



**BOARD OF DIRECTORS MEETING  
FRIDAY, JUNE 2, 2017 – 8:30 A.M.  
OMNITRANS METRO FACILITY  
1700 WEST 5<sup>TH</sup> STREET  
SAN BERNARDINO, CA 92411**

The Board of Directors meeting facility is accessible to persons with disabilities. If assistive listening devices or other auxiliary aids or Limited English Proficiency services are needed in order to participate in the public meeting, requests should be made through the Board Secretary at least three (3) business days prior to the Board Meeting. The Board Secretary's telephone number is 909-379-7110 (voice) or 909-384-9351 (TTY). If you have comments about items on the agenda or other general concerns and are not able to attend the meeting, please mail them to VTrans at 1700 West Fifth Street, San Bernardino, California, Attention Board Secretary. Comments may also be submitted by email to [BoardSecretary@omnitrans.org](mailto:BoardSecretary@omnitrans.org).

**THIS MEETING IS AVAILABLE BY TELECONFERENCE AT THE FOLLOWING LOCATIONS AND  
WILL BE CONDUCTED IN ACCORDANCE WITH GOVERNMENT CODE SECTION 54953(B)**

**CITY OF CHINO HILLS, 14000 CITY CENTER DRIVE, CHINO HILLS CA 91709**

**THESE LOCATIONS ARE ACCESSIBLE TO THE PUBLIC AND MEMBERS OF THE PUBLIC MAY  
ADDRESS THE COMMITTEE FROM THESE TELECONFERENCE LOCATIONS**

**A. CALL TO ORDER**

1. Pledge of Allegiance
2. Roll Call

**B. ANNOUNCEMENTS/PRESENTATIONS**

1. Next Board Meeting: To Be Determined

**C. COMMUNICATIONS FROM THE PUBLIC**

This is the time and place for the general public to address the Board for items that are not on the agenda. In accordance with rules applicable to meetings of the Board of Directors, comments on items not on the agenda and on items on the agenda are to be limited to a total of three (3) minutes per individual.

**D. POSSIBLE CONFLICT OF INTEREST ISSUES**

1. Note agenda item contractors, subcontractors and agents, which may require member abstentions due to conflict of interest and financial interests. Board Member abstentions shall be stated under this item for recordation on the appropriate item.

**E. CONSENT CALENDAR**

The following items are expected to be routine and non-controversial. The Board will act upon them at one time without discussion, unless the Board directs that an item be held for further discussion under Agenda Item F, Discussion Items. Any person wishing to address consent items should address the Board under Agenda Item #E3 Action on Consent Calendar.

1. Approve Minutes of February 3, 2017
2. Receive and File Financial Statements through April 30, 2017
3. Action on Consent Calendar

3  
7



**BOARD OF DIRECTORS MEETING  
FRIDAY, JUNE 2, 2017 – 8:30 A.M.  
OMNITRANS METRO FACILITY  
1700 WEST 5<sup>TH</sup> STREET  
SAN BERNARDINO, CA 92411**

**F. DISCUSSION ITEMS**

- |  |    |
|--|----|
| 1. CEO Report  | 41 |
| 2. Approve Amendment No. 3 to Contract No. 11174 between San Bernardino County Transportation Authority and Valley Transportation Services     |    |
| 3. Approve Resolution Authorizing the Transfer of Assets from Valley Transportation Services to San Bernardino County Transportation Authority | 44 |
| 4. Approve Extension of Administrative Agent Agreement between Valley Transportation Authority and Omnitrans                                   | 46 |
| 5. Approve Amendment No. 3 to Contract for Legal Services with Renne Sloan Holtzman Sakai LLP  | 51 |
| 6. Approve Dissolution of Valley Transportation Services   | 55 |

**F. ADJOURNMENT**

**DATE:** June 2, 2017  
**TO:** Valley Transportation Services Board of Directors  
**FROM:** P. Scott Graham, CEO  
**RE:** Minutes of the February 3, 2017, Board Meeting

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## MINUTES

1. Call to Order– meeting called to order at 8:02 a.m. by Board Chairman Sam Spagnolo.

2. Pledge of Allegiance

The pledge was not recited.

3. Roll Call

Directors Present

Penny Lilburn  
John Roberts  
Sam Spagnolo  
Alan Wapner

Directors Teleconferencing

Ed Graham  
Alan Wapner

Directors Absent

None

Legal Counsel

Jennifer Gore, via Teleconference

Others Present

P. Scott Graham – Omnitrans  
Maurice Mansion – Omnitrans  
Doug Stanley - Omnitrans  
Don Walker - Omnitrans  
Vicki Dennett – Omnitrans  
Andrea Zureick - San Bernardino County Transit Authority  
Nancy Strickert - San Bernardino County Transit Authority

4. Public Comment for Items not on the Agenda

None.

5. Comments by Board Members

None.

6. Consent Calendar

a. Approve Minutes of September 21, 2016, Board Meeting

Motion by Director Lilburn, seconded by Director Roberts, that approved the September 21, 2016 minutes. Director Graham abstained. Roll call vote was taken and the motion was approved by Members present.

b. Receive and File Financial Statements through December 31, 2016

This item was received and filed.

7. CEO Report

a. Receive update

- P. Scott Graham introduced Doug Stanley as the Interim Director of Special Transit Services. He asked Mr. Stanley to provide a brief update on the Rural Volunteer (TREP) Program. Doug Stanley reported that there is currently \$176,000 remaining in the budget and based on the projections, the funds are expected to be spent by the end of the fiscal year. Omnitrans staff is meeting with San Bernardino County Transit Authority (SBCTA) and the other operators involved to discuss the transition to their programs which will begin in July.
- P. Scott Graham provided a brief update on the Dialysis Pilot Program. He stated that there are two projects; one in the City of Highland and one in the West Valley. He explained that agreements are being drafted for those programs and are expected to be presented to the Board in June. Director Lilburn provided additional information on the Highland program and stated that it will be operated through the Highland Senior Center using volunteer drivers.

8. Discussion Items

a. Adopt 2017 Meeting Calendar

Motion by Director Graham, seconded by Director Lilburn, that approved the meetings to be held quarterly, the first Friday of each month, at 8:30 a.m., as reflected below.

April 7, 2017  
July 7, 2017  
October 6, 2017

April 7, 2017 – Finance Committee Meeting

Roll call vote was taken and the motion was unanimously approved.

b. Election of Officers for 2017

Motion by Director Spagnolo, seconded by Director Roberts, that appointed the following slate of officers to the VTrans Board.

Sam Spagnolo, Board Chair  
Ed Graham, Treasurer

John Roberts , Vice Chair  
Penny Lilburn, Secretary

Alan Wapner, Finance Committee  
John Roberts, Finance Committee

Ed Graham, Finance Committee

Roll call vote was taken and the motion was unanimously approved.

c. Special Transit Services Fiscal Year 2016/2017 Budget

Treasury Manager, Maurice Mansion presented the Special Transit Services FY2016/2017 Budget. He noted the only difference to the budget was that the prior budget did not include salary and benefits for the VTrans employees previously being paid for by Omnitrans, whereas the current budget includes the allocation for those positions.

The Board engaged in a discussion and there were some questions regarding the funding sources and allocation of funds.

VTrans Legal Counsel Jennifer Gore recommended that the Special Transit Services budget be approved by the VTrans Board to the extent it applies to VTrans and the Omnitrans Board approve the budget as it applies to Omnitrans.

Motion by Director Spagnolo, seconded by Director Roberts, that the VTrans Board approve the Omnitrans Special Transit Services Fiscal Year 2016/2017 Budget for the Consolidated Transit Services Agency to the extent it pertains to VTrans run programs and addressed therein. Roll call vote was taken and the motion was unanimously approved.

d. Status of Transition of CTSA Activities and Options for VTrans

This item was presented by Legal Counsel, Jennifer Gore. Ms. Gore stated that the purpose of this item was to provide the Board with a status report on the transition of VTrans operations to Omnitrans.

Ms. Gore raised the issue that at some point, the Board will need to determine if the Omnitrans Consolidated Transportation Services Agency (CTSA) has any need for a nonprofit arm to it. She stated that if the Omnitrans decides to incorporate a nonprofit to its' CTSA, perhaps the Board may consider that VTrans transition into that role rather than to close its' operation and set up a new nonprofit. She stated that this is not a decision that needs to be determined today; but was brought up to inform the Board and begin the discussion as to what direction the Board would like to pursue.

The Board engaged in a discussion and several questions were raised regarding the possible change in Board composition if a transition to a nonprofit was to occur. Jennifer Gore mentioned that there are various options as far as the composition, however stated that any changes to the Bylaws will need to be approved by the SBCTA Board.

The consensus of the Board was to begin discussions with Omnitrans staff to explore the value of maintaining the nonprofit and whether or not it is needed and report back at a future date before presenting a recommendation to the Omnitrans Board.

9. Adjourn – Meeting adjourned at 8:45 a.m.

Approved on June 2, 2017

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Sam Spagnolo, Chair

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Penny Lilburn, Secretary of the Board

Valley Transportation Services  
**Balance Sheet**  
As of April 30, 2017

Item E2

Apr 30, 17

**ASSETS**

**Current Assets**

**Checking/Savings**

101001 · Checking-Bank of the West	70,713.47
101002 · Bank of the West Money Market	897,309.35
101006 · Citizens Bank	40.00
101007 · Chase Investment Account	1,146,668.21
101008 · Chase ACH Debit Checking	<u>355,690.95</u>

Total Checking/Savings 2,470,421.98

**Accounts Receivable**

102001 · Accounts Receivable	33,854.41
102901 · Grants Receivable	<u>29,365.18</u>

Total Accounts Receivable 63,219.59

**Other Current Assets**

**103000 · Inventory**

103001 · Inventory-Parts/Fluids	34,048.13
103005 · Inventory-Cores	<u>1,289.76</u>

Total 103000 · Inventory 35,337.89

Total Other Current Assets 35,337.89

Total Current Assets 2,568,979.46

**Fixed Assets**

**111002 · Non-Grant Fixed Assets**

1110021 · NG - Computer Equipment	24,436.93
1110022 · NG-Furniture & Shop Equip	154,828.34
1110025 · NG-Vehicles	35,140.77
1110028 · NG-Leashold Improvements	<u>231,255.26</u>

Total 111002 · Non-Grant Fixed Assets 445,661.30

2:23 PM  
05/25/17  
Accrual Basis

**Valley Transportation Services**  
**Balance Sheet**  
As of April 30, 2017

	<u>Apr 30, 17</u>
111004 · Acc Depr Non-Grant Equipment	-82,250.00
<b>Total Fixed Assets</b>	<u>363,411.30</u>
<b>Other Assets</b>	
152001 · Security Deposits	8,605.43
161001 · 457 Deferred Compensation Trust	76,422.58
<b>Total Other Assets</b>	<u>85,028.01</u>
<b>TOTAL ASSETS</b>	<u><u>3,017,418.77</u></u>
<b>LIABILITIES &amp; EQUITY</b>	
<b>Liabilities</b>	
<b>Current Liabilities</b>	
<b>Accounts Payable</b>	
201001 · Trade Accounts Payable	140,803.13
<b>Total Accounts Payable</b>	<u>140,803.13</u>
<b>Credit Cards</b>	
206000 · Credit Cards	
206005 · Chase Credit Card	-279.41
206000 · Credit Cards - Other	-63.37
<b>Total 206000 · Credit Cards</b>	<u>-342.78</u>
<b>Total Credit Cards</b>	-342.78
<b>Other Current Liabilities</b>	
202002 · Accrued Vacation	2,129.09
203000 · Sales & Use Tax Payable	
203001 · Sales Tax Payable	7,347.91
203002 · Use Tax Payable	201.87
<b>Total 203000 · Sales &amp; Use Tax Payable</b>	<u>7,549.78</u>



2:23 PM  
05/25/17  
Accrual Basis

Valley Transportation Services  
**Balance Sheet**  
As of April 30, 2017

	<u>Apr 30, 17</u>
203003 - New Tire Usage Tax Payable	55.08
Total Other Current Liabilities	<u>9,733.95</u>
Total Current Liabilities	150,194.30
Long Term Liabilities	
221001 - Long-Term Lease/Notes Payable	
2210011 - Capital Lease - Kyocera Copier	839.47
Total 221001 - Long-Term Lease/Notes Payable	<u>839.47</u>
230001 - 457 Deferred Comp Trust Payable	76,422.58
Total Long Term Liabilities	<u>77,262.05</u>
Total Liabilities	227,456.35
Equity	
320000 - Unrestricted Reserves	1,195,170.07
320010 - Committed Reserves	1,635,578.00
320011 - Operating Reserve	750,000.00
Net Income	-790,785.65
Total Equity	<u>2,789,962.42</u>
TOTAL LIABILITIES & EQUITY	<u>3,017,418.77</u>

