

# BOARD OF SUPERVISORS

## AGENDA

Meetings are located at:  
Yuba County Government Center  
Board Chambers, 915 Eighth Street  
Marysville, California



Agenda materials are available at the Yuba County Government Center, 915 8<sup>th</sup> Street, Marysville and [www.co.yuba.ca.us](http://www.co.yuba.ca.us). Any disclosable public record related to an open session item and distributed to all or a majority of the Board less than 72 hours prior to the meeting is available for public inspection at Suite 109 of the Government Center during normal business hours.

**APRIL 22, 2014**



### **8:30 A.M. YUBA COUNTY WATER AGENCY**

### **9:25 A.M. YUBA COUNTY PUBLIC FACILITIES CORPORATION**

- A. **ROLL CALL**: Directors Vasquez, Nicoletti, Griego, Abe, Stocker
- B. **ELECTION OF OFFICERS** - President-Chief Executive Officer; Secretary; Chief Financial Officer
- C. Approve minutes of the meeting of April 23, 2013.
- D. Approve Public Facilities Corporation Bylaws.
- E. **ADJOURN**

### **9:30 A.M. YUBA COUNTY BOARD OF SUPERVISORS - Welcome to the Yuba County Board of Supervisors meeting. As a courtesy to others, please turn off cell phones, pagers, or other electronic devices, which might disrupt the meeting. Thank you.**

- I. **PLEDGE OF ALLEGIANCE** - Led by Supervisor Stocker
- II. **ROLL CALL** - Supervisors Vasquez, Nicoletti, Griego, Abe, Stocker
- III. **CONSENT AGENDA**: All matters listed under the Consent Agenda are considered to be routine and can be enacted in one motion.
  - A. Clerk of the Board of Supervisors
    - 1. (160-14) Appoint Steve Wigley to the Library Advisory Commission as the District One Representative with a term ending date of December 31, 2014.
    - 2. (161-14) Appoint David Pietz to the Peoria Cemetery District for a term to end August 13, 2017.
  - B. Community Development and Services
    - 1. (162-14) Adopt resolution authorizing Yuba County Community Development and Services Agency Director or his designee to complete the purchase of single family residences APN 021-281-020, 021-322-002, 021-024-007, 021-073-002, and 021-051-011 as part of the Neighborhood Stabilization program and execute all documents needed for completion of purchase, rehabilitation, reconstruction, and resale.
  - C. Human Resources and Organizational Services
    - 1. (163-14) Adopt resolution amending the Departmental Position Allocation schedule as it relates to the Project Manager - Limited Term effective May 1, 2014.
  - D. Sheriff-Coroner
    - 1. (164-14) Approve agreement with Yuba County Water Agency for law enforcement services for the limited term of May 15, 2014 through September 15, 2014 and authorize the Chair to execute same.

- IV. **PUBLIC COMMUNICATIONS:** Any person may speak about any subject of concern provided it is within the jurisdiction of the Board of Supervisors and is not already on today's agenda. The total amount of time allotted for receiving such public communication shall be limited to a total of 15 minutes and each individual or group will be limited to no more than 5 minutes. Prior to this time speakers are requested to fill out a "Request to Speak" card and submit it to the Clerk of the Board of Supervisors. Please note: No Board action can be taken on comments made under this heading.
- V. **COUNTY DEPARTMENTS**
- A. Administrative Services
1. (150-14) Approve sublease agreement between Continental Pacific Lumber Industries and Cali Shine Distillery Company, for property located at 5216 Arboga Road, and authorize Chair to execute same. (Continued from April 15, 2014) (Public Facilities Committee recommends approval) (Fifteen minute estimate)
- VI. **ORDINANCES AND PUBLIC HEARINGS:** If you challenge in court the action or decision of the Yuba County Board of Supervisors regarding a zoning, planning, land use or environmental protection matter made at any public hearing described in this notice, you may be limited to raising only those issues you or someone else raised at such public hearing, or in written correspondence delivered to the Yuba County Board of Supervisors at, or prior to, such public hearing and such public comments will be limited to three minutes per individual or group.
- A. (153-14) Hold public hearing, waive reading, and adopt ordinance adding Article 5 to Chapter 2.50 authorizing the Purchasing Agent to perform all acts necessary regarding the acquisition of real property where the purchase price does not exceed \$150,000.; and make finding the ordinance is statutorily exempt from the California Environmental Quality Act (CEQA). (Second Reading) (Ten minute estimate)
- B. (154-14) Hold public hearing, waive reading, and adopt ordinance amending Chapters 13.00.030, 13.00.042, 13.00.052, 13.00.056 and 13.00.060 of the Yuba County Ordinance Consolidated Fee Ordinance Code for Administrative Services, Clerk Recorder, Health Services, and Treasurer; and make finding the ordinance is statutorily exempt from the California Environmental Quality Act (CEQA). (Second Reading) (Ten minute estimate)
- VII. **BOARD AND STAFF MEMBERS' REPORTS:** This time is provided to allow Board and staff members to report on activities or to raise issues for placement on future agendas.
- VIII. **CLOSED SESSION:** Any person desiring to comment on any matter scheduled for this closed session may address the Board at this time.
- A. Pending litigation pursuant to Government Code §54956.9(d)(2) - One Claim
- IX. **ADJOURN**

**04/25/14 - 8:30 A.M. Bi-County Juvenile Hall / Mental Health Committee**  
Juvenile Hall Administration Building  
1023 Fourteenth Street, Conference Room  
Marysville, Ca 95901

In compliance with the Americans with Disabilities Act, the meeting room is wheelchair accessible and disabled parking is available. If you have a disability and need disability-related modifications or accommodations to participate in this meeting, please contact the Clerk of the Board's office at (530) 749-7510 or (530) 749-7353 (fax). Requests must be made two full business days before the start of the meeting. To place an item on the agenda, contact the office of the Clerk of the Board of Supervisors at (530) 749-7510.

#### **PUBLIC INFORMATION**

**AGENDA ITEMS:** The opportunity of the public to be heard on an item shall be provided during the consideration of that item. In the interest of time, the Board has limited the length of such comment or input on each item to 15 minutes total, with a limit of no more than 5 minutes per person or group. The period for public comments on a particular item may be extended upon a majority vote of the Board. These time limits do not apply to applicants appearing before the Board on behalf of their applications.

**ACTION ITEMS:** All items on the Agenda under the headings "Consent," "County Departments," Ordinances and Public Hearings," "Items of Public Interest," and "Closed Session," or any of them, are items on which the Board may take any action at this meetings.

**PUBLIC HEARINGS:** All members of the public shall be allowed to address the Board as to any item which is noticed on the Board's agenda as a public hearing. The Board has limited each person or group input to no more than 3 minutes. Any person or group may provide the Board with a written statement in lieu of or in supplement to any oral statement made during a public hearing. Written statements shall be submitted to the Clerk of the Board.

**ORDINANCES:** Ordinances shall not be passed within five days of their introductions, nor at other than a regular meeting or at an adjourned regular meeting. The Board of Supervisors will address ordinances at first readings. The public is urged to address ordinances at first readings. Passage of ordinances will be held at second readings, after reading the title, further reading is waived and adoption of the ordinance is made by majority vote. An urgency ordinance may be passed immediately upon introduction. The Board reserves the right to amend any proposed ordinances and to hold a first reading in lieu of a second reading.

**INFORMATIONAL CORRESPONDENCE:** The Board may direct any item of informational correspondence to a department head for appropriate action.

**SCHEDULED LUNCH BREAK:** Between the hours of 12:00 noon and 1:00 p.m. and at the discretion of the Chair, the Board will recess one hour for lunch.

**SPECIAL MEETINGS:** No public comment shall be allowed during special meetings of the Board of Supervisors, except for items duly noticed on the agenda.

**End**

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*PUBLIC  
FACILITIES  
CORPORATION*

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MINUTES OF THE SPECIAL MEETING OF  
THE COUNTY OF YUBA  
PUBLIC FACILITIES CORPORATION  
APRIL 23, 2013

The Honorable Board of Directors of the Yuba County Public Facilities Corporation met in regular session on the above date, commencing at 9:17 a.m., within the Government Center, Marysville, California, with a quorum being present as follows: Directors Andy Vasquez, John Nicoletti, Mary Jane Griego, Roger Abe, and Hal Stocker. Also present were County Administrator Robert Bendorf and County Counsel Angil Morris-Jones. President Abe presided.

A. ROLL CALL: Directors Vasquez, Nicoletti, Griego, Abe, Stocker - All Present

B. ELECTION OF OFFICERS:

MOTION: Move to appoint Roger Abe President-Chief Executive Officer

MOVED: John Nicoletti                      SECOND: Hal Stocker

AYES: John Nicoletti, Hal Stocker, Andy Vasquez, Mary Jane Griego, Roger Abe

NOES: None      ABSENT: None      ABSTAIN: None

MOTION: Move to appoint Mary Jane Griego Secretary

MOVED: John Nicoletti                      SECOND: Roger Abe

AYES: John Nicoletti, Roger Abe, Andy Vasquez, Mary Jane Griego, Hal Stocker

NOES: None      ABSENT: None      ABSTAIN: None

MOTION: Move to appoint John Nicoletti Chief Financial Officer

MOVED: Mary Jane Griego                      SECOND: Hal Stocker

AYES: Mary Jane Griego, Hal Stocker, Andy Vasquez, John Nicoletti, Roger Abe

NOES: None      ABSENT: None      ABSTAIN: None

C. Approve minutes of the meeting of April 26, 2011.

MOTION: Move to approve      MOVED: Roger Abe      SECOND: John Nicoletti

AYES: Roger Abe, John Nicoletti, Andy Vasquez, Mary Jane Griego, Hal Stocker

NOES: None      ABSENT: None      ABSTAIN: None

D. ADJOURN: 9:20 a.m. by President Abe.

ATTEST:

SECRETARY OF THE COUNTY OF YUBA  
PUBLIC FACILITIES CORPORATION

\_\_\_\_\_  
Roger Abe, President

\_\_\_\_\_  
Mary Jane Griego

Approved: \_\_\_\_\_

# The County of Yuba

**Clerk of the Board of Supervisors**

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April 22, 2014

**TO:** Public Facilities Corporation  
**FROM:** Donna Stottlemeyer, Clerk of the Board of Supervisors  
**SUBJECT:** Bylaws approval

A handwritten signature in black ink, appearing to read "Donna Stottlemeyer", is written over the "FROM:" line of the memo.

**Recommendation**

Approve updated Public Facilities Corporation By-Laws.

**Background and Discussion**

The by-laws for the Corporation were adopted in 1991 when the corporation was established and have not been updated since that time. The bylaws have been updated to reflect changes in address, compliancy with the Brown Act and terms of office of Board of Supervisors.

The bylaws are attached with changes highlighted in yellow, have been reviewed by Counsel for legal sufficiency and are submitted for your approval.

There is no fiscal impact.

Attachment



**BYLAWS  
OF THE COUNTY OF YUBA  
PUBLIC FACILITIES CORPORATION**

**ARTICLE I  
OFFICES**

Section 1.01 Principal Office. The principal office of the corporation for its transaction of business is located in the City of Marysville, County of Yuba, State of California.

Section 1.02 Change of Address. The Board of Directors of this corporation (the "Board") is hereby granted full power and authority to change the principal office of the corporation from one location to another in the County of Yuba, California. Any such change shall be noted by the secretary in these Bylaws, but shall not be considered an amendment of these Bylaws.

**ARTICLE II  
NO MEMBERS**

Section 2.01 No Members. Pursuant to Section 5310 of the Corporations Code, the bylaws of a nonprofit corporation may provide that the corporation shall have no members. This corporation shall have no members.

**ARTICLE III  
DIRECTORS**

Section 3.01 Powers. Subject to the limitations of the Articles of Incorporation and these Bylaws, the activities and affairs of this corporation shall be conducted and all corporate powers shall be exercised by or under the direction of the Board. All actions taken by the Board or by a committee created by the Board shall be at a meeting duly called and shall be reported in the duly executed minutes of the corporation or of such committee for such meeting and transmitted to the County of Yuba Board of Supervisors (the "Board of Supervisors"). The Board may delegate the management of the activities of the corporation to any person or persons, a management company or committees, however composed, provided that any such delegation other than to a committee of the Board or to the staff of the Board of Supervisors must be approved by the Board of Supervisors, and provided, moreover, that the activities and affairs of the corporation shall be managed and all corporate powers shall be exercised under the ultimate direction of the Board. Without prejudice to such general powers, but subject to the same limitations, it is hereby expressly declared that the Board shall have the following powers in addition to the other powers enumerated in these Bylaws and in the State of California Nonprofit Public Benefit Corporation Law (the "Law"):

(a) To select and remove all of the other officers, agents and employees of the corporation, prescribe powers and duties for them as may not be inconsistent with law, the Articles of Incorporation or these Bylaws, fix their compensation, if any, and require from them security for faithful service;

(b) To conduct, manage and control the affairs and activities of the corporation and to take such rules and regulations therefore as are consistent with law, the Articles of Incorporation or these Bylaws, as they may deem best;

(c) To adopt, make and use a corporate seal and to alter the form of such seal from time to time as they may deem best;

(d) Subject to the approval of the Board of Supervisors, to borrow money and incur indebtedness for the purposes of the corporation, and to cause to be executed and delivered therefore, in the corporate name, promissory notes, bonds, debentures, deeds of trust, mortgages, pledges, hypothecations or other evidences of debt and securities therefore; and

(e) Subject to the approval of the Board of Supervisors, to acquire real or personal property of any nature and to lease the same to the County and to assign its interest in any such lease to any person including a trustee for the benefit of holders of certificates of participation. All acquisitions of real or personal property and any construction undertaken shall be done in accordance with the laws and regulations applicable to the County for procurement or construction.

Section 3.02 Number. The authorized number of directors shall be not less than one and not more than fifteen; provided, however, that the number of directors shall at all times be equal to the number of permanent members of the Board of Supervisors or its successor which is currently five (5). The number of directors may be changed by an amendment of these Bylaws.

Section 3.03 Term of Office. The four year term of office of each director shall be co-extensive with his or her four year term as a member of the Board of Supervisors.

Section 3.04 Resignation<sup>h</sup> and Removal. Subject to the provisions of Section 5226 of the Law, any director who may resign at any time as a permanent member of the Board of Supervisors shall be automatically deemed to have resigned from the Board of Directors of the corporation. Such resignation shall take effect at the time the resignation takes effect for purposes of the Board of Supervisors and the acceptance of such resignation shall not be necessary to make it effective for purposes of the corporation. Any director shall be removed from the Board of Directors of the corporation if such director, in his or her capacity as a permanent member of the Board of Supervisors, is removed from the Board of Supervisors, and shall be automatically replaced as a director of the corporation by the person elected to the Board of Supervisors to replace the permanent member so removed.

The Board of Supervisors or the Board, with the approval of the Board of Supervisors, may declare vacant the office of a director who has been declared of unsound mind by a final order of a court, or convicted of a felony, or who has been found by a final order or judgment of any court to have breached any duty arising under Chapter 2, Article 3 of the Law.

No reduction of the authorized number of directors shall have the effect of removing any director prior to the expiration of the director's term of office.

Section 3.05 Designation of Directors and Filling of Vacancies. The incorporator of the corporation shall elect the existing permanent members of the Board of Supervisors to serve as the Board of the corporation so long as each such director remains a permanent member of the Board of Supervisors.

If the office of any director becomes vacant due to a vacancy on the Board of Supervisors, the person elected or appointed to the Board of Supervisors to fill such vacancy in the Board of Supervisors shall automatically fill the vacancy in the Board of Directors of the corporation. A vacancy or vacancies in the Board shall be deemed to exist in case of the death, resignation or removal of any member sitting on the Board of Supervisors, or if the authorized number of members of the Board of Supervisors shall be increased.

Section 3.06 Organizational Meeting. The Board shall hold at least one regular meeting annually (the "Organizational Meeting") for the purpose of the organization of the corporation, election of officers and the transaction of other business. Notice of each Organizational Meeting shall be given in accordance with the notice requirements for special meetings set forth in Article III, Section 3.08 hereof.

Section 3.07 Other Regular Meetings. Other regular meetings of the Board shall be held without call or notice on such dates and at such times and places as the Board shall fix by resolution.

Section 3.08 Special Meetings. Special meetings of the Board for any purpose or purposes may be called at any time by the president or any vice president or the secretary or any two directors. Any person calling such meeting shall cause such notice of the meeting to be given pursuant to the requirements set forth below.

