

**LEASE AGREEMENT  
WITH OPTION TO PURCHASE**

**By and Between**

**REDEVELOPMENT AGENCY  
OF THE CITY OF MODESTO**

**and**

**CIVIC PARTNERS MODESTO, INC.  
a California corporation**

JPA Building/Retail Space  
Modesto Redevelopment Project

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Exhibit D	Definition of Shell Space for Retail
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## LEASE AGREEMENT WITH OPTION TO PURCHASE

This Lease Agreement (the "Lease") is made as of this 11th day of October, 2001, by and between the REDEVELOPMENT AGENCY OF THE CITY OF MODESTO, a public body, corporate and politic, established and operating pursuant to the Community Redevelopment Law of the State of California (hereinafter called "Landlord"), and CIVIC PARTNERS MODESTO, Inc., a California corporation (hereinafter called "Tenant").

### Recitals

A. Landlord is in the process of carrying out the Redevelopment Plan (the "Redevelopment Plan") for the Modesto Redevelopment Project (the "Project"), as it is defined in Section 102 of that certain Disposition and Development Agreement entered into between the Landlord and Tenant, dated August 21, 1997, as amended by that certain First Implementation Agreement to Disposition and Development Agreement, dated February 6, 1998 and as further amended by that certain Second Implementation Agreement dated January 19, 1999, and as further amended by that certain Third Implementation Agreement dated March 22, 2001 (collectively, the "DDA").

B. In implementation of the Redevelopment Plan, the DDA provides for the disposition and development and improvement of certain real property (the "Developer Parcels") located within the boundaries of the Project (the "Project Area"), including certain retail and cinema uses (collectively, the "Developer's Project"). The DDA, an executed copy of which is on file in the offices of the Agency, is hereby incorporated herein by reference and made a part hereof as though fully set forth herein, and all terms defined in the DDA and used in this Lease shall have the meanings given in the DDA.

C. In conjunction with and as contemplated by the DDA, the Landlord also entered into an agreement dated July 22, 1997, as amended, (the "Master Agreement") with the City-County Capital Improvements and Financing Joint Powers Agency (the "JPA"), the City of Modesto (the "City") and the County of Stanislaus (the "County") providing for the development and construction of a separate, but related project (the "JPA Project") adjacent to the Site, including a joint City Hall and County Administration Facility (the "JPA Building") and a public garage (the "Public Garage"). The Developer's Project and the JPA Project are sometimes collectively referred to herein as the "Tenth Street Place".

D. Landlord and JPA have entered into a Reciprocal Easement, Operation and Maintenance Agreement with Restrictions and Covenants (JPA Building), dated August 17, 2001, (the "Building REA") which has been recorded in the office of the County Recorder, County of Stanislaus at 1021 I Street, Modesto, California, 95353. The Building REA governs the respective rights and obligations of the Landlord and JPA with respect to the JPA Building. Tenant has been provided with a copy of the Building REA.

E. A portion of the Tenth Street Place project is the subject of a Reciprocal Easement, Operation and Maintenance Agreement with Restrictions and Covenants by and between the JPA, Landlord, Tenant and Vintage Ranch Properties, Inc. (the "Plaza REA") which was approved on June 12, 2000, and recorded on June 15, 2000, as Instrument No. 2000-0048248 in the Office of the County Recorder, Stanislaus County, California.

F. Landlord and Tenant have entered into that certain Parking Agreement dated June 12, 2000 (the "Parking Agreement"), recorded on June 15, 2000, as Instrument No. 2000-0048258 in the Office of the County Recorder, Stanislaus County, California.

G. Pursuant to the DDA and the Master Agreement, Landlord has purchased from the JPA the Retail Airspace Parcel consisting of approximately 27,689 gross square feet, more or less, (the "Premises") located on the ground floor of the JPA Building. The Premises are specifically delineated as Parcels A-1 and A-2 on that certain Record of Survey recorded as Book 26 of Surveys, Page 29, Stanislaus County Records attached hereto as Exhibit A and incorporated herein by reference.

### Lease and Agreements

NOW, THEREFORE, in consideration of the rents to be paid hereunder and of the agreements, covenants and conditions herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

I. [§100] BASIC LEASE TERMS

A. [§101] Lease of the Premises

Upon and subject to the terms, covenants and conditions hereof, Landlord hereby leases and demises to Tenant, and Tenant hereby leases and takes from Landlord, the Premises. It is mutually agreed that the leasing hereunder is upon and subject to the terms, covenants, conditions and restrictions contained herein, and in the Building REA. Tenant covenants, as a material part of the consideration of this Lease, to keep, perform and observe each and all of said terms, covenants, conditions and restrictions by Tenant, with respect to the Premises, to be kept, performed or observed, and that this Lease is made upon the condition of such performance.

As used herein, the term "Premises" shall mean and include approximately 27,689 square feet of the Retail Airspace Parcel as set forth in G above, developed by the JPA on the ground floor of the JPA Building, in accordance with and pursuant to the Master Agreement, and all improvements placed thereon by the Tenant pursuant to this Lease, together with all rights, easements and appurtenances pertaining thereto including, without limitation, all rights and easements granted to the Landlord under the Building REA and the Plaza REA including, without limitation, the non-exclusive right to use the Building Common Area (as defined in the Plaza Area) and the Service Area (as defined in the Plaza REA). The Premises shall include all parking rights and privileges granted to Tenant under the Parking Agreement; provided, however, in the event of any inconsistencies between the REA and this Lease, this

Lease shall prevail.

Landlord and Tenant understand that the rights, duties and obligations of the Landlord in the Premises are based on or derived from the Reciprocal Easement, Operation and Maintenance Agreement With Restrictions and Covenants ("Building REA"), an agreement written after this Lease Agreement With Option to Purchase was written. Accordingly, the parties agree that where the terms, definitions, duties and obligations in this Agreement conflict with those found in the Building REA, those in the Building REA shall prevail, and govern the relationship of the parties under this Agreement as though set forth herein. But, to the extent that the terms of this Agreement are supplemental or complimentary to those in the Building REA, they shall be given full force and effect to that extent.

B. [§102] Term and Possession

The term of this Lease shall be for a period of fifty (50) years (or until sooner terminated as herein provided) commencing upon the date this Lease is executed by the RDA and terminating fifty (50) years thereafter (the "Termination Date") (the "Initial Term").

If this Lease shall not have been previously terminated and if Tenant is not in default under this Lease at the time of the giving of notice as hereinbelow described (or, if Tenant is in default but Tenant is diligently proceeding to cure said default) and is not in default at the expiration of the Initial Term or the immediately preceding Option Term (as defined herein), whichever is applicable, then Tenant shall have five (5) options to extend the term of this Lease for an additional five (5) years per option (collectively, the "Option Terms") at the expiration of the Initial Term on all of the provisions herein contained.

1. Tenant agrees to continue to use the Premises for the "Permitted Uses" as defined in Section 202 below in accordance with the terms and conditions of the Building REA; and

2. The Base Rent as defined in Section 107 of this Lease shall be redetermined as set forth herein.

Each Option Term may be exercised by the delivery of written notice by Tenant to Landlord delivered at least six (6) months but not more than one (1) year in advance of the Termination Date of the Initial Term or the then-current Option Term, as the case may be. If Tenant fails to deliver written notice of its exercise of any Option Term at least six (6) months prior to the expiration of the Initial Term or the then-current Option Term, as the case may be, Landlord shall provide Tenant with written notice thereof. In such event, Tenant shall have fifteen (15) days after receipt of Landlord's notice within which to exercise the then-applicable Option Term.

C. [§103] Tenant's Option to Purchase

Landlord hereby grants to Tenant the option to purchase the Premises at any time during the term of this Lease (including any Option Term), on the terms and conditions contained

in Exhibit C, attached hereto.