**Valley Transportation Services**  
**A/R Aging Summary**  
As of April 30, 2017

	<u>Current</u>	<u>1 - 30</u>	<u>31 - 60</u>	<u>61 - 90</u>	<u>&gt; 90</u>	<u>TOTAL</u>
Department of Transportation - CAITRANS	0.00	0.00	0.00	0.00	29,365.18	29,365.18
IRC	1,904.48	2,214.50	0.00	0.00	0.00	4,118.98
Omni Trans	0.00	12,703.07	0.00	-31,657.99	36,399.26	17,444.34
ONTARIO POMONA ARC	4,499.42	6,885.08	0.00	0.00	-0.70	11,383.80
Ontario/Montclair YMCA	0.00	252.41	0.00	129.27	0.00	381.68
Salem Christian Homes	0.00	239.79	0.00	0.00	0.00	239.79
Victor Valley Transit Authority	0.00	0.00	0.00	0.00	285.82	285.82
<b>TOTAL</b>	<u><u>6,403.90</u></u>	<u><u>22,294.85</u></u>	<u><u>0.00</u></u>	<u><u>-31,528.72</u></u>	<u><u>66,049.56</u></u>	<u><u>63,219.59</u></u>

**Valley Transportation Services**  
**A/P Aging Summary**  
As of April 30, 2017

	<u>Current</u>	<u>1 - 30</u>	<u>31 - 60</u>	<u>61 - 90</u>	<u>&gt; 90</u>	<u>TOTAL</u>
Bell Cab	26.83	0.00	0.00	0.00	0.00	26.83
Central City Lutheran Mission	0.00	2,542.59	2,053.37	2,137.89	1,970.34	8,704.19
Chase Card Services	0.00	0.00	0.00	0.00	279.41	279.41
City of Grand Terrace	0.00	3,964.44	0.00	0.00	0.00	3,964.44
City of Redlands	5,434.29	0.00	0.00	0.00	0.00	5,434.29
Community Senior Services	0.00	2,465.27	4,529.66	0.00	0.00	6,994.93
Cynthia Inclan	15.52	0.00	0.00	0.00	28.62	44.14
Edwards Office Systems	109.78	0.00	0.00	0.00	0.00	109.78
Elizabeth White	116.36	0.00	0.00	0.00	0.00	116.36
Gloria Catalan	89.56	0.00	0.00	0.00	0.00	89.56
Inland Empire United Way	0.00	0.00	2,827.60	0.00	0.00	2,827.60
Marcus Garcia	94.64	0.00	0.00	0.00	0.00	94.64
NAPA Auto Parts	923.74	0.00	0.00	0.00	0.00	923.74
OmniTrans	63,550.39	0.00	0.00	0.00	0.00	63,550.39
Ontario-Montclair YMCA	2,165.71	2,782.64	0.00	0.00	0.00	4,948.35
Ontario Municipal Utilities Company	299.53	0.00	0.00	0.00	0.00	299.53
OPARC	0.00	2,608.36	4,757.08	0.00	0.00	7,365.44
Performance Construction & Painting	0.00	2,985.00	0.00	0.00	0.00	2,985.00
PVW	13,656.34	14,706.65	0.00	0.00	0.00	28,362.99
Renne Sloan Holtzman Sakai	967.50	1,171.00	0.00	0.00	0.00	2,138.50
Ruby Sulca	113.42	0.00	0.00	0.00	0.00	113.42
Yellow Cab of Pomona	1,409.00	0.00	0.00	0.00	0.00	1,409.00
Yesenia De Anda	20.60	0.00	0.00	0.00	0.00	20.60
<b>TOTAL</b>	<u><b>88,993.21</b></u>	<u><b>33,225.95</b></u>	<u><b>14,167.71</b></u>	<u><b>2,137.89</b></u>	<u><b>2,278.37</b></u>	<u><b>140,803.13</b></u>

Valley Transportation Services  
Profit & Loss Budget Performance - Operating Fund  
July 2016 through April 2017

	<u>Jul '16 - Apr 17</u>	<u>Budget</u>	<u>\$ Over Budget</u>	<u>Jul '16 - Apr 17</u>	<u>YTD Budget</u>	<u>\$ Over Budget</u>	<u>Annual Budget</u>
Income							
409001 · Measure I							
409002 · Measure I OP Revenue	0.00	318,083.34	-318,083.34	0.00	318,083.34	-318,083.34	381,700.00
Total 409001 · Measure I	0.00	318,083.34	-318,083.34	0.00	318,083.34	-318,083.34	381,700.00
414001 · Interest Income	817.84	416.66	401.18	817.84	416.66	401.18	500.00
Total Income	817.84	318,500.00	-317,682.16	817.84	318,500.00	-317,682.16	382,200.00
Gross Profit	817.84	318,500.00	-317,682.16	817.84	318,500.00	-317,682.16	382,200.00
Expense							
501001 · Payroll	-120.00	0.00	-120.00	-120.00	0.00	-120.00	0.00
502005 · Employer Pension Costs	1,500.00	0.00	1,500.00	1,500.00	0.00	1,500.00	0.00
503001 · Professional Services							
5030016 · Administrative Services	594,390.76	250,000.00	344,390.76	594,390.76	250,000.00	344,390.76	300,000.00
5030012 · Consulting Services	-3,799.17	0.00	-3,799.17	-3,799.17	0.00	-3,799.17	0.00
5030013 · Legal Services	11,880.76	10,000.00	1,880.76	11,880.76	10,000.00	1,880.76	12,000.00
Total 503001 · Professional Services	602,472.35	260,000.00	342,472.35	602,472.35	260,000.00	342,472.35	312,000.00
503002 · Payroll Processing Services	60.00	0.00	60.00	60.00	0.00	60.00	0.00
503005 · Facility							
5030051 · Facility Rent	44,783.47	32,333.34	12,450.13	44,783.47	32,333.34	12,450.13	38,800.00
5030053 · Facility - Alarm/Security	0.00	333.34	-333.34	0.00	333.34	-333.34	400.00
Total 503005 · Facility	44,783.47	32,666.68	12,116.79	44,783.47	32,666.68	12,116.79	39,200.00
504008 · Office Supplies	2,955.44	0.00	2,955.44	2,955.44	0.00	2,955.44	0.00
504009 · Postage	19.16	0.00	19.16	19.16	0.00	19.16	0.00
505001 · Telephone	6,325.44	0.00	6,325.44	6,325.44	0.00	6,325.44	0.00
506001 · Insurance Premiums	324.92	8,750.00	-8,425.08	324.92	8,750.00	-8,425.08	10,500.00
506021 · Computer Supp, Serv. & Software	2,121.41	833.34	1,288.07	2,121.41	833.34	1,288.07	1,000.00
506085 · Facility Maint. & Supplies	587.00			587.00			

Valley Transportation Services  
Profit & Loss Budget Performance - Operating Fund  
July 2016 through April 2017

	<u>Jul '16 - Apr 17</u>	<u>Budget</u>	<u>\$ Over Budget</u>	<u>Jul '16 - Apr 17</u>	<u>YTD Budget</u>	<u>\$ Over Budget</u>	<u>Annual Budget</u>
507001 · Tax/License/Dues/Permits	50.00	0.00	50.00	50.00	0.00	50.00	0.00
509001 · Travel							
5090012 · Staff Travel	20,406.82	0.00	20,406.82	20,406.82	0.00	20,406.82	0.00
5090013 · Employee Mileage Reimbursement	974.29	0.00	974.29	974.29	0.00	974.29	0.00
Total 509001 · Travel	21,381.11	0.00	21,381.11	21,381.11	0.00	21,381.11	0.00
509002 · Professional Development	885.00	0.00	885.00	885.00	0.00	885.00	0.00
513002 · Depreciation-Non Grant Equip	0.00	6,250.00	-6,250.00	0.00	6,250.00	-6,250.00	7,500.00
514001 · Miscellaneous	590.08	10,000.00	-9,409.92	590.08	10,000.00	-9,409.92	12,000.00
Total Expense	683,935.38	318,500.02	365,435.36	683,935.38	318,500.02	365,435.36	382,200.00
Net Income	<u>-683,117.54</u>	<u>-0.02</u>	<u>-683,117.52</u>	<u>-683,117.54</u>	<u>-0.02</u>	<u>-683,117.52</u>	<u>0.00</u>

**Valley Transportation Services**  
**Profit & Loss Budget Performance - Maintenance Dept.**  
July 2016 through April 2017

	<u>Jul '16 - Apr 17</u>	<u>Budget</u>	<u>\$ Over Budget</u>	<u>Jul '16 - Apr 17</u>	<u>YTD Budget</u>	<u>\$ Over Budget</u>	<u>Annual Budget</u>
<b>Income</b>							
407002 - Maintenance Service Revenue							
4070023 - Inspection Revenue - Comm Prtnr	18,491.16	0.00	18,491.16	18,491.16	0.00	18,491.16	0.00
4070021 - Community Partner Serv. Revenue	33,916.31	43,666.66	-9,750.35	33,916.31	43,666.66	-9,750.35	52,400.00
Total 407002 - Maintenance Service Revenue	52,407.47	43,666.66	8,740.81	52,407.47	43,666.66	8,740.81	52,400.00
407003 - Maintenance Parts Revenue							
4070031 - Maint. Parts Revenue-Comm Prtnr	32,884.58	38,583.34	-5,698.76	32,884.58	38,583.34	-5,698.76	46,300.00
Total 407003 - Maintenance Parts Revenue	32,884.58	38,583.34	-5,698.76	32,884.58	38,583.34	-5,698.76	46,300.00
4070034 - Maint Revenue-Outside Services	0.00	333.34	-333.34	0.00	333.34	-333.34	400.00
409001 - Measure I							
409002 - Measure I OP Revenue	0.00	10,583.34	-10,583.34	0.00	10,583.34	-10,583.34	12,700.00
Total 409001 - Measure I	0.00	10,583.34	-10,583.34	0.00	10,583.34	-10,583.34	12,700.00
Total Income	85,292.05	93,166.68	-7,874.63	85,292.05	93,166.68	-7,874.63	111,800.00
Gross Profit	85,292.05	93,166.68	-7,874.63	85,292.05	93,166.68	-7,874.63	111,800.00
<b>Expense</b>							
502002 - Workers Comp	947.13	0.00	947.13	947.13	0.00	947.13	0.00
503003 - Bank Fees	70.98	1,000.00	-929.02	70.98	1,000.00	-929.02	1,200.00
503005 - Facility							
5030051 - Facility Rent	34,473.31	34,416.66	56.65	34,473.31	34,416.66	56.65	41,300.00
5030052 - Facility Repair	2,985.00	0.00	2,985.00	2,985.00	0.00	2,985.00	0.00
5030053 - Facility - Alarm/Security	342.00	416.66	-74.66	342.00	416.66	-74.66	500.00
Total 503005 - Facility	37,800.31	34,833.32	2,966.99	37,800.31	34,833.32	2,966.99	41,800.00
504005 - Cost of Goods Sublet	480.00	3,666.66	-3,186.66	480.00	3,666.66	-3,186.66	4,400.00
504006 - Cost of Goods Parts/Fluids/Tire	0.00	30,833.34	-30,833.34	0.00	30,833.34	-30,833.34	37,000.00
504008 - Office Supplies	194.41	83.34	111.07	194.41	83.34	111.07	100.00

Valley Transportation Services  
Profit & Loss Budget Performance - Maintenance Dept.  
July 2016 through April 2017

	<u>Jul '16 - Apr 17</u>	<u>Budget</u>	<u>\$ Over Budget</u>	<u>Jul '16 - Apr 17</u>	<u>YTD Budget</u>	<u>\$ Over Budget</u>	<u>Annual Budget</u>
504009 · Postage	0.00	83.34	-83.34	0.00	83.34	-83.34	100.00
505001 · Telephone	2,155.96	3,166.66	-1,010.70	2,155.96	3,166.66	-1,010.70	3,800.00
505002 · Utilities	3,658.01	3,666.66	-8.65	3,658.01	3,666.66	-8.65	4,400.00
506001 · Insurance Premiums	4,382.90	3,666.66	716.24	4,382.90	3,666.66	716.24	4,400.00
506021 · Computer Supp, Serv. & Software	3,565.16	3,750.00	-184.84	3,565.16	3,750.00	-184.84	4,500.00
506052 · Minor Equip & Office Furniture	184.92	0.00	184.92	184.92	0.00	184.92	0.00
506060 · Shop Supplies	818.81	1,083.34	-264.53	818.81	1,083.34	-264.53	1,300.00
506070 · Shop Tools	105.00	0.00	105.00	105.00	0.00	105.00	0.00
506080 · Repairs and Maintenance	391.67	0.00	391.67	391.67	0.00	391.67	0.00
506085 · Facility Maint. & Supplies	657.57	1,666.66	-1,009.09	657.57	1,666.66	-1,009.09	2,000.00
507001 · Tax/License/Dues/Permits	5,045.35	833.34	4,212.01	5,045.35	833.34	4,212.01	1,000.00
509001 · Travel							
5090013 · Employee Mileage Reimbursement	0.00	333.34	-333.34	0.00	333.34	-333.34	400.00
Total 509001 · Travel	0.00	333.34	-333.34	0.00	333.34	-333.34	400.00
509003 · Uniforms & Laundry	4,030.42	2,500.00	1,530.42	4,030.42	2,500.00	1,530.42	3,000.00
514001 · Miscellaneous	2,960.10	2,000.00	960.10	2,960.10	2,000.00	960.10	2,400.00
69901 · Construction - Temp Holding Acc	4,600.00	0.00	4,600.00	4,600.00	0.00	4,600.00	0.00
Total Expense	72,048.70	93,166.66	-21,117.96	72,048.70	93,166.66	-21,117.96	111,800.00
Net Income	13,243.35	0.02	13,243.33	13,243.35	0.02	13,243.33	0.00

