does not exceed six months and the amount does not exceed 85 percent of the sound market value of the property or leasehold, together with the improvements located on the property which are made subject to the lien, as determined by proper appraisal.

(f) The term of the loan does not exceed 60 months, the amount does not exceed 85 percent of the sound market value of the property or leasehold, together with the improvements located on the property which are made subject to the lien, as determined by proper appraisal, and the loan is for the purpose of financing building operations under a plan providing for payment of the loan or providing for refinancing by loans otherwise permitted by this chapter.

A commercial bank may make a loan without regard to the above restrictions when necessary to facilitate the sale of real property owned by the bank.

(Amended by Stats. 1996, Ch. 1064, Sec. 192.1. Effective January 1, 1997. Operative July 1, 1997.)

1227.2. (a) The provisions of any deed of trust or mortgage on real property which authorize any state or nationally chartered bank to accelerate the maturity date of the principal and interest on any loan secured thereby or to exercise any power of sale or other remedy contained in the deed of trust or mortgage, upon the failure of the trustor or mortgagor to pay, at the times provided under the terms of the deed of trust or mortgage, any taxes, rents, assessments, or insurance premiums with respect to the real property securing the loan, or upon



November 17, 1999

ShipseY & Seitz, Inc.
 A Law Corporation
 P. O. Box 953
 San Luis Obispo, Ca. 93406

Ref: Depot Associates Lease

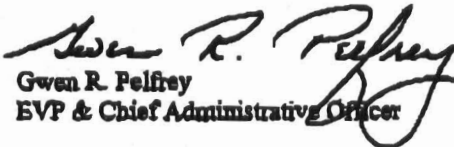
Dear Mr. Seitz:

This letter is in response to your communication of November 16, 1999. More specifically, the State Regulation prohibiting the Bank from extending credit secured by a 1st Trust Deed on a leasehold under a lease, which does not extend at a minimum of 10 years beyond the maturity date of the loan. Because of this fact, we respectfully request that you amend the existing lease as requested by the borrowers (Depot Associates) to meet aforementioned criteria.

Heritage Oaks Bank has reviewed the costs for construction and verified the borrowers actual cash in the project to date to determine that there are sufficient funds available to complete the project as proposed. This project is currently under construction with a significant amount of work in progress. In addition, we would like to add that the bank has been doing business with these partners in excess of six years and have extended loan commitments for greater amounts than this request to three of the four partners, and have always been paid as agreed.

We trust that this information will assist you in amending and finalizing the current lease as requested by Mr. Hastings and his partners. The Depot Associates group have indicated that they would like to executed loan documents as soon as possible and we are hopeful to finalize the process next week.

Sincerely,


 Gwen R. Pelfrey
 EVP & Chief Administrative Officer

- Main Office -

545 Twelfth Street ♦ Paso Robles, CA 93446 ♦ Phone 805.239.5200 ♦ Fax 805.239.5204
 P. O. Box 7012 ♦ Paso Robles, CA 93447

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NOTE:

- Revisions:
- Section 2
- Section 3
- Section 4 (b) (c) (d)
- Section 8

REDLINED

**LONG TERM
PROPERTY LEASE**

This Lease (hereinafter "Lease") is executed this ____ day of _____, 1999, by and between the CITY OF EL PASO DE ROBLES (hereinafter referred to as "Lessor" or "City", and **DEPOT ASSOCIATES, a California Partnership LLC** (hereinafter referred to as "Lessee"), with reference to the following recitals:

RECITALS

A. Lessor is a Municipal Corporation of the State of California.

B. Lessee is a Limited Liability Corporation, organized pursuant to California law.

C. Lessor owns certain partially improved real property within the City described as Parcel 1 of PR95086, commonly known as the North County Transportation Center. Said property is partially improved with a Transportation Center, parking facilities and the Paso Robles Rail Station. Said property is further depicted on Exhibit "A" attached hereto and incorporated herein by reference.

D. Lessee desires to lease a portion of the real property more particularly described in Recital C, above, including the building commonly known as the "Historic Paso Robles Rail Station" and surrounding property of 50 feet by 300 feet, located between 7th and 8th Street on Pine Street south of the North County Transportation Center. The "Historic Paso Robles Rail Station" and adjacent property more particularly described in Exhibits "A" and "B" attached hereto is herein referred to as the "Premises" or the "Leased Premises".

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E. Lessor agrees to lease said Premises to Lessee and Lessee agrees to lease said Premises from Lessor on the terms and conditions herein stated.

THEREFORE, THE PARTIES HEREBY AGREE AS FOLLOWS:

1. Leasing of Property

Subject to the terms, conditions and covenants set forth in this Lease, Lessor hereby leases to Lessee the Premises.

2. Term

The initial term of this Lease shall be fifty-five years for ~~twenty-four months (24 months)~~, commencing on September 1, 1999, and expiring at ~~noon~~ on September 1, 2004~~2054~~ (hereinafter referred to as the "Initial Term").

3. Option to Renew
Intentionally omitted.

~~Lessor hereby grants to Lessee an option to extend the term of this Lease (herein "Extended Term") on the same terms, conditions and provisions as contained in this Lease, except as otherwise provided herein, for an additional fifty-three (53) years (herein "Option to Extend") on the following conditions:~~

~~(a) Subject to paragraph (b) below, the Option to Extend shall be automatically exercisable by written notice from Lessee to Lessor of Lessee's intent to exercise its election to extend the term not later than the date which is ninety (90) days prior to the expiration of the Initial Term.~~

~~(b) Lessee may only exercise its option, and the exercise thereof shall only be effective, if at the time of Lessee's exercise of such option, it has satisfied the following conditions to the satisfaction of Lessor:~~

- ~~1. Lessee is not in default of this Lease.~~
- ~~2. Lessor has received an Occupancy Permit for improvements pursuant to Section 8, below.~~

New 3. Revocation of Prior Lease.

This Lease shall become effective and the prior lease (originally signed September 22, 1999), shall terminate upon Lessee obtaining construction financing for the improvements referenced in Section 8, below. Said financing shall be

conclusively established by the General Manager's initials on the space herein provided.

Initials of James L. App

4. Rent

(a) The monthly base rent ("Base Rent") for the Premises shall be Four Hundred Dollars (\$400.00) per month or **ten percent (10%)** of the net operating income, whichever is greater. Lessee shall pay Lessor the Base Rent on or before the first day of each calendar month during the term of this Lease, in advance, except as provided in 4b below. Should it be allowed under State Law, for the Lessee to enter into a lease period of more than 55 years, the Lessee shall have two- 10 year options to extend the lease upon mutual approval by Lessee and Lessor, said approval shall not be unreasonably withheld.

[Net Operating Income is the income remaining after all operating expenses are deducted from effective gross income, but before mortgage debt service and book depreciation are deducted. Administration expenses shall not exceed four percent (4%) of effective gross income, and legal and accounting expenses shall not exceed two percent (2%) of effective gross income.]

(b) There shall be no obligation to pay rent during the first twelve months of the Lease Term. ~~Lessee will be entitled to twelve months free rent during the Initial Term of this Lease.~~ No further free rent will be granted.

(c) The \$400.00 minimum Base Rent shall increased ~~\$12.00~~ per month annually, commencing on the twenty fifth~~first~~ month of the Extended Lease Term.

(d) The ten percent (10%) calculation for establishing Base Rent shall be increased to fifteen percent (15%) commencing on the first month of the twenty-six~~four~~ (26) year anniversary date of the Lease~~Extended~~ Term.

(e) The Lessor shall, with not less than ten (10) days notice, have the right to review and/or conduct audits on all financial records and/or statements of Lessee related to the Lease of the Premises by Lessee.