D.     [§104] Title and Condition of the Premises

1.     [§105] Title

Title to the leasehold of the Premises is hereby conveyed by Landlord to Tenant free and clear of all recorded liens, encumbrances, covenants, assessments, easements, leases and taxes, except as set forth in the Approved Title Exceptions, attached hereto as Exhibit and incorporated herein by reference, and this Lease; provided, however, that the Premises shall be subject to the Building REA and all easements of record. Landlord, for itself and the JPA under the Building REA, reserves the use of the area beyond the finished walls and beneath the floor and above the finished ceiling of the Premises, together with the right from time to time to install, maintain, use and replace utility lines, pipes, conduits, ducts, wires and the like under, over or through the Premises in locations which will not unreasonably interfere with Tenant's use thereof.

2.     [§106] Condition of the Premises

Pursuant to the Master Agreement, the JPA has constructed the JPA Building as further set forth in Article III hereof. The Premises consists of the Retail Airspace Parcel developed within the JPA Building.

The Premises have been accepted by the Tenant as being in the condition required by the Master Agreement and the DDA. In the event Tenant becomes aware of any defect in the Premises within one (1) year of its acceptance of the Premises, it shall promptly notify Landlord of such defect in order to allow Landlord to pursue any remedies available to it to cure such defect. After such one(1) year period, the Premises shall thereafter be deemed as conveyed to Tenant in an "as is" condition, provided, however, that Landlord shall assign to Tenant any claims it may have against the contractor, architect, engineers or consultants.

E.     [§107] Rent

Tenant shall pay to Landlord, without abatement, deduction or offset whatsoever in lawful money of the United States of America, at the office of the Agency, or to such other person or at such other place as Landlord may from time to time designate by notice to Tenant, rent during the term of this Lease in accordance with the following Sections.

1.     [§108] Base Rent

Tenant shall pay rent ("Base Rent") in the amounts and at the times set forth in Exhibit D hereto. The Base Rent amounts reflect the amount necessary to cover the Agency's full cost of acquiring and financing the Premises. Base Rent shall be paid in semi-annual payments, with each payment due on or before the dates set forth in the attached Exhibit D, which payment dates reflect the date ten (10) days prior to the Agency's debt service payments. Landlord acknowledges that Tenant has been making the payments of Base Rent

payment as shown on the attached Exhibit D. Tenant acknowledges that Base Rent payments commenced prior to completion of construction and occupancy of the Premises by Tenant. Notwithstanding, Tenant shall pay Base Rent payments in the full amount and at the times set forth in the attached Exhibit D.

Following retirement or other termination of the Agency's debt service payments associated with the Premises, and on each anniversary thereafter, the Base Rent for the Premises shall be equal to the annual Base Rent payment for the previous twelve (12) month period, adjusted upward or downward by the same percentage as the average increase or decrease for all rents for subtenants of Tenant of the retail space comprising the Premises during the previous twelve (12) months, provided, however, that Base Rent shall not exceed fair market rental for the Premises.

2. [§109] Additional Rent

In addition to and not by way of limitation of Landlord's rights under specific provisions of this Lease, Landlord shall at all times have the right (at its sole election and without any obligation to do so) to advance on behalf of Tenant any amount payable and delinquent under the terms hereof by Tenant, or to otherwise satisfy any of Tenant's obligations hereunder, provided that (except in cases of emergency calling for immediate payment) Landlord shall first have given Tenant no less than ten (10) days advance written notice of Landlord's intent to advance such amounts on behalf of Tenant and Tenant shall have failed to make such payment within such period of time. No advance by Landlord shall operate as a waiver of any of Landlord's rights under this Lease and Tenant shall remain fully responsible for the performance of its obligations under this Lease. All amounts advanced by Landlord shall constitute "Additional Rent" under this Lease, shall be immediately due and payable by Tenant to Landlord, and shall bear interest at the maximum rate permitted on the date of such advance by Section 1(2) of Article XV of the California Constitution (not to exceed ten percent (10%) per annum) from the date of advance until paid in full.

3. [§110] Late Charges

Tenant recognizes that late payment of Base Rent, Additional Rent or any other payment due hereunder from Tenant to Landlord will result in administrative and other additional expenses to Landlord, the extent of which additional expense is extremely difficult and economically impractical to ascertain. Tenant therefore agrees that if Base Rent, Additional Rent or any other payment due hereunder from Tenant to Landlord remains unpaid five (5) days after said payment is due, Tenant shall pay to Landlord a late charge equal to interest on the amount of the delinquent Base Rent, Additional Rent or other payment at the maximum rate permitted under Section 1(2) of Article XV of the California Constitution (not to exceed ten percent (10%) per annum) from the date when said payment should have been made, which late charge shall be added to and become part of the delinquent Base Rent, Additional Rent or other payment. The amount of the late charge to be paid Landlord by Tenant on any unpaid Base Rent, Additional Rent or other payment shall be reassessed and added to Tenant's obligation for each successive monthly period accruing after the date on which the late charge is initially imposed. Tenant agrees that such amount is a reasonable estimate of the loss and expense to be suffered by

Landlord as a result of such late payment by Tenant and may be charged by Landlord to defray such loss and expense. The provisions of this Section 110 in no way relieve Tenant of the obligation to pay Base Rent, Additional Rent or other payments on or before the date on which they are due, nor do the terms of this Section 110 in any way affect Landlord's remedies pursuant to Section 1101 hereof in the event any Base Rent, Additional Rent or other payment is unpaid after the due date.

4.     [§111] Triple Net Lease

Except as may otherwise be provided herein, this Lease is a triple net lease, and Base Rent and other payments payable hereunder to or on behalf of Landlord shall be paid without notice or demand and without setoff, counterclaim, abatement, suspension, deferment, deduction or defense.

II.    [§200] USE, OPERATION AND MAINTENANCE OF THE PREMISES

A.     [§201] Use

1.     [§202] Use of the Premises

Tenant shall use the Premises for retail, office, and institutional uses (collectively, the "Permitted Uses") as specified for such Premises in this Lease, and for no other purpose without the prior written consent of Landlord, which consent shall not be unreasonably withheld. The term "retail uses" shall include, without limitation, office use which is incidental to a permitted retail use and "retail office users" (as defined in Section 701). Tenant agrees to use reasonable efforts to lease the Premises primarily for retail uses.

2.     [§203] Nondiscrimination

There shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, sexual preference, marital status, ancestry or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Premises or the improvements to be constructed thereon, or any part thereof, and the Tenant itself, or any person claiming under or through it, shall not establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Premises or any part thereof.

Tenant shall refrain from restricting the rental, sale or lease of the Premises, or any portion thereof, on the basis of race, color, creed, religion, sex, sexual preference, marital status, ancestry or national origin of any person. All such deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

- a.     In deeds: "The grantee herein covenants by and for himself or

herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, sexual preference, marital status, ancestry or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the grantee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the land herein conveyed. The foregoing covenants shall run with the land."

b. In leases: "The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions:

"That there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, sexual preference, marital status, ancestry or national origin in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the land herein leased, nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the land herein leased."

c. In contracts: "There shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, sexual preference, marital status, ancestry or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land, nor shall the transferee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the land."

3. [§204] The Redevelopment Plan and DDA

Tenant, subject to the provisions of this Lease, shall perform and enforce all of the provisions of the Redevelopment Plan and the DDA required to be performed or enforced by it.

B. [§205] Maintenance of Improvements

Tenant shall, at all times and without cost or expense to Landlord, cause the non-structural interior of all improvements on the Premises, including, but not limited to, exterior doors and entrances, all windows, floor coverings, sills, door closures, moldings, trim of all doors and windows, and all partitions, door surfaces and Tenant's fixtures, equipment and

signs, to be kept in a neat and clean condition of repair to ensure that the Premises and each part thereof is maintained in a first-class manner. Such upkeep and maintenance shall be in accordance with the Building REA.

Tenant shall reimburse Landlord for the costs payable by Landlord under the Building REA and the Plaza REA for the maintenance and repair of the Building Common Area, the Plaza, and the Service Area on a monthly basis within twenty (20) days after receipt of Landlord's billing therefor (which billing shall include copies of all bills and supporting invoices provided by the JPA. Landlord shall enforce all rights under the Building REA and the Plaza REA to the fullest extent possible in order to maintain the Premises in a first-class condition.