Valley Transportation Services  
Profit & Loss Budget Performance-VTREP  
July 2016 through April 2017

	<u>Jul '16 - Apr 17</u>	<u>Budget</u>	<u>\$ Over Budget</u>	<u>Jul '16 - Apr 17</u>	<u>YTD Budget</u>	<u>\$ Over Budget</u>	<u>Annual Budget</u>
Income							
409001 - Measure I							
409002 - Measure I OP Revenue	0.00	29,128.34	-29,128.34	0.00	29,128.34	-29,128.34	34,954.00
Total 409001 - Measure I	0.00	29,128.34	-29,128.34	0.00	29,128.34	-29,128.34	34,954.00
409007 - JARC - Operating Revenue	3,128.11	5,825.00	-2,696.89	3,128.11	5,825.00	-2,696.89	6,990.00
409008 - New Freedom Operating Revenue	12,441.65	23,302.50	-10,860.85	12,441.65	23,302.50	-10,860.85	27,963.00
Total Income	15,569.76	58,255.84	-42,686.08	15,569.76	58,255.84	-42,686.08	69,907.00
Gross Profit	15,569.76	58,255.84	-42,686.08	15,569.76	58,255.84	-42,686.08	69,907.00
Expense							
503001 - Professional Services							
5030015 - Marketing Services	0.00	1,666.66	-1,666.66	0.00	1,666.66	-1,666.66	2,000.00
Total 503001 - Professional Services	0.00	1,666.66	-1,666.66	0.00	1,666.66	-1,666.66	2,000.00
503003 - Bank Fees	0.00	416.66	-416.66	0.00	416.66	-416.66	500.00
504001 - Trans-Fuel Cost	68.98			68.98			
504008 - Office Supplies	199.37	0.00	199.37	199.37	0.00	199.37	0.00
504009 - Postage	0.00	833.34	-833.34	0.00	833.34	-833.34	1,000.00
505001 - Telephone	64.39	0.00	64.39	64.39	0.00	64.39	0.00
506021 - Computer Supp, Serv. & Software	7.32	0.00	7.32	7.32	0.00	7.32	0.00
506052 - Minor Equip & Office Furniture	0.00	1,666.66	-1,666.66	0.00	1,666.66	-1,666.66	2,000.00
509001 - Travel							
5090013 - Employee Mileage Reimbursement	94.88	833.34	-738.46	94.88	833.34	-738.46	1,000.00
Total 509001 - Travel	94.88	833.34	-738.46	94.88	833.34	-738.46	1,000.00
509002 - Professional Development	0.00	1,250.00	-1,250.00	0.00	1,250.00	-1,250.00	1,500.00
509008 - Mileage Reimbursement Stipend	79,352.14	45,833.34	33,518.80	79,352.14	45,833.34	33,518.80	55,000.00
514001 - Miscellaneous	0.00	1,325.84	-1,325.84	0.00	1,325.84	-1,325.84	1,591.00
60000 - Overhead Applied	0.00	4,430.00	-4,430.00	0.00	4,430.00	-4,430.00	5,316.00



Valley Transportation Services  
Profit & Loss Budget Performance-VTREP  
July 2016 through April 2017

	<u>Jul '16 - Apr 17</u>	<u>Budget</u>	<u>\$ Over Budget</u>	<u>Jul '16 - Apr 17</u>	<u>YTD Budget</u>	<u>\$ Over Budget</u>	<u>Annual Budget</u>
Total Expense	<u>79,787.08</u>	<u>58,255.84</u>	<u>21,531.24</u>	<u>79,787.08</u>	<u>58,255.84</u>	<u>21,531.24</u>	<u>69,907.00</u>
Net Income	<u>-64,217.32</u>	<u>0.00</u>	<u>-64,217.32</u>	<u>-64,217.32</u>	<u>0.00</u>	<u>-64,217.32</u>	<u>0.00</u>

Valley Transportation Services  
Profit & Loss Budget Performance-TREP  
July 2016 through April 2017

	<u>Jul '16 - Apr 17</u>	<u>Budget</u>	<u>\$ Over Budget</u>	<u>Jul '16 - Apr 17</u>	<u>YTD Budget</u>	<u>\$ Over Budget</u>	<u>Annual Budget</u>
Income							
409009 · Rural TREP 5310	173,336.68			173,336.68			
409007 · JARC - Operating Revenue	1,864.65			1,864.65			
409008 · New Freedom Operating Revenue	7,458.60	208,333.34	-200,874.74	7,458.60	208,333.34	-200,874.74	250,000.00
Total Income	<u>182,659.93</u>	<u>208,333.34</u>	<u>-25,673.41</u>	<u>182,659.93</u>	<u>208,333.34</u>	<u>-25,673.41</u>	<u>250,000.00</u>
Gross Profit	182,659.93	208,333.34	-25,673.41	182,659.93	208,333.34	-25,673.41	250,000.00
Expense							
503003 · Bank Fees	40.68	416.66	-375.98	40.68	416.66	-375.98	500.00
504008 · Office Supplies	209.73	0.00	209.73	209.73	0.00	209.73	0.00
504009 · Postage	0.00	1,250.00	-1,250.00	0.00	1,250.00	-1,250.00	1,500.00
505001 · Telephone	64.37	0.00	64.37	64.37	0.00	64.37	0.00
506021 · Computer Supp, Serv. & Software	7.32	2,500.00	-2,492.68	7.32	2,500.00	-2,492.68	3,000.00
509001 · Travel							
5090012 · Staff Travel	0.00	1,250.00	-1,250.00	0.00	1,250.00	-1,250.00	1,500.00
Total 509001 · Travel	<u>0.00</u>	<u>1,250.00</u>	<u>-1,250.00</u>	<u>0.00</u>	<u>1,250.00</u>	<u>-1,250.00</u>	<u>1,500.00</u>
509002 · Professional Development	0.00	1,250.00	-1,250.00	0.00	1,250.00	-1,250.00	1,500.00
509008 · Mileage Reimbursement Stipend	0.00	191,083.34	-191,083.34	0.00	191,083.34	-191,083.34	229,300.00
514001 · Miscellaneous	0.00	1,250.00	-1,250.00	0.00	1,250.00	-1,250.00	1,500.00
60000 · Overhead Applied	0.00	9,333.34	-9,333.34	0.00	9,333.34	-9,333.34	11,200.00
Total Expense	<u>322.10</u>	<u>208,333.34</u>	<u>-208,011.24</u>	<u>322.10</u>	<u>208,333.34</u>	<u>-208,011.24</u>	<u>250,000.00</u>
Net Income	<u>182,337.83</u>	<u>0.00</u>	<u>182,337.83</u>	<u>182,337.83</u>	<u>0.00</u>	<u>182,337.83</u>	<u>0.00</u>

Valley Transportation Services  
Profit & Loss Budget Performance-Travel Training  
April 2017

	<u>Apr 17</u>	<u>Budget</u>	<u>\$ Over Budget</u>	<u>Jul '16 - Apr 17</u>	<u>YTD Budget</u>	<u>\$ Over Budget</u>	<u>Annual Budget</u>
Income							
409001 - Measure I							
409002 - Measure I OP Revenue	0.00	652.08	-652.08	0.00	6,520.84	-6,520.84	7,825.00
Total 409001 - Measure I	0.00	652.08	-652.08	0.00	6,520.84	-6,520.84	7,825.00
409007 - JARC - Operating Revenue	0.00	1,630.25	-1,630.25	50,771.25	16,302.50	34,468.75	19,563.00
409008 - New Freedom Operating Revenue	0.00	978.17	-978.17	30,383.59	9,781.66	20,601.93	11,738.00
Total Income	0.00	3,260.50	-3,260.50	81,154.84	32,605.00	48,549.84	39,126.00
Gross Profit	0.00	3,260.50	-3,260.50	81,154.84	32,605.00	48,549.84	39,126.00
Expense							
504008 - Office Supplies	21.95	0.00	21.95	236.28	0.00	236.28	0.00
504009 - Postage	0.00	250.00	-250.00	0.00	2,500.00	-2,500.00	3,000.00
505001 - Telephone	0.00	833.33	-833.33	5,087.69	8,333.34	-3,245.65	10,000.00
506021 - Computer Supp, Serv. & Software	0.00	583.33	-583.33	109.90	5,833.34	-5,723.44	7,000.00
509001 - Travel							
5090013 - Employee Mileage Reimbursement	413.98	1,000.00	-586.02	3,315.36	10,000.00	-6,684.64	12,000.00
Total 509001 - Travel	413.98	1,000.00	-586.02	3,315.36	10,000.00	-6,684.64	12,000.00
509002 - Professional Development	0.00	416.67	-416.67	0.00	4,166.66	-4,166.66	5,000.00
514001 - Miscellaneous	0.00	177.17	-177.17	2,765.28	1,771.66	993.62	2,126.00
Total Expense	435.93	3,260.50	-2,824.57	11,514.51	32,605.00	-21,090.49	39,126.00
Net Income	<u>-435.93</u>	<u>0.00</u>	<u>-435.93</u>	<u>69,640.33</u>	<u>0.00</u>	<u>69,640.33</u>	<u>0.00</u>

Valley Transportation Services  
Profit & Loss Budget Performance-TAXI  
April 2017

	<u>Apr 17</u>	<u>Budget</u>	<u>\$ Over Budget</u>	<u>Jul '16 - Apr 17</u>	<u>YTD Budget</u>	<u>\$ Over Budget</u>	<u>Annual Budget</u>
Income							
409001 - Measure I							
409002 - Measure I OP Revenue	0.00	11,271.33	-11,271.33	0.00	112,713.34	-112,713.34	135,256.00
Total 409001 - Measure I	0.00	11,271.33	-11,271.33	0.00	112,713.34	-112,713.34	135,256.00
409007 - JARC - Operating Revenue	0.00	3,757.08	-3,757.08	6,226.48	37,570.84	-31,344.36	45,085.00
464005 - TAXI Participant User Fee	560.00	0.00	560.00	5,509.66	0.00	5,509.66	0.00
Total Income	560.00	15,028.41	-14,468.41	11,736.14	150,284.18	-138,548.04	180,341.00
Gross Profit	560.00	15,028.41	-14,468.41	11,736.14	150,284.18	-138,548.04	180,341.00
Expense							
503001 - Professional Services							
5030015 - Marketing Services	0.00	375.00	-375.00	0.00	3,750.00	-3,750.00	4,500.00
Total 503001 - Professional Services	0.00	375.00	-375.00	0.00	3,750.00	-3,750.00	4,500.00
504008 - Office Supplies	21.96	166.67	-144.71	203.75	1,666.66	-1,462.91	2,000.00
505001 - Telephone	0.00	0.00	0.00	64.39	0.00	64.39	0.00
506021 - Computer Supp. Serv. & Software	0.00	833.33	-833.33	7.34	8,333.34	-8,326.00	10,000.00
507001 - Tax/License/Dues/Permits	0.00			-40.00			
508001 - Taxi Subsidy	1,435.83	12,500.00	-11,064.17	11,942.99	125,000.00	-113,057.01	150,000.00
509001 - Travel							
5090013 - Employee Mileage Reimbursement	10.30	175.00	-164.70	209.55	1,750.00	-1,540.45	2,100.00
Total 509001 - Travel	10.30	175.00	-164.70	209.55	1,750.00	-1,540.45	2,100.00
509002 - Professional Development	0.00	83.33	-83.33	0.00	833.34	-833.34	1,000.00
514001 - Miscellaneous	0.00	83.92	-83.92	59.20	839.16	-779.96	1,007.00
60000 - Overhead Applied	0.00	811.17	-811.17	0.00	8,111.66	-8,111.66	9,734.00
Total Expense	1,468.09	15,028.42	-13,560.33	12,447.22	150,284.16	-137,836.94	180,341.00
Net Income	-908.09	-0.01	-908.08	-711.08	0.02	-711.10	0.00