(f) The Lessee shall submit every five (5) years annual *compiled* financial statements and federal tax returns to the Lessor. City has right to audit lessee's records. Should the audit reveal shortages

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in the amount owed the City, in excess of 5 percent, then:

- (i) Lessee shall pay the City's costs in performing the audit;
- (ii) Lessee shall pay all back rent and other charges owing as reflected in the audit; and
- (iii) Lessee shall pay Lessor a five (5) percent penalty of all rent or other charges owing as reflected in the audit.

5. Condition of Premises

(a) Except as provided herein, the Premises and existing buildings are leased in an "AS-IS" condition, and Lessee shall be responsible for upgrade and restoration of the building and construction of additional buildings on the premises, as approved by the Planning Commission in PD 98-017 on January 12, 1999.

(b) Lessee acknowledges that Lessor has provided Lessee with any and all documentation regarding the condition of the Premises and existing buildings, and that the Lessee has had an opportunity to review such reports and information.

6. Utilities

(a) Lessee shall make all arrangements and pay for all water, gas, heat, light, power, telephone and other utility services supplied to the Premises together with any taxes thereon and for all connection charges. Lessors shall have the right of use of the exterior electrical and water outlets, provided that such use shall not unreasonably interfere with the business operations of the Lessee's tenants. Such use shall not unreasonably increase Lessee's electrical and water costs.

(b) Lessee acknowledges that Lessor has no obligation to provide utilities furnished as of the date of this Lease to the Premises or additional utilities. Lessor shall not be liable to Lessee under any circumstances for damages or loss to Lessee's property, injury to person or property, or consequential damages, however occurring, through, in connection with, or incidental to failure to furnish or interruption of any utilities or services.

(c) Lessee shall comply with all rules and regulations which Lessor, any governmental agencies or authorities, or any utility company may establish for the use, proper functioning and protection of any such utility.

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7. Lessee's Use of the Premises

The Premises will be used by Lessee for the purposes of conducting tourist-oriented, commercial and/or restaurant activities permitted or conditionally permitted pursuant to City Zoning Codes for the C-3 Zone category, subject to the following limitations:

(a) Lessee shall not use or permit the Premises, the existing buildings, or Lessee Improvements, to be used for any purpose or purposes that will cause a cancellation of any insurance policy covering the building located on the Premises, or any part of it; nor will lessee sell, or permit to be kept, used, or sold, in or about the Premises any article prohibited by the standard form of fire insurance policies. Lessee will, at its sole cost, comply with all requirements pertaining to the Premises, of any insurance organization or company, necessary for the maintenance of insurance as provided in this lease, covering any building and appurtenances at any time located on the Premises.

(b) Lessee shall comply with all applicable laws affecting the Premises. Lessee will not commit or allow to be committed any waste on the Premises, nor maintain or allow to be maintained any nuisance on the Premises. The City agrees to waive all City fees except building and plan-check and inspection fees.

(c) Lessee shall not use or permit the Premises, the existing buildings, or Lessee Improvements, or any part of such property to be used for any purpose that would interfere with Lessor's operation of the existing Transportation Center or other Improvements constructed by Lessor at the North County Transportation Center.

(d) Lessee shall not use or permit the Premises, the existing buildings, or Lessee Improvements, or any part of such property to be used for any purpose that would violate any other provisions or conditions of this Lease.

(e) Except as otherwise provided, the Lessee shall not use any part of the surrounding City property for any purpose whatsoever without prior written consent of the City Manager, except that customers and guests are free to utilize the parking and pedestrian areas around the Premises.

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(f) Employees of Lessee and/or Lessee's subtenants shall be given written notice not to use any part of the adjoining parking lot (North County Transportation Center) for parking vehicles.

8. Improvements

(a) ~~Within the first twenty-four months of the Lease Term, Prior to Lessee's exercise of its Option to Extend the Initial Term referenced in Section 2, above,~~ and in compliance with the requirements of Section 9, below,

1. Lessee shall rehabilitate, at it sole cost and expense, the existing 1,700 square foot Historic Paso Robles Rail Station.

2. Lessee shall construct an approximate 3,030 square foot addition to the Historic Paso Robles Rail Station.

3. Lessee shall construct a new separate building approximately 3,840 square feet to the south of the existing Historic Paso Robles Rail Station building.

4. Install landscaping.

(b) The Improvements set out in Section 8(a), above, shall be completed to match the architectural image of the existing Historic Paso Robles Rail Station building.

(c) Rehabilitation of existing structures and all new construction shall comply with the Americans With Disabilities Act.

(d) Lessee at its sole expense shall be responsible for seismic retrofitting of all buildings on the Premises in accordance with the County and/or City Seismic Safety Ordinances.

(e) The improvements set out in Section 8(a) above (herein "Improvements") shall be completed as evidenced by a Certificate of Occupancy.

9. Plans, Specifications and Construction

(a) No improvement shall be erected, placed, altered or maintained on the Premises unless plans and specifications have been approved in writing by Lessor. Such approval by Lessor shall not be unreasonably withheld. Prior to commencing construction of any building, structure or improvement (including landscaping) on the Premises, Lessee shall notify Lessor of the date of commencement and expected completion thereof and shall submit the following plans and specifications for approval:

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1. Plot plans drawn to scale, full dimensions, with name, date and north arrow showing property lines, size, location and configuration of all Improvements, including, but not limited to, buildings, structures, retaining walls, fences, walls, easements, access, parking areas, public and private streets, signs, exterior lighting, landscaped areas, topography, and the proposed location of all service areas and trash collection areas indicating the proposed method of screening such service and trash areas from public view.

2. Landscaping plans indicating the location, type, size and quantity of all trees, shrubs, plants and ground cover plus the layout of the proposed watering facilities plan. Said approval by Lessor shall not be unreasonably withheld.

3. Architectural plans and total square footage of all structures, including signs, and showing exterior renderings or elevations of all sides of all structures, details of roof screening, construction materials and exterior colors.

4. A complete set of working drawings.

5. The name and license number of the general contractor and each subcontractor who will supply material or services in constructing the Improvements.

(b) Lessee shall be responsible, at Lessee's sole cost and expense, for securing all necessary governmental or quasi-governmental approvals of the plans and specifications and for securing all permits necessary to construct and operate the Lessee Improvements and Approved Improvements.

(c) Once Lessee shall have commenced construction, Lessee shall pursue the same with reasonable speed and dispatch in compliance with the approved plans and specifications and using the contractors specified in Subsection (a)5. All construction shall be in accord with all applicable laws, ordinances and regulations. Lessee's construction shall not interfere with Lessor's operation of the North County Transportation Center, and Lessee shall comply with all directives of Lessor related thereto. If Lessee is prevented from completing Improvements on account of strikes, lockouts, failure of contractor or subcontractors, inability to procure material or labor in the free market, governmental restrictions, fire, earthquake, the elements, or other casualty or similar extraordinary conditions beyond Lessee's reasonable control (excluding financial difficulties, economic conditions or inability to obtain governmental approvals), then the Lessee shall thereafter

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proceed with all reasonable speed and dispatch to complete the Improvements.

(d) By approving plans and specifications, Lessor assumes no liability therefor, or for any defect resulting from the plans and specifications. Lessee indemnifies and shall hold Lessor harmless from any damage, loss or prejudice claimed, and from all expenses incurred arising out of approvals of plans and specifications or any improvement on the Premises

(e) All of the Improvements shown in the approved plans and specifications constitute the "Approved Improvements." Substantial modifications to Approved Improvements shall be made only with prior written approval of Lessor, except that Lessor's prior written approval shall not be required for changes to the interior of any building which do not substantially diminish the value thereof.