Landlord shall provide Tenant with a copy of the proposed annual Budgets and Work Program under the Building REA and the Plaza REA within ten (10) days after Landlord's receipt of such Budgets. Tenant shall have the right to review and comment on the Budgets and Work Program. If, with respect to any line item in the JPA Building Budget which exceeds Fifty Thousand Dollars (\$50,000.00), Tenant reasonably believes such cost is excessive, Tenant shall have the right, upon written notice to the Landlord within fifteen (15) days after receipt of the JPA Building Budget, to request that Landlord request pursuant to the Building REA that proposals be submitted to perform the work, and Landlord shall request the JPA to hire the lowest reasonable bidder to provide the work, product, or service pursuant to Article 4, Section 8 of the Building REA. With respect to any line item in the JPA Building Budget which is Fifty Thousand Dollars (\$50,000.00) or less, any line item in the Plaza Budget, or the cost of the Maintenance Director, if Tenant reasonably believes such cost is excessive, Tenant shall have the right, upon written notice to the Landlord within fifteen (15) days after receipt of the JPA Budget or the Plaza Budget, as the case may be, to request that Landlord request the applicable Management Committee (as defined under each REA) to obtain proposals to perform the work, and Landlord shall request the JPA to hire the lowest responsible bidder to provide the work, product, or service. The parties agree that it shall be reasonable for Tenant to believe a cost is excessive and to request or require that proposals be obtained as set forth above if the cost per square foot payable by Tenant materially exceeds the cost per foot payable by tenants in comparable buildings for such work, product, or service.

### III. [§300] CONSTRUCTION OF PREMISES

#### A. [§301] Construction of the Premises

The Retail Airspace Parcel core and shell improvements constituting the Premises have been constructed by the JPA pursuant to the Master Agreement. Said improvements shall include all those items identified in Exhibit E attached hereto. Tenant shall not be responsible for any work of constructing the Premises improvements prior to acceptance of the Premises by the Landlord and Tenant.

#### B. [§302] Delivery of Possession

Tenant hereby accepts possession of the Premises, subject to the correction and completion of any punch list items pursuant to the Master Agreement, and shall thereafter

diligently work to complete the completed retail improvements as provided for in Section 501 hereof. Tenant's taking possession of the Premises shall not be deemed to waive any breaches of this Lease by Landlord. Tenant shall have the benefit and right to enforce all warranties and guaranties provided to Landlord under the Master Agreement with respect to the Premises (and Landlord agrees to assign to Tenant any such warranties and guaranties) as long as such warranties and guaranties shall run to the benefit of Tenant and are assignable to Landlord.

#### IV. [§400] LAWS, TAXES AND UTILITIES

##### A. [§401] Compliance with Laws

Tenant shall, at its sole cost and expense, comply with and shall cause its sublessees, operators, licensees and concessionaires to comply with:

1. All federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations and ordinances affecting the Premises or any part thereof, or the use thereof including those which require the making of any structural, unforeseen or extraordinary changes, whether or not any such statutes, laws, rules, orders, regulations or ordinances which may be hereafter enacted involve a change of policy on the part of the governmental body enacting the same, if such changes are required because of Tenant's specific use of the Premises or related to the installation of tenant improvements for Tenant or its sublessees, operators, licensees or concessionaires (provided, however, that any such laws are applicable solely to the Premises); and

2. All rules, orders and regulations of the National Board of Fire Underwriters or other bodies exercising similar functions in connection with the prevention of fire or the correction of hazardous conditions which apply to Tenant's specific use of the Premises or the installation of tenant improvements for Tenant or its sublessees, operators, licensees or concessionaires.

Tenant shall comply with each and every requirement of all policies of public liability, fire and other insurance which at any time may be in force with respect to the Premises, provided that Tenant has the right to use the Premises as permitted hereunder. The judgment of any court of competent jurisdiction or the admission of Tenant in any action or proceeding against it, whether Landlord be a party thereto or not, that Tenant has violated any such ordinance or statute in the use of the Premises shall be conclusive of that fact as between Landlord and Tenant.

##### B. [§402] Taxes and Assessments

##### 1. [§403] Generally

Tenant acknowledges and agrees that this Lease will create a possessory interest subject to property taxation. Tenant agrees to pay and discharge, as additional rent for the Premises during the term of this Lease, before delinquency, all taxes (including, without

limitation, possessory interest taxes associated with the Premises and the execution of this Lease), assessments, fees, levies, water, drainage and sewer fees, rates and charges, license and permit fees and other governmental charges of any kind or nature whatsoever, general and special, ordinary and extraordinary, foreseen and unforeseen or hereinafter levied or assessed in lieu of or in substitution of any of the foregoing (all of the foregoing collectively called "taxes" for all purposes under this Lease) which are or may be at any time or from time to time during the term of this Lease levied, charged, assessed or imposed upon or against the Premises, or against any of Tenant's personal property now or hereafter located thereon, or which may be levied, charged, assessed or imposed upon or against the leasehold estate created hereby or which may be imposed upon any taxable interest of Tenant acquired pursuant to this Lease on account of any taxable possessory right which Tenant may have acquired pursuant to this Lease. If, at any time during the term of this Lease, any taxes (other than personal property taxes) are levied which may at the election of the taxpayer be paid in installments, Tenant shall pay such installments during the term of this Lease, and Landlord shall pay any installments thereafter. If any such taxes must be paid in a lump sum, Tenant shall pay the entire amount thereof.

2.     [§404] Additional Rent

In the event the Premises, or any possessory interest therein, should at any time be subject to ad valorem taxes or privilege taxes levied, assessed or imposed on such property, Tenant shall pay taxes upon the assessed value of the entire Premises and not merely upon the assessed value of its leasehold interest, as provided in Section 33673 of the California Health and Safety Code.

3.     [§405] Limits of Tax Liability

The provisions of this Lease shall not be deemed to require Tenant to pay municipal, county, state or federal income or gross receipts taxes (except as provided below) or excess profits taxes assessed against Landlord, or municipal, county, state or federal capital levy, estate, succession, inheritance, gift or transfer taxes of Landlord, or corporation franchise taxes imposed upon any corporate owner of the fee of the Premises; except, however, that Tenant shall pay all taxes assessed by any governmental authority by virtue of any operations by Tenant conducted on or out of the Premises. It is agreed that in the event the State of California or any taxing authority thereunder changes or modifies the system of taxing real estate so as to tax the rental income from real estate (whether or not denominated a gross receipts tax) and so as to impose a liability upon Landlord for the amount of such tax, then Tenant shall be liable under this Lease for the payment of the taxes so imposed during the Lease term. In order to determine the amount of such alternative tax for which Tenant shall be liable, the Premises shall be considered as if it were the only asset of Landlord, and the rent paid hereunder shall be considered as if it were the only income of Landlord.

4.     [§406] Apportionment

All taxes for the fiscal or tax years in which the term of this Lease shall begin and end shall be apportioned so that Tenant shall pay only those portions thereof which correspond with the portion of said years as are within the Lease term.

5.     [§407] Tax Receipts

Tenant, upon request of Landlord, shall furnish to Landlord or, if requested by Landlord, to any fee mortgagee, within thirty (30) days after the date when any such taxes would become delinquent, official receipts of the appropriate taxing authority or other evidence satisfactory to Landlord or such mortgagee evidencing the payment of such taxes.

6.     [§408] Evidence of Nonpayment

The certificate, advice, receipt or bill of the appropriate official designated by law to make or issue the same or to receive payment of any such taxes, of non-payment of such taxes shall be prima facie evidence that such taxes are due and unpaid or have not been paid at the time of the making or issuance of such certificate, advice, receipt or bill.

7.     [§409] Landlord's Attorney-in-Fact

Landlord appoints Tenant the attorney-in-fact of Landlord for the purpose of making all payments to be made by Tenant pursuant to any of the provisions of this Lease to persons or entities other than Landlord. In case any person or entity to whom any sum is directly payable by Tenant under any of the provisions of this Lease shall refuse to accept payment of such sum from Tenant, Tenant shall thereupon give written notice of such fact to Landlord and shall pay such sum directly to Landlord at the address specified in Section 1603 hereof, and Landlord shall thereupon pay such sum to such person or entity kind (including, but not limited to, reasonable attorneys' fees and expenses) which may be imposed upon or incurred by Landlord in connection therewith.