Valley Transportation Services  
Profit & Loss Budget Performance-Community Service Partners  
July 2016 through April 2017

	<u>Jul '16 - Apr 17</u>	<u>Budget</u>	<u>\$ Over Budget</u>	<u>Jul '16 - Apr 17</u>	<u>YTD Budget</u>	<u>\$ Over Budget</u>	<u>Annual Budget</u>
Income							
409001 - Measure I							
409002 - Measure I OP Revenue	0.00	500,292.50	-500,292.50	0.00	500,292.50	-500,292.50	600,351.00
Total 409001 - Measure I	0.00	500,292.50	-500,292.50	0.00	500,292.50	-500,292.50	600,351.00
 Total Income	0.00	500,292.50	-500,292.50	0.00	500,292.50	-500,292.50	600,351.00
 Gross Profit	0.00	500,292.50	-500,292.50	0.00	500,292.50	-500,292.50	600,351.00
 Expense							
503006 - Community Service							
5030621 - Scholarships	2,827.60			2,827.60			
Total 503006 - Community Service	2,827.60			2,827.60			
 503064 - Pomona Valley Workshop							
503064d - Pomona Valley Contract Services	119,682.22	149,040.84	-29,358.62	119,682.22	149,040.84	-29,358.62	178,849.00
Total 503064 - Pomona Valley Workshop	119,682.22	149,040.84	-29,358.62	119,682.22	149,040.84	-29,358.62	178,849.00
 503066 - Central City Lutheran							
503066d - Central City Luth Contract Serv	19,970.59	26,505.84	-6,535.25	19,970.59	26,505.84	-6,535.25	31,807.00
Total 503066 - Central City Lutheran	19,970.59	26,505.84	-6,535.25	19,970.59	26,505.84	-6,535.25	31,807.00
 503068 - Community Senior Services							
503068d - Comm. Sr Serv Contract Services	33,566.77	41,666.66	-8,099.89	33,566.77	41,666.66	-8,099.89	50,000.00
Total 503068 - Community Senior Services	33,566.77	41,666.66	-8,099.89	33,566.77	41,666.66	-8,099.89	50,000.00
 503628 - OPARC							
503628d - OPARC Contract Services	48,303.98	119,858.34	-71,554.36	48,303.98	119,858.34	-71,554.36	143,830.00
Total 503628 - OPARC	48,303.98	119,858.34	-71,554.36	48,303.98	119,858.34	-71,554.36	143,830.00
 503630 - 211 Mobility Manager							

Valley Transportation Services  
Profit & Loss Budget Performance-Community Service Partners  
July 2016 through April 2017

	Jul '16 - Apr 17	Budget	\$ Over Budget	Jul '16 - Apr 17	YTD Budget	\$ Over Budget	Annual Budget
503630d · 211 MM Contract Services	25,702.07	25,075.84	626.23	25,702.07	25,075.84	626.23	30,091.00
Total 503630 · 211 Mobility Manager	25,702.07	25,075.84	626.23	25,702.07	25,075.84	626.23	30,091.00
503634 · Ontario/Montclair YMCA							
503634d · Ontario/Montclair Contract Serv	32,486.19	25,744.16	6,742.03	32,486.19	25,744.16	6,742.03	30,893.00
Total 503634 · Ontario/Montclair YMCA	32,486.19	25,744.16	6,742.03	32,486.19	25,744.16	6,742.03	30,893.00
503636 · YMCA Rancho/Fontana							
503636d · Rancho YMCA Contract Services	0.00	28,205.84	-28,205.84	0.00	28,205.84	-28,205.84	33,847.00
Total 503636 · YMCA Rancho/Fontana	0.00	28,205.84	-28,205.84	0.00	28,205.84	-28,205.84	33,847.00
503639 · Grand Terrace							
503639d · Grand Terrace - Contract Svs	34,586.11	36,895.84	-2,309.73	34,586.11	36,895.84	-2,309.73	44,275.00
Total 503639 · Grand Terrace	34,586.11	36,895.84	-2,309.73	34,586.11	36,895.84	-2,309.73	44,275.00
503640 · City of Redlands							
503640d · Contract Svs	63,939.67	47,299.16	16,640.51	63,939.67	47,299.16	16,640.51	56,759.00
Total 503640 · City of Redlands	63,939.67	47,299.16	16,640.51	63,939.67	47,299.16	16,640.51	56,759.00
Total Expense	381,065.20	500,292.52	-119,227.32	381,065.20	500,292.52	-119,227.32	600,351.00
Net Income	-381,065.20	-0.02	-381,065.18	-381,065.20	-0.02	-381,065.18	0.00

Valley Transportation Services  
Profit & Loss Budget Performance-OTHER TREP  
July 2016 through April 2017

	<u>Jul '16 - Apr 17</u>	<u>Budget</u>	<u>\$ Over Budget</u>	<u>Jul '16 - Apr 17</u>	<u>YTD Budget</u>	<u>\$ Over Budget</u>	<u>Annual Budget</u>
Expense							
509008 · Mileage Reimbursement Stipend	4,528.36			4,528.36			
509010 · TREP Pass-Thru Mileage Reimb.							
509012 · MARTA Mileage Reimb.	<u>22,487.52</u>	<u>0.00</u>	<u>22,487.52</u>	<u>22,487.52</u>	<u>0.00</u>	<u>22,487.52</u>	<u>0.00</u>
Total 509010 · TREP Pass-Thru Mileage Reimb.	<u>22,487.52</u>	<u>0.00</u>	<u>22,487.52</u>	<u>22,487.52</u>	<u>0.00</u>	<u>22,487.52</u>	<u>0.00</u>
Total Expense	<u>27,015.88</u>	<u>0.00</u>	<u>27,015.88</u>	<u>27,015.88</u>	<u>0.00</u>	<u>27,015.88</u>	<u>0.00</u>
Net Income	<u><u>-27,015.88</u></u>	<u><u>0.00</u></u>	<u><u>-27,015.88</u></u>	<u><u>-27,015.88</u></u>	<u><u>0.00</u></u>	<u><u>-27,015.88</u></u>	<u><u>0.00</u></u>

**DATE:** June 2, 2017  
**TO:** Valley Transportation Services Board of Directors  
**FROM:** P. Scott Graham, CEO  
**RE:** Status of Transition of VTrans' Contracts

---

This Agenda Item is presented to inform the Valley Transportation Services Board of Directors on the status of open contracts held by VTrans. VTrans has successfully assigned all of its funding agreements with the community partners to OmniTrans, including the funding agreements.

The lease agreement with H&S Properties, Inc. for the leasing of VTrans' Maintenance Facility located at 1044 Brooks Street, Ontario, CA was reviewed by legal counsel and finalized. The agreement was forwarded to H&S Properties for signature.

***Fiscal Impact:***

None

***Recommendation:***

None

***Attachments:***

Lease Agreement  
Rent Adjustment  
Addendum





**AIR COMMERCIAL REAL ESTATE ASSOCIATION  
STANDARD INDUSTRIAL/COMMERCIAL SINGLE-TENANT LEASE -- GROSS  
(DO NOT USE THIS FORM FOR MULTI-TENANT BUILDINGS)**

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

**1.1 Parties:** This Lease ("Lease"), dated for reference purposes only February 1, 2017, is made by and between H & S Properties, Inc. ("Lessor") and OmniTrans ("Lessee"), (collectively the "Parties," or individually a "Party").

**1.2 Premises:** That certain real property, including all improvements therein or to be provided by Lessor under the terms of this Lease, and commonly known as 1044 Brooks Street, Ontario, located in the County of San Bernardino, State of California and generally described as (describe briefly the nature of the property and, if applicable, the "Project", if the property is located within a Project) Approximate 6,480 s.f concrete tilt up building

**1.3 Term:** 1 years and 8 months ("Original Term") commencing February 1, 2017 ("Commencement Date") and ending September 30, 2018 ("Expiration Date"). (See also Paragraph 3)

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

**1.5 Base Rent:** \$3,469.63 per month ("Base Rent"), payable on the first (1) day of each month commencing February 1, 2017. (See also Paragraph 4)

☒ If this box is checked, there are provisions in this Lease for the Base Rent to be adjusted. See Paragraph 51

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

(a) **Base Rent:** \$3,469.63 for the period February 1, 2017- February 28, 2017

(b) **Security Deposit:** \$4,500.00 (on acct) ("Security Deposit"). (See also Paragraph 5)

(c) **Association Fees:** \$\_\_\_\_\_ for the period \_\_\_\_\_

(d) **Other:** \$\_\_\_\_\_ for \_\_\_\_\_

(e) **Total Due Upon Execution of this Lease:** \$3,469.63

**1.7 Agreed Use:** See addendum paragraph 53. (See also Paragraph 6)

**1.8 Insuring Party:** Lessor is the "Insuring Party". The annual "Base Premium" is \$1,406.00 (See also Paragraph 8)

**1.9 Real Estate Brokers:** (See also Paragraph 45 and 26)

(a) **Representations:** 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  
☐ \_\_\_\_\_ 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 the brokerage fee agreed to in a separate written agreement (or if there is no such agreement, the sum of \_\_\_\_\_ or \_\_\_\_\_ % of the total Base Rent) for the brokerage services rendered by the Brokers.

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

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

- ☒ an Addendum consisting of Paragraphs 53 through 58 ;  
☒ a plot plan depicting the Premises;  
☒ a current set of the Rules and Regulations;  
☐ a Work Letter;  
☒ other (specify): Exhibit A, Reciprocal Parking Agreement Exhibit B and Exhibit D.

*AS*  
INITIALS

2. Premises.

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

2.2 Condition. Lessor shall deliver the Premises to Lessee broom clean and free of debris on the Commencement Date or the Early Possession Date, whichever first occurs ("Start Date"), and, so long as the required service contracts described in Paragraph 7.1(b) below are obtained by Lessee and in effect within thirty days following the Start Date, warrants that the existing electrical, plumbing, fire sprinkler, lighting, heating, ventilating and air conditioning systems ("HVAC"), loading doors, sump pumps, if any, and all other such elements in the Premises, other than those constructed by Lessee, shall be in good operating condition on said date and that the surface and structural elements of the roof, bearing walls and foundation of any buildings on the Premises (the "Building") shall be free of material defects, and that the 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 said warranty exists as of the Start Date, or if one of such systems or elements should malfunction or fail within the appropriate warranty period, Lessor shall, as Lessor's sole obligation with respect to such matter, except as otherwise provided in this Lease, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, malfunction or failure, rectify same at Lessor's expense. The warranty periods shall be as follows: (i) 6 months as to the HVAC systems, and (ii) 30 days as to the remaining systems and other elements of the Building. If Lessee does not give Lessor the required notice within the appropriate warranty period, correction of any such non-compliance, malfunction or failure shall be the obligation of Lessee at Lessee's sole cost and expense, except for the roof, foundations, and bearing walls which are handled as provided in paragraph 7. Lessor also warrants, that unless otherwise specified in writing, Lessor is unaware of (i) any recorded Notices of Default affecting the Premise; (ii) any delinquent amounts due under any loan secured by the Premises; and (iii) any bankruptcy proceeding affecting the Premises.