10. Repairs and Maintenance

(a) Lessee shall maintain the Premises and every part thereof in good order, condition and repair, including but without limitation, the following:

1. all buildings, structures or fixtures, including foundations, roofs, ceilings, floors, interior and exterior walls,
2. store fronts, windows, doors, hangar doors, plate glass, showcases, skylights, entrances and vestibules located within the Premises,
3. landscaping, fences and signs, and
4. all sprinkler systems, plumbing, sewers, drainage devices, heating, air conditioning, electrical facilities, equipment and other utilities or facilities serving the Premises.

(b) Lessee shall commence any repair within thirty (30) days after the receipt by Lessee of written notice of the need for such repair, including any notice from Lessor. Lessor shall not be liable to Lessee by reason of any injury to or interference with Lessee's business arising from or connected with the need for or the making of any repairs, alterations or Improvements. All repairs, modifications or Improvements to the Premises shall be performed in accordance with the building standards of the City of El Paso de Robles, and it shall be the responsibility of Lessee to secure appropriate permits from the City of El Paso de Robles. Lessee shall maintain the floors and paint interior walls and exterior walls and shall wash all

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windows in the Premises as often as may be required to keep the Premises neat and attractive, and shall keep the Premises at all times in a neat, sanitary condition, free from waste or debris, consistent with standards established by Lessor. Lessee shall screen and landscape all outside storage areas and service yards of the Premises with fencing and landscaping approved by Lessor, and shall not allow any temporary structures or facilities on the Premises, without Lessor's approval, which approval is revocable at any time in the sole discretion of Lessor.

(c) In the event Lessee fails to perform its obligations under Section 10(b), Lessor may, at its option, after *thirty(30)* days written notice to Lessee, enter upon the Premises and put the same in good order, condition and repair, and the cost thereof shall become due and payable, upon demand, by Lessee to Lessor as additional rent.

(d) Lessor shall have no obligation to make any repairs to the Premises other than as expressly and specifically set forth in this Lease. Lessee hereby waives any and all rights provided in Sections 1941 through 1942, inclusive, of the Civil Code of California and hereby waives, to the extent permissible, any rights other than statutes or laws now or hereafter in effect which are contrary to the obligations of Lessee under this Lease, or which place obligations upon Lessor in addition to those provided in this Lease.

(e) Lessee shall defend, indemnify and hold Lessor harmless against all actions, claims and damages by reason of (1) Lessee's failure to perform the terms of this paragraph, or (2) Lessee's nonobservance or nonperformance of any law, ordinance or regulation applicable to the Premises, and any liability or duty to repair imposed by the laws of California.

11. Liens

(a) Lessee shall not allow or permit to be enforced against the Premises or any part thereof, any mechanic's, materialmen's, contractor's or subcontractor's liens arising from any claim growing out of work of any construction, repair, restoration, replacement or improvement, or any other claim or demand no matter how the same may arise. Lessee shall pay or cause to be paid all of said liens, claims or demands before any lawsuit is brought to enforce them against the Premises. Lessee agrees to defend, indemnify and hold the Lessor and the Premises free and harmless from all liability for any and all such liens, claims and demands, together with reasonable attorneys' fees and all costs and expenses incurred by Lessor in connection therewith.

(b) Notwithstanding anything to the contrary set forth above, if Lessee shall in good faith contest the validity of any such lien, claim or demand, then Lessee shall, at its expense, defend itself and Lessor against the same and shall pay and satisfy any adverse judgment that may be rendered thereon before the enforcement thereof against Lessor or the Premises. A condition to Lessee's right to contest the validity of any lien, claim or demand shall be that if Lessor shall require, Lessee shall furnish to Lessor evidence of a surety bond satisfactory to Lessor in an amount at least equal to the contested lien, claim or demand, the effect of which is to indemnify Lessor against liability for the same, and to hold the Premises free from the effect of such lien or claim.

12. Hazardous Materials

(a) Lessee shall not cause or permit any hazardous materials or toxic substances to be brought upon, kept or used in or about the Premises by Lessee, its agents, employees, contractors or invitees, without the prior written consent of Lessor. Lessor shall not unreasonably withhold such consent as long as Lessee demonstrates to Lessor's reasonable satisfaction and covenants to Lessor that such hazardous materials or toxic substances are necessary or useful to Lessee's business and will be used, kept and stored in a manner that complies with all laws relating to any such hazardous materials or toxic substances so brought upon or used or kept in or about the Premises or the North County Transportation Center. Lessee shall indemnify, defend and hold Lessor harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses (including, without limitation, diminution in value of the Premises or the North County Transportation Center, damages for the loss or restriction on use of rentable or usable space or of any amenity of the Premises or the North County Transportation Center, damages arising from any adverse impact on marketing of space in the North County Transportation Center, and sums paid in settlement of claims, actual attorneys' fees, consultant fees and expert fees), which arise during or after the term of the Lease as a result of such contamination. The indemnity, defense and hold harmless obligations of Lessee under this Section shall survive any termination of this Lease. Notwithstanding the foregoing, Lessee shall not be responsible for any hazardous waste materials or toxic substances that presently exist on the subject property. Lessor agrees to indemnify and hold Lessee harmless including any liability, obligations, claims causes of action and reasonable attorneys fees and costs, from such existing waste materials and hazardous toxic substances.

(b) As used herein, the terms "hazardous materials and/or toxic substances" mean (1) any hazardous or toxic substance, material or waste which is or becomes regulated by any local, state or federal government or special district, (2) designated as a "hazardous substance" pursuant to Section 1311 of the Federal Water Pollution Control Act (33 USC Section 1317), (3) defined as a "hazardous waste" pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, 42 USC Section 6901, et seq. (42 USC Section 6903), (4) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 USC Section 9601, et seq. (42 USC Section 9601), (5) defined as a "hazardous waste" or as a "hazardous substance" pursuant to Section 25117, 25316 or 25821(d) of the California Health and Safety Code, or (6) any infectious wastes or substances. References herein to specific statutes or laws shall also be references to any amendments of or applicable successor statutes or laws.

(c) Any increase in the premium for insurance carried by Lessor or required of Lessee under this Lease on the Premises or the North County Transportation Center which arises from Lessee's use and/or storage of these materials shall be solely at Lessee's expense. Lessee shall procure and maintain at its sole expense such additional insurance as may be necessary to comply with any requirement of any federal, state or local governmental agency or special district with jurisdiction.

13. Taxes and Assessment

(a) Lessee shall pay without abatement, deduction or offset all real and personal property taxes, general and special assessments, and other charges of every description levied on or assessed against the Premises, improvements located on the Premises, personal property located on or in the land or Improvements, the leasehold estate, or any subleasehold estate, to the full extent of installments falling due during the term, whether belonging to or chargeable against Lessor or Lessee. Lessee shall make all such payments directly to the charging authority at least fifteen (15) days before delinquency and before any fine, interest or penalty shall become due or be imposed by operation of law for nonpayment. If, however, the law permits the payment of any or all of the above items in installments (whether or not interest accrues on the unpaid balance), Lessee may, at Lessee's election, utilize the permitted installment method, but shall pay each installment with any interest before delinquency.

(b) Lessee shall furnish to Lessor at least fifteen (15) days before the date when any tax, assessment or charge would

become delinquent, receipts or other appropriate evidence establishing their payment. Lessee may comply with this requirement by retaining a tax service to notify Lessor whether the taxes have been paid.

(c) Taxes and assessments determined from the latest information available for the first and, if Lessee is not in default under this Lease, the last year of this Lease shall be prorated between the Lessor and Lessee on the basis of a tax fiscal year commencing July 1 and ending June 30.