C.     [§410] Services and Utilities

Tenant shall pay promptly as the same become due and payable all charges, costs, bills and expenses of and for water, gas, electricity, sewer, drainage, garbage, telephone and all other services and utilities of whatever kind furnished or supplied to or used by Tenant or any other party in connection with the use, occupancy, maintenance or operation of the Premises or any part thereof, excluding connection or capacity fees. Tenant hereby expressly waives as to Landlord any and all claims for compensation, damages, payments or offset based upon or with respect to any and all loss or damage now or hereafter sustained by Tenant by reason of any defect, deficiency, failure or impairment of whatever kind or nature in any service or utility furnished or supplied to or used by Tenant or any other party in connection with the use, occupancy, maintenance or operation of the Premises or any part thereof, except if caused by the Landlord's or JPA's negligence. Such services and utilities shall include, without limitation, the water supply system, drainage, sewer system, garbage, wires leading to or inside the Premises, gas, electric or telephone services. In the event that these services and utilities are not provided, Landlord will invoke the arbitration procedure under the Building REA and/or Plaza REA to cause them to be provided. Landlord shall enforce all rights under the Building REA and the Plaza REA to the fullest extent possible in order to maintain the services and utilities in a first-class condition.

V. [§500] CONSTRUCTION AND LIENS

A. [§501] Construction of Tenant Improvements

Landlord and Tenant acknowledge and agree that the Premises, upon conveyance of leasehold interest to Tenant hereunder, consists of certain retail shell space improvements developed by the JPA pursuant to "Exhibit E" on the ground floor of the JPA Building. Within the time and in the manner set forth in the DDA and, in particular, the Scope of Development (Attachment No. 4 to the DDA) and the Schedule of Performance (Attachment No. 3 to the DDA), Tenant shall use its commercially reasonable efforts with due diligence to comply with the leasing requirements and thereafter diligently construct or cause to be constructed the completed retail improvements required by the DDA to be constructed on the Premises. Tenant shall cooperate with Landlord and the JPA and, as necessary, coordinate such construction work so as not to unreasonably interfere with the occupancy and use of the remainder of the JPA Building.

B. [§502] Additional Construction, Alterations and Repairs

1. [§503] General Construction Standards

All additional construction, alteration or repair work permitted herein shall be accomplished expeditiously and diligently. Tenant shall take all measures reasonably necessary to minimize any damage, disruption or inconvenience caused by such work and make adequate provision for the safety and convenience of all persons affected thereby. Tenant shall repair, at its own cost and expense, any and all damage caused by such work and shall restore the area upon which such work is performed to a condition which is equal to or better than the condition which existed prior to the beginning of such work. In addition, subject to the mutual waiver of subrogation set forth herein, Tenant shall pay (or cause to be paid) all costs and expenses associated therewith and, to the extent not covered by insurance carried by Landlord or Tenant, shall indemnify and hold Landlord harmless from all damages, losses or claims attributable to the performance of such work. Dust, noise and other effects of such work shall be controlled using the best accepted methods customarily utilized in order to control such deleterious effects associated with the construction of tenant improvements in the office buildings.

Any remodeling or reconstruction work undertaken on any existing improvement shall at all times be of good quality construction and architectural design and in accordance with plans therefor submitted to and approved by Landlord, which shall not be unreasonably withheld.

C. [§504] Mechanics' and Other Liens

1. [§505] Discharge of Liens

Tenant shall not create or permit or suffer to be created or to remain, and will discharge (or bond off), any lien (including, but not limited to, the liens of mechanics, laborers,

materialmen, suppliers or vendors for work or materials alleged to be done or furnished in connection with the Premises), encumbrance or other charge upon the Premises or any part thereof or upon Tenant's leasehold interest therein, provided, however, that Tenant shall not be required to discharge any such liens, encumbrances or charges as may be placed upon the Premises by the act of Landlord.

2.        [§506] Right to Contest Liens

Tenant shall have the right to contest in good faith and by appropriate legal proceedings, the validity or amount of any mechanics', laborers', materialmen's, suppliers' or vendors' lien or claimed lien. In the event of such contest, if the amount in dispute exceeds \$25,000, Tenant shall give to Landlord reasonable security (which may be in the form of a bond or an indemnity of the title insurance company), as may be required by Landlord, to insure payment thereof and to prevent any sale, foreclosure or forfeiture of the Premises or any part thereof by reason of such non-payment. Such security shall not be less than a sum equal to one and one-quarter times the amount of such lien or such claim of lien. On final determination of such lien or such claim of lien, Tenant shall immediately pay any judgment rendered, with all proper costs and charges, and shall have such lien released or judgment satisfied at Tenant's expense, and upon such payment and release or satisfaction, Landlord shall promptly return to Tenant such security as Landlord shall have received in connection with such contest; provided, however, that Tenant may use the security to satisfy the lien or judgment.

3.        [§507] Protection of Landlord

Nothing in this Lease shall be construed as constituting the consent of Landlord, expressed or implied, to the performance of any labor or the furnishing of any materials or any specific improvements, alterations of or repairs to the Premises, or any part thereof, by any contractor, subcontractor, laborer or materialmen, nor as giving Tenant any right, power or authority to act as agent of or to contract for, or permit the rendering of, any services, or the furnishing of any materials, in such manner as would give rise to the filing of mechanics' liens or other claims against the fee of the Premises. Landlord shall have the right at all reasonable times to post, and keep posted, on the Premises any notices which Landlord may deem necessary for the protection of Landlord and of the Premises from mechanics' liens or other claims. In addition, Tenant shall make, or cause to be made prompt payment of all monies due and legally owing by Tenant to all persons doing any work or furnishing any materials or supplies to Tenant or any of its contractors or subcontractors in connection with the Premises, subject to Tenant's right to contest any such amounts pursuant to Section 507.

VI.       [§600] OWNERSHIP OF IMPROVEMENTS

A.        [§601] Ownership of Improvements

1.        [§602] Ownership During Term

All improvements to real property constructed on the Premises by Tenant as permitted or required by this Lease shall, during this Lease term, be and remain the property of

Tenant, provided, however, that Tenant shall have no right to waste, destroy, demolish or remove the improvements, and provided, further, that Tenant's rights and powers with respect to the improvements are subject to the terms and limitations of this Lease. Landlord and Tenant covenant for themselves and all persons claiming under or through them that the improvements are real property.

2.     [§603] Ownership at Termination

At the expiration or sooner termination of this Lease term, provided Tenant has not exercised its option to purchase the Premises pursuant to Section 103 hereof, Landlord may, at Landlord's election, demand the removal from the Premises, at Tenant's sole cost and expense, of all moveable fixtures and/or furnishings, or of certain moveable fixtures and/or furnishings, as specified in the notice provided for below. A demand to take effect at the normal expiration of the term shall be effected by notice given at least six (6) months before the expiration date. A demand to take effect on any other termination of this Lease shall be effectuated by notice given concurrently with notice of such termination or within ten (10) days after such termination, provided that Tenant has reasonable opportunity to remove such items, which in no event shall be less than thirty (30) days following the effective date of termination. Tenant shall have no obligation to remove any fixtures or furnishings that are permanently attached to the Premises.

Any fixtures and/or furnishings not removed by Tenant within thirty (30) days following the effective date of termination of this Lease shall be deemed to be abandoned by Tenant and shall, without compensation to Tenant, then become the Landlord's property, free and clear of all claims to or against them by Tenant or any third party.

Upon termination of this Lease, whether by expiration of the term or otherwise, provided Tenant has not exercised its option to purchase the Premises pursuant to Section 103 hereof, all improvements, and all fixtures and/or furnishings not removed by Tenant as hereinabove provided, shall, without compensation to Tenant, then become Landlord's property, free and clear of all claims to or against them by Tenant or any third party.