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

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

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

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

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

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

3. Term.

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

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

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

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

4. **Rent.**
- 4.1. **Rent Defined.** All monetary obligations of Lessee to Lessor under the terms of this Lease (except for the Security Deposit) are deemed to be rent ("Rent").
- 4.2. **Payment.** Lessee shall cause payment of Rent to be received by Lessor in lawful money of the United States, without offset or deduction (except as specifically permitted in this Lease), on or before the day on which it is due. All monetary amounts shall be rounded to the nearest whole dollar. In the event that any invoice prepared by Lessor is inaccurate such inaccuracy shall not constitute a waiver and Lessee shall be obligated to pay the amount set forth in this Lease. Rent for any period during the term hereof which is for less than one full calendar month shall be prorated based upon the actual number of days of said month. Payment of Rent shall be made to Lessor at its address stated herein or to such other persons or place as Lessor may from time to time designate in writing. Acceptance of a payment which is less than the amount then due shall not be a waiver of Lessor's rights to the balance of such Rent, regardless of Lessor's endorsement of any check so stating. In the event that any check, draft, or other instrument of payment given by Lessee to Lessor is dishonored for any reason, Lessee agrees to pay to Lessor the sum of \$25 in addition to any Late Charge and Lessor, at its option, may require all future payments to be made by Lessee to be by cashier's check. Payments will be applied first to accrued late charges and attorney's fees, second to accrued interest, then to Base Rent, Insurance and Real Property Taxes, and any remaining amount to any other outstanding charges or costs.
- ~~4.3. **Association Fees.** In addition to the Base Rent, Lessee shall pay to Lessor each month an amount equal to any owner's association or condominium fees levied or assessed against the Premises. Said monies shall be paid at the same time and in the same manner as the Base Rent.~~
5. **Security Deposit.** Lessee shall deposit with Lessor upon execution hereof the Security Deposit as security for Lessee's faithful performance of its obligations under this Lease. If Lessee fails to pay Rent, or otherwise Defaults under this Lease, Lessor may use, apply or retain all or any portion of said Security Deposit for the payment of any amount already due Lessor, for Rentals which will be due in the future, and/ or to reimburse or compensate Lessor for any liability, expense, loss or damage which Lessor may suffer or incur by reason thereof. If Lessor uses or applies all or any portion of the Security Deposit, Lessee shall within 10 days after written request therefor deposit monies with Lessor sufficient to restore said Security Deposit to the full amount required by this Lease. If the Base Rent increases during the term of this Lease, Lessee shall, upon written request from Lessor, deposit additional monies with Lessor so that the total amount of the Security Deposit shall at all times bear the same proportion to the increased Base Rent as the Initial Security Deposit bore to the Initial Base Rent. Should the Agreed Use be amended to accommodate a material change in the business of Lessee or to accommodate a sublessee or assignee, Lessor shall have the right to increase the Security Deposit to the extent necessary, in Lessor's reasonable judgment, to account for any increased wear and tear that the Premises may suffer as a result thereof. If a change in control of Lessee occurs during this Lease and following such change the financial condition of Lessee is, in Lessor's reasonable judgment, significantly reduced, Lessee shall deposit such additional monies with Lessor as shall be sufficient to cause the Security Deposit to be at a commercially reasonable level based on such change in financial condition. Lessor shall not be required to keep the Security Deposit separate from its general accounts. Within 90 days after the expiration or termination of this Lease, Lessor shall return that portion of the Security Deposit not used or applied by Lessor. Lessor shall upon written request provide Lessee with an accounting showing how that portion of the Security Deposit that was not returned was applied. No part of the Security Deposit shall be considered to be held in trust, to bear interest or to be prepayment for any monies to be paid by Lessee under this Lease. THE SECURITY DEPOSIT SHALL NOT BE USED BY LESSEE IN LIEU OF PAYMENT OF THE LAST MONTH'S RENT.
6. **Use.**
- 6.1. **Use.** Lessee shall use and occupy the Premises only for the Agreed Use, or any other legal use which is reasonably comparable thereto, and for no other purpose. Lessee shall not use or permit the use of the Premises in a manner that is unlawful, creates damage, waste or a nuisance, or that disturbs occupants of or causes damage to neighboring premises or properties. Other than guide, signal and seeing eye dogs, Lessee shall not keep or allow in the Premises any pets, animals, birds, fish, or reptiles. Lessor shall not unreasonably withhold or delay its consent to any request for a modification of the Agreed Use, so long as the same will not impair the structural integrity of the improvements on the Premises or the mechanical or electrical systems therein, and/or is not significantly more burdensome to the Premises. If Lessor elects to withhold consent, Lessor shall within 7 days after such request give written notification of same, which notice shall include an explanation of Lessor's objections to the change in the Agreed Use.
- 6.2. **Hazardous Substances.**
- (a) **Reportable Uses Require Consent.** The term "Hazardous Substance" as used in this Lease shall mean any product, substance, or waste whose presence, use, manufacture, disposal, transportation, or release, either by itself or in combination with other materials expected to be on the Premises, is either: (i) potentially injurious to the public health, safety or welfare, the environment or the Premises, (ii) regulated or monitored by any governmental authority, or (iii) a basis for potential liability of Lessor to any governmental agency or third party under any applicable statute or common law theory. Hazardous Substances shall include, but not be limited to, hydrocarbons, petroleum, gasoline, and/or crude oil or any products, by-products or fractions thereof. Lessee shall not engage in any activity in or on the Premises which constitutes a Reportable Use of Hazardous Substances without the express prior written consent of Lessor and timely compliance (at Lessee's expense) with all Applicable Requirements. "Reportable Use" shall mean (i) the installation or use of any above or below ground storage tank, (ii) the generation, possession, storage, use, transportation, or disposal of a Hazardous Substance that requires a permit from, or with respect to which a report, notice, registration or business plan is required to be filed with, any governmental authority, and/or (iii) the presence at the Premises of a Hazardous Substance with respect to which any Applicable Requirements requires that a notice be given to persons entering or occupying the Premises or neighboring properties. Notwithstanding the foregoing, Lessee may use any ordinary and customary materials reasonably required to be used in the normal course of the Agreed Use, ordinary office supplies (copier toner, liquid paper, glue, etc.) and common household cleaning materials, so long as such use is in compliance with all Applicable Requirements, is not a Reportable Use, and does not expose the Premises or neighboring property to any meaningful risk of contamination or damage or expose Lessor to any liability therefor. In addition, Lessor may condition its consent to any Reportable Use upon receiving such additional assurances as Lessor reasonably deems necessary to protect itself, the public, the Premises and/or the environment against damage, contamination, injury and/or liability, including, but not limited to, the installation (and removal on or before Lease expiration or termination) of protective modifications (such as concrete encasements) and/or increasing the Security Deposit.
- (b) **Duty to Inform Lessor.** If Lessee knows, or has reasonable cause to believe, that a Hazardous Substance has come to be located in, on, under or about the Premises, other than as previously consented to by Lessor, Lessee shall immediately give written notice of such fact to Lessor, and provide Lessor with a copy of any report, notice, claim or other documentation which it has concerning the presence of such Hazardous Substance.
- (c) **Lessee Remediation.** Lessee shall not cause or permit any Hazardous Substance to be spilled or released in, on, under, or about the Premises (including through the plumbing or sanitary sewer system) and shall promptly, at Lessee's expense, comply with all Applicable Requirements and take all investigatory and/or remedial action reasonably recommended, whether or not formally ordered or required, for the cleanup of any contamination of, and for the maintenance, security and/or monitoring of the Premises or neighboring properties, that was caused or materially contributed to by Lessee, or pertaining to or involving any Hazardous Substance brought onto the Premises during the term of this Lease, by or for Lessee, or any third party.
- (d) **Lessee Indemnification.** Lessee shall indemnify, defend and hold Lessor, its agents, employees, lenders and ground lessor, if any, harmless from and against any and all loss of rents and/or damages, liabilities, judgments, claims, expenses, penalties, and attorneys' fees arising out of or involving any Hazardous Substance brought onto the Premises by or for Lessee, or any third party (provided, however, that Lessee shall have no liability under this Lease with respect to underground migration of any Hazardous Substance under the Premises from adjacent properties not caused or contributed to by Lessee). Lessee's obligations shall include, but not be limited to, the effects of any contamination or injury to person, property or the environment created or suffered by Lessee, and the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease. No termination, cancellation or release agreement entered into by Lessor and Lessee shall release Lessee from its obligations under this Lease with respect to Hazardous Substances, unless specifically so agreed by Lessor in writing at the time of such agreement.
- (e) **Lessor Indemnification.** Except as otherwise provided in paragraph 6.7, Lessor and its successors and assigns shall indemnify, defend, reimburse and hold Lessee, its employees and lenders, harmless from and against any and all environmental damages, including the cost of remediation, which result from Hazardous Substances which existed on the Premises prior to Lessee's occupancy or which are caused by the gross negligence or willful misconduct of Lessor, its agents or employees. Lessor's obligations, as and when required by the Applicable Requirements, shall include, but not be limited to, the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease.
- (f) **Investigations and Remediations.** Lessor shall retain the responsibility and pay for any investigations or remediation measures required by governmental entities having jurisdiction with respect to the existence of Hazardous Substances on the Premises prior to Lessee's occupancy, unless such remediation measure is required as a result of Lessee's use (including "Alterations", as defined in paragraph 7.3(a) below) of the Premises, in which event Lessee shall be responsible for such payment. Lessee shall cooperate fully in any such activities at the request of Lessor, including allowing Lessor and Lessor's agents to have reasonable access to the Premises at reasonable times in order to carry out Lessor's investigative and remedial responsibilities.

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

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

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

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

##### 7.1 Lessee's Obligations.

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

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

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

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

7.2 **Lessor's Obligations.** Subject to the provisions of Paragraphs 2.2 (Condition), 2.3 (Compliance), 9 (Damage or Destruction) and 14 (Condemnation), it is intended by the Parties hereto that Lessor have no obligation, in any manner whatsoever, to repair and maintain the Premises, or the equipment therein, all of which obligations are intended to be that of the Lessee, except for the surface and structural elements of the roof, foundations and bearing walls, the repair of which shall be the responsibility of Lessor upon receipt of written notice that such a repair is necessary. It is the intention of the Parties that the terms of this Lease govern the respective obligations of the Parties as to maintenance and repair of the Premises, and they expressly waive 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, do not trigger the requirement for additional modifications and/or improvements to the Premises resulting from Applicable Requirements, such as compliance with Title 24, and the cumulative cost thereof during this Lease as extended does not exceed a sum equal to 3 months' 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 materialmen's lien against the Premises or any interest therein. Lessee shall give Lessor not less than 10 days notice prior to the commencement of any work in, on or about the Premises, and Lessor shall have the right to post notices of non-responsibility. If Lessee shall contest the validity of any such lien, claim or demand, then Lessee shall, at its sole expense defend and protect itself, Lessor and the Premises against the same and shall pay and satisfy any such adverse judgment that may be rendered thereon before the enforcement thereof. If Lessor shall require, Lessee shall furnish a surety bond in an amount equal to 150% of the amount of such contested lien, claim or demand, indemnifying Lessor against liability for the same. If Lessor elects to participate in any such action, Lessee shall pay Lessor's attorneys' fees and costs.

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

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

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

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

**8. Insurance; Indemnity.**

**8.1 Payment of Premium Increases.**

(a) Lessee shall pay to Lessor any insurance cost increase ("Insurance Cost Increase") occurring during the term of this Lease. Insurance Cost Increase is defined as any increase in the actual cost of the insurance required under Paragraph 8.2(b), 8.3(a) and 8.3(b), over and above the Base Premium as hereinafter defined calculated on an annual basis. Insurance Cost Increase shall include but not be limited to increases resulting from the nature of Lessee's occupancy, any act or omission of Lessee, requirements of the holder of mortgage or deed of trust covering the Premises, increased valuation of the Premises and/or a premium rate increase. The parties are encouraged to fill in the Base Premium in paragraph 1.8 with a reasonable premium for the Required Insurance based on the Agreed Use of the Premises. If the parties fail to insert a dollar amount in Paragraph 1.8, then the Base Premium shall be the lowest annual premium reasonably obtainable for the Required Insurance as of the commencement of the Original Term for the Agreed Use of the Premises. In no event, however, shall Lessee be responsible for any portion of the increase in the premium cost attributable to liability insurance carried by Lessor under Paragraph 8.2(b) in excess of \$2,000,000 per occurrence.

(b) Lessee shall pay any such insurance Cost Increase to Lessor within 30 days after receipt by Lessee of a copy of the premium statement or other reasonable evidence of the amount due. If the insurance policies maintained hereunder cover other property besides the Premises, Lessor shall also deliver to Lessee a statement of the amount of such insurance Cost Increase attributable only to the Premises showing in reasonable detail the manner in which such amount was computed. Premiums for policy periods commencing prior to, or extending beyond the term of this Lease, shall be prorated to correspond to the term of this Lease.

**8.2 Liability Insurance.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## 9. Damage or Destruction.

### 9.1 Definitions.

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

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

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

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

(e) **"Hazardous Substance Condition"** shall mean the occurrence or discovery of a condition involving the presence of, or a contamination by, a Hazardous Substance, in, on, or under the Premises which requires 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 (except as to the deductible which is Lessee's responsibility) as and when required to complete said repairs. In the event, however, such shortage was due to the fact that, by reason of the unique nature of the improvements, full replacement cost insurance coverage was not commercially reasonable and available, Lessor shall have no obligation to pay for the shortage in insurance proceeds or to fully restore the unique aspects of the Premises unless Lessee provides Lessor with the funds to cover same, or adequate assurance thereof, within 10 days following receipt of written notice of such shortage and request therefor. If Lessor receives said funds or adequate assurance thereof within said 10 day period, the party responsible for making the repairs shall complete them as soon as reasonably possible and this Lease shall remain in full force and effect. If such funds or assurance are not received, Lessor may nevertheless elect by written notice to Lessee within 10 days thereafter to: (i) make such restoration and repair as is commercially reasonable with Lessor paying any shortage in proceeds, in which case this Lease shall remain in full force and effect, or (ii) have this Lease terminate 30 days thereafter. Lessee shall not be entitled to reimbursement of any funds contributed by Lessee to repair any such damage or destruction. Premises Partial Damage due to flood or earthquake shall be subject to Paragraph 9.3, notwithstanding that there may be some insurance coverage, but the net proceeds of any such insurance shall be made available for the repairs if made by either Party.