(d) In the event Lessee fails to pay such taxes or assessments, Lessor may, at its option, after giving ten (10) days' notice to Lessee, pay any such taxes or assessments together with all penalties and interest which may have been added thereto by reason of any such delinquency or failure to pay, and may likewise redeem the Premises or any part thereof, or the buildings or Improvements located thereon, from any tax sale or sales. Any such amounts so paid by Lessor shall become immediately due and payable as additional rent by Lessee to Lessor, together with interest thereon at the maximum lawful rate from the date of payment by Lessor until paid by Lessee. Any such payment shall not be deemed to be a waiver of any other rights of Lessor hereunder. Lessee may, in good faith, contest any such tax or assessment at its expense. However, Lessee shall defend itself and Lessor against the same and shall pay and satisfy any judgment including all penalties and interest that may be rendered thereon. Lessor may require Lessee to furnish Lessor a surety bond or other security reasonably satisfactory to Lessor in an amount equal to such contested tax or assessment, indemnifying Lessor against liability for such tax or assessment and holding the Premises free from the effect of such tax or assessment.

14. Insurance and Indemnity

(a) Lessor's Non-liability. Lessor shall not be liable for any loss, damage or injury of any kind to any person or property arising from any use of the Premises, or any part thereof, or caused by any defect in any building, structure or other improvement thereon or in any equipment or other facility therein, or caused by or arising from any act or omission of Lessee or any of its agents, employees, licensees or invitees, or by or from any accident on the Premises or any fire or other casualty thereon, or occasioned by the failure of Lessee to maintain the Premises and all Improvements thereto in a safe condition, or arising from any other cause except where caused by Lessor's use of the premises, or by the negligence of Lessor, its agents or employees. With respect to any and all claims, demands, damages, costs or liabilities arising from the joint or

concurrent negligence of Lessor and the Lessee, each party shall assume responsibility in proportion to the degree of its respective fault, as determined by a court of competent jurisdiction.

(b) Indemnification of Lessor. Notwithstanding anything to the contrary contained in this Lease, and irrespective of any insurance carried by Lessee for the benefit of Lessor under the terms of this Lease, Lessee agrees to defend, indemnify and hold the Lessor and the Premises harmless from any and all damages and liabilities at any time occasioned by or arising out of (A) any act, activity or omission of Lessee, or of anyone holding under Lessee, or (B) the occupancy or use of the Premises or any part thereof, by or under Lessee, or (C) any state or condition of the Premises or any part thereof.

(c) Liability Insurance. Lessee shall procure and maintain at all times during the term of this Lease, at its sole cost and expense, a policy or policies of comprehensive public liability insurance by the terms of which Lessor and Lessee are named as insured and are indemnified against liability for damage or injury to property or person, including death, of any person entering upon or using the Premises or any Improvements thereon or any part thereof, with limits of coverage in an amount of not less than One Million Dollars (\$1,000,000.00) combined single limit and annual aggregate coverage applying to injury to or death of any one or more persons arising from the same occurrence and for damage or injury to property. If Lessor's reasonably exercised judgment determines that the liability insurance amounts set forth herein become inadequate, then Lessor may, by written notice, require a reasonable increase in coverage commencing with the next policy anniversary date. Such public liability insurance policy or policies shall be stated to be primary and noncontributing with any insurance which may be carried by Lessor and shall contain a provision (provided such provisions are available without increased premium) that the Lessor, although named as an insured shall nevertheless be entitled to recover under that policy for any loss, injury or damage to the Lessor, its agents and employees or the property of such persons by reason of the negligence of Lessee. Worker's compensation insurance shall be in the amounts required by law.

The following endorsements shall be attached to the liability insurance policy:

1. The insurance policy insures on an "occurrence" basis.
2. The policy must cover personal injury, as well as bodily injury.

3. The coverage shall be at least as broad as comprehensive liability and broad form comprehensive general liability or "commercial" general liability.

4. The Lessor, its Council Members, its officers, agents, employees and volunteers shall be named as insured under the coverage afforded with respect to liability arising out of activities performed by or on behalf of Lessee under this contract. The coverage shall contain no special limitations on the scope of protection afforded to Lessor, its Council Members, its officers, agents, employees and volunteers.

5. An endorsement shall be attached which states that the coverage is primary insurance and that any insurance or self-insurance fund maintained by or available to Lessor or any of its officers, agents, employees or volunteers shall be in excess of Lessee's insurance and shall not be called upon to contribute to a loss covered by the policy.

6. A cross-liability endorsement must be included to the effect that each insured is covered as if separate policies had been issued to each insured.

7. The liability coverage may be either on a blanket basis or a policy which specifically identifies this Agreement with a contractual liability endorsement.

8. Any deductibles or self-insured retention must be declared to and approved by Lessor. At the option of Lessor, the insurer shall reduce or eliminate such deductibles or self-insured retention as respects the Lessor, its officers, agents, employees and volunteers or the Lessee shall procure a bond guaranteeing payment of losses and related investigation, claims administration and defense expenses.

(d) Lessee shall at all times during the term of this Lease and at its sole expense, procure and maintain in full force a policy or policies of standard fire and extended coverage insurance insuring all Improvements on the Premises in an amount equal to not less than the full replacement costs. Lessee agrees to reevaluate insurance coverage at five (5) year intervals or annually upon request of Lessor and to increase said coverage if it shall be less than the then full replacement cost of the Improvements on the Premises. The amount of the full replacement cost shall be determined in writing by the carrier of insurance then in force and shall be binding on the parties for the purpose of this paragraph. The insurance policies insuring against fire or other casualty shall include the interest of the holder of any "mortgage" executed by Lessee in connection with obtaining of any interim or permanent financing with respect to the Premises, and said policies shall provide that any loss is payable jointly to Lessor, Lessee and the holder, if any, of a "mortgage" in the Lessee's interest under this Lease. Proceeds from any insurance policy shall be

used in accordance with the provisions of this Lease dealing with use of insurance funds for repair and restoration.

(e) All policies of insurance procured and maintained by Lessee hereunder shall be issued by companies authorized to do business in California having not less than Best's A. Executed copies of all insurance policies or a certificate thereof shall be delivered to Lessor on the Commencement Date and shall contain a provision that not less than thirty (30) days written notice by certified mail, return receipt requested, shall be given to Lessor prior to the cancellation, reduction of coverage, expiration or any material change in any such policy.

(f) In the event any buildings, structures or Improvements located on the Premises are damaged by fire or other casualty, any such sums as are received from or on account of any policy of insurance covering the same shall, except as provided in Section 15, below, be expended for the restoration, repair or replacement of said buildings, structures or Improvements.

(g) If Lessee fails or refuses to procure or to maintain insurance as required by this Lease or fails or refuses to furnish Lessor with required proof that the insurance has been procured and is in force and paid for, Lessor shall have the right at Lessor's election, without notice, to procure and maintain such insurance. The premiums paid by Lessor shall be treated as added rent due from Lessee with interest at the Bank of America prime rate, to be paid within thirty (30) days of demand. Lessor shall give prompt notice of the payment of such premiums, stating the amounts paid and the names of the insurer or insurers.

(h) The parties hereby release each other, and their respective representatives, from any claims for damage to any person or to the Premises and the Improvements which may be located upon the Premises and to the fixtures, personal property, Lessee's Improvements and alterations of Lessee in or on the Premises and the Improvements which may be located upon the Premises that are caused by or result from risks insured against under any insurance policies carried by the parties hereto and in force at the time of any such damage. Each party hereto shall cause each insurance policy obtained by it to provide that the insurance company waives all right of recovery by way of subrogation against either party in connection with any damage covered by any policy, provided obtaining such a waiver in each such policy is then available at a reasonable charge. Neither party hereto shall be liable to the other for any damage caused by fire or any of the risks insured against under any insurance policy required by this Lease.