Tenant shall defend and indemnify Landlord against all liability and loss arising from any such claims or from Landlord's exercise of the rights conferred by this Section 603.

VII.   [§700] ASSIGNMENT AND SUBLETTING

A.     [§701] Assignment and Subletting

In view of the fact that the Premises constitute a major and indispensable component of Landlord's redevelopment plans for downtown Modesto and is a component of the larger joint JPA Building as referred to in Section 208 of this Lease, and that, therefore, the identity of the Tenant of the Premises is of the utmost concern to the Landlord and the City of Modesto, Tenant, its successors and assigns, shall not assign its interest in this Lease either voluntarily or by operation of law or sublease, except as expressly permitted herein, all or any

part of the Premises or allow any other person or entity (except Tenant's authorized representatives) to occupy or use all or any part of the Premises without the prior written consent of Landlord, which consent shall not be unreasonably withheld and shall be based upon the proposed assignee's experience with retail operations and financial strength.

Notwithstanding anything to the contrary in this Section 701, Tenant shall be permitted to sublease the Premises to or enter into license or concession agreements with retail users (as hereinafter defined), provided the form of sublease agreement is at all times subject to the terms of this Lease. The term "retail users" shall also be deemed to include "retail office users", which may include offices which provide services directly to consumers, including but not limited to financial institutions, real estate, stock brokerages, title company and escrow offices, travel and insurance agencies, and medical, dental and legal clinics, so long as any such use is not in conflict with the City's zoning ordinance, and a limited number of "business office users," which shall mean offices which do not provide services directly to consumers.

Notwithstanding anything contained herein to the contrary, Tenant shall have the right, without Landlord's consent, to assign this Lease or sublease the Premises to any affiliate of Tenant, to any entity succeeding to substantially all of the stock or assets of Tenant as a result of a consolidation or merger, or to an entity to which all or substantially all of the stock or assets of Tenant have been sold, or to a successor entity, the majority of the ownership interests of which entity shall be owned by the shareholders of Tenant ("Permitted Assignment"). The term "affiliate" shall mean any other person or entity directly or indirectly controlling, controlled by or under common control with Tenant. For purposes of this Lease, "control" as applied to any person or entity means the possession, directly or indirectly, of the power to direct or cause the direction of the management, policies and decision-making of such person or entity, through the ownership of voting interests.

Notwithstanding anything contained herein to the contrary, Tenant shall have the right, with Landlord's prior consent, which consent shall not be unreasonably withheld, to assign this Lease at any time after the Premises have been initially leased.

Notwithstanding the right to assign herein, the Tenant shall personally be responsible for and guarantee payments of assessments and rents required by this Lease and any assignment documents shall reflect this provision, unless the assignee has fully assumed all the obligations under this Lease and Landlord has expressly consented in writing to such assignment and assumption, as set forth below.

Landlord shall not unreasonably withhold its consent pursuant to the paragraph immediately above, if Tenant and any such proposed transferee shall, in addition to any other reasonable requirements or conditions required by Landlord, comply with the following:

1. Any proposed transferee shall have the qualifications and financial responsibility, as reasonably determined by Landlord, necessary and adequate to fulfill the obligations undertaken in this Lease by Tenant;
2. Any proposed transferee, by instrument in writing, shall, for itself and its

successors and assigns, and expressly for the benefit of Landlord, have expressly assumed all of the obligations of Tenant under this Lease arising after the date of transfer and agreed to be subject to all of the conditions and restrictions to which Tenant is subject; provided, however, that the fact that for any reason any transferee of this Lease, or any other successor in interest to this Lease shall not have assumed such obligations, shall not, unless and only to the extent otherwise specifically provided in this Lease or agreed to in writing by Landlord, relieve or except such transferee or successor of or from such obligations, conditions or restrictions or deprive or limit Landlord of or with respect to any rights or remedies or controls with respect to this Lease, the Premises, the DDA or the construction of the improvements. It is the intent of this Lease, to the fullest extent permitted by law and equity and excepting only in the manner and to the extent specifically provided otherwise in this Lease, that no transfer of this Lease, or any interest herein, however consummated or occurring, and whether voluntary or involuntary, shall operate, legally or practically, to deprive or limit Landlord of or with respect to any rights or remedies or controls provided in or resulting from this Lease with respect to the Premises and the construction of improvements that Landlord would have had, had there been no such transfer or change;

3. There has been submitted to Landlord for review, and Landlord has approved, all instruments and other legal documents involved in effecting transfer.

If, notwithstanding the provisions of this Section, this Lease is assigned by operation of law in connection with any proceedings under state or federal insolvency or bankruptcy law, or any comparable law, whether for liquidation or reorganization, Landlord shall have a right of first refusal to purchase this Lease, if such right is permitted by applicable law. If any trustee or debtor in possession (collectively "trustee") receives an offer to purchase this Lease, such trustee shall notify Landlord in writing of the terms of such offer. If Landlord, within sixty (60) days after receipt of such notice, indicates in writing its agreement to purchase this Lease on the terms stated, the trustee shall sell and convey this Lease to Landlord on the terms stated in the notice. If the Landlord does not indicate its agreement within sixty (60) days, the trustee shall thereafter have the right to assign this Lease to the party making the offer on the terms of such offer. If such offeror does not purchase this Lease on such terms and conditions, Landlord shall have a right of first refusal to purchase this Lease in the event of any later offer for the purchase of this Lease. If an offeror purchases this Lease in connection with any proceedings under state or federal insolvency or bankruptcy law, or any comparable law, whether for liquidation or reorganization, Landlord shall have the option to purchase this Lease from such party for an amount equal to the amount such party paid for this Lease, at any time within one (1) year from the date of such offeror's purchase thereof.

Tenant represents and agrees for itself and any successor in interest of itself that without the prior written approval of Landlord which shall not be unreasonably withheld, there shall be no significant change (voluntary or involuntary) in the membership, management or control of Tenant which would prevent or impair the ability of Tenant to complete its obligations under this Lease.

Tenant further covenants and agrees that Tenant shall (a) diligently enforce the terms of a sublease with retail users, as said sublease has been approved by the Landlord,

including appropriate recourse to any remedies available to Tenant for defaults under the sublease, and (b) not take or allow, by action or inaction of Tenant, any act, condition or circumstance that would violate the sublease with a retail user or excuse or prevent the retail users from fully operating and complying with the terms of the sublease. The provisions of this paragraph shall not be construed to prohibit Tenant from terminating the sublease for a material uncured default under the terms thereof, or as otherwise permitted thereunder for cause. So long as Tenant is complying with the terms of this Lease, a default of any sublessee shall not be deemed to be a default by Tenant under this Lease.

Tenant shall promptly notify Landlord of any and all significant changes in the membership, management or control of Tenant whether legal or beneficial, or of any other act or transaction involving or resulting in any change in the ownership or identity of Tenant, or with respect to the identity of the parties in control of Tenant or the degree thereof, of which it or any of its officers have been notified or otherwise have knowledge or information..

No assignment of any interest in this Lease made with Landlord's consent, or as herein otherwise permitted, shall be effective until there shall have been delivered to Landlord an executed counterpart of such assignment containing an agreement, in recordable form, executed by the assignor and the proposed assignee, wherein and whereby such assignee assumes due performance of the obligations on the assignor's part to be performed under this Lease arising after the date of assignment to the end of the term hereof.

The consent by Landlord to an assignment hereunder shall not in any way be construed to relieve Tenant from obtaining the express consent in writing of Landlord to any further assignment.

Notwithstanding an assignment by Tenant hereunder to which Landlord has consented, Tenant shall remain liable for all liabilities and obligations hereunder unless expressly released therefrom as part of Landlord's consent thereto as set forth above.