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

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

9.5 **Damage Near End of Term.** If at any time during the last 6 months of this Lease there is damage for which the cost to repair exceeds one month's Base Rent, whether or not an Insured Loss, Lessor may terminate this Lease effective 60 days following the date of occurrence of such damage by giving a written termination notice to Lessee within 30 days after the date of occurrence of such damage. Notwithstanding the foregoing, if Lessee at that time has an exercisable option to extend this Lease or to purchase the Premises, then Lessee may preserve this Lease by,



(a) exercising such option and (b) providing Lessor with any shortage in insurance proceeds (or adequate assurance thereof) needed to make the repairs on or before the earlier of (i) the date which is 10 days after Lessee's receipt of Lessor's written notice purporting to terminate this Lease, or (ii) the day prior to the date upon which such option expires. If Lessee duly exercises such option during such period and provides Lessor with funds (or adequate assurance thereof) to cover any shortage in insurance proceeds, Lessor shall, at Lessor's commercially reasonable expense, repair such damage as soon as reasonably possible and this Lease shall continue in full force and effect. If Lessee fails to exercise such option and provide such funds or assurance during such period, then this Lease shall terminate on the date specified in the termination notice and Lessee's option shall be extinguished.

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

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

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

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

**10. Real Property Taxes.**

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

**10.2**

(a) **Payment of Taxes.** Lessor shall pay the Real Property Taxes applicable to the Premises provided, however, that Lessee shall pay to Lessor the amount, if any, by which Real Property Taxes applicable to the Premises increase over the fiscal tax year during which the Commencement Date Occurs ("Tax Increase"). Payment of any such Tax Increase shall be made by Lessee to Lessor within 30 days after receipt of Lessor's written statement setting forth the amount due and computation thereof. If any such taxes shall cover any period of time prior to or after the expiration or termination of this Lease, Lessee's share of such taxes shall be prorated to cover only that portion of the tax bill applicable to the period that this Lease is in effect. In the event Lessee incurs a late charge on any Rent payment, Lessor may estimate the current Real Property Taxes, and require that the Tax Increase be paid in advance to Lessor by Lessee monthly in advance with the payment of the Base Rent. Such monthly payment shall be an amount equal to the amount of the estimated installment of the Tax Increase divided by the number of months remaining before the month in which said installment becomes delinquent. When the actual amount of the applicable Tax Increase is known, the amount of such equal monthly advance payments shall be adjusted as required to provide the funds needed to pay the applicable Tax Increase. If the amount collected by Lessor is insufficient to pay the Tax Increase when due, Lessee shall pay Lessor, upon demand, such additional sums as are necessary to pay such obligations. Advance payments may be intermingled with other moneys of Lessor and shall not bear interest. In the event of a Breach by Lessee in the performance of its obligations under this Lease, then any such advance payments may be treated by Lessor as an additional Security Deposit.

(b) **Additional Improvements.** Notwithstanding anything to the contrary in this Paragraph 10.2, Lessee shall pay to Lessor upon demand therefor the entirety of any increase in Real Property Taxes assessed by reason of Alterations 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.

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

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

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

**12. Assignment and Subletting.**

**12.1 Lessor's Consent Required.**

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

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

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

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

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

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

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

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

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

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

(c) Lessor's consent to any assignment or subletting shall not constitute a consent to any subsequent assignment or subletting.  
(d) In the event of any Default or Breach by Lessee, Lessor may proceed directly against Lessee, any Guarantors or anyone else responsible for the performance of Lessee's obligations under this Lease, including any assignee or sublessee, without first exhausting Lessor's remedies against any other person or entity responsible therefor to Lessor, or any security held by Lessor.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) A Default by Lessee as to the terms, covenants, conditions or provisions of this Lease, or of the rules adopted under Paragraph 40 hereof, other than those described in subparagraphs 13.1(a), (b), (c) or (d), above, where such Default continues for a period of 30 days after written notice; provided, however, that if the nature of Lessee's Default is such that more than 30 days are reasonably required for its cure, then it shall not be deemed to be a Breach if Lessee commences such cure within said 30 day period and thereafter diligently prosecutes such cure to completion.

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

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

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

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

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



to perform or quit given to Lessee under the unlawful detainer statute shall also constitute the notice required by Paragraph 13.1. In such case, the applicable grace period required by Paragraph 13.1 and the unlawful detainer statute shall run concurrently, and the failure of Lessee to cure the Default within the greater of the two such grace periods shall constitute both an unlawful detainer and a Breach of this Lease entitling Lessor to the remedies provided for in this Lease and/or by said statute.

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

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

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

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

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

**13.5 Breach by Lessor.**

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

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

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

**15. Brokerage Fees.**

**15.1 Additional Commission.** In addition to the payments owed pursuant to Paragraph 1.0 above, Lessor agrees that: (a) if Lessee exercises any Option, (b) if Lessee or anyone affiliated with Lessee acquires any right to the Premises or other premises owned by Lessor and located within the same Project, if any, within which the Premises is located, (c) if Lessee remains in possession of the Premises, with the consent of Lessor, after the expiration of this Lease, or (d) if Base Rent is increased, whether by agreement or operation of an escalation clause herein, then, Lessor shall pay Broker a fee in accordance with the fee schedule of the Brokers in effect at the time the Lease was executed.

**15.2 Assumption of Obligations.** Any buyer or transferee of Lessor's interest in this Lease shall be deemed to have assumed Lessor's obligation hereunder. Brokers shall be third party beneficiaries of the provisions of Paragraphs 1.0, 15.1, 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. In addition, Lessee acknowledges that any failure on its part to provide such an Estoppel Certificate will expose Lessor to risks and potentially cause Lessor to incur costs not contemplated by this Lease, the extent of which will be extremely difficult to ascertain. Accordingly, should the Lessee fail to execute and/or deliver a requested Estoppel Certificate in a timely fashion the monthly Base Rent shall be automatically increased, without any requirement for notice to Lessee, by an amount equal to 10% of the then existing Base Rent or \$100, whichever is greater for remainder of the Lease. The Parties agree that such increase in Base Rent represents fair and reasonable compensation for the additional risk/costs that Lessor will incur by reason of Lessee's failure to provide the Estoppel Certificate. Such increase in Base Rent shall in no event constitute a waiver of Lessee's Default or Breach with respect to the failure to provide the Estoppel Certificate nor prevent the exercise of any of the other rights and remedies granted hereunder.

(c) If Lessor desires to finance, refinance, or sell the Premises, or any part thereof, Lessee and all Guarantors shall within 10 days

after written notice from Lessor deliver to any potential lender or purchaser designated by Lessor such financial statements as may be reasonably required by such lender or purchaser, including but not limited to Lessee's financial statements for the past 3 years. All such financial statements shall be received by Lessor and such lender or purchaser in confidence and shall be used only for the purposes herein set forth.

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

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

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

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

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

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

23. **Notices.**

23.1 **Notice Requirements.** All notices required or permitted by this Lease or applicable law shall be in writing and may be delivered in person (by hand or by courier) or may be sent by regular, certified or registered mail or U.S. Postal Service Express Mail, with postage prepaid, or by facsimile transmission, or by email, 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 delivered by hand, or transmitted by facsimile transmission or by email shall be deemed delivered upon actual receipt. If notice is received on a Saturday, Sunday or legal holiday, it shall be deemed received on the next business day.

24. **Waivers.**

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

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

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

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

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

(i) **Lessor's Agent.** A Lessor's agent under a listing agreement with the Lessor acts as the agent for the Lessor only. A Lessor's agent 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 licensees, 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 Parties, 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. Holdover Base Rent shall be calculated on monthly basis. Nothing contained herein shall be construed as consent by Lessor to any holding over by Lessee.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37. **Guarantor.**

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

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

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

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

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

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

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

39.4 **Effect of Default on Options.**

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

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

(c) An Option shall terminate and be of no further force or effect, notwithstanding Lessee's due and timely exercise of the Option, if,

after such exercise and prior to the commencement of the extended term or completion of the purchase, (i) Lessee fails to pay Rent for a period of 30 days after such Rent becomes due (without any necessity of Lessor to give notice thereof), or (ii) if Lessee commits a Breach of this Lease.

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

41. **Security Measures.** Lessee hereby acknowledges that the Rent payable to Lessor hereunder does not include the cost of guard service or other security measures, and that Lessor shall have no obligation whatsoever to provide same. Lessee assumes all responsibility for the protection of the Premises, Lessee, its agents and invitees and their property from the acts of third parties.

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

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

44. **Authority; Multiple Parties; Execution.**

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

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

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

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

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

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

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

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

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

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

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

LESSOR AND LESSEE HAVE CAREFULLY READ AND REVIEWED THIS LEASE AND EACH TERM AND PROVISION CONTAINED HEREIN, AND BY THE EXECUTION OF THIS LEASE SHOW THEIR INFORMED AND VOLUNTARY CONSENT THERETO. THE PARTIES HEREBY AGREE THAT, AT THE TIME THIS LEASE IS EXECUTED, THE TERMS OF THIS LEASE ARE 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, AND THE SUITABILITY OF THE PREMISES FOR LESSEE'S INTENDED USE.

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

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

Executed at: Ontario, CA.

Executed at: \_\_\_\_\_

On: February 1, 2017

On: February 1, 2017

By LESSOR:

By LESSEE:

H & S Properties, Inc.

OmniTrans

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

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

Name Printed: Lisa Terry

Name Printed: P. Scott Graham

Title: Administrative Manager

Title: CEO/ General Manager

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

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

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

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

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

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

Address: 1009 Brooks Street  
Ontario, CA. 91762

Address: 1700 W. 5th Street  
San Bernardino, CA. 92411

Telephone: (909) 391-2129

Telephone: (909) 379-7110

Facsimile: (909) 391-3309

Facsimile: (909) 889-5779

Email: h.sproperties@yahoo.com

Email: \_\_\_\_\_

Email: \_\_\_\_\_

Email: \_\_\_\_\_

Federal ID No. 95-3267341

Federal ID No. 95-3035112

BROKER: \_\_\_\_\_

BROKER: \_\_\_\_\_

Alt: \_\_\_\_\_

Alt: \_\_\_\_\_

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

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

Address: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: ( ) \_\_\_\_\_

Telephone: ( ) \_\_\_\_\_

Facsimile: ( ) \_\_\_\_\_

Facsimile: ( ) \_\_\_\_\_

Email: \_\_\_\_\_

Email: \_\_\_\_\_

Federal ID No. \_\_\_\_\_

Federal ID No. \_\_\_\_\_

Broker/Agent BRE License #: \_\_\_\_\_

Broker/Agent BRE License #: \_\_\_\_\_

NOTICE: These forms are often modified to meet changing requirements of law and industry needs. Always write or call to make sure you are utilizing the most current form: AIR Commercial Real Estate Association, 500 N Brand Blvd, Suite 900, Glendale, CA 91203. Telephone No. (213) 687-8777. Fax No.: (213) 687-8816.

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## RENT ADJUSTMENT(S) STANDARD LEASE ADDENDUM

**Dated** February 1, 2017

**By and Between (Lessor)** H & S Properties, Inc.

**(Lessee)** OmniTrans

**Address of Premises:** 1004 Brooks Street

Ontario, CA. 91762

Paragraph 51

**A. RENT ADJUSTMENTS:**

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

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

☐ 1. Cost of Living Adjustment(s) (COLA)

a. On (Fill in COLA Dates): \_\_\_\_\_

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

\_\_\_\_\_, All Items

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

b. The monthly Base Rent payable in accordance with paragraph A.1.a. of this Addendum shall be calculated as follows: the Base Rent set forth in paragraph 1.5 of the attached Lease, shall be multiplied by a fraction the numerator of which shall be the CPI of the calendar month 2 months prior to the month(s) specified in paragraph A.1.a. above during which the adjustment is to take effect, and the denominator of which shall be the CPI of the calendar month which is 2 months prior to (select one): the ☐ first month of the term of this Lease as set forth in paragraph 1.3 ("Base Month") or ☐ (Fill in Other "Base Month"): \_\_\_\_\_. The sum so calculated shall constitute the new monthly Base Rent hereunder, but in no event, shall any such new monthly Base Rent be less than the Base Rent payable for the month immediately preceding the Base Rent adjustment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

October 1, 2017  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The New Base Rent shall be:

\$3,573.72  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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, 600 N Brand Blvd, Suite 900, Glendale, CA 91203.  
Telephone No. (213) 687-8777. Fax No.: (213) 687-8816.