15. Repair and Restoration

If during the term of this Lease any building or improvement on the Premises or any part thereof shall be damaged or destroyed by fire or other casualty, Lessee shall, at its sole cost and expense, repair or restore the same according to the original plans thereof or to such modified plans as shall be previously approved in writing by Lessor pursuant to Section 9. If such damage or destruction occurs during the last two (2) years of the Lease term Lessee shall have no duty to repair or restore, and if Lessee elects not to repair or restore, this Lease shall terminate and Lessor shall receive all insurance proceeds, referenced in Section 14d. Such work of repair or restoration shall be commenced within ninety (90) days after the damage or loss occurs and shall be completed with diligence but not longer than one (1) year after such work is commenced, provided, however, that the time for completion of such repair and restoration shall be extended as appropriate in accordance with the provisions of Section 28(n) below. If insurance proceeds provided for above shall be insufficient for the purpose of such restoration and repair, or if the casualty is one not required to be insured against, then Lessee shall make up the deficiency out of its own funds. Lessee waives the provisions of Civil Code Sections 1932(2) and 1933(4) with respect to any destruction of the Premises.

16. Assignment and Subletting

(a) Except as provided in Section 17 of this Lease entitled Hypothecation, Lessee shall not encumber, assign, transfer or sublet all or any part of Lessee's interest in this Lease or the Premises without Lessor's prior written consent (City Manager or designee) given under and subject to the terms of this Lease.

(b) The following conditions are applicable to both assignments and subletting:

(1) Each request for consent to an assignment or subletting shall be in writing.

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

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

(4) If Lessee attempts to make or allow to be made any sublease or assignment, except in accordance with the provisions of this Section 16, then any of the foregoing events shall be deemed a breach of the conditions and restrictions of this Lease, and upon such breach, Lessor may, at its option, terminate this Lease within 30 days, by written notice, and upon such termination this Lease shall end and be of no further force.

(c) The following additional conditions are applicable to subletting:

(1) Lessor shall respond within 15 days of receipt of an acceptable sublease agreement.

(2) Lessor's consent shall not be unreasonably withheld. Lessor and Lessee may agree in writing on pre-approved uses for subletting purposes.

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

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(4) In the event of a Breach by Lessee in the performance of its obligations under this Lease, Lessor, at its option and without any obligation to do so, may require any sublessee to attorn to Lessor, in which event Lessor shall undertake the obligations of the sublessor under such sublease from the time of the exercise of said option to the expiration of such sublease; provided, however, Lessor shall not be liable for any prepaid rents or security deposit paid by such sublessee to such sublessor or for any other prior Defaults or Breaches of such sublessor under such sublease.

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

(d) Additional conditions applicable to assignments:

(1) Each request for consent shall be accompanied with a non-refundable deposit of \$1,000 or ten percent (10%) of the current monthly Base Rent, whichever is greater, as reasonable consideration for Lessor's consideration and processing the request for consent.

(2) A change in the control of Lessee shall constitute an assignment requiring Lessor's consent. The transfer, on a cumulative basis, of more than fifty percent (50%) or more of the voting control of Lessee shall constitute a change in control for this purpose.

(3) Lessor shall respond within 25 days of receipt of an acceptable written assignment and the information referenced in Section (d)(6), below.

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

(5) Lessor may accept any rent or performance of Lessee's obligations from any person other than Lessee pending approval or disapproval of an assignment. Neither a delay in the approval or disapproval of such assignment nor the acceptance of

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

(6) It shall not be unreasonable for Lessor to withhold or condition its consent based on the prospective assignee's financial strength, experience in operating the type of business permitted by this Lease, credit history or any other factor which Lessor reasonably believes germane to a Lessee's ability and willingness to perform the obligations of this Lease. Lessee agrees to provide Lessor with information and/or documentation as may be reasonably requested by Lessor regarding the proposed assignee.

(7) No assignment shall release Lessee from further liability under this Lease.

17. Hypothecation

Lessee is hereby given the right by Lessor, without Lessor's prior written consent, to encumber by mortgage or deed of trust, or other proper instrument (herein collectively referred to as "mortgage"), its leasehold interest to secure any bona fide loan upon the condition that all rights acquired under such leasehold mortgage(s) shall be subject to each and all of the covenants, conditions and restrictions set forth in this Lease, and all rights in interest of Lessor herein, none of which covenants, conditions or restrictions is or shall be deemed waived by Lessor by reason of the right given so to mortgage such interest in this Lease, except as expressly provided herein.

If lessee shall so encumber its leasehold interest and estate and if lessee or the holder of the indebtedness secured by such encumbrance shall give notice to lessor of the existence of the encumbrance and the address of such holder, then lessor will mail or deliver to such holder, at such address, a duplicate copy of all notices in writing that lessor may, from time to time, give to or serve on lessee under and pursuant to the terms and provisions of this lease. Such copies will be mailed or delivered to such holder at, or as near as possible to, the same time such notices are given to or served on lessee. Such holder may, at its option, at any time before the rights of lessee shall be terminated as provided in this agreement, pay any of the rents due under this lease, or pay any taxes and assessments, or do any other act or thing required of lessee by the terms of the lease, or do any act or thing that may be necessary and proper to be done in the observance of the covenants and conditions of this lease, or to prevent the termination of it. All payments so made, and all things so done and performed by such holder, will be as effective to prevent

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the foreclosure of the rights of lessee under this agreement as they would have been if done and performed by lessee.

Any act required to be performed by Lessee pursuant to the terms of this Lease may be performed by any holder of a mortgage on Lessee's behalf and the performance of such act shall be deemed to be the performance by Lessee and shall be acceptable as Lessee's act by Lessor. Nothing contained herein shall require the holder of an encumbrance to cure any default of Lessee hereunder, but such failure to cure shall leave Lessor free to terminate this Lease and pursue all of its rights against Lessee.

18. Prohibition of Involuntary Assignment

Neither this lease nor the leasehold estate of lessee nor any interest of lessee under this lease in the property or in the building or Improvements on the property will be subject to involuntary assignment, transfer, or sale, or to assignment, transfer, or sale by operation of law in any manner whatsoever (except through statutory merger or consolidation, or devise, or intestate succession). Any such attempt at involuntary assignment, transfer, or sale will be void and of no effect.

19. Default

The occurrence of any one or more of the following events shall constitute a default under this Lease by Lessee:

(a) Failure to pay an installment of rent or other sum when due;

(b) Failure to pay any insurance premium, lien, claim, demand, judgment or other charge provided for in this Lease to be paid or caused to be paid by Lessee at the time and in the manner as provided for in this Lease;

(c) Failure to maintain the Leased Premises or the Improvements as provided in this Lease;

(d) Abandonment of the Leased Premises after completion of construction for a continuous period of thirty (30) days;

(e) Default by Lessee under the terms of any mortgage on the estate of Lessee;

(f) The making by Lessee of any general arrangements or assignments for the benefit of creditors;

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(g) Lessee's becoming a "debtor" as defined in 11 USCS §101 or any successor statute, unless, the case of a petition filed against Lessee, it is dismissed within sixty (60) days after filing;

(h) The appointment of a trustee or receiver to take possession of substantially all of Lessor's assets at the Leased Premises or of Lessor's interest in this Lease, where possession is not restored to Lessee within thirty (30) days of this appointment;

(i) The attachment, execution, or other judicial seizure of substantially all of Lessee's assets located at the Leased Premises or of Lessee's interest in this Lease, where this seizure is not discharged within thirty (30) days after the seizure;