Special meetings of the Board shall be held on forty-eight (48) hours' notice delivered personally or by telephone, fax, email, or telegraph. Except as provided in the next sentence, under no circumstance may the Articles of Incorporation or these Bylaws dispense with the notice of a special meeting. Notice of the special meeting need not be given to any director who signs a waiver of notice or a written consent to holding the meeting or an approval of the minutes thereof, whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of such notice to such director. All such waivers, consents, and approvals shall be filed with the corporate records or made a part of the minutes of the meetings.

Section 3.09 Ralph M. Brown Act. All meetings of the Board and any committee thereof shall be called, noticed (except where these Bylaws impose a greater period of notice), held and conducted in accordance with the provisions of the Ralph M. Brown Act, as amended (commencing with Section 54950 of the Government Code of the State of California).

Section 3.10 Place of Meeting. Regular and special meetings of the Board shall be held in the chambers of the Board of Supervisors located at the Yuba County Government Center, 915 Eighth Street in Marysville, California or in any place within or without the State of California which has been designated from time to time by resolution of the Board. The designation of a place of meeting outside the County must be approved in advance by the Board of Supervisors and comply with the Brown Act.

Section 3.11 Quorum. A majority of the authorized number of directors shall constitute a Quorum of the Board for the transaction of business. Every act or decision done or made by a majority of the directors

present at a meeting duly held at which a quorum is present shall be regarded as the act or decision of the Board, unless a greater number is required by law or by the Articles of Incorporation.

Section 3.12 Adjournment. A majority of the directors present, whether or not a quorum is present, may adjourn any meeting to another time and place. Notice of the time and place of holding an adjourned meeting need not be given to absent directors if the time and place is fixed at the meeting adjourned, except as provided in the next sentence. If the meeting is adjourned for more than twenty-four (24) hours, notice of any adjournment to any other time or place shall be given prior to the time of the adjourned meeting to the directors who were not present at the time of the

adjournment. A copy of the order or notice of adjournment shall be conspicuously posted on or near the door of the place where the meeting was held within twenty-four (24) hours after the time of adjournment.

Section 3.13 Rights of Inspection. Any person may inspect any Public Record in accordance with the Brown Act and the Public Records Act. The inspection shall be at any reasonable time during regular business hours of the Corporation. Any person pursuant to and in accordance with the Public Records Act may obtain a copy of any public record regularly maintained by the Corporation.

Section 3.14 Committees. The Board may create one or more committees, each consisting of two or more directors, and delegate to such committees any of the authority of the Board, except with respect to the following:

- (a) The filing of vacancies on the Board or on any committee;
- (b) The fixing of compensation of the directors for serving on the Board or on any committee;
- (c) The amendment or repeal of these Bylaws or the adoption of new bylaws;
- (d) The amendment or repeal of any resolution of the Board which by its express terms is not so amendable or repealable;
- (e) The appointment of other committees of the Board or the members thereof;
- (f) The expenditure of corporate funds to support a nominee for director after there are more people nominated for director than can be elected; and
- (g) The approval of any self-dealing transaction except as provided in paragraph (3) of subdivision (d) of Section 5233 of the Law.

Any such committee must be created, and the members thereof appointed, by resolution adopted by a majority of the authorized number of directors then in office, provided that a quorum is present. Any such committee may be designated by such name as the Board shall specify. The Board may appoint one or more directors as alternate members of any committee, who may replace any absent member at any meeting of the committee. The Board shall have the power to prescribe the manner in which proceedings

of any such committee shall be conducted. In the absence of any such prescription, such committee shall have the power to prescribe the manner in which its proceedings shall be conducted.

The regular and special meetings and other actions of any such committee shall be governed by the Brown Act and the provisions of this Article III applicable to meetings and actions of the Board. Minutes in written form shall be kept of each meeting of the corporation and of each committee.

Section 3.15 Compensation and Reimbursement. The directors and members of committees shall receive no compensation for their services as directors and as members of committees. The directors and members of committees may receive reimbursement for expenses, if any, incurred in the performance of their duties as directors or as members of committees, in accordance with procedures established by the Board and ratified by the Board of Supervisors.

## **ARTICLE IV OFFICERS**

Section 4.01. Officers. The officers of the corporation, who shall be directors of the corporation, shall be a president, a secretary and a chief financial officer. The corporation may also have, at the discretion of the Board, one or more vice presidents, one or more assistant secretaries, one or more assistant chief financial officers, and such other officers as may be elected or appointed in accordance with the provisions of Section 4.03 of this Article IV. Any number of offices may be held by the same person except as provided in the Articles of Incorporation or in these Bylaws and except that the offices of president and secretary or president and chief financial officer may not be combined.

Section 4.02 Election. The officers of the corporation, except such officers as may be elected or appointed in accordance with the provisions of Section 4.03 or Section 4.05 of this Article IV, shall be chosen annually by, and shall serve at the pleasure of, the Board, and shall hold their respective offices until their resignation, removal, or other disqualification from service, or until their respective successor shall be elected.

Section 4.03 Subordinate Officers. The Board may elect, and may empower the president to appoint, such other officers, who need not be directors of the corporation, as the business of the corporation may require, each of whom shall hold office for such period, have such authority and perform such duties as are provided in these Bylaws or as the Board may from time to time determine.

Section 4.04 Removal and Resignation. Any officer may be removed, either with or without cause, by the Board at any time or, except in the case of an officer chosen by the Board, by any officer upon whom such power of removal may be conferred by the Board. Any such removal shall be without prejudice to the rights, if any, of the officer under any contract of employment of the officer.

Any officer may resign at any time upon written notice to the corporation without prejudice to the rights, if any, of the corporation under any contract to which the officer is a party. Any such resignation shall take effect upon the date of the receipt by the corporation of such notice or at any later time specified therein and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 4.05 Vacancies. A vacancy in any office because of death, resignation, removal, disqualification or any other cause shall be filled in the manner prescribed in these Bylaws for regular election or appointment to such office, provided that such vacancies shall be filled as they occur and not on an annual basis.

Section 4.06 President. The president is the general manager and chief executive officer of the corporation and has, subject to the control of the Board, general supervision, direction and control of the business and officers of the corporation. The president shall preside at all meetings of the Board. The president has the general powers and duties of management usually vested in the office of president and general manager of a corporation and such other powers and duties as may be prescribed by the Board.

Section 4.07 Vice Presidents. In the absence or disability of the president, the vice presidents, if any be appointed, in order of their rank as fixed by the Board or, if not ranked, the vice president designated by the Board, shall perform all the duties of the president and, when so acting, shall have all the powers of, and be subject to all the restrictions upon, the president. The vice presidents shall have such other powers and perform such other duties as from time to time may be prescribed for them respectively by the Board.

Section 4.08 Secretary. The secretary shall keep or cause to be kept, at the principal office or such other place as the Board may order, a book of minutes of all meetings of the Board and its committees, with the time and place of holding, whether regular or special, and if special, how authorized, the notice thereof given, the names of those present at Board and committee meetings, and the proceedings thereof. The secretary shall keep, or cause to be kept, at the corporation's principal office in the State of California the original or a copy of the corporation's Articles of Incorporation and Bylaws, as amended to date.

The secretary shall give, or cause to be given, notice of all meetings of the Board and any committees thereof required by these Bylaws or by law to be given, shall keep the seal of the corporation in safe custody, and shall have such other powers and perform such other duties as may be prescribed by the Board.

Section 4.09 Chief Financial Officer. The chief financial officer is the treasurer of the corporation and shall keep and maintain, or cause to be kept and maintained, adequate and correct accounts of the properties and business transactions of the corporation. The corporation's accounting books and financial statements shall at all times be open to inspection by any director or by any member of the Board of Supervisors.

The chief financial officer shall deposit or cause to be deposited all moneys and other valuables in the name and to the credit of the corporation with such depositories as may be allowed by law and designated by the Board. The chief financial officer shall disburse the funds of the corporation as may be ordered by the Board, shall render to the president and the directors, whenever they request it, an account of all transactions as chief financial officer and of the financial condition of the corporation, and shall have such other powers and perform such other duties as may be prescribed by the Board.

## ARTICLE V

## OTHER PROVISIONS

Section 5.01 Endorsement of Documents; Contracts. Subject to the provisions of applicable law, any note, mortgage, evidence of indebtedness, contract, conveyance or other instrument in writing and any assignment or endorsement thereof executed or entered into between the corporation and any other person, when signed by the president or any vice president, and the secretary, any assistant secretary, the chief financial officer or any assistant chief financial officer of the corporation, shall be valid and binding on the corporation in the absence of actual knowledge on the part of the other person that the signing officers had no authority to execute the same. Any such instruments may be signed by any other person or persons and in such manner as from time to time shall be determined by the Board, and, unless so authorized by the Board, no officer, agent or employee shall have any power or authority to bind the corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or amount.

Section 5.02 Construction and Definitions. Unless the context otherwise requires, the general provisions, rules of construction and definitions contained in the General Provisions of the California Nonprofit Corporation Law and in the Law shall govern the construction of these Bylaws.

## ARTICLE VI NOTICE

Section 6.01 Notice of Meetings. Notice of all meetings of the Board, and any committees thereof, shall be given to the Board of Supervisors in writing in the same manner as notices are given to the directors of the corporation.

Notices shall be directed to the Board of Supervisors of the County of Yuba, 915 Eighth Street, Suite 109 Marysville, California 95901. Failure to give such notice shall not in any way invalidate any action taken by the Board at any such meeting.

Section 6.02 Participation of the County Board. Members of the Board of Supervisors or their designees shall have the right to attend meetings of the Board, and committees thereof and to make recommendations thereto.

## ARTICLE VII AMENDMENTS

Except as otherwise provided by the Articles of Incorporation and these Bylaws, new articles of incorporation and/or bylaws may be adopted or the Articles of Incorporation and/or these Bylaws may be amended or repealed by the vote of a majority of a quorum of the Board at a meeting of the Board duly called for the purpose in accordance with the Articles of Incorporation and these Bylaws; provided, however, that the Articles of Incorporation and these Bylaws shall not be amended or repealed without the consent of the Board of Supervisors.

**ARTICLE VIII  
CORPORATE RECORDS, FISCAL YEAR AND SEAL**

Section 8.01 Keeping Records. The corporation shall keep adequate and correct records and minutes of the proceedings of the Board and committees of the Board. The minutes shall be kept in written form.

Section 8.02 Annual Report. The annual report referred to in Section 6321 of the Nonprofit Corporation Law of the State of California is expressly dispensed with.

Section 8.03 Fiscal Year. The fiscal year of the Corporation shall begin July 1 and end June 30 of each year, except the first fiscal year shall run from the date of incorporation to June 30, 1992.

Section 8.04 Dissolution. In the event of dissolution of the Corporation in any manner and for any cause, after the payment or adequate provision for the payment of all of its debts and liabilities, all of the remaining funds, assets and properties of the Corporation shall be paid or distributed to the County of Yuba.

Section 8.05 Corporate Seal. The Board shall adopt a corporate seal which shall be in the following form and design: {seal embossed}

The secretary of the corporation shall have the custody of the seal and affix it in all appropriate cases to all corporate documents. Failure to affix the seal shall not, however, affect the validity of any instrument.

**CERTIFICATE OF SECRETARY**

**OF**

**COUNTY OF YUBA PUBLIC FACILITIES CORPORATION**

I hereby certify that I am the duly elected and acting Secretary of said corporation and that the foregoing Bylaws, comprising 8 pages, constitute the Bylaws of said corporation as duly adopted at a meeting of the Board of Directors thereof held on \_\_\_\_\_ 2014.

CORPORATE SECRETARY  
OF THE COUNTY OF YUBA  
PUBLIC FACILITIES CORPORATION

**APPROVED AS TO FORM**

**ANGIL P. MORRIS-JONES**

**COUNTY COUNSEL**

BY: 





*CONSENT*  
*AGENDA*

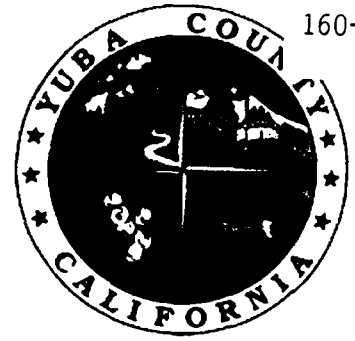
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# The County of Yuba

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## Office of Clerk of the Board of Supervisors

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160-14

**To:** Board of Supervisors  
**From:** Donna Stottlemeyer, Clerk of the Board *Donna Stottlemeyer*  
**Subject:** Yuba County Library Advisory Commission District One Representative  
**Date:** April 22, 2014

### Recommendation

Appoint Steve Wigley to the Library Advisory Commission as the District One Representative with a term ending date of December 31, 2014.

### Background and Discussion

The Local Appointment List of all Boards/Commissions/Committees is continually posted indicating vacancies, appointees, terms of office, qualifications and meeting information. This is an unscheduled vacancy due to the resignation of Mr. Dale Henley in March of 2013. One application has been received from Mr. Steve Wigley and is attached for your review. Supervisor Vasquez recommends appointment.

In light of the expressed interest, it would be appropriate to appoint at this time.

### Fiscal Impact

None

### Committee Action

None required.

attachments

# The County of Yuba

RECEIVED

APR 9 2014



Application for Board/Commission/Committee  
Appointed by the Board of Supervisors

Clerk/Board of Supervisors

RETURN APPLICATION WITH ORIGINAL SIGNATURE TO:

CLERK OF THE BOARD OF SUPERVISORS  
YUBA COUNTY GOVERNMENT CENTER  
915 EIGHTH STREET, SUITE 109  
MARYSVILLE, CA 95901  
(530) 749-7510

BOARD/COMMISSION/COMMITTEE

ON WHICH YOU WOULD LIKE TO SERVE: LIBRARY Advisory Commission

APPLICANT NAME:

STEVE WIGLEY

MAILING ADDRESS -  
(Street/P.O. Box, City, Zip):

[REDACTED]

PHYSICAL ADDRESS  
(Street, City, Zip):

[REDACTED] LINDA/OLIVEHURST 95961

TELEPHONE:

HOME:  
CELL

[REDACTED]

WORK:  
MSG.

[REDACTED]

EMAIL ADDRESS:

[REDACTED]  
000

OCCUPATION/PROFESSION:

SUPERVISOR/ DISTRICT

NUMBER: 1

REASONS YOU WISH TO

SERVE ON THIS BODY:

Community involvement

QUALIFICATIONS:

RESIDENT OF DISTRICT 1 & INTERESTED IN COMMUNITY  
IMPROVEMENT

LIST PAST AND CURRENT

PUBLIC POSITIONS HELD:

NONE

DO YOU HAVE ANY CRIMINAL CONVICTION THAT MAY BE CONSIDERED A CONFLICT OF INTEREST WITH THE COMMITTEE YOU WISH TO SERVE UPON? ☐ YES ☒ NO

IF YES, PLEASE EXPLAIN. NOTE: THAT A FELONY CONVICTION SHALL PRECLUDE YOU FROM SERVICE.

I UNDERSTAND THAT IF APPOINTED TO A BOARD/COMMISSION/COMMITTEE AND WHAT MAY BE CONSIDERED A CONFLICT OF INTEREST ARISES, THAT I HAVE A DUTY TO GIVE WRITTEN NOTICE OF SUCH TO THE COUNTY.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING INFORMATION IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

SIGNATURE

[Signature]

DATE

4-9-14

## THIS SECTION FOR OFFICE USE ONLY

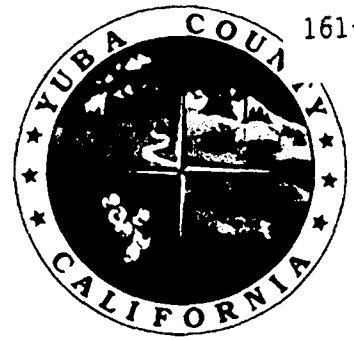
☐ NO VACANCY CURRENTLY EXISTS ON ABOVE-MENTIONED BODY. APPLICANT NOTIFIED.

☐ APPLICANT APPOINTED: \_\_\_\_\_

☐ OTHER: \_\_\_\_\_

# *The County of Yuba*

**Office of Clerk of the Board of Supervisors**



161-14

To: Board of Supervisors  
From: Donna Stottlemeyer, Clerk of the Board  
Subject: Peoria Cemetery District Appointment  
Date: April 22, 2014

A handwritten signature in black ink, appearing to read "Donna Stottlemeyer", is written over the "From:" line of the header.