Notwithstanding the termination of this Lease, or any default by Tenant hereunder, Landlord covenants and agrees to recognize and to not disturb the right of any retail user under a sublease permitted and approved, if required, pursuant to this Section 701 to use, possess, manage, operate and maintain the Premises or the respective portion thereof subleased to such retail user, provided that (1) the retail user shall not then be in default under its sublease; (2) Landlord shall have approved of the retail user's sublease with the Tenant or the sublease is expressly subordinate to this Lease and does not materially modify the terms of this Lease; (3) the retail user shall attorn to Landlord and pay to Landlord from and after the date of such attornment all sums thereafter becoming due under the terms of its sublease; and (4) Landlord shall not be responsible to the retail user except for obligations accruing subsequent to the date of such attornment.

B.     [§702] Attornment

In the event of a termination of this Lease, any authorized sublessee, approved by Landlord, under a sublease with Tenant shall attorn to Landlord unless Landlord shall elect to

dispossess such sublessee, subject to the last paragraph of Section 701, immediately above and subsection 2 of Section 1001 below. Tenant covenants that any sublease hereafter executed shall contain a clause expressly providing that the sublessee thereunder shall attorn to Landlord in the event of a termination of this Lease, but the absence of such a clause from any sublease shall not relieve the sublessee from the provisions of this Section 702.

C.     [§703] Successors and Assigns

The terms, covenants and conditions contained herein shall be binding upon and inure to the benefit of the heirs, successors, executors, administrators and assigns of the parties hereto.

D.     [§704] Release of Landlord

In the event of a sale, assignment, transfer or conveyance by Landlord of the Premises or its rights hereunder, the sale, assignment, transfer or conveyance together with the commercially reasonable written agreement furnished to Tenant of such purchaser, assignee or transferee, wherein such purchaser, assignee or transferee agrees to assume all of Landlord's obligations and duties hereunder from and after the effective date of such sale, assignment, transfer or conveyance, shall operate to release Landlord from any future liability upon any of the covenants or conditions, expressed or implied, herein contained in favor of Tenant, and in such event Tenant agrees to look solely to the responsibility of the successor in interest of Landlord in and to the Premises or this Lease. This Lease shall not be affected by any such sale, assignment, transfer or conveyance, and Tenant agrees to attorn to any such purchaser or assignee.

VIII.   [§800] INSURANCE, INDEMNIFICATION, DAMAGE AND DESTRUCTION

A.     [§801] Insurance and Indemnification

1.     [§802] Required Insurance Policies

Tenant shall maintain or cause to be maintained and keep in force during the term of this Lease, for the mutual benefit of Landlord and Tenant, at Tenant's sole cost and expense, the following insurance applicable to the Premises:

a.     Comprehensive General Liability Insurance with limits of not less than \$1,000,000 each occurrence combined single-limit bodily injury and property damage. This amount may be adjusted to reflect changing market conditions by written agreement approved by Landlord's counsel and executed by both the Tenant and Executive Director of the Landlord, but not more frequently than once every five (5) years. Coverages thereunder shall include contractual liability, personal injury, owners' and contractors' protection, products and completed operations coverage.

b.     Property Insurance of the types and nature and in the respective amounts as follows:

(1) During the course of any alteration, construction or reconstruction, including, without limitation, during the period of construction, builders' risk insurance for the amount of the completed value on an all-risk form (including earthquake and flood, if such coverage is required for commercial properties in Modesto, California, by a governmental entity having jurisdiction over such matters, or if not so required, at Tenant's option) insuring the interests of Landlord, Tenant and any contractors and subcontractors.

(2) Special Form - Causes of Loss (formerly known as "all risk") property insurance in an amount not less than one hundred percent (100%) of the actual replacement value of the improvements, including furnishings, fixtures and equipment, located in, on or upon the Premises installed by Tenant or any subtenant of the Premises (excluding the cost of foundations, excavations and footings below the lowest basement floor and without any deduction being made for depreciation) Such insurance shall provide coverage against the perils of fire, lightning, debris removal, vandalism, malicious mischief, flood (if required pursuant to the Plaza REA), theft, mysterious disappearance and such other hazards and perils as are embraced and covered by the standard extended coverage endorsement approved for use in the State of California. Such replacement value shall be determined from time to time, but not more frequently than once every five (5) years, at the request of Landlord, by an appraiser, architect or contractor who shall be mutually and reasonably acceptable to Landlord and Tenant, provided, however, that no omission on the part of Landlord to request any such determination shall relieve Tenant of its obligation hereunder. Notwithstanding anything to the contrary contained in the foregoing, in lieu of Tenant obtaining and maintaining the insurance set forth in this paragraph with respect to improvements not installed by Tenant, Tenant shall satisfy the requirements of this paragraph by requiring its subtenants, under the terms of its respective subleases with such subtenants, to obtain and maintain the insurance required hereunder with respect to such subleased portions of the Premises.

c. After completion of the Premises improvements, rental value or business interruption insurance for loss caused by any of the perils or hazards set forth in and insured pursuant to subsection b.(2) of this Section 802 in an amount not less than the aggregate of all Base Rent for a twelve (12) month period. The amount of the initial rental value insurance shall be calculated from the date of completion of the Premises improvements and shall be adjusted from time to time thereafter. At no time shall the amount of any deductible under any such policy or policies exceed an amount equal to the aggregate amount of one (1) month's rent. The proceeds of or from or payable under or pursuant to any such rental value or business interruption insurance shall be payable and applied first to the payment of any unpaid and outstanding rental payments hereunder, then to the payment of any unpaid and outstanding obligations under any leasehold mortgage, and thereafter to or for the benefit of Tenant as Tenant directs.

## 2. §803] General Insurance Policy Requirements

a. All insurance provided for in this Part VIII (Section 800 et seq.) shall be effected under valid and enforceable policies in form and substance reasonably satisfactory to Landlord issued by insurers reasonably satisfactory to Landlord authorized to do business in the State of California and the policies required pursuant to Section 802 hereof shall

name Landlord, the JPA and the City of Modesto as additional insureds. A photocopy of each insurance policy certified by the insurer to be a true copy thereof shall be delivered to Landlord, the JPA and the City of Modesto by certified mail on or before the Commencement Date (except the certificate with respect to rental value or business interruption insurance, which shall be provided to Landlord, the JPA and the City of Modesto by certified mail within thirty (30) days after the Premises improvements are completed) and upon the renewal of each policy. Tenant may provide any insurance required hereunder by a blanket insurance policy covering the Premises and any other properties.

b. Tenant hereby expressly waives on behalf of its insurers hereunder any right of subrogation against Landlord, and Landlord likewise waives on behalf of its insurers any right of subrogation against Tenant, which any such insurers may have against Landlord or Tenant by reason of any claim, liability, loss or expense arising under this Lease. The foregoing mutual waivers of subrogation are conditioned upon such waivers being available from the insurers of each party without the payment of additional insurance premiums unless the other party agrees to pay such additional premiums. In the event that either party at any time determines that such waiver is not or is no longer so available, it shall promptly notify the other party in writing of that fact.

c. All policies of fire and property damage insurance required hereunder shall also be payable to any lender as the interest of such lender may appear, pursuant to a standard mortgagee clause, or endorsement, and the lender shall be entitled to receive a certified copy or photocopy of such policies and to participate in the settlement or adjustment of any losses covered by such policies of insurance. All such policies issued by the respective insurers shall contain an agreement by the insurers that such policies shall not be cancelled or modified to reduce or eliminate coverage or insured risks without at least thirty (30) days prior written notice by certified mail to Landlord, the JPA, the City of Modesto and any lender or ten (10) days for non-payment of premiums. "Lender" shall mean a beneficiary under a deed of trust or Permitted Mortgage encumbering the Premises or Tenant's leasehold interest.

d. The liability insurance requirements required hereunder shall be reviewed by Landlord each five (5) years, and Landlord hereby expressly reserves the right to increase such requirements if Landlord in its reasonable judgment determines such increases are necessary and if such new requirements are reasonably consistent with and similar to the insurance requirements of ground lessors under ground leases of property in California similarly improved and such increase is required pursuant to the terms of the Building REA. Tenant, upon receipt from Landlord of written notification of any such changes, from time to time shall obtain and thereafter keep in force during the balance of the term of this Lease or until any subsequent notice from Landlord, at Tenant's sole cost and expense, such insurance as set forth in such notice.

e. Landlord shall maintain or cause to be maintained insurance on the JPA Building in accordance with the requirements of the Building REA.