(j) Failure to perform or breach of any other covenant, condition or restriction provided for in this Lease;

20. Remedies in Event of Default

Upon any default of Lessee, and in the event the said default is due to the failure of Lessee to make the payment of any installment of rent or other sum when due, and in the event Lessee shall fail to remedy such default within *thirty (30) days* after written notice to do so, or upon any other default by Lessee, and in the event that Lessee shall fail to remedy such other default within thirty (30) days after written notice from Lessor so to do specifying the nature of such default, or if such default cannot be cured within thirty (30) days, Lessee has not commenced corrective action and prosecuted the same to completion with due diligence, or in the event that the default is of such a nature that it cannot be cured by any action of Lessee, then and in any of these events, in addition to any other remedy Lessor may have by operation of law, Lessor shall have the right but not the obligation without any further demand or notice to reenter the Leased Premises and eject all persons from the Leased Premises, using due process of law, and either:

(a) Immediately terminate Lessee's right to possession of the Premises, and repossess the same by summary proceedings or other appropriate action, and Lessor shall thereupon be entitled to receive from Lessee all damages specified in California Civil Code Section 1951.2(a), including, without limitation, the right to receive the worth at the time of the 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 for the same period that Lessee proves could be reasonably avoided; all of which damages to the extent specified in Section 1951.2(b) shall

be computed by allowing interest at the maximum rate permitted by law. Lessor shall also have the right, but no duty, to cure any default of Lessee under the terms of any mortgage on the estate of Lessee.

(b) Without terminating this Lease or the Lessee's right to possession, relet the Leased Premises or any part of the Leased Premises as the agent and for the account of Lessee upon such reasonable terms and conditions as Lessor may deem advisable, in which event the rents received on such reletting and collection shall be applied first to the reasonable expenses of such reletting and collection, including necessary renovation and alterations of the Leased Premises, reasonable attorneys' fees, any real estate commissions paid, and thereafter to payment of all sums due or to become due to Lessor under this Lease, and if a sufficient sum shall not be thus realized by the payment of such sums and other charges, Lessee shall pay Lessor any deficiency notwithstanding Lessor may have received rental in excess of the rental stipulated in this Lease in previous or subsequent months, and Lessor may bring an action therefor as such monthly deficiency shall arise.

21. Effect of Eminent Domain

(a) In the event the entire Premises shall be appropriated or taken under the power of eminent domain by any public or quasi-public authority, this Lease will terminate and expire as of the date of such taking, and lessee will then be released from any liability thereafter accruing under the Lease agreement.

(b) In the event a portion of the Premises shall be so appropriated or taken and the remainder of the Premises shall not be suitable for the use then being made of the Premises by Lessee, Lessee will have the right to terminate this Lease as of the date of such taking on giving to lessor written notice of such termination within thirty (30) days [number of days notice of termination due to partial condemnation] days after Lessor has notified Lessee in writing that the Premises has been so appropriated or taken.

If, in the event of such partial taking, Lessee does not so terminate this Lease, then this Lease will continue in full force and effect as to the part not taken, and the rent to be paid by Lessee during the remainder of the term, shall, as of the date of taking, be adjusted so that Lessee shall be required to pay for the remainder of the term only such portion of such rent as the value of the part of the Premises remaining after the taking bears to the value of the entire Premises at the date of taking. Any such determination will not affect or change the

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times at which Lessor may require an adjustment in rent under such provisions.

(c) (1) In the event of the termination of this Lease by reason of the total or partial taking of the Premises by eminent domain, then in any such condemnation proceedings Lessor and Lessee will be free to make claim against the condemning or taking authority for the amount of any damage done to them, respectively, as a result of such taking.

(2) If, in the event of a partial taking of the Premises, this Lease is not terminated, then Lessor and Lessee will be free to make claim against the condemning or taking authority for the amount of any damage done to them, respectively, as the result of such taking.

22. Nondiscrimination Covenant

Lessee, for itself, its personal representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land: (A) that no person on the grounds of sex, race, color or national origin shall be excluded from participation in, denied the benefits of or be otherwise subjected to discrimination in the use of said facilities; (B) that in the construction of any Improvements on, over or under such land and the furnishing of services thereon, no person on the grounds of race, color or national origin shall be excluded from participation in, denied the benefits of or otherwise be subject to discrimination; and (C) that Lessee shall use the Premises and all Improvements thereon in compliance with all other requirements imposed by law, including but not limited to the provisions of Section 51 et seq. of the Civil Code of the State of California and Sections 1290 et seq. of the California Government Code, all of which are incorporated herein by reference as though set forth at length.

23. Obligations of Lessor

(a) Lessor shall have no further obligation to perform repair or maintenance work on or to the Premises.

(b) Lessee hereby acknowledges that Lessor shall have no obligation whatsoever to provide guard service or other security measures for the benefit of the Premises or Improvements to be constructed thereon.

24. Lessor's Reservations

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(a) Lessee shall make the 1700 square foot Paso Robles Historic Rail Station available to Lessor at no charge upon request for City-related purposes provided that:

1. Lessor requests such use *thirty (30)* days in advance.

2. Said use is for no more than 24 hours.

3. Said use does not conflict with Lessor's prior scheduled special events such as weddings, receptions, private parties, etc. "Prior scheduled special events" excludes all ongoing commercial uses of the Paso Robles Historic Rail Station, such as restaurant, retail and wholesale operations.

(a) Lessor agrees to protect and does hereby indemnify and hold Lessee harmless from all demands, claims, actions and damages to any person or property (including reasonable attorneys' fees) arising out of or connected with Lessor's use or occupancy of the Historic Paso Robles Rail Station as provided in subsection (a), above, other than those attributable (and then to the extent attributable) to the negligence or willful misconduct of Lessee.

(c) Upon Lessor's request, Lessee shall provide Lessor with a written schedule of special events.

25. Estoppel Certificates

Lessor and Lessee shall, respectively, at any time and from time to time upon not less than ten (10) days' prior written request by the other, deliver to the requesting party an executed and acknowledged statement in writing certifying:

(a) That this Lease is unmodified and in full force and effect (or if there has been any modification(s) thereof that the same is in full force and effect as modified, and stating the nature of the modification or modifications);

(b) That to its knowledge the requesting party is not in default under this Lease (or if any such default exists, the specific nature and extent thereof), and

(c) The date to which rent and other charges have been paid in advance, if any. Each certificate delivered pursuant to this Section may be relied on by any prospective purchaser or transferee of the Leased Premises or of Lessor's or Lessee's interest hereunder or by any fee mortgagee of the Leased Premises or of Lessor's or Lessee's interest hereunder or by any assignee of any such mortgagee.

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26. Surrender of Lease

The voluntary or other surrender of this lease by lessee, or a mutual cancellation of the lease, will not work a merger, and will, at the option of lessor, terminate all or any existing subleases or subtenancies, or may, at the option of lessor, operate as an assignment to it of any or all such subleases or subtenancies.

27. Ownership of Improvements

At the expiration or sooner termination of the term of this Lease, all Improvements on the Premises constructed by Lessee pursuant to Section 8 shall become the property of Lessor.

28. Miscellaneous

(a) Attorneys' Fees. In the event any action is brought by Lessor to recover any rent due and unpaid hereunder or to recover possession of the Leased Premises, or in the event any action is brought by Lessor or Lessee against the other to enforce or for the breach of any of the terms, covenants or conditions contained in this Lease, the prevailing party shall be entitled to recover reasonable attorneys' fees to be fixed by the Court, together with costs of suit therein incurred.