## **Recommendation**

Appoint David Pietz to the Peoria Cemetery District for a term to end August 13, 2017.

## **Background and Discussion**

This is an unscheduled vacancy due to the resignation of Mr. Robert Sutton. The vacancy was posted on the County website and at the Government Center March 14, 2014 and has been noticed for 20 days pursuant to the Maddy Act. One application was received from Mr. Pietz and is attached for your consideration.

In light of the expressed interest, it would be appropriate to appoint at this time.

## **Fiscal Impact**

None due to appointment.

## **Committee Action**

None required.

attachment

# The County of Yuba

RECEIVED

MAR 27 2014



## Application for Board/Commission/Committee Appointed by the Board of Supervisors

Clerk/Board of Supervisors

RETURN APPLICATION WITH ORIGINAL SIGNATURE TO:

CLERK OF THE BOARD OF SUPERVISORS  
YUBA COUNTY GOVERNMENT CENTER  
915 EIGHTH STREET, SUITE 109  
MARYSVILLE, CA 95901  
(530) 749-7510

### BOARD/COMMISSION/COMMITTEE

ON WHICH YOU WOULD LIKE TO SERVE: Peoria Cemetery District

APPLICANT NAME:

David Pietz

MAILING ADDRESS -  
(Street/P.O. Box, City, Zip):

[REDACTED] Browns Valley, CA 95918

PHYSICAL ADDRESS  
(Street, City, Zip):

Same

TELEPHONE:

HOME:

[REDACTED]

WORK:

EMAIL ADDRESS:

[REDACTED]

OCCUPATION/PROFESSION:  
SUPERVISOR/ DISTRICT  
NUMBER:

Rancher

5

REASONS YOU WISH TO  
SERVE ON THIS BODY:

To insure Peoria Cemetery is properly maintained &  
the cost are kept within reason.

QUALIFICATIONS:

Maintenance background with over 50 years experience that includes  
landscaping, supervision and budgeting. 30 years ago lived to clean up, repair & reset headstones  
in the cemetery.

LIST PAST AND CURRENT

PUBLIC POSITIONS HELD:

None

DO YOU HAVE ANY CRIMINAL CONVICTION THAT MAY BE CONSIDERED A CONFLICT OF INTEREST WITH THE COMMITTEE YOU  
WISH TO SERVE UPON? ☐ YES ☒ NO

IF YES, PLEASE EXPLAIN. NOTE: THAT A FELONY CONVICTION SHALL PRECLUDE YOU FROM SERVICE.

I UNDERSTAND THAT IF APPOINTED TO A BOARD/COMMISSION/COMMITTEE AND WHAT MAY BE CONSIDERED A CONFLICT OF  
INTEREST ARISES, THAT I HAVE A DUTY TO GIVE WRITTEN NOTICE OF SUCH TO THE COUNTY.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING INFORMATION IS TRUE AND CORRECT TO THE BEST OF  
MY KNOWLEDGE.

David Pietz  
SIGNATURE

3/20/14  
DATE

#### THIS SECTION FOR OFFICE USE ONLY

☐ NO VACANCY CURRENTLY EXISTS ON ABOVE-MENTIONED BODY. APPLICANT NOTIFIED.

☐ APPLICANT APPOINTED: \_\_\_\_\_

☐ OTHER: \_\_\_\_\_

# The County of Yuba

## Community Development & Services Agency

**Kevin Mallen, Director**

Phone – (530) 749-5430 • Fax – (530) 749-5424  
915 8<sup>th</sup> Street, Suite 123  
Marysville, California 95901  
www.co.yuba.ca.us



**BUILDING** 162-14  
749-5440 • Fax 749-5440

**CODE ENFORCEMENT**  
749-5455 • Fax 749-5424

**ENVIRONMENTAL HEALTH • CUPA**  
749-5450 • Fax 749-5454

**HOUSING & COMMUNITY SERVICES**  
749-5460 • Fax 749-5464

**PLANNING**  
749-5470 • Fax 749-5434

**PUBLIC WORKS • SURVEYOR**  
749-5420 • Fax 749-5424

**Date:** April 22, 2014

**To:** Yuba County Board of Supervisors

**From:** Sean Powers, Director of Finance and Administration

**Subject:** Acquisition of Single Family Residences APNs 021-281-020, 021-322-002, 021-024-007, 021-073-002, and 021-051-011 for the Neighborhood Stabilization Program

### **Recommendation:**

Adopt the attached resolution authorizing the Community Development Director or his designee to complete the purchase of single family residence APNs 021-281-020, 021-322-002, 021-024-007, 021-073-002, and 021-051-011 as part of the Neighborhood Stabilization Program and execute all documents needed for completion of purchase, rehabilitation, reconstruction, and resale.

### **Background:**

The goal of the County of Yuba Neighborhood Stabilization Program is to stabilize property values and homeownership rates in neighborhoods impacted by foreclosures. The County of Yuba has been awarded \$4,265,711 under the Neighborhood Stabilization Program allocation per agreement 11-NSP3-8112 for acquisition, rehabilitation, reconstruction, and resale single family homes. The activities are to be primarily performed in census tract number 0403.00 in the areas of Marysville and Linda.

### **Discussion:**

The attached resolution is required for further implementation of the Neighborhood Stabilization Program. For each individual property approved for the program by the County, the Board must consider and approve the purchase of the property by resolution. Assuming Board approval, the County will hold title during the rehabilitation and reconstruction up to resale. CDSA will oversee all activities involving acquisition, rehabilitation, reconstruction, and resale. The Board has previously approved the Community Development Services Agency Director to make purchase offers to the current property owners which have been accepted.

**Committee Action:**

This item was previously discussed with the Board in order to make the initial offers to the current property owners and therefore is being presented directly to the full Board in order to formally move forward with the acquisition.

**Fiscal Impact:**

The purchase, rehabilitation, and reconstruction costs will be covered by the Neighborhood Stabilization Program funds in accordance with the requirements established by the State of California Neighborhood Stabilization Program. The purchase prices are estimated to be:

APN 021-281-020	\$62,000	APN 021-073-002	\$48,500
APN 021-322-002	\$45,000	APN 021-051-011	\$25,000
APN 021-024-007	\$47,000		



**BEFORE THE BOARD OF SUPERVISORS  
OF THE COUNTY OF YUBA**

**RESOLUTION AUTHORIZING YUBA COUNTY )  
COMMUNITY DEVELOPMENT AND SERVICES )  
AGENCY DIRECTOR OR HIS DESIGNEE TO )  
COMPLETE THE PURCHASE OF SINGLE FAMILY )  
RESIDENCES APN 021-281-020, APN 021-322-002, )  
APN 021-024-007, APN 021-073-002, AND )  
APN 021-051-011 AS PART OF THE )  
NEIGHBORHOOD STABILIZATION PROGRAM )  
AND EXECUTE ALL DOCUMENTS NEEDED FOR )  
COMPLETION OF PURCHASE, REHABILITATION )  
RECONSTRUCTION, AND RESALE. )**

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

**WHEREAS**, Yuba County was awarded Neighborhood Stabilization Program funds per agreement 11-NSP3-8112 with the Department of Housing and Community Development on April 30, 2012 and is authorized to conduct activities in housing acquisition, rehabilitation, reconstruction, and resale of single family homes; and

**WHEREAS**, these activities are to be performed in the census tract number 0403.00 in the following areas of Marysville and Linda; and

**WHEREAS**, the purpose of acquiring these foreclosed properties through the Neighborhood Stabilization Program is to rehabilitate and reconstruct and resell the properties to a owner-occupant which meets the program requirements; and

**WHEREAS**, the Board has previously approved the Community Development Services Agency Director to make, and he has made, a purchase offer to the current property owner which has been accepted; and

**WHEREAS**, the purchase, rehabilitation, and reconstruction costs will be covered by the Neighborhood Stabilization Program funds in accordance with the requirements established by the State of California Neighborhood Stabilization Program and the purchase prices are estimated to be:

APN 021-281-020	\$62,000	APN 021-073-002	\$48,500
APN 021-322-002	\$45,000	APN 021-051-011	\$25,000
APN 021-024-007	\$47,000		

**NOW, THEREFORE, BE IT RESOLVED**, that the Board of Supervisors authorizes the Yuba County Community Development and Services Agency Director or his designee to complete the purchase, rehabilitation, reconstruction, and resale of APN 021-281-020, APN 021-322-002, APN 021-024-007, APN 021-073-002, and APN 021-051-011 and execute any necessary documents, subject to County Counsel review.

**PASSED AND ADOPTED** at a regular meeting of the Board of Supervisors of the County of Yuba, State of California on the \_\_\_\_\_ day of \_\_\_\_\_, 2014 by the following vote:

AYES:

NOES:

ABSENT:

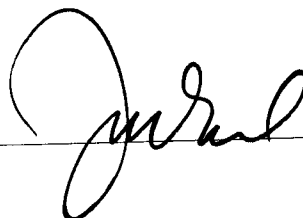
ABSTAIN:

\_\_\_\_\_  
CHAIR

ATTEST: DONNA STOTTLEMEYER  
CLERK OF THE BOARD OF SUPERVISORS

\_\_\_\_\_

ANGIL P. MORRIS-JONES  
YUBA COUNTY COUNSEL  
APPROVED AS TO FORM:

  
\_\_\_\_\_

**YUBA COUNTY  
HUMAN RESOURCES & ORGANIZATIONAL  
SERVICES DEPARTMENT**

**915 8TH STREET, SUITE 113, MARYSVILLE, CA 95901**

**DATE:** April 22, 2014  
**TO:** Board of Supervisors  
**FROM:** Martha Wilson, Human Resources Director   
 Kevin Mallen, Community Development & Services Agency Director 

**RECOMMENDATION**

Adopt the attached resolution amending the Position Allocation as it relates to the Community Development and Services Agency, effective May 1, 2014.

**BACKGROUND**

On April 1, 2014 the Community Development and Services Agency (CDSA) presented the Board of Supervisors with information on the current status of the Neighborhood Stabilization Program (NSP). The County implemented the federally funded NSP in 2009 and has since purchased 38 foreclosed homes, and rehabilitated and resold them to income eligible families in Yuba County, achieving multiple objectives, including improving housing and neighborhoods as well as helping residents achieve home ownership.

**DISCUSSION**

Moving forward on NSP, the County has been provided an amendment to the Program that allows the purchase of substandard housing and/or vacant lots where substandard housing has been demolished from willing sellers and then building new homes to be sold to income eligible families. With this amendment is a substantial amount of unanticipated workload and an aggressive timeline. However, it is also with available funding to retain a limited term manager to ensure completion. It is recommended that a Limited Term Project Manager be added to the CDSA position allocation from May 1, 2014 to June 30, 2017 for the purpose of managing NSP to completion.

The attached Resolution updates the County position allocation.

**COMMITTEE**

This item has bypassed committee as it consistent with what was discussed with the Board on April 1, 2014.

**FISCAL IMPACT**

All costs associated with this position will be paid for by NSP.

**BEFORE THE BOARD OF SUPERVISORS  
OF THE COUNTY OF YUBA**

RESOLUTION AMENDING THE )  
DEPARTMENTAL POSITION )  
ALLOCATION SCHEDULE )  
\_\_\_\_\_ )

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

BE IT RESOLVED that the Departmental Position Allocation Schedule as it relates to the following department(s) is amended effective May 1, 2014 as follows:

**ADD:**

<b>DEPARTMENT</b>	<b><u>CLASSIFICATION</u></b>	<b># OF POSITIONS</b>
Community Development	Project Manager – Limited Term	1

PASSED AND ADOPTED by the Board of Supervisors of the County of Yuba, State of California, on the \_\_\_\_\_ day of \_\_\_\_\_, 2014 by the following votes:

AYES:  
NOES:  
ABSENT:

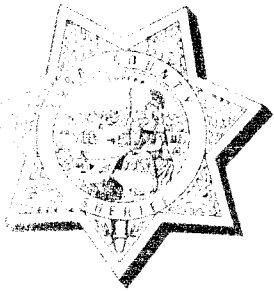
\_\_\_\_\_  
CHAIRMAN

ATTEST: Donna Stottlemeyer  
Clerk of the Board

APPROVED AS TO FORM: Angil Morris-Jones  
County Counsel

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

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



# Yuba County Sheriff's Department


## Steven L. Durfor, Sheriff-Coroner

215 5th Street, Suite 150, Marysville, CA 95901  
Ph: 530-749-7777 • Fax: 530-741-6445



APRIL 22, 2014

TO: YUBA COUNTY BOARD OF SUPERVISORS

FR: STEVEN L. DURFOR, SHERIFF-CORONER 

RE: LAW ENFORCEMENT AGREEMENT WITH YUBA COUNTY WATER AGENCY

### **RECOMMENDATION:**

Approve the agreement with Yuba County Water Agency for law enforcement services for the limited term, May 15, 2014 through September 15, 2014.

### **BACKGROUND:**

For the past sixteen years, the Water Agency has paid the Sheriff's Department for patrol coverage at the Bullard's Bar for the months of mid-May through mid-September. The coverage included a Deputy Sheriff III for eight hours per day, 40 hours per week.

### **DISCUSSION:**

This is a continuation of an agreement that is a benefit to both the Water Agency and the Sheriff's Department. This service provides additional coverage at the lake, with no fiscal impact to the regular Boat Patrol budget or the General Fund. The Sheriff's Department will hire an extra help Deputy III for the seasonal period, to work in conjunction with the Sheriff's Boat Patrol deputies. Additionally, the Yuba County Water Agency agrees to reimburse the Yuba County Sheriff's Department for 25% of salary and benefits of the Marine Enforcement Deputy's position to provide additional law enforcement presence at the New Bullard's Bar Reservoir and associated recreational lands.

### **FISCAL IMPACT:**

No additional cost to the Sheriff's Department or General Fund. Revenues from the Water Agency of approximately \$53,475 will cover the necessary costs for the additional coverage, including the extra help salaries, overtime, and overhead costs.

### **COMMITTEE ACTION:**

Due to time constraints, and the routine nature of this request, the item was placed directly on the Board of Supervisor's agenda.


**OPERATING AGREEMENT BETWEEN YUBA COUNTY SHERIFF'S DEPARTMENT  
AND THE YUBA COUNTY WATER AGENCY**

In return for the full time assignment of a Yuba County Deputy III for 40 hours per week to patrol and provide law enforcement services at New Bullards Bar Reservoir and associated recreational lands, the Yuba County Water Agency agrees to reimburse the Yuba County Sheriff's Department for salary and overtime costs in support of Yuba County Water Agency operational requirements. The period of service will be from May 15, 2014 through September 15, 2014.

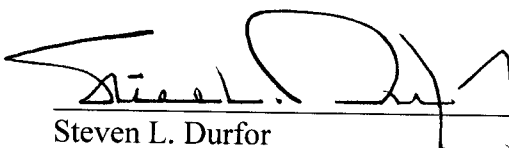
Additionally, the Yuba County Water Agency agrees to reimburse the Yuba County Sheriff's Department for 25% of salary and benefits of the Marine Enforcement Deputy position to provide additional law enforcement presence at the New Bullard's Bar Reservoir and associated recreational lands. Billings will be made at the following rates for 2014:

Deputy III (\$5,632 per month):	\$22,528
Overtime rate: \$38.00 (maximum 40 hours)	\$ 1,520
Marine Enforcement Deputy	\$29,427

Total billings are expected to be no more than \$53,475. Billings will be made in two increments-one on July 1, 2014 and one upon the completion of service in September 2014. Both parties can make a different billing schedule or changes to this agreement upon negotiation and agreement. We the undersigned concur with all aspects of the above detailed operating agreement.

  
Curt Aikens  
General Manager  
Yuba County Water Agency

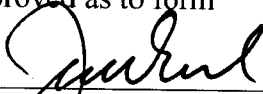
Date: 3/25/14

  
Steven L. Durfor  
Sheriff-Coroner  
Yuba County Sheriff's Department

Date: 6/3/14/14

\_\_\_\_\_  
Chairman, Board of Supervisors  
County of Yuba

Approved as to form

  
Angil Morris-Jones  
County Counsel

Date: 3/31/14



*COUNTY*  
*DEPARTMENTS*

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# The County of Yuba

## Department of Administrative Services

Doug McCoy, Director




150-14

AIRPORT	741-6248
BUILDING & GROUNDS	749-7880
FACILITIES MANAGEMENT	749-7880
INFORMATION SERVICES	749-7891
PRINT SHOP	749-7880
PURCHASING	749-7880
TELECOMMUNICATIONS	749-7880

(530) 749-7880  
FAX (530) 749-7936

April 15, 2014

TO: YUBA COUNTY BOARD OF SUPERVISORS

FROM: Doug McCoy, Administrative Services Director 

SUBJECT: AUTHORIZE THE CHAIRMAN TO EXECUTE CONSENT TO SUBLEASE AS IT RELATES TO THE LEASE AGREEMENT BETWEEN CONTINENTAL PACIFIC LUMBER INDUSTRIES AND CALI SHINE DISTILLERY COMPANY, FOR PROPERTY LOCATED AT 5216 ARBOGA ROAD, OLIVEHURST

### Recommendation:

It is recommended that the Board authorize the Chairman to execute the subject agreement.