3. [§804] Hold Harmless and Indemnification

Tenant shall indemnify and hold Landlord, the JPA and the City of Modesto and their respective officers, agents and employees harmless from and against all liabilities, obligations, damages, penalties, claims, costs, charges and expenses, including reasonable architects' and attorneys' fees (collectively referred to in this Section 804 as "claim"), which may be imposed upon or incurred by or asserted against Landlord, the JPA or the City of Modesto or their respective officers, agents and employees ("Landlord Indemnified Parties") by reason of any of the following occurrences during the term of this Lease:

a. Any work or thing done in, on or about the Premises, or any part thereof, including, without limitation, the construction of the Premises improvements or any subsequent improvements by or at the direction of Tenant or by any party whatsoever other than Landlord, the JPA or the City of Modesto;

b. Any use, non-use, possession, occupation, condition, operation, maintenance or management of the Premises, or any part thereof by any party whatsoever other than Landlord, the JPA or the City of Modesto;

c. Any negligence or wrongful act on the part of Tenant or any of its agents, contractors, servants, employees, or sublessees,;

d. Any accident, injury or damage to any person or property occurring in, on or about the Premises, or any part thereof,;

e. Any failure on the part of Tenant to perform or comply with any of the terms, provisions, covenants and conditions contained in this Lease on its part to be performed or complied with.

The foregoing indemnity shall exclude any such claims or liability arising from or relating to the negligence or willful misconduct of a Landlord Indemnified Party and shall be subject to the waiver of subrogation set forth in Section 803 b. In case any action or proceeding is brought against Landlord, the JPA or the City of Modesto or their respective officers, agents and employees by reason of any such claim, Tenant, upon written notice from Landlord, the JPA or the City of Modesto, shall, at Tenant's expense, resist or defend such action or proceeding by counsel approved by Landlord, the JPA or the City of Modesto in writing.

Landlord shall indemnify and hold Tenant and its respective officers, agents and employees harmless from and against all liabilities, obligations, damages, penalties, claims, costs, charges and expenses, including reasonable architects' and attorneys' fees (collectively referred to in this Section 804 as "claim"), which may be imposed upon or incurred by or asserted against Tenant or its respective officers, agents and employees ("Tenant Indemnified Parties") by reason of any of the following occurrences during the term of this Lease:

- a. Any work or thing done in, on or about the Premises, or any part thereof, by or at the direction of Landlord;
- b. Any negligence or wrongful act on the part of Landlord or any of its agents, officers or employees;
- c. Any failure on the part of Landlord to perform or comply with any of the terms, provisions, covenants and conditions contained in this Lease on its part to be performed or complied with.

The foregoing indemnity shall exclude any such claims or liability arising from or relating to the negligence or willful misconduct of a Tenant Indemnified Party and shall be subject to the waiver of subrogation set forth in Section 803b. In case any action or proceeding is brought against Tenant, or its respective officers, agents and employees by reason of any such claim, Landlord, upon written notice from Tenant, shall, at Landlord's expense, resist or defend such action or proceeding by counsel approved by Tenant in writing.

B. [\$805] Damage to or Destruction of Improvements

1. [\$806] No Termination of Lease; Obligation to Restore

No loss or damage by fire or any other cause resulting in either partial or total destruction of any buildings or improvements now or hereafter located in, upon or on the Premises, or any fixtures, equipment or machinery used or intended to be used in connection with the Premises, shall, except as otherwise provided herein, operate to terminate this Lease, or to relieve or discharge Tenant from the payment of any Base Rent or other amounts payable hereunder, as rent or otherwise, as and when they become due and payable, or from the performance and observance of any of the agreements, covenants and conditions herein contained on the part of Tenant to be performed and observed. Tenant hereby covenants to repair and/or reconstruct any improvements so damaged or destroyed to the extent of at least the value of such improvements prior to such damage or destruction. Tenant hereby waives the provisions of Section 1932, subsection 2, and of Section 1933, subsection 4, of the California Civil Code, as either or both may from time to time be amended, replaced or restated.

2. [\$807] Application of Proceeds

In the event that the Premises or the improvements to be constructed thereon, or any part thereof, is damaged or destroyed, Tenant shall promptly give Landlord written notice of such damage or destruction, setting forth the date on which such damage or destruction occurred. Whenever any part of the Premises or the improvements to be constructed thereon shall have been damaged or destroyed, Tenant shall promptly make proof of loss and shall proceed promptly to collect, or cause to be collected, all valid claims which Tenant may have against insurers or others based upon any such damage or destruction. Sums of money received as payments for any losses pursuant to said insurance policies shall be used and expended for the purpose of fully repairing or reconstructing the portions of the Premises which

have been destroyed or damaged. Subject to the provisions of this Section 807, if any sums remain after repair or reconstruction has been fully completed, such sums shall belong to Tenant.

3.     [§808] Reconstruction

Tenant shall commence and complete, in a good and workmanlike manner, the reconstruction or repair of any part of the Tenant's work in the Premises damaged or destroyed after Landlord has approved Tenant's plans, drawings, specifications and construction schedule for such reconstruction or repair in accordance with Section 502, unless Landlord's approval thereof is not required pursuant to Section 504 of this Lease. Notwithstanding the foregoing, in the event of any "major damage or destruction to the Premises" (as defined in Section 809 below) in which the subtenant of all or a portion of the Premises terminates its lease, Landlord agrees to reasonably cooperate with Tenant in attempting to secure the Management Committee's and JPA's approval if Tenant wishes to delay the reconstruction of the interior improvements of such subleased premises until Tenant executes a new sublease for such space. In such event, Tenant agrees to remove all debris from the subleased premises, restore the subleased premises to slightly condition, and cover all exterior windows for such premises.

In the event of any damage or destruction of the JPA Building, Plaza and/or Service Area, Landlord shall enforce all rights under the Building REA and the Plaza REA in order to insure that the JPA perform its obligations under the Building REA and/or the Plaza REA to repair and restore the JPA Building, Plaza and/or Service Area. Notwithstanding anything contained in this Lease to the contrary, Tenant shall have no obligation to repair any damage to the Premises if the JPA fails to perform its obligations under the Building REA and/or Plaza REA to repair any damage to JPA Building, Plaza and/or Service Area.

4.     [§809] Damage or Destruction During Final  
Years of Lease Term

In the event of major damage or destruction to the Premises during the last five (5) years of this Lease term, Tenant shall have the election to terminate this Lease, provided Tenant complies with all of the following conditions:

- a.     Tenant gives Landlord notice of the damage or destruction within ten (10) days after the event causing such damage or destruction;
- b.     Tenant is not in default under any provision or condition of this Lease;
- c.     Tenant delivers possession of the Premises to Landlord and quit claim to Landlord all right, title and interest in the Premises.

Major damage or destruction to the Premises as used in this Section 809 means such damage or destruction that the cost of restoration will exceed fifty percent (50%) of the cost to reconstruct the Premises in its entirety. The calculation of said percentage shall be based upon the replacement cost of the improvements as of the date of the subject destruction. If

Landlord or Tenant so elects to terminate this Lease, then the parties shall be released thereby without further obligations to the other party as of the effective date of such termination subject to (1) the indemnification provisions of Section 804 hereof and (2) any amounts of whatever kind or nature hereunder, including, without limitation, rent, taxes and insurance premiums, whether accrued or due and payable by Tenant to Landlord as of the effective date of such termination.

## IX. [§900] MORTGAGE OF LEASEHOLD

### A. [§901] Leasehold Mortgagee Rights

1. Landlord's right, title and interest herein and in the Premises shall not be subordinated to the lien, priority and security title of any encumbrance of this Lease or the interest of Tenant hereunder as security for any indebtedness Tenant may incur, whether by deed to secure debt, mortgage, deed of trust or other security instrument (all or any one of which are hereinafter referred to as "Leasehold Mortgage" and the owner or owners or holder or holders of all or any of which are referred to herein as "Leasehold Mortgagee"), and Landlord's right to receive Base Rent and Additional Rent hereunder shall have priority over any rights of any Leasehold Mortgagee.