(b) Waiver. No waiver of any breach of any of the terms, covenants, agreements, restrictions or conditions of this Lease shall be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions and conditions hereof. No delay or omission of Lessor to exercise any right or remedy shall be construed as a waiver of any such right or remedy or of any default by Lessee under this Lease. The various rights and remedies reserved to Lessor herein including those not specifically described in this Lease shall be cumulative and, except as otherwise provided by California statutory law in force at the time of execution of this Lease, Lessor may pursue any or all of such rights and remedies whether at the same time or otherwise.

(c) Holding Over. If Lessee shall hold over the Leased Premises after the expiration of the term hereof with the consent of Lessor, either express or implied, such holding over shall be construed to be only a tenancy from month to month, subject to all the covenants, conditions and obligations hereof, and Lessee hereby agrees to pay to Lessor double the rent as provided in this Lease; provided, however, that nothing herein contained shall be construed to give Lessee any rights to so

hold over and to continue in possession of the Leased Premises after the expiration of the term hereof.

(d) Lease Binding Upon Successors and Assigns. Subject to the limitations on assignment and subleasing, each of the terms, covenants and conditions of this Lease shall extend to and be binding on and inure to the benefit of not only Lessor and Lessee, but each of their successors and assigns. Whenever in this Lease reference is made to either Lessor or Lessee, the reference shall be deemed to include, wherever applicable, the successors and assigns and such parties the same as if in every case expressed.

(e) Inspection. Lessor reserves the right for Lessor and Lessor's agents and representatives to enter upon the Leased Premises and Improvements constructed by Lessee at any reasonable time during normal business hours, for the purpose of attending to Lessor's interest hereunder, and to inspect the Leased Premises and Improvements constructed by Lessee.

(f) Relationship of Parties. The relationship of the parties hereto is that of Lessor and Lessee, and it is expressly understood and agreed that Lessor does not in any way nor for any purpose become a partner of Lessee or a joint venturer with Lessee in the conduct of Lessee's business or otherwise.

(g) Time of the Essence. Time is expressly declared to be of the essence of this Lease.

(h) Memorandum of Lease. This Lease shall not be recorded, but the parties agree to execute and deliver a Memorandum of this Lease in recordable form which will include the restrictions on assignment.

(i) Quitclaim. At the expiration or earlier termination of this Lease, Lessee shall execute, acknowledge and deliver to Lessor within five (5) days after written demand from Lessor to Lessee any quitclaim deed or other document required by any reputable title company to remove the cloud of this Lease from the real property subject to this Lease.

(j) Number and Gender. Whenever the singular number is used in this Lease and when required by the context, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders, and the word "person" shall include corporation, firm or association. If there is more than one Lessee, the obligations imposed under this Lease upon Lessee shall be joint and several.

(k) Headings and Titles. The marginal headings or titles to the Sections of this Lease are not a part of this Lease and shall have no effect upon the construction or interpretation of any part of this Lease.

(l) Compliance with Governmental Regulations. Lessee shall, at its own cost and expense, promptly and properly, comply with and execute, including the making of any alteration to the Leased Premises or Improvements constructed by Lessee, all orders, regulations, laws and requirements of all governmental authorities arising from the use or occupancy of, or applicable to, the Leased Premises ("Applicable Laws").

(m) Entire Agreement. This Lease contains the entire agreement of the parties hereto with respect to the matters covered hereby, and no other previous agreement, statement or promise made by any party hereto which is not contained herein shall be binding or valid.

(n) Modification. Any Addendum to or modification of this Lease must be in writing and signed by the respective authorized representative of both Lessor and Lessee and when so executed shall become a part of this Lease

(o) Force Majeure. Except as to the payment of rent, neither of the parties hereto shall be chargeable with, liable for, or responsible to, the other for anything or in any amount for any delay caused by fire, earthquake, explosion, flood, hurricane, the elements, acts of God, or the public enemy, action or interference of governmental authorities or agents, war, invasion, insurrection, rebellion, riots, strikes, or lockouts or any other cause whether similar or dissimilar to the foregoing, which is beyond the control of such parties and any delay due to said causes or any of them shall not be deemed a breach of or default in the performances of this Lease.

(p) Disclaimer of Representation. Except as otherwise specifically provided herein, Lessor has made no representations or warranties to the Lessee concerning the Leased Premises, the present use thereof or the suitability for Lessee's intended use of the property. Lessee represents and warrants to Lessor that its representatives have made or will make their own independent inspection and investigation of the Leased Premises and Lessee, in entering into this Lease, is relying solely on such inspection and investigation. No patent or latent physical condition of Leased Premises, whether or not known or discovered, shall affect the rights of either party hereto. Any agreement, warranties or representations not expressly contained herein shall in no way bind either Lessee or Lessor. Lessor and Lessee waive any right of rescission and all claims for damages

by reason of any statement, representations, warranty, promise and agreement, if any, not contained in this Lease.

(q) Late Charge. Both Lessor and Lessee acknowledge and agree that Lessor is dependent on the revenue from Lessee for the North County Transportation Center operations and that it would be extremely difficult to estimate the damages to Lessor from late payment by Lessee. If any installment of Base Rent or other payment due from Lessee is not received by Lessor within ten (10) days of the date upon which it is due, Lessee shall pay to Lessor an additional charge of ten percent (10%) of the overdue payment as a late charge.

(r) Interest on Past Due Obligations. Any amount due from Lessee to Lessor which is not paid when due shall bear interest at an annual rate equal to the higher of (A) ten percent (10%) per annum, or (B) five percent (5%) per annum in excess of the prevailing rate established by the Federal Reserve Bank at San Francisco on advances to member banks on the twenty-fifth (25th) day of the month preceding the Commencement Date (but not more than the maximum rate permissible by law), from the due date until paid, but the payment of such interest shall not excuse or cure any default by Lessee. Said interest is in addition to the late charge due pursuant to subsection (q), above.

(s) Recitals. Recitals A through E of this Lease are incorporated herein by this reference and made a part hereof.

(t) Transfer of Lessor's Interest. In the event of any transfer of Lessor's interest in the Premises, the transferor shall be automatically relieved of any and all obligations and liabilities accruing from and after the date of such transfer.

(u) North County Transportation Center Operation. It is understood and agreed that general control over said North County Transportation Center are vested in the City acting by and throughout its City Council, Committees and Officers appointed by such City Council. In the general operation of any activities conducted under the terms of this Lease, Lessee agrees to comply with all reasonable rules and regulations adopted by the City for the use and operation of the North County Transportation Center which are not in conflict with the terms of this Lease.

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(v) Venue. Lessor and Lessee agree that if any legal action is taken to interpret or enforce the terms and conditions of this Lease, such actions shall be filed with the proper court in the County of San Luis Obispo.

(w) Authority to Execute Agreement. The parties hereby represent that the parties executing this agreement are expressly authorized to do so for and on behalf of the parties.

(x) Payments and Notices. Any notice to be given or other document to be delivered by either party to the other party may be given by personal delivery, generally recognized overnight courier, prepaid, or may be deposited in the United States mail, duly registered or certified, with postage prepaid, and addressed to the party for whom intended as follows:

To Lessor: City of El Paso de Robles
Department of Public Works
1000 Spring Street
Paso Robles, CA 93446

To Lessee: Depot Associates
1111 Riverside Avenue, Suite 500
Paso Robles, CA 93446

Either party hereto may from time to time by written notice to the other party designate a different address which shall be substituted for the one specified above. Notices and documents shall be served upon receipt or, if any notice or

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other document is sent by registered or certified mail, as provided above, the same shall be deemed served or delivered seventy-two (72) hours after the mailing thereof.

Executed at Paso Robles City on the day and the year first above written.