### Background:

Continental Pacific Lumber leases approximately 12.5 acres in Yuba County Airport Industrial Park No. 1. The company has subleased the property since it was assigned the related leases in 1986. The lease agreements require the County to approve any sublease of the Continental Pacific Lumber's leased properties. There are three lease agreements extending to 2019, 2055, and 2065 and provide the Yuba County Airport annual revenue in the amount of \$1,500.

### Discussion:

Brian D. Toepfer, Michael R. Toepfer & Christopher M. Dean, dba Cali Shine Distillery Company, are leasing 14,000 square feet of an approximate 47,600 square foot complex located at 5216 Arboga Road, Olivehurst. This is a three-year, six-month lease that began on December 1, 2013, and terminating May 31, 2017. The space will be used for the production of alcoholic beverages. The tenants will be repairing the property and bring it up to food safety standards as required by the county.

### Committee Action:

This item was presented to the Public Facilities Committee on March 25, 2014, and was agreed to move forward to the full Board for approval.

### Fiscal Impact:

There are no costs associated with this agenda item that would impact the General Fund.

### Attachments

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Bud Applegate  
Senior Vice President  
Lic. #00785734

301 University Avenue, Suite 100  
Sacramento, CA 95825  
www.colliers.com/sacramento

MAIN +1 916 929 5999  
DIRECT +1 916 563 3003  
FAX +1 916 641 1318  
Email Bud.Applegate@colliers.com

150-14



November 19, 2013

Mary Hansen  
Airport Manager  
1364 Sky Harbor Drive, Suite A  
Olivehurst, CA 95961

**RE: 5216 Arboga Rd**

Dear Mary:

Enclosed please find three (3) original Leases executed by Owner (Continental Pacific Lumber Industries, Inc.) and Lessee (Brian D. Toepfer, Michael R. Toepfer, & Christopher M. Dean, dba: Cali Shine Distillery Co.). This building will be used for the production of alcoholic beverages. They will be repairing the property and bring it up to food safety standards.

If you have any questions please do not hesitate to give me a call, and if you could please give me some indication about how long it will take to receive this document back. You will note that we plan to paint the building and turn the electrical back on so it will have a much better appearance from the street.

Thank you very much for your help.

Sincerely,

**COLLIERS INTERNATIONAL**

A handwritten signature in cursive script that reads "Bud".

W.W. Applegate, Jr.  
Senior Vice President  
(916) 563-3003

c: Paul Taylor  
Paul Taylor  
Continental Pacific Lumber Industries  
11294 Coloma Road, Suite H  
Gold River, CA 95670

Bud Applegate  
Senior Vice President  
Lic. #00785734

301 University Avenue, Suite 100  
Sacramento, CA 95825  
www.colliers.com/sacramento

MAIN +1 916 929 5999  
DIRECT +1 916 563 3003  
FAX +1 916 641 1318  
Email Bud.Applegate@colliers.com



### Lease Approval 5216 Arboga Road, Olivehurst CA

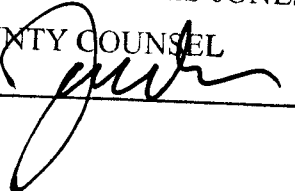
**Yuba County Approval:** This Lease must be approved by Yuba County. If the county adds any restriction the Lessor or Lessee cannot accept, then the Lessor and Lessee both have the option to cancel this Lease within 10 days of notice from the County.

Yuba County Lease Approval

\_\_\_\_\_  
Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

APPROVED AS TO FORM  
ANGIL P. MORRIS-JONES  
COUNTY COUNSEL  
BY: 

**AIR COMMERCIAL REAL ESTATE ASSOCIATION  
STANDARD INDUSTRIAL/COMMERCIAL MULTI-TENANT LEASE - NET**

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

- ☐ \_\_\_\_\_ represents Lessor exclusively ("**Lessor's Broker**");
- ☐ \_\_\_\_\_ represents Lessee exclusively ("**Lessee's Broker**"); or
- ☒ Colliers International - Bud Applegate represents both Lessor and Lessee ("**Dual Agency**").

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

1.11 **Guarantor.** The obligations of the Lessee under this Lease are to be guaranteed by \_\_\_\_\_ ("**Guarantor**"). (See also Paragraph 37)

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

- ☒ an Addendum consisting of Paragraphs 50 through 52 ;
- ☒ a site plan depicting the Premises Exhibit "A";
- ☐ a site plan depicting the Project;
- ☐ a current set of the Rules and Regulations for the Project;
- ☐ a current set of the Rules and Regulations adopted by the owners' association;
- ☐ a Work Letter;
- ☐ other (specify); \_\_\_\_\_

## 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 that portion of the Premises contained within the Building ("**Unit**") 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 Unit, other than those constructed by Lessee, shall be in good operating condition on said date, that the structural elements of the roof, bearing walls and foundation of the Unit shall be free of material defects, and that the Unit does not contain hazardous levels of any mold or fungi defined as toxic under applicable state or federal law. If a non-compliance with such 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 Unit. 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 (except for the repairs to the fire sprinkler systems, roof, foundations, and/or bearing walls - see Paragraph 7).

2.3 **Compliance.** Lessor warrants that to the best of its knowledge the improvements on the Premises and the Common Areas comply with the building codes that were in effect at the time that each such improvement, or portion thereof, was constructed, and also with all applicable laws, covenants or restrictions of record, regulations, and ordinances in effect on the Start Date ("**Applicable Requirements**"). Said warranty does not apply to the use to which Lessee will put the Premises, modifications which may be required by the Americans with Disabilities Act or any similar laws as a result of Lessee's use (see Paragraph 49), or to any Alterations or Utility Installations (as defined in Paragraph 7.3(a)) made or to be made by Lessee. **NOTE: Lessee is responsible for determining whether or not the 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 Unit, 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 the amount equal to 6 months' Base Rent. If Lessee elects termination, Lessee shall immediately cease the use of the Premises which requires such Capital Expenditure and deliver to Lessor written notice specifying a termination date at least 90 days thereafter. Such termination date shall, however, in no event be earlier than the last day that Lessee could legally utilize the Premises without commencing such Capital Expenditure.

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

(c) Notwithstanding the above, the provisions concerning Capital Expenditures are intended to apply only to 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 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.

**2.6 Vehicle Parking.** Lessee shall be entitled to use the number of parking spaces specified in Paragraph 1.2(b) on those portions of the Common Areas designated from time to time by Lessor for parking. Lessee shall not use more parking spaces than said number. Said parking spaces shall be used for parking by vehicles no larger than full-size passenger automobiles or pick-up trucks, herein called "**Permitted Size Vehicles.**" Lessor may regulate the loading and unloading of vehicles by adopting Rules and Regulations as provided in Paragraph 2.9. No vehicles other than Permitted Size Vehicles may be parked in the Common Area without the prior written permission of Lessor. In addition:

(a) Lessee shall not permit or allow any vehicles that belong to or are controlled by Lessee or Lessee's employees, suppliers, shippers, customers, contractors or invitees to be loaded, unloaded, or parked in areas other than those designated by Lessor for such activities.

(b) Lessee shall not service or store any vehicles in the Common Areas.

(c) If Lessee permits or allows any of the prohibited activities described in this Paragraph 2.6, then Lessor shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove or tow away the vehicle involved and charge the cost to Lessee, which cost shall be immediately payable upon demand by Lessor.

**2.7 Common Areas - Definition.** The term "**Common Areas**" is defined as all areas and facilities outside the Premises and within the exterior boundary line of the Project and interior utility raceways and installations within the Unit that are provided and designated by the Lessor from time to time for the general non-exclusive use of Lessor, Lessee and other tenants of the Project and their respective employees, suppliers, shippers, customers, contractors and invitees, including parking areas, loading and unloading areas, trash areas, roadways, walkways, driveways and

landscaped areas.

2.8 **Common Areas - Lessee's Rights.** Lessor grants to Lessee, for the benefit of Lessee and its employees, suppliers, shippers, contractors, customers and invitees, during the term of this Lease, the non-exclusive right to use, in common with others entitled to such use, the Common Areas as they exist from time to time, subject to any rights, powers, and privileges reserved by Lessor under the terms hereof or under the terms of any rules and regulations or restrictions governing the use of the Project. Under no circumstances shall the right herein granted to use the Common Areas be deemed to include the right to store any property, temporarily or permanently, in the Common Areas. Any such storage shall be permitted only by the prior written consent of Lessor or Lessor's designated agent, which consent may be revoked at any time. In the event that any unauthorized storage shall occur then Lessor shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove the property and charge the cost to Lessee, which cost shall be immediately payable upon demand by Lessor.

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

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

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

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

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

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

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

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

### 3. **Term.**

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

3.2 **Early Possession.** Any provision herein granting Lessee Early Possession of the Premises is subject to and conditioned upon the Premises being available for such possession prior to the Commencement Date. Any grant of Early Possession only conveys a non-exclusive right to occupy the Premises. If Lessee totally or partially occupies the Premises prior to the Commencement Date, the obligation to pay Base Rent shall be abated for the period of such Early Possession. All other terms of this Lease (including but not limited to the obligations to pay Lessee's Share of Common Area Operating Expenses, 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 tender 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 **Common Area Operating Expenses.** Lessee shall pay to Lessor during the term hereof, in addition to the Base Rent, Lessee's Share (as specified in Paragraph 1.6) of all Common Area Operating Expenses, as hereinafter defined, during each calendar year of the term of this Lease, in accordance with the following provisions:

(a) "**Common Area Operating Expenses**" are defined, for purposes of this Lease, as all costs incurred by Lessor relating to the ownership and operation of the Project, including, but not limited to, the following:

(i) The operation, repair and maintenance, in neat, clean, good order and condition, and if necessary the replacement, of the following:

(aa) The Common Areas and Common Area improvements, including parking areas, loading and unloading areas, trash areas, roadways, parkways, walkways, driveways, landscaped areas, bumpers, irrigation systems, Common Area lighting facilities, fences and gates, elevators, roofs, exterior walls of the buildings, building systems and roof drainage systems.

(bb) Exterior signs and any tenant directories.

(cc) Any fire sprinkler systems.

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

(ii) The cost of water, gas, electricity and telephone to service the Common Areas and any utilities not separately metered.

(iii) The cost of trash disposal, pest control services, property management, security services, owners' association dues and fees, the cost to repaint the exterior of any structures and the cost of any environmental inspections.

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

(v) Real Property Taxes (as defined in Paragraph 10).

(vi) The cost of the premiums for the insurance maintained by Lessor pursuant to Paragraph 8.

(vii) Any deductible portion of an insured loss concerning the Building or the Common Areas.

(viii) Auditors', accountants' and attorneys' fees and costs related to the operation, maintenance, repair and replacement of the Project.

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

(x) The cost of any other services to be provided by Lessor that are stated elsewhere in this Lease to be a Common Area Operating Expense.

(b) Any Common Area Operating Expenses and Real Property Taxes that are specifically attributable to the Unit, the Building or to any other building in the Project or to the operation, repair and maintenance thereof, shall be allocated entirely to such Unit, Building, or other building. However, any Common Area Operating Expenses and Real Property Taxes that are not specifically attributable to the Building or to any other building or to the operation, repair and maintenance thereof, shall be equitably allocated by Lessor to all buildings in the Project.

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

(d) Lessee's Share of Common Area Operating Expenses is payable monthly on the same day as the Base Rent is due hereunder. The amount of such payments shall be based on Lessor's estimate of the annual Common Area Operating Expenses. Within 60 days after written request (but not more than once each year) Lessor shall deliver to Lessee a reasonably detailed statement showing Lessee's Share of the actual Common Area Operating Expenses for the preceding year. If Lessee's payments during such year exceed Lessee's Share, Lessor shall credit the amount of such over-payment against Lessee's future payments. If Lessee's payments during such year were less than Lessee's Share, Lessee shall pay to Lessor the amount of the deficiency within 10 days after delivery by Lessor to Lessee of the statement.

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

4.3 **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 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 and Common Area Operating Expenses, and any remaining amount to any other outstanding charges or costs.

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

6. **Use.**

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

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

(e) **Lessor Indemnification.** 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 are suffered as a direct result of Hazardous Substances on the Premises prior to Lessee taking possession 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 the Lessee taking possession, 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 such Requirements, without regard to whether said Requirements are now in effect or become effective after the Start Date. Lessee shall, within 10 days after receipt of Lessor's written request, provide Lessor with copies of all permits and other documents, and other information evidencing Lessee's compliance with any Applicable Requirements specified by Lessor, and shall immediately upon receipt, notify Lessor in writing (with copies of any documents involved) of any threatened or actual claim, notice, citation, warning, complaint or report pertaining to or involving the failure of Lessee or the Premises to comply with any Applicable Requirements. Likewise, Lessee shall immediately give written notice to Lessor of: (i) any water damage to the Premises and any suspected seepage, pooling, dampness or other condition conducive to the production of mold; or (ii) any mustiness or other odors that might indicate the presence of mold in the Premises.

6.4 **Inspection; Compliance.** Lessor and Lessor's "Lender" (as defined in Paragraph 30) and consultants shall have the right to enter into Premises at any time, in the case of an emergency, and otherwise at reasonable times after reasonable notice, for the purpose of inspecting the condition of the Premises and for verifying compliance by Lessee with this Lease. The cost of any such inspections shall be paid by Lessor, unless a violation of Applicable Requirements, or a Hazardous Substance Condition (see Paragraph 9.1) 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 written request therefor.

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, fixtures, interior walls, interior surfaces of exterior walls, ceilings, floors, windows, doors, plate glass, and skylights but excluding any items which are the responsibility of Lessor pursuant to Paragraph 7.2. 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.

(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, and (iii) 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 (ie. 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), 4.2 (Common Area Operating Expenses), 6 (Use), 7.1 (Lessee's Obligations), 9 (Damage or Destruction) and 14 (Condemnation), Lessor, subject to reimbursement pursuant to Paragraph 4.2, shall keep in good order, condition and repair the foundations, exterior walls, structural condition of interior bearing walls, exterior roof, fire sprinkler system, Common Area fire alarm and/or smoke detection systems, fire hydrants, parking lots, walkways, parkways, driveways, landscaping, fences, signs and utility systems serving the Common Areas and all parts thereof, as well as providing the services for which there is a Common Area Operating Expense pursuant to Paragraph 4.2. Lessor shall not be obligated to paint the exterior or interior surfaces of exterior walls nor shall Lessor be obligated to maintain, repair or replace windows, doors or plate glass of the Premises. Lessee expressly waives the benefit of any statute now or hereafter in effect to the extent it is inconsistent with the terms of this Lease.

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

(a) **Definitions.** The term "**Utility Installations**" refers to all floor and window coverings, air 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, 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) **Liens; Bonds.** Lessee shall pay, when due, all claims for labor or materials furnished or alleged to have been furnished to or for Lessee at or for use on the Premises, which claims are or may be secured by any mechanic's or materialman'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, if this Lease is for 12 months or less, then Lessee shall surrender the Premises in the same condition as delivered to Lessee on the Start Date with NO allowance for ordinary wear and tear. Lessee shall repair any damage occasioned by the installation, maintenance or removal of Trade Fixtures, Lessee owned Alterations and/or Utility Installations, furnishings, and equipment as well as the removal of any storage tank installed by or for Lessee. Lessee shall also completely remove from the Premises any and all Hazardous Substances brought onto the Premises by or for Lessee, or any third party (except Hazardous Substances which were deposited via underground migration from areas outside of the Project) even if such removal would require Lessee to perform or pay for work that exceeds statutory requirements. Trade Fixtures shall remain the property of Lessee and shall be removed by Lessee. Any personal property of Lessee not removed on or before the Expiration Date or any earlier termination date shall be deemed to have been abandoned by Lessee and may be disposed of or retained by Lessor as Lessor may desire. The failure by Lessee to timely vacate the Premises pursuant to this Paragraph 7.4(c) without the express written consent of Lessor shall constitute a holdover under the provisions of Paragraph 26 below.