## ADDENDUM

Date: February 1, 2017

By and Between (Lessor) H & S Properties, Inc.  
(Lessee) Omnitrans

Address of Premises: 1044 Brooks Street  
Ontario, CA. 91762

- Paragraph 53      USE: Light fleet maintenance excluding rebuilding/replacing transmissions, rebuilding/replacing axles, rebuilding engines. Engine swaps old to new are allowed. No old engine storage. Major mechanical repairs may be permitted with prior approval from lessor. Subject to compliance to city rules, regulations and permits.
- Paragraph 54      Landscaping: Lessor contracts with a landscape company and bills for services rendered. Lessor contracting with landscape company does not alter Lessees' obligations. Lessee is obligated to notify Lessor of any problems with any part of the irrigation, timers, deterioration or plant material, clogged drains or any other problems that may occur.
- Paragraph 55      Rent Due: To avoid late charges, all lease/rent payments must be received in the leasing office, located at 1009 Brooks Street, Ontario CA 91762, by the close of business at 5:00PM on the 6<sup>th</sup> day of the month. Regular business hours are 8:00AM to 5:00PM, Monday thru Friday.
- Paragraph 56      Parking: Subject to Reciprocal Parking Agreement, Exhibit A and B. The fenced parking area to the north of the building may remain fenced pending approval from the City of Ontario and the 6 spaces within the fenced area are included in the 13 parking spaces dedicated for the use of 1044 Brooks Street. Any damage caused by anything stored in the lot will be repaired by Lessee to bring parking lot back to original condition.
- Paragraph 57      Roof: Lessee will promptly notify Lessor of any roof leaks or clogged roof drains. Lessee shall not make any alteration, cut roof penetrations or attach any items to the roof without Lessor's written consent.
- Paragraph 58      Omnitrans has acquired the prior lease holder Valley Transportation Services, Inc. and Valley Transportation Services, Inc. will no longer exist as an entity. Upon execution of this Lease, Omnitrans assumes all responsibility and liability regarding the Lease, and the prior Lease entered into between Lessor and Valley Transportation Services, Inc. shall have no further force or effect.

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



**DATE:** June 2, 2017  
**TO:** Valley Transportation Services Board of Directors  
**FROM:** Scott Graham, CEO  
**RE:** Approve Amendment No. 3 to Contract No. 11174 between San Bernardino County Transportation Authority (SBCTA) and Valley Transportation Services

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***Recommendation:***

Authorize the VTrans CEO to sign a third Amendment the Agreement between VTrans and SBCTA in substantially the same form as attached hereto, with the assistance of counsel.

***Discussion:***

In January 2016, the VTrans Board approved an amended and restated agreement (“Agreement”) between VTrans and the San Bernardino County Transportation Authority (“SBCTA,” previously the “San Bernardino Associated Governments”). The Agreement, as amended and restated, provided for the orderly transition of VTrans’ functions to Omnitrans without a disruption of services to service providers and consumers, based on the determination by the SBCTA Board that the consolidation of Omnitrans’ and VTrans’ CTSA services would be in the best interest of the taxpayers of San Bernardino County.

The attached Amendment Number 3 to the Agreement is a clarifying amendment to reflect that VTrans is required to return any assets acquired with Measure I tax revenue to SBCTA. This will allow SBCTA to ensure that the assets are provided to another entity that provides consolidated transportation services to the taxpayers of San Bernardino Valley, or are otherwise disposed of in a manner consistent with the Measure I ordinance.

***Fiscal Impact:***

Undetermined.

**AMENDMENT NO. 3 TO**

**CONTRACT NO. 11174**

**SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY  
AND**

**VALLEY TRANSPORTATION SERVICES**

**(MEASURE I VALLEY CTSA FUNDING)**

**THIS AMENDMENT NO. 3** (Amendment) to Contract No. 11174 is made by and between the San Bernardino County Transportation Authority (“SBCTA”), and Valley Transportation Services (“VTrans”), effective \_\_\_\_\_. SBCTA and VTrans are individually referred to as a Party or collectively as the Parties.

**RECITALS:**

- A. SBCTA (previously referred to as SANBAG) and VTrans entered into Contract No. 11174 May 4, 2011, for the purpose of setting forth the terms under which SBCTA would provide San Bernardino Valley Measure I Senior and Disabled funding to VTrans for the operation of a consolidated transportation services agency (CTSA);
- B. SBCTA and VTrans modified the terms of Contract No. 11174 by entering into an Amended and Restated Contract No. 11174 (the “Contract”), which was approved by SBCTA’s Board June 5, 2013;
- C. The Parties further amended the Contract to reflect the need to transition CTSA functions and funding to another San Bernardino Valley CTSA in an orderly manner to avoid any lapse or disruption in the flow of CTSA funds and services to Valley area social service transportation providers and consumers, by entering into Amendment No. 2 to Contract No. 11174 which was approved by SBCTA’s Board February 3, 2016; and
- D. The Parties now desire to further amend the Contract to clarify the intended disposition of VTrans’ assets to ensure the uninterrupted delivery of CTSA services in the San Bernardino Valley.

**NOW THEREFORE**, SBCTA and VTrans mutually agree as follows:

1. All references to “SANBAG” in the Contract are hereby replaced with “SBCTA.”

2. Section 9 (Termination) of Contract No. C11174 is amended to state as follows:

“Should SBCTA determine that VTrans has violated a material provision of this Contract, it shall have the right to serve on VTrans a notice of default and intention to terminate the Contract. Upon receipt of such notice to terminate, VTrans shall have 30 days in which to cure the stated violation(s) and to provide to SBCTA sufficient evidence that the violations have been cured. If, after 30 days after the notice has been served on VTrans, VTrans has not cured and has not provided sufficient evidence of such to SBCTA, SBCTA may stop making payments under the Contract, terminate the Contract, and/or revoke VTrans’ designation as the CTSA for the San Bernardino Valley. Should VTrans be dissolved, or should SBCTA elect to terminate the Contract or revoke VTrans’ designation as the CTSA for the San Bernardino Valley, any unobligated Measure I funds held by VTrans at that time, and any of VTrans’ assets purchased with Measure I funds, shall be returned to SBCTA.”

3. Except as expressly amended herein, all terms and conditions of the Agreement shall remain in full force and effect.

**IN WITNESS WHEREOF**, the parties have duly executed this Amendment on the date first referenced above.

**VALLEY TRANSPORTATION  
SERVICES**

By: \_\_\_\_\_  
Sam Spagnolo  
Board Chair

**SAN BERNARDINO COUNTY TRANSPORTATION  
AUTHORITY**

By: \_\_\_\_\_  
Raymond W. Wolfe  
Executive Director

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Eileen Monaghan Teichert  
SBCTA General Counsel

**DATE:** June 2, 2017  
**TO:** Valley Transportation Services Board of Directors  
**FROM:** Scott Graham, CEO  
**RE:** Approve Resolution Authorizing the Transfer of Assets from Valley Transportation Services to San Bernardino County Transportation Authority (SBCTA)

---

***Recommendation:***

Authorize the VTrans CEO to take any actions required to transfer VTrans' remaining assets to SBCTA, with the assistance of counsel.

***Discussion:***

Consistent with the Amendment Number 3 to the Agreement between VTrans and SBCTA, staff requests that the Board authorize the CEO to take any actions required to transfer VTrans' remaining assets acquired with Measure I tax revenue to SBCTA. This will allow SBCTA to ensure that the assets are provided to another entity that provides consolidated transportation services to the taxpayers of San Bernardino Valley, or are otherwise disposed of in a manner consistent with the Measure I ordinance.

These assets include the office furniture owned by VTrans, which is no longer required following the move to Omnitrans' offices, as well as computer equipment, iPads, software, copier(s)/printers, phone system, maintenance shop equipment and furniture, and the remaining vehicle.

***Fiscal Impact:***

Undetermined.

**RESOLUTION NO. 2017-01**

**RESOLUTION OF THE BOARD OF DIRECTORS  
OF VALLEY TRANSPORTATION SERVICES  
AUTHORIZING THE TRANSFER OF ASSETS FROM VALLEY  
TRANSPORTATION SERVICES TO SAN BERNARDINO COUNTY  
TRANSPORTATION AUTHORITY**

**BE IT RESOLVED** by the Board of Directors ("Board") of Valley Transportation Services ("VTrans") that the Chief Executive Officer is hereby directed to take the necessary steps to transfer the remaining assets of Valley Transportation Services purchased with Measure I tax revenue to the San Bernardino County Transportation Authority, as required by the funding agreement between the parties, to ensure that the assets are provided to another consolidated transportation services agency providing services in the San Bernardino Valley.

This Resolution shall take effect from and after the date of its passage and adoption.

\* \* \* \* \*

PASSED AND ADOPTED this 2nd day of June, 2017, by the following vote:

AYES:

NOES:

ABSENT:

\_\_\_\_\_  
Chairperson

ATTEST:

\_\_\_\_\_  
Secretary

**DATE:** June 2, 2017  
**TO:** Valley Transportation Services Board of Directors  
**FROM:** Jennifer Gore, Legal Counsel  
**RE:** Approve Extension of Administrative Agent Agreement between Valley Transportation Authority and Omnitrans

---

**Recommendation:**

Approve the extension of the Administrative Agent Agreement for an additional fiscal year, and authorize the CEO to execute an amendment in substantially the same form as attached hereto, with the assistance of counsel.

**Discussion:**

As the Board knows, on November 4, 2015, the SANBAG Board of Directors appointed Omnitrans as a Consolidated Transportation Services Agency ("CTSA") for the San Bernardino Valley and directed that the ongoing CTSA operations of VTrans be transitioned to Omnitrans. Since that time, Omnitrans and VTrans staff have been working together, in cooperation with SBCTA to implement an orderly transition of VTrans' current functions in the Valley area to Omnitrans without a disruption of services to the CTSA's community service partners and consumers.

To accomplish this transition, on March 16, 2016, the VTrans Board approved an Administrative Agent ("AA") Agreement. This AA Agreement documented that, Omnitrans would provide VTrans with a CEO, as well as all the necessary administrative services to continue operating VTrans' programs until each program could be transitioned to Omnitrans in an orderly manner, and allows VTrans to reimburse Omnitrans for such services to the extent they are eligible for reimbursement with Measure I funds.

The AA Agreement was particularly important to the continuation of the Rural Transportation Reimbursement Escort ("Rural TREP") Program. As the Board may recall, Caltrans awarded VTrans \$300,000 to operate the Rural TREP Program, prior to the November 4, 2015, action of SBCTA, but Caltrans' would not allow for the transfer of the Rural TREP Program grant to Omnitrans. The AA Agreement allows for Omnitrans to continue to provide administrative services to operate the Rural TREP

Program on behalf of VTrans, until those funds are exhausted, which is anticipated by June 30, 2017.

Although the Rural TREP funds may be exhausted by June 30<sup>th</sup>, staff recommends that the AA Agreement be extended for one fiscal year to allow for the continued operation of VTrans until its activities are fully transitioned to Omnitrans, its assets are appropriately transferred to SBCTA, and the non-profit corporation can be dissolved, if that is the direction of the VTrans Board.

Attached is an amendment to the AA Agreement for the Board's review. Omnitrans' counsel still must review the amendment on behalf of Omnitrans, so minor changes may be made. But staff recommends that the Board authorize VTrans' CEO to execute an amendment, with the assistance of counsel.

***Fiscal Impact:***

VTrans will be obligated to continue to pay Omnitrans for needed staffing services provided under this agreement.

***Attachments:***

- a. Revised Administrative Agent Agreement

**AMENDMENT NO. 1**  
**ADMINISTRATIVE AGENT AGREEMENT BETWEEN**  
**VALLEY TRANSPORTATION SERVICES**  
**AND**  
**OMNITRANS**

---

This Amendment No. 1 to the May 4, 2016, Administrative Agent Agreement between Valley Transportation Services, a non-profit corporation (hereinafter “VTrans”), and OMNITRANS, in its capacity as a Consolidated Transportation Services Agency (“Omnitrans”), is entered into effective July 1, 2017.

WHEREAS, VTrans and Contractor entered into the Administrative Agent Agreement to allow Omnitrans to provide various administrative, financial, and clerical services for its programs; and

WHEREAS, VTrans and Omnitrans wish to extend the term of the contract for one additional year for services in Fiscal Year 2017-18.

NOW, THEREFORE, VTrans and Omnitrans agree as follows:

1. Section 4 of the Administrative Agent Agreement (Time of Performance), subsection a. only, is deleted in its entirety and is hereby replaced as follows:

“a. This Agreement shall go into effect on May 4, 2016, contingent upon approval by both parties, and Omnitrans shall commence work after notification to proceed by VTrans’ Board of Directors. This Agreement shall end on July 1, 2018, unless extended by written amendment pursuant to Section 12 below.