LESSEE:
Depot Associates
1111 Riverside Avenue, Suite 500
Paso Robles, CA 93446

LESSOR:
City Of El Paso de Robles

By: _____
Newlin Hastings

Managing Member

By: _____
James L. App, City
Manager

By: _____
A. Nichols Gilman

Managing Member

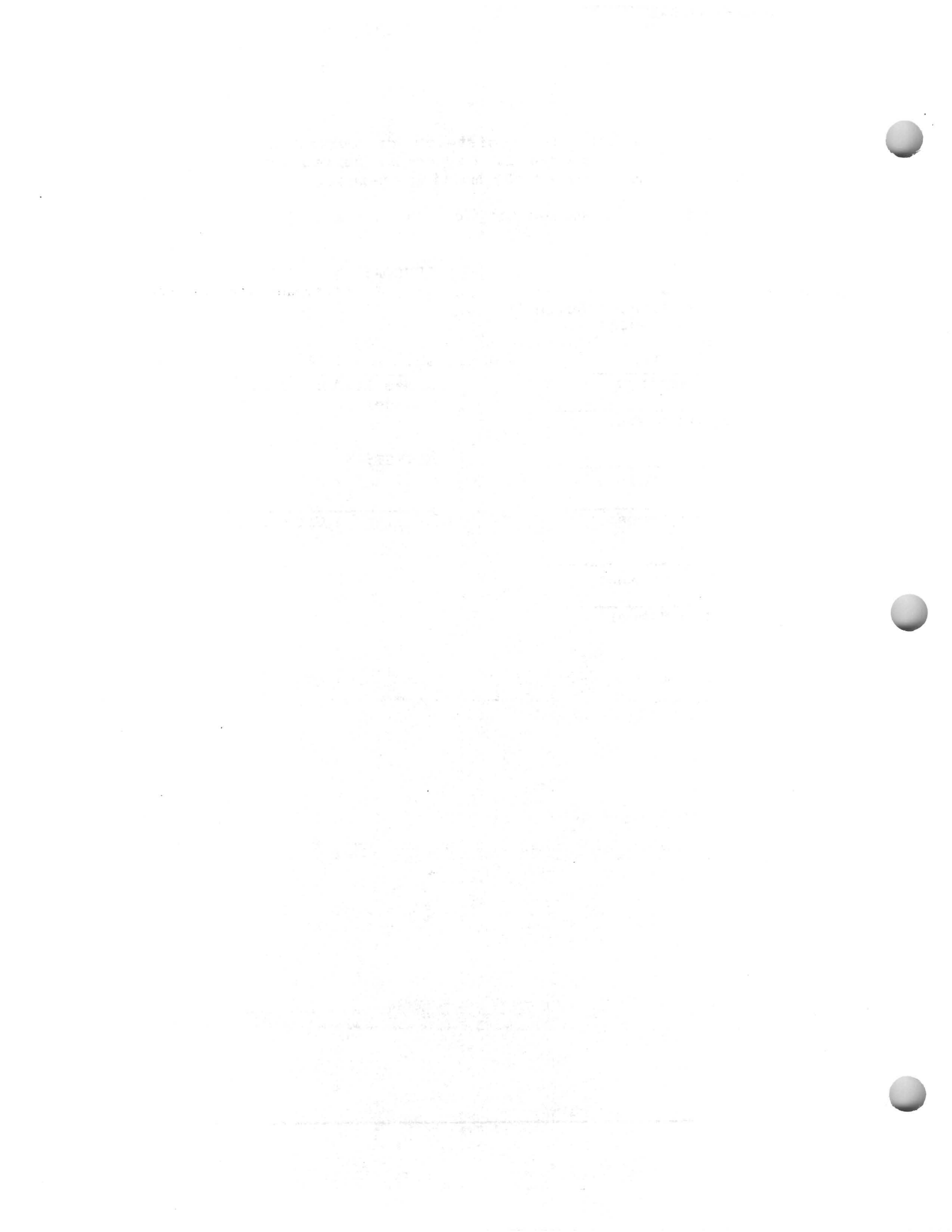
ATTEST:

City Clerk

By: _____
Bryan N. Beckham

Managing Member

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Consent to Security Interest in Lease

This consent to Security Interest in Lease is made and entered into as of December ____ 1999, by and among the city of El Paso de Robles, California ("City"), Heritage Oaks Bank ("Bank") and Depot Associates ("Depot").

This Consent is entered into with reference to the following facts:

- A. The City is the present owner in fee simple of the real property described in Exhibit "A" attached hereto ("Premises").
- B. The City and Depot entered into a lease Agreement, dated September 22, 1999, for the Premises ("Lease").
- C. Depot has requested the Bank to extend it credit in the amount of \$534,000, to be secured in part by a security interest in Depot's leasehold interest in the Premises created by the Lease.
- D. The Bank is willing to lend Depot the sum it has requested if, among other things, the City will execute this consent. The City is willing to execute this Consent in compliance with Article XXXV – Lender Transfer of the Lease.

Now, therefore, the parties agree as follows:

1. The City hereby consents to the granting by Depot to the Bank, and to any other institutional lenders to which the Bank may assign some or all of its interest in the Promissory Note and Deed of Trust executed by Depot in favor of the Bank to evidence its extension of credit to Depot (hereinafter, "Bank's Assignees"), of a security interest in Lease.
2. As a material part of the consideration for the Bank's extension of credit to Depot and with the understanding that the Bank's Assignees are relying on the representations made in this Consent, Depot and the City represent that the Lease is currently in full force and effect, with the term of the lease modified and that no default currently exists thereunder.
3. The City agrees that in the event that the Bank or the Bank's Assignees foreclosure on the security instrument securing its interest in the Lease and acquires Depot's interest in the Lease, at such foreclosure sale the City (provided the new buyer has satisfied the Bank and City's financial/credit worthiness criteria) will agree to execute a new lease with the purchaser or assign the existing lease at the foreclosure sale on substantially the terms contained in the Lease and/or such lease shall thereafter also be referred to as the "Lease".
4. This Consent shall remain in full force and effect so long as the Bank or the Bank's Assignees have any interest in the Lease.

5. This Consent is executed as of the date first written above.

Dated: December , 1999

CITY

City of El Paso de Robles

By: _____

Attest: _____

BANK

Heritage Oaks Bank

By: _____

DEPOT

Depot Associates

By: _____

EXHIBIT "A"

BEING A PORTION OF PARCEL 1 OF PR-95-098, IN THE CITY OF PASO ROBLES, COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA, PER MAP RECORDED FEBRUARY 6, 1996 IN BOOK 51 OF PARCEL MAPS AT PAGE 85, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID PARCEL 1; THENCE ALONG THE EASTERLY LINE OF SAID PARCEL 1, NORTH 0 06' 58" WEST, 105.37 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 89 53' 02" WEST, 44.31 FEET; THENCE PARALLEL WITH SAID EASTERLY LINE, NORTH 0 06' 58" WEST, 310.00 FEET; THENCE NORTH 89 53' 02" EAST 44.31 FEET TO A POINT ON SAID EASTERLY LINE; THENCE ALONG SAID EASTERLY LINE SOUTH 0 06' 58" EAST, 310.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 13,736 SQUARE FEET.

SEE ATTACHED EXHIBIT B, MADE A PART HEREOF.

TOTAL P.02
MAY 28 '99 12:52PM 92 DM NORTH COAST ENG. INC

TO

2384784 P.3/23

EXHIBIT B

PINE

7 TH STREET

8 TH STREET

STREET

PARCEL 1
01 PM 08

EXISTING S.P.R.R. TRACKS

EXISTING LOADING PLATFORM

0 50' 100' 200'

SCALE: 1"=100'

NCE NORTH COAST ENGINEERING INC.
725 Creston Rd Suite B, Poso, Calif. 95227