#### 8. **Insurance; Indemnity.**

8.1 **Payment of Premiums.** The cost of the premiums for the insurance policies required to be carried by Lessor, pursuant to Paragraphs 8.2(b), 8.3(a) and 8.3(b), shall be a Common Area Operating Expense. Premiums for policy periods commencing prior to, or extending beyond, the term of this Lease shall be prorated to coincide with the corresponding Start Date or Expiration Date.

##### 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.** Lessor shall obtain and keep in force a policy or policies of insurance in the name of Lessor, with loss payable to Lessor, any ground-lessor, and to any Lender insuring loss or damage to the 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.

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

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

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

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

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

(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.

(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 order such insurance and charge the cost thereof to Lessee, which amount shall be payable by Lessee to Lessor upon demand. Such policies shall be for a term of at least one year, or the length of the remaining term of this Lease, whichever is less. If either Party shall fail to procure and maintain the insurance required to be carried by it, the other Party may, but shall not be required to, procure and maintain the same.

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

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

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

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

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

9. **Damage or Destruction.**

9.1 **Definitions.**

(a) **"Premises Partial Damage"** shall mean damage or destruction to the improvements on the Premises, other than Lessee Owned Alterations and Utility Installations, which can reasonably be repaired in 3 months or less from the date of the damage or destruction, and the cost thereof does not exceed a sum equal to 6 month's Base Rent. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total. Notwithstanding the foregoing, Premises Partial Damage shall not include damage to windows, doors, and/or other similar items which Lessee has the responsibility to repair or replace pursuant to the provisions of Paragraph 7.1.

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

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

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

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

9.2 **Partial Damage - Insured Loss.** If a Premises Partial Damage that is an Insured Loss occurs, then Lessor shall, at Lessor's expense, repair such damage (but not Lessee's Trade Fixtures or Lessee Owned Alterations and Utility Installations) as soon as reasonably possible and this Lease shall continue in full force and effect; provided, however, that Lessee shall, at Lessor's election, make the repair of any damage or destruction the total cost to repair of which is \$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 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 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 Project, Lessor's right to other income therefrom, and/or Lessor's business of leasing, by any authority having the direct or indirect power to tax and where the funds are generated with reference to the Project address and where the proceeds so generated are to be applied by the city, county or other local taxing authority of a jurisdiction within which the Project is located. The term "Real Property Taxes" shall also include any tax, fee, levy, assessment or charge, or any increase therein: (i) imposed by reason of events occurring during the term of this Lease, including but not limited to, a change in the ownership of the Project, (ii) a change in the improvements thereon, and/or (iii) levied or assessed on machinery or equipment provided by Lessor to Lessee pursuant to this Lease. In calculating Real Property Taxes for any calendar year, the Real Property Taxes for any real estate tax year shall be included in the calculation of Real Property Taxes for such calendar year based upon the number of days which such calendar year and tax year have in common.

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

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



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

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

11. **Utilities and Services.** 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. Notwithstanding the provisions of Paragraph 4.2, if at any time in Lessor's sole judgment, Lessor determines that Lessee is using a disproportionate amount of water, electricity or other commonly metered utilities, or that Lessee is generating such a large volume of trash as to require an increase in the size of the trash receptacle and/or an increase in the number of times per month that it is emptied, then Lessor may increase Lessee's Base Rent by an amount equal to such increased costs. There shall be no abatement of Rent and Lessor shall not be liable in any respect whatsoever for the inadequacy, stoppage, interruption or discontinuance of any utility or service due to riot, strike, labor dispute, breakdown, accident, repair or other cause beyond Lessor's reasonable control or in cooperation with governmental request or directions.

12. **Assignment and Subletting.**

12.1 **Lessor's Consent Required.**

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

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

(c) The involvement of Lessee or its assets in any transaction, or series of transactions (by way of merger, sale, acquisition, financing, transfer, leveraged 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(c), or a noncurable Breach without the necessity of any notice and grace period. If Lessor elects to treat such unapproved assignment or subletting as a noncurable Breach, Lessor may either: (i) terminate this Lease, or (ii) upon 30 days written notice, increase the monthly Base Rent to 110% of the Base Rent then in effect. Further, in the event of such Breach and rental adjustment, (i) the purchase price of any option to purchase the Premises held by Lessee shall be subject to similar adjustment to 110% of the price previously in effect, and (ii) all fixed and non-fixed rental adjustments scheduled during the remainder of the Lease term shall be increased to 110% of the scheduled adjusted rent.

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

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

(g) Notwithstanding the foregoing, allowing a de minimis portion of the Premises, ie. 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 consent to any subsequent assignment or subletting.

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

remedies against any other person or entity responsible therefore to Lessor, or any security held by Lessor.

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

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

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

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

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

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

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

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

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

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

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

(a) The abandonment of the Premises; or the vacating of the Premises without providing a commercially reasonable level of security, or where the coverage of the property insurance described in Paragraph 8.3 is jeopardized as a result thereof, or without providing reasonable assurances to minimize potential vandalism.

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

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

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

(e) A Default by Lessee as to the terms, covenants, conditions or provisions of this Lease, or of the rules adopted under

Paragraph 2.9 hereof, other than those described in subparagraphs 13.1(a), (b), (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 damages under Paragraph 12. If termination of this Lease is obtained through the provisional remedy of unlawful detainer, Lessor shall have the right to recover in such proceeding any unpaid Rent and damages as are recoverable therein, or Lessor may reserve the right to recover all or any part thereof in a separate suit. If a notice and grace period required under Paragraph 13.1 was not previously given, a notice to pay rent or quit, or to perform or quit given to Lessee under the unlawful detainer statute shall also constitute the notice required by Paragraph 13.1. In such case, the applicable grace period required by Paragraph 13.1 and the unlawful detainer statute shall run concurrently, and the failure of Lessee to cure the Default within the greater of the two such grace periods shall constitute both an unlawful detainer and a Breach of this Lease entitling Lessor to the remedies provided for in this Lease and/or by said statute.

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

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

**13.3 Inducement Recapture.** Any agreement for free or abated rent or other charges, or for the giving or paying by Lessor to or for Lessee of any cash or other bonus, inducement or consideration for Lessee's entering into this Lease, all of which concessions are hereinafter referred to as "Inducement Provisions", shall be deemed conditioned upon Lessee's full and faithful performance of all of the terms, covenants and conditions of this Lease. Upon Breach of this Lease by Lessee, any such Inducement Provision shall automatically be deemed deleted from this Lease and of no further force or effect, and any rent, other charge, bonus, inducement or consideration theretofore abated, given or paid by Lessor under such an

Inducement Provision shall be immediately due and payable by Lessee to Lessor, notwithstanding any subsequent cure of said Breach by Lessee. The acceptance by Lessor of rent or the cure of the Breach which initiated the operation of this paragraph shall not be deemed a waiver by Lessor of the provisions of this paragraph unless specifically so stated in writing by Lessor at the time of such acceptance.

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

**13.5 Interest.** Any monetary payment due Lessor hereunder, other than late charges, not received by Lessor, when due as to scheduled payments (such as Base Rent) or within 30 days following the date on which it was due for non-scheduled payment, shall bear interest from the date when due, as to scheduled payments, or the 31st day after it was due as to non-scheduled payments. 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 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 floor area of the Unit, or more than 25% of the parking spaces 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.** If a separate brokerage fee agreement is attached then in addition to the payments owed pursuant to Paragraph 1.10 above, and unless Lessor and the Brokers otherwise agree in writing, Lessor agrees that: (a) if Lessee exercises any Option, (b) if Lessee or anyone affiliated with Lessee acquires from Lessor any rights to the Premises or other premises owned by Lessor and located within the Project, (c) if Lessee remains in possession of the Premises, with the consent of Lessor, after the expiration of this Lease, or (d) if Base Rent is increased, whether by agreement or operation of an escalation clause herein, then, Lessor shall pay Brokers a fee in accordance with the schedule attached to such brokerage fee agreement.

**15.2 Assumption of Obligations.** Any buyer or transferee of Lessor's interest in this Lease shall be deemed to have assumed Lessor's obligation hereunder. Brokers shall be third party beneficiaries of the provisions of Paragraphs 1.10, 15, 22 and 31. If Lessor fails to pay to Brokers any amounts due as and for brokerage fees pertaining to this Lease when due, then such amounts shall accrue Interest. In addition, if Lessor fails to pay any amounts to Lessee's Broker when due, Lessee's Broker may send written notice to Lessor and Lessee of such failure and if Lessor fails to pay

such amounts within 10 days after said notice, Lessee shall pay said monies to its Broker and offset such amounts against Rent. In addition, Lessee's Broker shall be deemed to be a third party beneficiary of any commission agreement entered into by and/or between Lessor and Lessor's Broker for the limited purpose of collecting any brokerage fee owed.

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

16. **Estoppel Certificates.**

(a) Each Party (as "**Responding Party**") shall within 10 days after written notice from the other Party (the "**Requesting Party**") execute, acknowledge and deliver to the Requesting Party a statement in writing in form similar to the then most current "**Estoppel Certificate**" form published by the 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.

(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.

23.2 **Date of Notice.** Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, the postmark thereon. If sent by regular mail the notice shall be deemed given 72 hours after the same is addressed as required herein and mailed with postage prepaid. Notices delivered by United States Express Mail or overnight courier that

guarantees next day delivery shall be deemed given 24 hours after delivery of the same to the Postal Service or courier. Notices transmitted by facsimile transmission or similar means shall be deemed delivered upon telephone confirmation of receipt (confirmation report from fax machine is sufficient), provided a copy is also delivered via delivery or mail. If notice is received on a Saturday, Sunday or legal holiday, it shall be deemed received on the next business day.

**24. Waivers.**

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

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

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

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

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

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

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

(iii) *Agent Representing Both Lessor and Lessee.* A real estate agent, either acting directly or through one or more associate licenses, can legally be the agent of both the Lessor and the Lessee in a transaction, but only with the knowledge and consent of both the Lessor and the Lessee. In a dual agency situation, the agent has the following affirmative obligations to both the Lessor and the Lessee: (a) A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either 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 that the Lessor will accept rent in an amount less than that indicated in the listing or that the Lessee is willing to pay a higher rent than that offered. The above duties of the agent in a real estate transaction do not relieve a Lessor or Lessee from the responsibility to protect their own interests. Lessor and Lessee should carefully read all agreements to assure that they adequately express their understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional.

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

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

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

**27. Cumulative Remedies.** No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all

other remedies at law or in equity.

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

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

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

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

30.2 **Attornment.** In the event that Lessor transfers title to the Premises, or the Premises are acquired by another upon the foreclosure or termination of a Security 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 on Lessee's use of the Premises. All such activities shall be without abatement of rent or liability to Lessee.

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

34. **Signs.** Lessor may place on the Premises ordinary "For Sale" signs at any time and ordinary "For Lease" signs during the last 6 months of the term hereof. Except for ordinary "For Sublease" signs which may be placed only on the Premises, Lessee shall not place any sign upon the Project



without Lessor's prior written consent. All signs must comply with all Applicable Requirements.

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

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

37. **Guarantor.**

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

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

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

39. **Options.** If Lessee is granted 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. **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.

41. **Reservations.** Lessor reserves the right: (i) to grant, without the consent or joinder of Lessee, such easements, rights and dedications that Lessor deems necessary, (ii) to cause the recordation of parcel maps and restrictions, and (iii) to create and/or install new utility raceways, so long as such easements, rights, dedications, maps, restrictions, and utility raceways do not unreasonably interfere with the use of the Premises by Lessee. Lessee agrees to sign any documents reasonably requested by Lessor to effectuate such rights.

42. **Performance Under Protest.** If at any time a dispute shall arise as to any amount or sum of money to be paid by one Party to the



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

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

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

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

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

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

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

46. **Amendments.** This Lease may be modified only in writing, signed by the Parties in interest at the time of the modification. As long as they do not materially change Lessee's obligations hereunder, Lessee agrees to make such reasonable 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.

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

48. **Arbitration of Disputes.** An Addendum requiring the Arbitration of all disputes between the Parties and/or Brokers arising out of this Lease

☐ is ☒ is not attached to this Lease.

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

**LESSOR AND LESSEE HAVE CAREFULLY READ AND REVIEWED THIS LEASE AND EACH TERM AND PROVISION CONTAINED HEREIN, AND BY THE EXECUTION OF THIS LEASE SHOW THEIR INFORMED AND VOLUNTARY CONSENT THERETO. THE PARTIES HEREBY AGREE THAT, AT THE TIME THIS LEASE IS EXECUTED, THE TERMS OF THIS LEASE ARE 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 COMMERCIAL REAL ESTATE ASSOCIATION OR BY ANY BROKER AS TO THE LEGAL SUFFICIENCY, LEGAL EFFECT, OR TAX CONSEQUENCES OF THIS LEASE OR THE TRANSACTION TO WHICH IT RELATES. THE PARTIES ARE URGED TO:**

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

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

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

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

Executed at: Rancho Cordova, CA

Executed at: Olivehurst, CA

On: \_\_\_\_\_

On: \_\_\_\_\_

**By LESSOR:**

**By LESSEE:**

Continental - Pacific Lumber Industries  
Inc.

Brian D. Toepfer, Michael R. Toepfer and  
Christopher M. Dean, dba: Cali Shine  
Distillery Co.

By: 

By: 

Name Printed: Paul Taylor

Name Printed: Brian D. Toepfer

Title: \_\_\_\_\_

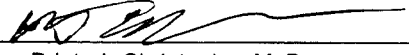
Title: \_\_\_\_\_

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

By: 

Name Printed: \_\_\_\_\_

Name Printed: \_\_\_\_\_

Title: _____	Name Printed: <u>Michael R. Toepfer</u>
Address: <u>11294 Coloma Road, Suite H</u>	Title: _____
<u>Rancho Cordova, CA 95670</u>	
Telephone: <u>(916) 852-8503</u>	By: <u></u>
Facsimile: <u>( )</u>	Name Printed: <u>Christopher M. Dean</u>
Email: _____	Address: <u>770 Ramirez Road</u>
Email: _____	<u>Marysville, CA 95901</u>
Federal ID No. _____	Telephone: <u>(530) 923-1453</u>
	Facsimile: <u>( )</u>
	Email: <u>briantoepper@sbcglobal.net</u>
	Email: _____
	Federal ID No. _____

**BROKER:**

Colliers International

Attn: Bud Applegate  
 Title: Senior Vice President  
 Address: 301 University Ave., #100  
Sacramento, CA 95825  
 Telephone: (916) 563-3003  
 Facsimile: (916) 641-1318  
 Email: bud.applegate@colliers.com  
 Federal ID No. \_\_\_\_\_  
 Broker/Agent DRE License #: 00785734

**BROKER:**

Colliers International

Attn: Bud Applegate  
 Title: Senior Vice President  
 Address: 301 University Ave., #100  
Sacramento, CA 95825  
 Telephone: (916) 563-3003  
 Facsimile: (916) 641-1318  
 Email: bud.applegate@colliers.com  
 Federal ID No. \_\_\_\_\_  
 Broker/Agent DRE License #: 00785734

**NOTICE:** These forms are often modified to meet changing requirements of law and industry needs. Always write or call to make sure you are utilizing the most current form: AIR Commercial Real Estate Association, 800 W 6th Street, Suite 800, Los Angeles, CA 90017. Telephone No. (213) 687-8777. Fax No.: (213) 687-8616.

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**ADDENDUM I TO INDUSTRIAL REAL ESTATE LEASE  
DATED NOVEMBER 1, 2013  
BY AND BETWEEN  
CONTINENTAL-PACIFIC LUMBER INDUSTRIES, INC. AS LESSOR  
AND  
BRIAN D. TOEPFER, MICHAEL R. TOEPFER AND CHRISTOPHER M. DEAN, DBA: CALI SHINE DISTILLERY  
CO. AS LESSEE**

If any portion of the Standard Lease should conflict with the terms of this Addendum I, the terms of this Addendum I shall control.

Defined terms not otherwise defined in this Addendum I shall have the meanings ascribed to such terms in the Standard Lease.

All references to the "Lease" in the Standard Lease or in this Addendum I shall mean, collectively, the Standard Lease as modified by this Addendum I.