22. Except as expressly amended herein, all terms and conditions of the Agreement shall remain in full force and effect.



IN WITNESS WHEREOF, THE PARTIES HAVE ENTERED INTO THIS  
AMENDMENT AS OF THE DATE HEREIN ABOVE APPEARING:

**VALLEY TRANSPORTATION SERVICES**

---

P. SCOTT GRAHAM  
Chief Executive Officer

APPROVED AS TO FORM:

---

RENNE SLOAN HOLTZMAN SAKAI LLP  
Legal Counsel to VTrans

**OMNITRANS**

---

P. SCOTT GRAHAM  
Chief Executive Officer

APPROVED AS TO FORM:

---

BEST, BEST & KRIEGER  
Legal Counsel to Omnitrans

**EXHIBIT “A-2”**  
**FY 2016-17 SCOPE OF WORK**

**A. Services**

Renne Sloan Holtzman Sakai will serve as General Counsel to Valley Transportation Services (VTrans), providing the following legal services as requested:

- Provide all legal advice on behalf of VTrans as necessary or as requested by the VTrans CEO, Board Members, and other designated personnel, as appropriate
- Attend Board Meetings and other meetings, in person or via Skype, as requested
- Research, prepare, or review legal opinions, resolutions, policies, contracts, and other legal documents as necessary or as requested by the CEO or Board Members
- Represent VTrans in response to all claims and/or litigation filed against it
- Monitor and advise VTrans of legislation or case law affecting VTrans operations

**B. Budget**

1. Total FY 2017-18 Budget: Not to Exceed \$50,000

2. FY 2017-18 Hourly Attorney Rates:

Nancy C. Miller	\$290.00
Christiane E. Layton	\$265.00
Paul J. Chrisman	\$265.00
Jennifer V. Gore	\$230.00
Madeline E. Miller	\$230.00
Other Associates	\$175.00-\$275.00
Paralegals	\$115.00

3. Costs: Photocopying, postage, federal express, courier service, travel expenses, court and administrative fees, and all other “out of pocket” costs will be billed at actual costs. Travel time will be charged at one half the attorney’s hourly rate.

**DATE:** June 2, 2017  
**TO:** Valley Transportation Services Board of Directors  
**FROM:** Scott Graham, CEO  
**RE:** Approve Amendment No. 3 to Contract for Legal Services with Renne Sloan Holtzman Sakai LLP

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***Discussion:***

In June 2015, the VTrans Board approved a one-year contract with Miller & Owen for legal services. In 2015, prior to recommending a contract with Miller & Owen (now RSHS), staff acquired telephone bids from three legal firms. Miller & Owen was the lowest bidder and had experience representing VTrans and organizations like VTrans. On October 1, 2015, that contract was assigned to Renne Sloan Holtzman Sakai LLP (“RSHS”), as permitted under the terms of the contract. The attorney assigned to represent VTrans following with contract assignment remained Jennifer Gore.

The June 2015 contract was extended for an additional year in June 2016, but is now set to expire on June 30, 2017. VTrans will, however, require legal services in the coming fiscal year to finalize the transition of VTrans’ obligations and functions to Omnitrans, in its capacity as a CTSA, and to wind down the agency, if directed to do so by the Board. As such, the VTrans Board approved a line item in the FY 2017-18 budget for continued legal support.

The attached contract amendment would extend the contract with RSHS through the end of FY 2017-18. No increase to the not to exceed amount (\$100,000) is required, given that more than \$40,000 remains under the existing contract. As such, VTrans is not required to obtain proposals under its purchasing policies prior to amending the contract. In addition, because of Jennifer Gore’s experience representing VTrans during the last six years, and her role in establishing VTrans as an entity, she is uniquely qualified to assist in the transition of its obligations and functions to Omnitrans in its capacity as a CTSA and its winding down. Utilizing the services of another attorney during this period would result in substantial duplication costs and unacceptable delay while the new attorney reviewed the existing documents to become familiar with VTrans’ obligations and functions.

For these reasons, staff recommends extending the term of the contract with RSHS through the end of FY 2017-18.

***Fiscal Impact:***

VTrans will only incur expenses for services requested on an hourly basis and is free to terminate this contract at any time.

***Recommendations:***

To approve the attached contract Amendment.

***Attachment(s):***

a. Amendment No. 3 to Standard Agreement

**AMENDMENT NO. 3**  
**AGREEMENT FOR PROFESSIONAL SERVICES BETWEEN**  
**VALLEY TRANSPORTATION SERVICES AND**  
**RENNE SLOAN HOLTZMAN SAKAI LLP**

---

This Amendment No. 3 to the July 1, 2015, Agreement for Professional Services (“Agreement”) between Valley Transportation Services, a non-profit corporation (hereinafter “VTRANS”), and Renne Sloan Holtzman Sakai, LLP (“Contractor”), is entered into effective July 1, 2017.

WHEREAS, VTRANS and Contractor entered into an Agreement for professional services that Contractor is specially trained for and/or has the experience and expertise to competently perform; and

WHEREAS, VTRANS and Contractor wish to extend the term of the contract for one additional year for legal services in Fiscal Year 2017-18.

NOW, THEREFORE, VTRANS and Contractor agree as follows:

1. Section 1 of the Agreement (Time of Performance), is deleted in its entirety and is hereby replaced as follows:

“Contractor shall complete work in accordance with the Scope of Work, attached hereto as Exhibit “A”, as expeditiously as is consistent with generally accepted standards of professional skill and care and the orderly progress of work.

- a. This Agreement shall go into effect on July 1, 2015, contingent upon approval by VTRANS, and Contractor shall commence work after notification to proceed by VTRANS’s Project Manager. This Agreement shall end on June 30, 2018, unless extended by written amendment pursuant to Section 12 below.
- b. Contractor is advised that any recommendation for contract award is not binding on VTRANS until the contract is fully executed and approved by VTRANS.”

2. Exhibit A, attached hereto, is added to Exhibit A and sets forth the scope of work and rates of compensation for FY 2017-18.

3. Except as expressly amended herein, all terms and conditions of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, THE PARTIES HAVE ENTERED INTO THIS  
AMENDMENT AS OF THE DATE HEREIN ABOVE APPEARING:

**VALLEY TRANSPORTATION SERVICES**

---

P. SCOTT GRAHAM  
Chief Executive Officer

**RENNE SLOAN HOLTZMAN SAKAI LLP:**

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NANCY C. MILLER  
Partner

**EXHIBIT “A-2”**  
**FY 2016-17 SCOPE OF WORK**

**A. Services**

Renne Sloan Holtzman Sakai will serve as General Counsel to Valley Transportation Services (VTrans), providing the following legal services as requested:

- Provide all legal advice on behalf of VTrans as necessary or as requested by the VTrans CEO, Board Members, and other designated personnel, as appropriate
- Attend Board Meetings and other meetings, in person or via Skype, as requested
- Research, prepare, or review legal opinions, resolutions, policies, contracts, and other legal documents as necessary or as requested by the CEO or Board Members
- Represent VTrans in response to all claims and/or litigation filed against it
- Monitor and advise VTrans of legislation or case law affecting VTrans operations

**B. Budget**

1. Total FY 2017-18 Budget: Not to Exceed \$50,000

2. FY 2017-18 Hourly Attorney Rates:

Nancy C. Miller	\$290.00
Christiane E. Layton	\$265.00
Paul J. Chrisman	\$265.00
Jennifer V. Gore	\$230.00
Madeline E. Miller	\$230.00
Other Associates	\$175.00-\$275.00
Paralegals	\$115.00

3. Costs: Photocopying, postage, federal express, courier service, travel expenses, court and administrative fees, and all other “out of pocket” costs will be billed at actual costs. Travel time will be charged at one half the attorney’s hourly rate.

**DATE:** June 2, 2017  
**TO:** Valley Transportation Services Board of Directors  
**FROM:** P. Scott Graham, CEO  
**RE:** Approve Dissolution of VTrans

---

**Recommendation:**

Vote to dissolve the Corporation, and direct staff, with the assistance of legal counsel, to formally wind-down VTrans and dissolve its non-profit corporation status.

**Discussion:**

As the Board knows, on November 4, 2015, the SBCTA Board of Directors appointed Omnitrans as a Consolidated Transportation Services Agency ("CTSA") for the San Bernardino Valley and directed that the ongoing CTSA operations of VTrans be transitioned to Omnitrans. Since that time, Omnitrans and VTrans staff have been working together, in cooperation with SBCTA to implement an orderly transition of VTrans' current functions in the Valley area to Omnitrans without a disruption of services to the CTSA's community service partners and consumers.

Since that time, VTrans has continued to operate the Rural TREP Program, with administrative assistance from Omnitrans, and to take steps to transfer VTrans' other CTSA functions to Omnitrans. VTrans has successfully assigned almost all of its funding agreements with the community partners to Omnitrans. VTrans has also continued to provide fleet maintenance services to several of the CTSA's community partners. But Omnitrans is in the process of entering into its own lease for the maintenance facility, which will allow for the termination of VTrans' lease.

Staff has also taken the necessary steps to initiate the termination of VTrans' 457 plan, and VTrans' 403(b) plan. In addition, staff has transferred the buses previously owned by VTrans to ISS and the City of Grand Terrace for the continued operation of their programs, per the direction of the VTrans' Board.

As discussed in February 2017, staff has been exploring whether VTrans and its non-profit status should be formally dissolved once the Rural TREP Program funding is fully exhausted, or if it should be wound-down to the extent possible, but transitioned to serve as a non-profit arm of Omnitrans' CTSA functions to continue to take advantage of any flexibility provided as a result of its non-profit status.

#### Costs to Maintaining VTrans

Staff did explore the option of maintaining VTrans' non-profit status, but transitioning it to serve as a non-profit division to Omnitrans' CTSA operation. However, staff has determined that the ongoing costs of maintaining VTrans' non-profit status exceed the potential benefits.

To maintain the separate non-profit, the following administrative tasks must be completed and the associated expenses would be incurred each year:

- Hold no less than one Board meeting per year
- File Form 700s
- Maintain a conflict of interest code
- File necessary documents with the Secretary of State
- File tax documents
- Maintain separate financial records
- Perform an annual audit
- Maintain insurance for the Board of Directors and any operations
- Maintain an Administrative Agent Agreement with Omnitrans
- Obtain legal services

#### Benefits of Maintaining a Non-Profit CTSA Division

Now that Omnitrans' CTSA functions are up and running, staff does not see a continuing need for a non-profit division.

The continued operation of the non-profit could allow the CTSA to provide functions outside of the San Bernardino Valley, should it choose to do so. However, Omnitrans would be required to secure non-Measure I funding for such programs.

The Inland Regional Center (IRC) has suggested that it is unable to contract with Omnitrans for the vehicle inspection services due to potential conflicts of interest.



However, staff will work with IRC to provide information that demonstrates that it has no conflicts of interest in providing vehicle inspection services. Staff is hopeful that through additional dialogue, this issue can be resolved.

And while the non-profit could solicit funds from private donors through fundraising campaigns, nearly every other type of funding that is available to a non-profit CTSA can be secured by a public agency as well.

Given these factors, staff recommends that the Board vote to dissolve VTrans and direct staff and legal counsel to take the necessary steps to wind-down the agency at this time.

#### Steps Required to Formally Dissolve

Following the exhaustion of all Rural TREP Program funds and the transfer or termination of all remaining VTrans obligations, VTrans could be formally dissolved. To do so, the VTrans Board would be required to take the following steps:

Step 1. Vote to Dissolve the Corporation

Step 2. Obtain a Dissolution Waiver from the Attorney General's office waiving any objections to the non-profit's plan for distributing the assets of the corporation. This requires submitting a letter to the Attorney General's office with the following information:

- a. Letter signed by the non-profit corporation's attorney or a director detailing who will receive the corporation's remaining assets. This must reflect that the assets are being distributed in accordance with the Articles/Bylaws, and that the recipient of the assets has the same tax exempt status as the dissolving non-profit.
- b. A signed copy of the Certificate of Dissolution to be filed with the Secretary of State.
- c. A financial statement showing receipts and disbursements, and a balance sheet for the three prior accounting periods, as well as the current, incomplete accounting period.
- d. A copy of the endorsed Articles of Incorporation, and any amendments.

Step 3. Submit the Dissolution Packet to the Secretary of State. This packet will include the Certificate of Dissolution and the Attorney General's letter approving the disposition of the assets.

Step 4. Submit Final Dissolution Notice to the Attorney General's Office. This will include the Certificate of Dissolution, endorsed by the Secretary of State, and a financial report showing all assets were distributed properly, resulting in a zero balance.

***Fiscal Impact:***

VTrans will incur expenses to wind-down the entity.

***Attachments:***

None

**RESOLUTION NO. 2017-02**

**RESOLUTION OF THE BOARD OF DIRECTORS  
OF VALLEY TRANSPORTATION SERVICES  
APPROVING THE DISSOLUTION OF  
VALLEY TRANSPORTATION SERVICES**

**BE IT RESOLVED** by the Board of Directors ("Board") of Valley Transportation Services ("VTrans") that the Chief Executive Officer and legal counsel are hereby directed to take the necessary steps to dissolve Valley Transportation Services.

This Resolution shall take effect from and after the date of its passage and adoption.

\* \* \* \* \*

PASSED AND ADOPTED this 2nd day of June, 2017, by the following vote:

AYES:

NOES:

ABSENT:

\_\_\_\_\_  
Chairperson

ATTEST:

\_\_\_\_\_  
Secretary