**Section 50**

**Rent:**

December 1, 2013 thru May 31, 2014	\$ 0.00 per month
June 1, 2014 thru May 31, 2015	\$1,400.00 per month
June 1, 2015 thru May 31, 2016	\$2,100.00 per month
June 1, 2016 thru May 31, 2017	\$2,800.00 per month

**Section 51**

**Tenant Improvements:**

- A. Lessee at his sole cost and expense will:
- Reconnect water and gas to Lessee's space
  - Reconnecting separately metered electricity to 14,000 square feet of building.
  - Install an ADA bathroom into the 6,000 square foot section of warehouse
  - Install water heater
  - Drywall and paint to bring the 6,000 square feet to food safety standards.
  - Install HVAC as needed.
  - Paint outside of building in the first 90 days of the lease with rust preventive paint to match the neighboring building (sides and roof)
  - Install a gas burner and floor drain as needed for Lessee's use.
  - Install a vent in the drop ceiling for ventilation due to Lessee's use
  - Install new efficient lighting in Lessee's space.
  - Replace metal siding as needed on Lessee's 14,000 square feet.
  - Install signage per code on Front of Building.

These building improvements will become the property of the Lessor and will be done in accordance with City, County and State Building codes.

Lessor will post a "Notice of Non-Responsibility".

**Section 52**

**Animals**

Lessee will be allowed to bring his dog to his premise. Lessee will be responsible for any actions of his dog.

**Consult Your Advisors:**

This document (including its exhibits and addenda, if any) has been prepared by Broker for approval by the undersigned respective parties' legal counsel. Broker makes no representation or recommendation as to the legal sufficiency or tax consequences of this document or the transaction to which it relates. These are questions for an attorney or accountant.

**THE ABOVE TERMS ARE ACKNOWLEDGED AND AGREED TO:**

**LESSOR: Continental-Pacific Lumber  
Industries, Inc.**

By:   
Paul Taylor

subject to County Approval:

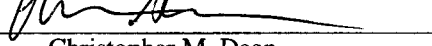
Date: \_\_\_\_\_

Initials: \_\_\_\_\_

**LESSEE: Brian D. Toepfer, Michael R. Toepfer and  
Christopher M. Dean, dba: Cali Shine  
Distillery Co.**

By:   
Brian D. Toepfer

By:   
Michael R. Toepfer

By:   
Christopher M. Dean

Date: 11-15-13

Initials: \_\_\_\_\_

# Exhibit A

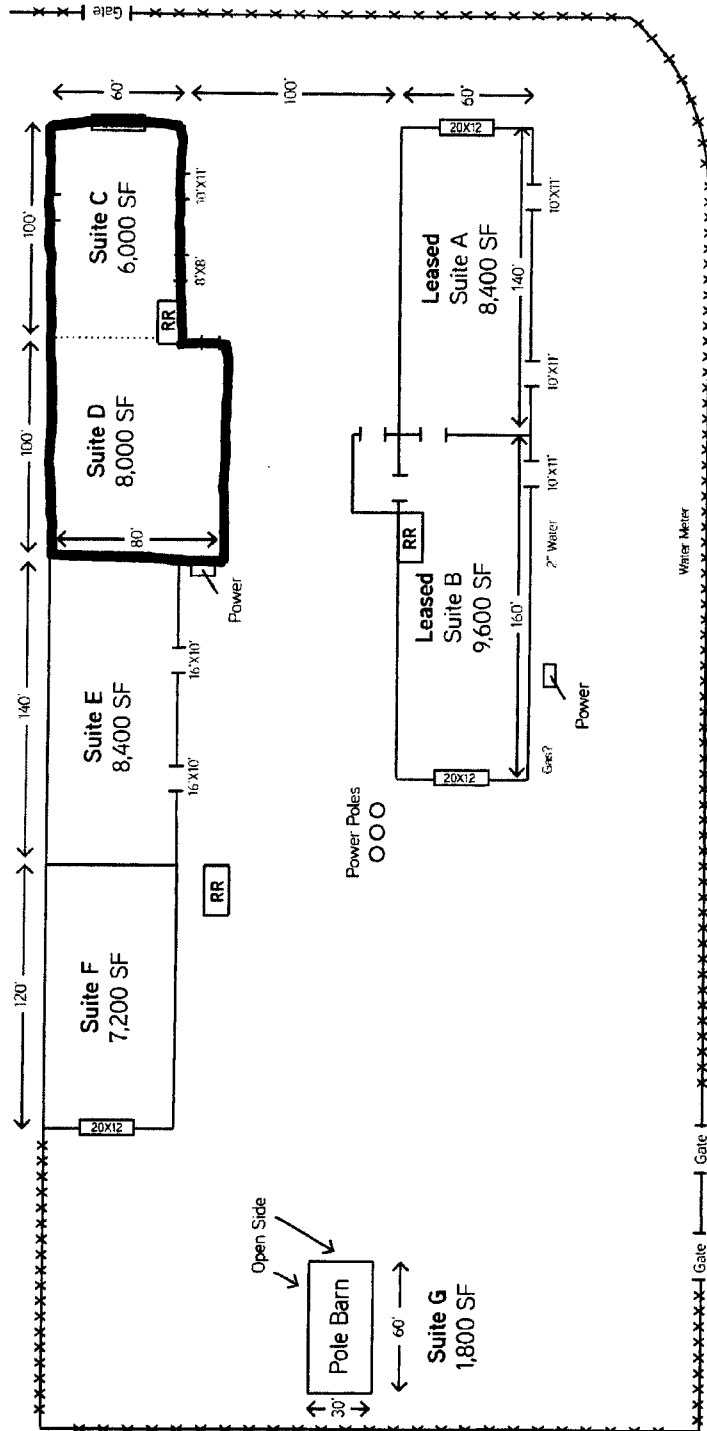
DATED NOVEMBER 1, 2013

BY AND BETWEEN

CONTINENTAL-PACIFIC LUMBER INDUSTRIES, INC. AS LESSOR

AND

BRIAN D. TOEPFER, MICHAEL R. TOEPFER AND CHRISTOPHER M. DEAN, DBA: CALI SHINE DISTILLERY  
CO. AS LESSEE



Initials: DP7

Initials: BDR

Property: 5216 Arboga Road, Olivehurst, California

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**Flood Zones.** According to Yuba County Dated: 2/18/11 the Property may or may not be located in a flood zone. Many lenders require flood insurance for properties located in flood zones, and government authorities may regulate development and construction in flood zones. Whether or not located in a flood zone, properties can be subject to flooding and moisture problems, especially properties on a slope or in low-lying areas or in a dam inundation zone (California Government Code Section 8589.5). Buyers and tenants should have their experts confirm whether the Property is in a flood zone and otherwise investigate and evaluate these matters. **Flood Zone Designation: Zone X500L**

**Earthquakes.** Earthquakes occur throughout California. According to Fault Activity Map of California and Adjacent Areas, 1994 [specify source], the Property may or may not be situated in an Earthquake Fault Zone and/or a Seismic Hazard Zone (Sections 2621 et seq. and Sections 2690 et seq. of the California Public Resources Code, respectively). Property development and construction in such zones generally are subject to the findings of a geologic report prepared by a state-registered geologist. Whether or not located in such a zone, all properties in California are subject to earthquake risks and may be subject to a variety of state and local earthquake-related requirements, including retrofit requirements. Among other items, all new and existing water heaters must be braced, anchored or strapped to resist falling or horizontal displacement, and in sales transactions, sellers must execute a written certification that the water heaters are so braced, anchored or strapped (California Health and Safety Code Section 19211). Buyers and tenants should have their experts confirm whether the Property is in any earthquake zone and otherwise investigate and evaluate these matters.

**Hazardous Materials and Underground Storage Tanks.** Due to prior or current uses of the Property or in the area or the construction materials used, the Property may have hazardous or undesirable metals (including lead-based paint), minerals (including asbestos), chemicals, hydrocarbons, petroleum-related compounds, or biological or radioactive/emissive items (including electrical and magnetic fields) in soils, water, building components, above or below-ground tanks/containers or elsewhere in areas that may or may not be accessible or noticeable. Such items may leak or otherwise be released. Asbestos has been used in items such as fireproofing, heating/cooling systems, insulation, spray-on and tile acoustical materials, floor tiles and coverings, roofing, drywall and plaster. If the Property was built before 1978 and has a residential unit, sellers/landlords must disclose all reports, surveys and other information known to them regarding lead-based paint to buyers and tenants and allow for inspections (42 United States Code Sections 4851 et seq.). Sellers/landlords are required to advise buyers/tenants if they have any reasonable cause to believe that any hazardous substance has come to be located on or beneath the Property (California Health and Safety Code Section 25359.7), and sellers/landlords must disclose reports and surveys regarding asbestos to certain persons, including their employees, contractors, buyers and tenants (California Health and Safety Code Sections 25915 et seq.); buyers/tenants have similar obligations. Have your experts investigate and evaluate these matters.

**Americans with Disabilities Act (ADA).** The Americans With Disabilities Act (42 United States Code Sections 12101 et seq.) and other federal, state and local requirements may require changes to the Property. Have your experts investigate and evaluate these matters.

**Taxes.** Sales, leases and other real estate transactions can have federal, state and local tax consequences. In sales transactions, Internal Revenue Code Section 1446 requires buyers to withhold and pay to the IRS 10% of the gross sales price within 10 days of the date of a sale unless the buyers can establish that the sellers are not foreigners, generally by having the sellers sign a Non-Foreign Seller Affidavit. Depending on the structure of the transaction, the tax withholding liability can exceed the net cash proceeds to be paid to the sellers at closing. California imposes an additional withholding requirement equal to 3 1/3% of the gross sales price not only on foreign sellers but also out-of-state sellers and sellers leaving the state if the sales price exceeds \$100,000. Withholding generally is required if the last known address of a seller is outside California, if the proceeds are disbursed outside of California or if a financial intermediary is used. Have your experts investigate and evaluate these matters.

**Fires.** California Public Resources Codes Sections 4125 et seq. require sellers of real property located within state responsibility areas to advise buyers that the property is located within such a wildland zone, that the state does not have the responsibility to provide fire protection services to any structure within such a zone and that such zones may contain substantial forest/wildland fire risks. Government Code Sections 51178 et seq. require sellers of real property located within certain fire hazard zones to disclose that the property is located in such a zone. Sellers must disclose that a property located in a wildland or fire hazard zone is subject to the fire prevention requirements of Public Resources Code Section 4291 and Government Code Section 51182, respectively. Sellers must make such disclosures if either the sellers have actual knowledge that a property is in such a zone or a map showing the property to be in such a zone has been provided to the county assessor. Properties, whether or not located in such a zone, are subject to fire/life safety risks and may be subject to state and local fire/life safety-related requirements, including retrofit requirements. Have your experts investigate and evaluate these matters.

**Broker Representation.** Colliers International is a national brokerage firm representing a variety of clients. Depending on the circumstances, Colliers International may represent both the seller/landlord and the buyer/tenant in a transaction, or you may be

Initials: DPZ

Initials: BOV

interested in a property that may be of interest to other Colliers International clients. If Colliers International represents more than one party with respect to a property, Colliers International will not disclose the confidential information of one principal to the other.

**Seller/Landlord Disclosure, Delivery of Reports, Pest Control Reports and Compliance with Laws.** Sellers/landlords are hereby requested to disclose directly to buyers/tenants all information known to sellers/landlords regarding the Property, including but not limited to, hazardous materials, zoning, construction, design, engineering, soils, title, survey, fire/life safety, and other matters, and to provide buyers/tenants with copies of all reports in the possession of or accessible to sellers/landlords regarding the Property. Sellers/landlords and buyers/tenants must comply with all applicable federal, state and local laws, regulations, codes, ordinances and administrative orders, including, but not limited to, the 1964 Civil Rights Act and all amendments thereto, the Foreign Investment in Real Property Tax Act, the Comprehensive Environmental Response Compensation and Liability Act, and The Americans With Disabilities Act. If a pest control report is a condition of the purchase contract, buyers are entitled to receive a copy of the report and any certification and notice of work completed.

**Property Inspections and Evaluations.** Buyers/tenants should have the Property thoroughly inspected and all parties should have the transaction thoroughly evaluated by the experts of their choice. Ask your experts what investigations and evaluations may be appropriate as well as the risks of not performing any such investigations or evaluations. Information regarding the Property supplied by the real estate brokers has been received from third party sources and has not been independently verified by the brokers. Have your experts verify all information regarding the Property, including any linear or area measurements and the availability of all utilities. All work should be inspected and evaluated by your experts, as they deem appropriate. Any projections or estimates are for example only, are based on assumptions that may not occur and do not represent the current or future performance of the property. Real estate brokers are not experts concerning nor can they determine if any expert is qualified to provide advice on legal, tax, design, ADA, engineering, construction, soils, title, survey, fire/life safety, insurance, hazardous materials, or other such matters. Such areas require special education and, generally, special licenses not possessed by real estate brokers. Consult with the experts of your choice regarding these matters.

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Initials: BOR

**ADDENDUM II TO INDUSTRIAL REAL ESTATE LEASE**  
**DATED NOVEMBER 1, 2013**  
**BY AND BETWEEN**  
**CONTINENTAL-PACIFIC LUMBER INDUSTRIES, INC. AS LESSOR**  
**AND**  
**BRIAN D. TOEPFER, MICHAEL R. TOEPFER AND CHRISTOPHER M. DEAN, DBA: CALI SHINE**  
**DISTILLERY CO. AS LESSEE**

If any portion of the Standard Lease should conflict with the terms of this Addendum II, the terms of this Addendum II shall control.

Defined terms not otherwise defined in this Addendum II shall have the meanings ascribed to such terms in the Standard Lease.

All references to the "Lease" in the Standard Lease or in this Addendum II shall mean, collectively, the Standard Lease as modified by this Addendum II.

**Section 52: Sublease Clarification:**

It is understood by lessee that he is a sub lessee to CONTINENTAL-PACIFIC LUMBER INDUSTRIES, INC lease with Yuba County and is subject to the same terms and conditions of the original lease.

Within CONTINENTAL-PACIFIC LUMBER INDUSTRIES, INC. lease it is started they must request from the County and receive prior approve for any assignment or Subleasing they do, consequently Cali Shine must also request prior approval from the county if they plan to sublease or assign their Sub lease per their Section 12.

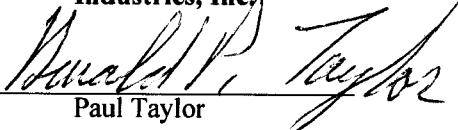
Per paragraph 32 of the sublease giving the Lessor the right of access will also apply to the property owner (Yuba County).

**Consult Your Advisors:**

This document (including its exhibits and addenda, if any) has been prepared by Broker for approval by the undersigned respective parties' legal counsel. Broker makes no representation or recommendation as to the legal sufficiency or tax consequences of this document or the transaction to which it relates. These are questions for an attorney or accountant.

**THE ABOVE TERMS ARE ACKNOWLEDGED AND AGREED TO:**

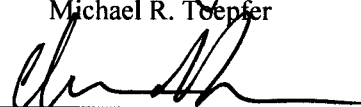
**LESSOR: Continental-Pacific Lumber Industries, Inc.**

By:   
Paul Taylor

**LESSEE: Brian D. Toepfer, Michael R. Toepfer and Christopher M. Dean, dba: Cali Shine Distillery Co.**

By:   
Brian D. Toepfer

By:   
Michael R. Toepfer

By:   
Christopher M. Dean

Date: Feb 17, 2014

Date: 2/14/14

Initials: DP7

Initials: BOR  
CMD  
MD

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*ORDINANCES  
AND  
PUBLIC HEARINGS*

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## Administrative Services Memorandum

**To:** Board of Supervisors  
**CC:** Robert Bendorf, County Administrator  
**From:** Doug McCoy, Director, Administrative Services *DM*  
**Date:** April 15, 2014  
**Re:** Amend ordinance relating to the purchase of real property

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### Recommendation

Adopt the attached ordinance amending Chapter 2.50 by adding Chapter 5, relating to the County's acquisition of real property.

### Background

Government Code 25350.60 grants the Board of Supervisors the authority to authorize County Staff to facilitate the purchase of real property up to a certain threshold. Current State law permits this assignment up to a value of \$50,000 unless the Board assigns authority for a different value.

Under current County policy, the Administrative Services Director has responsibility for all property acquisitions on behalf of the County.

This proposed amendment to the existing ordinance would assign the responsibility to the Administrative Service Director, as Purchasing Agent of the County, or his/her designee, to perform all acts necessary to approve and accept for the County the acquisition of real property where the purchase price does not exceed \$150,000.

### Discussion

Adoption of this ordinance change will greatly enhance the ability of staff to respond to simple acquisitions of lesser value properties in a more timely manner, and by easing the notification process, while still retaining the final step in the process of bring the final decision back to the Board.

### Committee Action

We have bypassed the Committee due to time sensitivity; so that the Ordinance could be reviewed and potentially adopted by BOS in April and thereby be included in the Muni Code update that is coming out this Summer

*April 7, 2014*

**Financial Impact**

There shall be no impact to the General Fund and could potentially be savings from amending the notification process during acquisition of lower valued properties.

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE ADDING AN ARTICLE 5 TO  
CHAPTER 2.50 OF TITLE II OF THE  
THE YUBA COUNTY ORDINANCE CODE  
RELATING TO THE PURCHASE OF REAL PROPERTY**

The following ordinance, consisting of three (3) sections, was duly and regularly passed and adopted by the Board of Supervisors of the County of Yuba, State of California, at a regular meeting of the Board of Supervisors held on \_\_\_\_\_ day of \_\_\_\_\_, 2014, by the following vote:

AYES:

NOES:

ABSENT:


ABSTAIN:

\_\_\_\_\_  
Chairman of the Board of Supervisors

ATTEST: DONNA STOTTLEMEYER  
Clerk of the Board of Supervisors

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

APPROVED AS TO FORM  
ANGIL P. MORRIS-JONES  
COUNTY COUNSEL

  
Angil P. Morris-Jones

**THE BOARD OF SUPERVISORS OF THE COUNTY OF YUBA, STATE OF CALIFORNIA DOES ORDAIN AS FOLLOWS:**

**Section 1.** This ordinance shall take effect Thirty (30) days after its passage, and before the expiration of fifteen (15) days after its passage a summary shall be published with the names of the members voting for and against the same, once in a local newspaper of general circulation in the County of Yuba, State of California.

**Section 2.** An Article 5 to Chapter 2.50 of Title II of the Yuba County Ordinance Code is hereby added and by such is amended to read as set forth herein below:

**Chapter 2.50**

**ARTICLE 5 PURCHASE OF REAL PROPERTY**

**Sections**

<b>2.50.250</b>	<b>Responsibility for Real Property Acquisition</b>
<b>2.50.260</b>	<b>No Publication of Intent to Purchase Real Property</b>
<b>2.50.270</b>	<b>Purchase and Procedure of Real Property for \$150,000 or less</b>
<b>2.50.280</b>	<b>Notice To Board of Purchase of Real Property for \$150,000 or less</b>
<b>2.50.290</b>	<b>Purchase of Real Property for More than \$150,000</b>
<b>2.50.300</b>	<b>Effective Period of Delegated Authority Unless Reauthorized by the Board</b>

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**2.50.250. Real Property Acquisition.**

The Purchasing Agent, or designee, as the Administrative Services Director (Purchasing Agent) is responsible for coordination, planning, and negotiation of all real property purchases, and for maintaining records of those purchases.

**2.50. 260. No Publication of Intent to Purchase Real Property.**

Pursuant to Government Code section 25350, acquisition of real property in accordance with the procedures specified under subsection 2.50.270 of this Article is exempt from the notice of intent requirements of that statute.

## **2. 50. 270. Purchase and Procedure for Real Property – \$150,000 or less.**

Pursuant to the authority granted to the Board of Supervisors by California Government Code section 25350.60 the Purchasing Agent, or designee, is authorized to perform all acts necessary to approve and accept for the County of any interest in real property where the purchase price for such interest does not exceed \$150,000 in accordance with the following specified procedures:

- A. Approved Purchase:** The acquisition of real property interest is for a public structure, building, road, park, public improvement (collectively “project” or public otherwise public purpose previously approved by the Board of Supervisors.
- B. Assurance of Funding:** Prior to committing the County to acquisition of the property, funding must be identified as assured by the appropriate authority.
- C. Establishment of Purchase Price:** The fair market value of the real property interest to be acquired has been determined by an appraisal or some other generally accepted industry standard or method of valuation. The appraised amount or valuation will be a determining factor along with any other unique or extenuating circumstances associated with the purchase to establish the negotiated purchase price.
- D. Environmental Clearance:** The purchase may not be consummated prior to compliance with the applicable environmental statutes and regulations.
- E. Approval of Acquisition by Planning Department:** When required, the Purchasing Agent, or designee, shall submit the proposed acquisition to the Appropriate planning department, director, commission or board in accordance with Government Code section 65402 or any statute which may later become appropriate to make a finding of General Plan conformance prior to acquisition of the real property interest.
- F. Environmental Compliant:** The acquisition complies with the California Environmental Quality Act (CEQA).
- G. County Policy Compliant:** The acquisition of the real property interest will be in accordance with the County's Policy and Procedures.
- H. Form of Instrument:** The Purchase Agreement and all other instruments relating to the purchase which includes but are not limited to escrow documents and instruments conveying ownership of the real property interest shall be reviewed and approved by County Counsel prior to final acquisition.

## **2.50. 280. Board Approval for Real Property Purchase \$150,000 or less.**

The Purchasing Agent, or designee, shall bring the purchase of real property to the Board of Supervisors for approval prior to the final acquisition of the real property for \$150,000 or less by placing the purchase of Real Property on the Board's Agenda for approval as an item under Consent .

**2.50. 290. Purchase of Real Property for more than \$150,000.**

Whenever it is necessary or desirable for the County to purchase real property and the price for such purchase exceed \$150,000, the Purchasing Agent, or designee, as the Administrative Services Director shall comply with the notice requirements of Government Code section 25350, except for any of the following:

- a) **Acquisition in settlement of an action in eminent domain.**
- b) **Acquisition of any real property or interest therein for the uses and purposes of county highways, roads, streets or obtaining a right of way(s).**
- c) **Acquisition for which the Board of Supervisors determines that emergency conditions require more immediate action by the County.**

**2.50. 300. Effective Period of Delegation of Authority Unless Reauthorized by the Board.**

Pursuant to Government Code section 25350.60 (c ), the authority granted to the Purchasing Agent, or designee, under this Article shall be effective for five years from the effective date of this ordinance, after which time such grant of authority shall be deemed expired and of no further effect unless reauthorized by an ordinance of the Board of Supervisors.

**Section 3.** If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be unconstitutional and invalid, such decision shall not affect the validity of the remaining portion of this ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and every section, subsection, sentence, clause or phrase thereof, irrespective of the fact any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional.



# The County of Yuba



## Office of the County Administrator

Robert Bendorf, County Administrator  
John Fleming, Economic Development Coordinator  
Russ Brown, Communications & Legislative Affairs Coordinator  
Grace M Mull, Management Analyst  
Teena L. Carlquist, Executive Assistant to the County Administrator  
Yuba County Government Center  
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tcarlquist@co.yuba.ca.us

**Date:** April 15, 2014  
**To:** Board of Supervisors  
**From:** Robert Bendorf, County Administrator *RB*  
**By:** Grace Mull, Management Analyst  
**Re:** FY 2014-2015 Consolidated Fee Ordinance

### Recommendation

Consider revisions to the Consolidated Fee Ordinance for fiscal year 2014-15.

### Background

Departments are tasked to review their fees annually to ensure that fees charged reflect true cost of services. The review process includes adding new fees, deleting obsolete fees, and revising fee titles to accurately describe the fee.

### Discussion

The purpose of the Consolidated Fee Ordinance is to allow the public and those doing business with the County to easily access fees associated with various departmental services. The annual revision process provides the Board and the public an opportunity to review and comment on the County's fee structure.

The attached summary displays which fees are proposed to be changed, the amount requested under the new fee, and the reasons for changing the fees. Fee increases reflect the department's full amount of time and costs associated with providing these services, and are meant to be cost covering.

### Committee

The Finance & Administration Committee reviewed this item on April 1, 2014 and recommended approval.

### Fiscal Impact

The proposed revisions to the Consolidated Fee Ordinance and associated fee schedules represent each department's estimate of the cost to provide services, or are set by state law. Consequently, fee adjustments, either up or down, are meant to eliminate a subsidy or to ensure there is no revenue in excess of the cost of the services provided from the fees being charged to perform the services.

**FY 14/15 Master Fee Schedule - Summary of Changes**

**Code Section &**

Department	Code	Name of Fee		Old Fee	New Fee	Reason for Change
		Services for Information Technology Security Officer				
Administrative Services	1.1	Group 1 - Hangers #1 - 24		\$118.00 month \$1,298.00 annual	\$76.00/hour	New fee established to cover services provided by Information Technology Security Officer
	1.2	Group 2 - Hangers #25-27 and #29-30		\$216.00 month \$2,376.00 annual	\$122.00 month \$1,464.00 annual	Fee increase based on hanger agreement which allows increase based on current CPI
	1.3	Group 3 - Hangers #32-36 and #38-42		\$171.00 month \$1,881.00 annual	\$222.00 month \$2,664.00 annual	Fee increase based on hanger agreement which allows increase based on current CPI
	1.4	Group 4 - Hangers #44-52 and #60-67		\$249.00 month \$2,739.00 annual	\$176.00 month \$2,112.00 annual	Fee increase based on hanger agreement which allows increase based on current CPI
	1.5	Group 5 - Hangers #53, #54, and #57		\$276.00 month \$3,036.00 annual	\$256.00 month \$3,072.00 annual	Fee increase based on hanger agreement which allows increase based on current CPI
	1.6	Storage Hanger #28		\$110.00 month \$1,210.00 annual	\$284.00 month \$3,408.00 annual	Fee increase based on hanger agreement which allows increase based on current CPI
	1.7	Storage Hanger #37		\$85.00 month \$935.00 annual	\$113.00 month \$1,356.00 annual	Fee increase based on hanger agreement which allows increase based on current CPI
	1.8	Storage Hanger #43		\$83.00 month \$913.00 annual	\$88.00 month \$1,056.00 annual	Fee increase based on hanger agreement which allows increase based on current CPI
	1.9	Storage Hanger #58		\$126.00 month \$1,298.00 annual	\$85.00 month \$1,020.00 annual	Fee increase based on hanger agreement which allows increase based on current CPI
	1.10	Storage Hanger #59		\$118.00 month \$1,298.00 annual	\$130.00 month \$1,560.00 annual	Fee increase based on hanger agreement which allows increase based on current CPI
	1.11	Storage Hanger #68		\$82.00 month \$902.00 annual	\$122.00 month \$1,464.00 annual	Fee increase based on hanger agreement which allows increase based on current CPI
	1.12	Security Access Card (New)		\$20.00 each	\$84.00 month \$1,008.00 annual	Fee increase to reflect increased cost of card supplies
	1.13	Security Access Card (Renewal)		\$20.00 each	\$30.00 each	Fee increase to reflect increased cost of card supplies
	1.14	Security Access Card Lost/Stolen (Replacement)		\$20.00 each	\$30.00 each	Fee increase to reflect increased cost of card supplies
	1.15	Uniformed Security hourly charge - with 48 hours or more advanced notice		\$13.44 hour	\$13.89 hour	Fee increase to reflect increase in security contract
	1.16	Uniformed Security hourly charge - with 24 hours notice (but > 8)		\$14.99 hour	\$15.50 hour	Fee increase to reflect increase in security contract
	1.17					

**FY 14/15 Master Fee Schedule - Summary of Changes**

Code Section & Department		Name of Fee	Old Fee	New Fee	Reason for Change
13.00.030 Administrative Services Continued	1.18	Buildings & Grounds hourly charge	\$37.00 hour	\$41.60 hour	Fee increase to reflect overhead charges
	1.19	Custodial Services hourly charge	\$30.00 hour	\$34.15 hour	Fee increase to reflect overhead charges
	2.1	Issuance of Public Marriage License	\$60.00	\$65.00	Fee increase due to increase of State's portion of disbursement
	2.2	Issuance of Confidential Marriage License	\$65.00	\$70.00	Fee increase due to increase of State's portion of disbursement
	2.3	Issuance of Duplicate Marriage License	\$20.00	\$25.00	Fee increase due to increase of State's portion of disbursement
13.00.042 Clerk Recorder	2.4	Amendment of Confidential Marriage Record after 1 year	\$20.00	\$23.00	Fee increase due to increase of State's portion of disbursement
	2.5	Election Related Custom Reports		\$15.00 per report	New Fee - provides mechanism to offer election reports to the public and candidates
	2.6	Map CD	.50 per image/\$15.00 minimum		Delete Fee - Revised to Map Image CD or Flash Drive
	2.7	Map Image CD or Flash Drive		\$20.00 up to 100 images	New Fee - previously "Map CD". New fee provides for more map images for lost cost per image
	2.8	Archival Map Images Hard Drive		\$500.00	New Fee - provides all map images currently available loaded onto hard drive
13.00.052 Health Services	3.1	Kids in Safety Seats Program	\$0.00		Delete Fee - Program funding expended by June 2014
	3.2	Immunizations (Children)	\$10.00 to \$25.00**		Delete Fee - Children immunizations transferred to Peach Tree Clinic
	3.3	Miscellaneous Clinic Services Fee	\$20.00		Delete Fee - Clinic services no longer provided
	3.4	Drug Testing - Urine (12 Panel)	\$15.00		Delete Fee - Clinic services no longer provided
	3.5	Alcohol - Saliva (Single)	\$15.00		Delete Fee - Clinic services no longer provided
	3.6	Buprenorphine - Urine (Single)	\$15.00		Delete Fee - Clinic services no longer provided
	3.7	Immigration Medical Exam (includes Tuberculosis skin test)	\$175.00		Delete Fee - Clinic services no longer provided

**FY 14/15 Master Fee Schedule - Summary of Changes**

Code Section & Department		Name of Fee	Old Fee	New Fee	Reason for Change
13.00.052 Health Services Continued	3.8	<b>Tetanus (Adult)</b>	<b>\$25.00</b>		<b>Delete Fee - Clinic services no longer provided</b>
	3.9	Tetanus-Diphtheria Immunization (Adult) Tdap	\$40.00		Delete Fee - Clinic services no longer provided
	3.10	<b>Hepatitis B Immunization (Each Visit-Adult)</b>	<b>\$55.00</b>		<b>Delete Fee - Clinic services no longer provided</b>
	3.11	Influenza (Adult and Children) Recommended Donation of \$10.00	\$10.00	\$10.00	Title Change - Add "Recommended Donation of \$10.00"
	3.12	<b>After Hours Burial Permit (State Set Fee)</b>	<b>\$11.00</b>	<b>\$12.00</b>	<b>State fee increase effective January 2014</b>
	3.13	Burial Permit (State Set Fee)	\$11.00	\$12.00	State fee increase effective January 2014
	3.14	<b>Certified Copy of Birth Certificate (State Set Fee)</b>	<b>\$20.00</b>	<b>\$25.00</b>	<b>State fee increase effective January 2014</b>
	3.15	Certified Copy of Birth Government Agency (State Set Fee)	\$14.00	\$19.00	State fee increase effective January 2014
	3.16	<b>Certified Copy of Burial Permit (State Set Fee)</b>	<b>\$1.00</b>	<b>\$12.00</b>	<b>State fee increase effective January 2014</b>
	3.17	Certified Copy of Death Certificate (State Set Fee)	\$16.00	\$21.00	State fee increase effective January 2014
13.00.056 Probation	3.18	<b>Certified Copy of Fetal Death Certificate (State Set Fee)</b>	<b>\$13.00</b>	<b>\$18.00</b>	<b>State fee increase effective January 2014</b>
	3.19	Crossfile Sent Out (State Set Fee-\$3.00 to Receiving Agency)	\$14.00	\$16.00	State fee increase effective January 2014
13.00.060 Probation	4.1	<b>Probation GPS Fee</b>		<b>\$5.00/day</b>	<b>New Fee - to cover costs associated with supervision of electronic monitoring devices for probationers</b>
13.00.060 Treasurer	5.1	Card Room Table (Per Table)	\$180.00	\$180.00	Title Change - Add "Per Table"
	5.2	<b>CD of Current Tax Roll</b>	<b>\$25.00</b>	<b>\$50.00</b>	<b>Fee increase to bring costs related to this function (labor and supplies) up to date</b>
	5.3	CD of Prior Tax Roll (Delinquent)	\$25.00	\$50.00	Fee increase to bring costs related to this function (labor and supplies) up to date
	5.4	<b>Copy Fee (Per Page)</b>		<b>\$0.25</b>	<b>New Fee - to include current County copy fee charges</b>

**FY 14/15 Master Fee Schedule - Summary of Changes**

Code Section & Department		Name of Fee	Old Fee	New Fee	Reason for Change
13.00.060 Treasurer Continued	5.5	Property Tax System Print Screen (Per Screen)		\$0.50	New Fee - to cover costs associated with Property Tax System screen prints of property tax bill
	5.6	Postage, Mailing, Shipping & Handling		Actual Cost	New Fee - to cover actual costs incurred for mailings
	5.7	Research Fee (Per Hour-Increments of 15 Minutes)	\$30.00	\$40.00	Fee increase to bring labor labor costs related to this function up to date
	5.8	Unsecured Collections Rate (Per Hour-Increments of 15 Minutes)	\$30.00	\$35.00	Fee increase to bring labor labor costs related to this function up to date

ORDINANCE NO. \_\_\_\_\_

**ORDINANCE REPEALING AND RE-ENACTING CHAPTERS 13.00.030,  
13.00.042, 13.00.052, 13.00.056 AND 13.00.060 OF THE YUBA COUNTY  
CONSOLIDATED FEE ORDINANCE CODE**

The following ordinances consisting of three (3) sections, was duly and regularly passed and adopted by the Board of Supervisors of the County of Yuba, State of California, at a regular meeting of the Board of Supervisors held on \_\_\_\_ day of \_\_\_\_\_, 2014, by the following vote:

AYES:

NOES:

ABSENT:

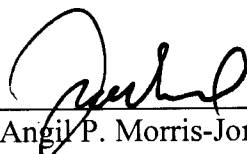
ABSTAIN:

\_\_\_\_\_  
John Nicoletti, Chairman of the Board of  
Supervisors of the County of Yuba,  
State of California

ATTEST: DONNA STOTTLEMEYER  
Clerk of the Board of Supervisors

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

APPROVED AS TO FORM:

By:   
Angil P. Morris-Jones, County Counsel

**THE BOARD OF SUPERVISORS OF THE COUNTY OF YUBA, STATE OF CALIFORNIA DOES ORDAIN AS FOLLOWS:**

Section 1. This ordinance shall take effect Sixty (60) days after its passage, and shall become operative and in full force on July 1, 2014. Before the expiration of Thirty (30) days after its passage a summary shall be published with the names of the members voting for and against the same, once in a local newspaper of general circulation in the County of Yuba, State of California.

Section 2. Sections 13.00.030, 13.00.042, 13.00.052, 13.00.056 and 13.00.060 of the Yuba County Consolidated Fee Ordinance Code are hereby repealed and re-enacted in its entirety to read as reflected in Attachment "A", hereto and by this reference is incorporated herein as though set forth in full.

Section 3. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be unconstitutional and invalid, such decision shall not affect the validity of the remaining portion of this ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and every section, subsection, sentence, clause or phrase thereof, irrespective of the fact any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional.

**Administrative Services - Code Section 13.00.030**

NAME OF FEE	FEE FY 14/15
<b>Information Technology</b>	
Services for Data Sets, Programming, Maps, Reports,	\$65.00/hour
Services for Information Security Officer	\$76.00/hour
Copies of Electronic Files, Training, Support	(1 hour minimum)
<b>Airport</b>	
<b>Hanger Rates</b>	Month/Annual
Group 1 - Hangars #1-24	\$122.00 / \$1,464.00
Group 2 - Hangars #25-27 and #29-30	\$222.00 / \$2,664.00
Group 3 - Hangars #32-36 and #38-42	\$176.00 / \$2,112.00
Group 4 - Hangars #44-52 and #60-67	\$256.00 / \$3,072.00
Group 5 - Hangars #53, #54, and #57	\$284.00 / \$3,408.00
<b>Storage Unit Rates</b>	Month/Annual
Storage Hangar #28	\$113.00 / \$1,356.00
Storage Hangar #37	\$88.00 / \$1,056.00
Storage Hangar #43	\$85.00 / \$1,020.00
Storage Hangar #58	\$130.00 / \$1,560.00
Storage Hangar #59	\$122.00 / \$1,464.00
Storage Hangar #68	\$84.00 / \$1,008.00
<b>Tie-Down Rates</b>	Day/Month
Single Engine Tie-Down Fees	\$5.00/\$40.00
Light Twin Tie-Down Fees (up to 6,000 lbs)	\$6.00/\$45.00
Multi-Engine Tie-Down Fees (6,000 to 12,000)	\$8.00/\$50.00
Multi-Engine Tie-Down Fees (over 12,000 lbs)	\$10.00/\$55.00
<b>Airport Use Permit/Off Airport Access Permit</b>	Month/Annual
Commercial Use/Off-Field Access Permit	\$125.00/\$1,500.00
Non-Commercial Use/Off-Field Access Permit	\$65.00/\$780.00
<b>T-Hangar Waiting List Application Fee</b>	\$15.00/month
<b>Late Fee(T-Hangar/Tie Downs/Building/Ground Leases)</b>	
Unless otherwise noted in agreement, a late charge of \$25.00	\$39.00 each occur
per occurrence, plus 1.5% interest on the unpaid balance	
<b>Non-Sufficient Fund Check Fee</b>	\$35.00
<b>Administrative Services</b>	
<b>Admin Services issued Security Cards</b>	
Security Access Card (New)	\$30.00/each
Security Access Card (Renewal)	\$30.00/each
Security Access Card Lost/Stolen (Replacement)	\$30.00/each



**Administrative Services - Code Section 13.00.030**

NAME OF FEE	FEE FY 14/15
<b>Meeting Room charge for non-County users</b>	
- evenings and weekend use (\$200.00 max per day)	\$50.00/hour
- after hours / emergency call in; 2 hour min based on hourly rates noted below	
<b>Uniformed Security hourly charge</b>	Charge at actual cost
- with 48 hours or more advance notice	\$13.89 / hour
- with 24 hours notice (but > 8)	\$15.50 / hour
<b>Buildings &amp; Grounds hourly charge</b>	\$41.60 / hour
- blended rate for chargeback when appropriate	
- after hours / emergency call in; 2 hour minimum	
<b>Custodial Services hourly charge</b>	\$34.15 / hour
- blended rate for chargeback when appropriate	
- after hours / emergency call in; 2 hour minimum	
<b>Admin Services office hourly rate</b>	\$34.00 / hour
- blended rate for chargeback when appropriate	

**Clerk-Recorder - Code Section 13.00.042**

NAME OF FEE	FEE FY 14/15
<b>Recording Fees</b>	
Recording Fee 1st page - 8.5 x11	\$14.00
Each additional page - 8.5 x 11	\$3.00
Combined documents - each title	\$14.00
Recording Penalty - Any page not 8.5 x 11 all pages of document additional	\$3.00
Print Size Penalty	\$1.00
Additional indexing - each additional reference	\$1.00
Additional indexing - more than ten names	\$1.00
Release of lien recorded in error by Gov't Agency (except Federal Gov't)	No Fee
Involuntary Lien Notice (in addition to standard recording fee) - each debtor at different address	\$7.00
Recording full releases of Gov't Agency Liens (State, County & City except Federal Gov't)	\$12.00
Military Discharge	No Fee
Recording Financing Statements (1-2 pgs) - State Sets Fee	\$10.00
Recording Financing Statements (3 or more pgs) - State Sets Fee	\$20.00
Filing & Indexing paper not required by law to be recorded	\$6.00
Survey Monument Fund Fee	\$10.00
Documentary Transfer Tax	.55/per \$500.00
Preliminary 20 Day Notice	\$35.00
Preliminary 20 Day Notice each additional parcel or address	\$20.00
Preliminary Change of Ownership Report not filed at time of recording	\$20.00
Annual Internet Access Fee - Public Records	\$6,000.00
<b>Vital Records Fees</b>	
Certified Copy of Birth Certificate/Certificate of No Record/Info. Copy of Birth = State Sets Fee	Fee Set by State
Certified Copy of Birth Certificate - Public Agency Applicant - State Sets Fee	Fee Set by State
Certified Copy of Certificate of Marriage/Certificate of No Record of Marriage - State Sets Fee	Fee Set by State
Certified Copy of Certificate of Marriage - Pub Agency Appl - State Sets Fee	Fee Set by State
Certified Copy of Death Record/Certificate of No Record/Info. Copy of Death - State Sets Fee	Fee Set by State
<b>Map Fees</b>	
Recording Map Fee - 1st page	\$9.00
Recording Map Fee each additional page	\$2.00
<b>Marriage Fees</b>	
Issuance of Public Marriage License	\$65.00
Issuance of Confidential Marriage License	\$70.00
Issuance of Duplicate Marriage License	\$25.00
Amendment of Confidential Marriage Record after 1 year	\$23.00
Issuance of Declaration of Marriage	\$60.00
Civil Marriage by Commissioner	\$40.00
Credible Witness Affidavit (each)	\$5.00

**Clerk-Recorder - Code Section 13.00.042**

NAME OF FEE	FEE FY 14/15
Office Witness Fee for Marriage Ceremony	\$20.00
After Hours Marriage License (Request for license after 4:45 p.m.)	\$25.00
<b>Fictitious Business Name Filing Fees</b>	
Fictitious Business Name Statement - 1 Business Name/Registrant	\$30.00
Each additional Fictitious Business at same location	\$5.00
Each additional Registrant operating under same name	\$5.00
Abandonment Statement	\$30.00
Withdrawal from Partnership Statement	\$30.00
Copy of Fictitious Business filings per month	\$10.00
Certified Copy of any statement on file re: fictitious business	\$3.00
<b>Copy &amp; Certification Fees</b>	
Photographic Copy of public record	\$2.00
Each additional page	\$0.50
Photographic map copy - 1st page - 11x17 inches	\$2.50
Each additional map page - 11x17	\$1.00
Photographic map copy - 1st page - 18x26 inches	\$3.00
Each additional map page - 18x26	\$2.00
Certificate under Seal	\$2.50
Certified Copy of Service Discharge	No Fee
Conformed Copy - each (Limit 2)	\$1.00
Map Image CD or Flash Drive	\$20.00 up to 100 images
Archival Map Images Hard Drive	\$500.00
CD Recorded Images per month	\$400.00
Federal Lien Search Certificate - 1968 forward	\$10.00
Fax Charge Per Page	\$1.00
<b>Miscellaneous Filing Fees</b>	
Bond Filing (doesn't include recording fee)	\$13.00
Process Server Registration (Includes Bond Filing)	\$117.00
Professional Photocopier Registration (Includes Bond Filing)	\$182.00
(Includes Bond Filing)	\$107.00
(Includes Bond Filing)	\$182.00
Additional Process Server ID Card	\$10.00
Certification of Notary Signature	\$10.00
Certification of Official Capacity or Signature Authorization	\$10.00
Administrative Filing Fee - Environmental - Fee Set by State	Fee Set by State
Environmental Impact Report - Fee Set by State	Fee Set by State
Negative Declaration - Fee Set by State	Fee Set by State
<b>Election Fees</b>	
Registration of Voter	No Fee
Certified Copy of Voter Registration	\$3.00
Copy of Voter Index, per thousand names	\$2.00+\$5.00setup
Copy of Reports or Stmt's, Political Reform Act per page	\$0.10
Preparing copies of any record per page	\$0.25

**Clerk-Recorder - Code Section 13.00.042**

NAME OF FEE	FEE FY 14/15
Certifying Fee	\$2.50
Searching record or files, per year (Clerk Research)	\$20 hr-1/2 hr min
Copy of voter index on disc/tape	\$100.00
Additional Reports added to Voter Index CD	\$5.00 each
Labels	.05 ea+\$5.00 setup
Absentee Chase - Fax (Includes initial mailing on CD)	\$150.00
Absentee Chase - CD	\$50.00 per CD
Surety Power of Attorney Filings - 1st name	\$12.00
Surety Power of Attorney Filings - each additional name	\$6.00
Humane Officer Filing	\$5.00
Initiative - Notice of Intent to Circulate Petition - Filing Fee (EC 9103)	\$200.00
Candidate Statement	Actual Cost
Election Related Custom Reports	\$15.00 per report

**Health - Code Section 13.00.052**

NAME OF FEE	FEE FY 14/15
<b>Miscellaneous</b>	
Copies of Medical Records (First four pages, no charge)	.25 per page
Medical Marijuana ID Card	\$126.00*
* Fee Reduced by Half if Medi-Cal Beneficiary	
Aids Court Mandated Class - Non-County Resident Fee	\$70.00
<b>Public Health - Clinic Services</b>	
Tuberculosis Skin Test	\$10.00 to \$25.00**
HIV Testing	\$15.00 to \$35.00**
Influenza (Adults and Children) Recommended Donation	\$10.00
<b>Public Health - Vital Records</b>	
After Hours Burial Permit (State Set Fee)	\$12.00
Burial Permit (State Set Fee)	\$12.00
Certified Copy of Birth Certificate (State Set Fee)	\$25.00
Certified Copy of Birth Government Agency (State Set Fee)	\$19.00
Certified Copy of Burial Permit (State Set Fee)	\$12.00
Certified Copy of Death Certificate (State Set Fee)	\$21.00
Certified Copy of Fetal Death Certificate (State Set Fee)	\$18.00
Certified Copy of Out of Country Letter (State Set Fee)	\$10.00
Crossfile Received (State Set Fee)	\$3.00
Crossfile Sent Out (State Set Fee-\$3.00 to Receiving Agency)	\$16.00
<b>Public Health - California Childrens Services</b>	
Annual Assessment Fee	\$20.00
Annual Enrollment Fee	\$60.00-\$1200.00**
* Fee Reduced by Half if Medi-Cal Beneficiary	
** Indicates a Sliding Fee Schedule	

**Probation - Code Section 13.00.056**[illegible]

**Treasurer - Code Section 13.00.060**

NAME OF FEE	FEE FY 14/15
<b>Business Licenses</b>	
Amusement Business (Initial Filing Fee Non-Refundable)	\$300.00
Amusement Business (License Fee - Per Day)	\$200.00
Bingo (Annual Fee)	\$50.00
Cardroom (Initial Filing Fee Non-Refundable)	\$300.00
Cardroom (Annual Fee)	\$200.00
Cardroom Table (Per Table)	\$180.00
Dance (Initial Filing Fee Non-Refundable)	\$300.00
Dance (Annual Fee)	\$200.00
Firearms (Process Fee)	\$25.00
Junk Dealer and/or Scrap Metal (Initial Filing Fee Non-Refundable)	\$300.00
Junk Dealer and/or Scrap Metal (Annual Filing Fee)	\$200.00
Massage Establishment Change of Location Fee	Per Resolution
Peddler/Itinerant Merchant Business License (Initial Filing Fee Non-Refundable)	\$300.00
Peddler/Itinerant Merchant Business License (Annual Fee)	\$200.00
Picture Arcade	Per Resolution
Picture Arcade Employee License	Per Resolution
Second Hand Dealer and/or Pawn Broker (Initial Filing Fee Non-Refundable)	\$300.00
Second Hand Dealer and/or Pawn Broker (Annual Fee)	\$200.00
Second Hand Dealer and/or Pawn Broker(Charitable Purpose/ Non-Profit/Fixed Location)	\$1.00
<b>Miscellaneous</b>	
Administrative Fee	\$16.00
CD of Current Tax Roll	\$50.00
CD of Prior Tax Roll (Delinquent)	\$50.00
Copy Fee (Per Page)	\$0.25
Property Tax System Print Screen (Per Screen)	\$0.50
DMV Hold for Delinquent Vessel Taxes	\$15.00
Duplicate Mobile Home Tax Clearance Certificate	\$30.00
Duplicate Release of Lien	\$20.00
Duplicate Tax Bill	\$1.50
Lot Line/Tentative Parcel Map (Per Parcel)	\$25.00
Postage, Mailing, Shipping & Handling	Actual Cost
Microfiche (Copy Per Parcel)	\$1.50
Power to Sell Fee (Secured Prior Year Roll)	\$35.00
Prior Year Payment Plan Fee (Secured & Unsecured)	\$50.00
Research Fee (Per Hour-Increments of 15 Minutes)	\$40.00
Returned Check Fee	\$35.00
Secured Delinquent Cost (2nd Installment Only)	\$20.00
Segregation of Tax Bill (Split into 2 Bills)	\$50.00
Segregation of Tax Bill (Each Additional Bill up to 4 Max)	\$50.00

**Treasurer - Code Section 13.00.060**

NAME OF FEE	FEE FY 14/15
TSTM/Tract Map (Per Hour - Up to a Maximum of \$100.00 Per Parcel)	Time & Materials
Unsecured Collections Rate (Per Hour - Increments of 15 minutes)	\$35.00
Unsecured Reminder Notice (Per Assessment)	\$1.50