2. Tenant shall have the right to convey Tenant's interest under this Lease, upon the prior written consent of Landlord, which consent shall not be unreasonably withheld, to a bank, trust or insurance company, pension fund, an educational institution, other institutional lender or other reputable lender, investor or joint venture partner of Tenant. No Leasehold Mortgage shall be binding upon Landlord with respect to the enforcement of the rights and remedies contained herein and provided by law for the benefit of any Leasehold Mortgagee unless and until an executed counterpart of such Leasehold Mortgage shall have first been delivered to Landlord, notwithstanding any other form of notice to Landlord, actual or constructive.

3. If Landlord shall have received from a Leasehold Mortgagee, prior to any Event of Default hereunder, written notice in the manner provided in Section 1201 hereof, specifying the name and address of such Leasehold Mortgagee and requesting that Landlord give to such Leasehold Mortgagee a copy of each notice of default by Tenant at the same time as and whenever any such notice of default shall thereafter be given by Landlord to Tenant, then Landlord shall comply with such request by giving such notice, addressed to such Leasehold Mortgagee at the address last furnished to Landlord. Landlord shall accept performance by any Leasehold Mortgagee of any covenant, condition or agreement on Tenant's part to be performed hereunder with the same force and effect as though performed by Tenant, if, at the time of such performance, Landlord shall be furnished with evidence reasonably satisfactory to Landlord of the interest in this Lease claimed by the Leasehold Mortgagee tendering such performance.

4. In case of termination of this Lease due to an Event of Default hereunder, Landlord shall give notice thereof to any Leasehold Mortgagee who shall have notified Landlord of its name and address pursuant to this Section, which notice shall be addressed to such Leasehold Mortgagee at the address last furnished to Landlord. If within thirty (30) days after the giving of such notice, such Leasehold Mortgagee shall pay all Base Rent and Additional Rent

and any and all other sums due and payable by Tenant hereunder, as of the date of such termination, Landlord shall, upon the written request of such Leasehold Mortgagee made any time within sixty (60) days from the date of notice given to the Leasehold Mortgagee of such termination, execute and deliver a new lease of the Premises to such Leasehold Mortgagee for the remainder of the Term, upon the same terms, covenants, conditions, limitations and agreements herein contained, including without limitation, the covenants for Base Rent and Additional Rent, but subject to the rights, if any, of parties then in possession (actual or constructive) of all or any part of the Premises; provided, however, that such Leasehold Mortgagee shall have paid to Landlord all Base Rent, Additional Rent and other charges due under this Lease up to and including the date of the commencement of the term of such new lease, together with all expenses, including reasonable attorneys' fees, incident to the execution and delivery of such new lease, and that nothing contained herein shall be deemed to impose any obligation on the part of Landlord to deliver physical possession of the Premises to such Leasehold Mortgagee.

5. Landlord agrees, for the benefit of any Leasehold Mortgagee who shall become entitled to notice as provided in this Section, that Landlord will not give or serve any notice of termination of this Lease upon Tenant pursuant to Section 1201 hereof, if within thirty (30) days after the receipt by such Leasehold Mortgagee of written notice of the particular Event of Default, such Leasehold Mortgagee shall have served upon Landlord notice of the intention of such Leasehold Mortgagee either to acquire Tenant's interest in the Premises by foreclosure of its Leasehold Mortgage and to effect thereby the removal of Tenant from the Premises by such Leasehold Mortgagee in order to cure the same; provided, however, that such Leasehold Mortgagee shall pay all Base Rent and Additional Rent then due and shall diligently pursue and prosecute the intention as expressed in such notice to Landlord, and such notice of intention incorporates an assumption by such Leasehold Mortgagee of all of the obligations of Tenant under this Lease susceptible of being performed by such Leasehold Mortgagee during such forbearance, including, but not limited to, the obligation to pay all Base Rent and Additional Rent and all other charges then due during such forbearance, a covenant by such Leasehold Mortgagee that the net subrental proceeds collected by any receiver or mortgagee in possession shall inure to the benefit of and be paid to Landlord unless such Leasehold Mortgagee cures all such defaults, whereupon all such net subrental proceeds shall be paid to such Leasehold Mortgagee.

6. Notwithstanding anything to the contrary in the immediately preceding paragraph concerning Landlord's forbearance, but subject to the provisions of this Section, Landlord shall not be precluded from exercising any rights or remedies under this Lease with respect to any other default by Tenant during any such period of forbearance.

7. No Leasehold Mortgagee or purchaser at foreclosure shall be entitled to become the owner of Tenant's interest in this Lease unless such Leasehold Mortgagee or purchaser shall first have delivered to Landlord an assumption agreement, executed in recordable form, wherein and whereby such Leasehold Mortgagee or purchaser (i) assumes the performance of all the terms, covenants and conditions of this Lease during the period it is the owner of Tenant's interest in this Lease, and expressly confirms that the same are in full force and effect, and (ii) agrees to operate the Premises for the uses permitted under this Lease.

8. If any Leasehold Mortgagee shall acquire title to Tenant's interest in this Lease, by foreclosure, assignment in lieu of foreclosure or otherwise, or under a new lease pursuant to this Section, such Leasehold Mortgagee may assign such lease in accordance with the provisions of Section 700 hereunder and such Leasehold Mortgagee shall thereupon be released from any further liability for the performance or observance of the covenants and conditions under this Lease contained on the Tenant's part to be performed and observed after the date of such assignment, provided, further, that the assignee from such Leasehold Mortgagee shall have expressly assumed in writing for the benefit of Landlord all of the obligations of Tenant under this Lease.

9. Landlord agrees to amend this Lease as reasonably required by Tenant's leasehold mortgagee so long as any such amendment does not materially increase Landlord's obligation under this Lease and is permitted under the Building REA and the Plaza REA.

B. [\$902] Landlord's Rights After Foreclosure

1. If any holder of a mortgage of Tenant's leasehold hereunder (including, but not limited to, any Leasehold Mortgagee) or a designee or controlled subsidiary thereof shall acquire title to Tenant's interest in this Lease by foreclosure of such holder's mortgage thereon or by assignment in lieu of foreclosure or enters into a new lease pursuant to Section 901:

a. Landlord may, at any time within ninety (90) days after such acquisition or new lease, purchase such holder's, designee's or subsidiary's interest in this Lease or such new lease for an amount equal to the sum of (1) the amount secured by such mortgage and owing to such holder at the time of foreclosure or execution of such new lease and (2) the fees and costs incurred by such holder in connection with such acquisition; and

b. Prior to any assignment of such interest by such holder, designee or subsidiary, such holder, designee or subsidiary shall offer to sell such interest to Landlord in a writing stating the terms of such sale, and Landlord shall have thirty (30) days within which to accept or decline such offer. If such offer is declined, such holder, designee or subsidiary may assign such interest within ninety (90) days thereafter, but only on terms not more favorable to its assignee than those offered to Landlord; if such an assignment is not consummated within such ninety (90) day period, such holder, designee or subsidiary may not assign such interest (or such new lease) without first offering such interest (or such new lease) to Landlord as provided in this subsection 1.b.

2. If upon foreclosure of a mortgage of Tenant's leasehold hereunder (including, but not limited to, any Leasehold Mortgage), a party other than the holder thereof, or a designee or controlled subsidiary of such holder, shall acquire title to Tenant's interest in this Lease, Landlord may, at any time within ninety (90) days after such foreclosure, purchase such party's interest in this Lease for an amount equal to the sum of (a) the amount paid by such party to acquire such interest and (b) the fees and costs incurred by such party in connection with such acquisition. The requirements of this subsection 2 may be amended by written agreement approved by the Executive Director and Counsel of the Landlord, to reflect the requirements of a construction or permanent lender.

X. [§1000] SURRENDER; HOLDING OVER

A. [§1001] Surrender of the Premises

1. At the end of the term, or other sooner termination, of this Lease, Tenant will surrender and deliver to Landlord the possession of the Premises, together with all improvements, in good order, condition, ordinary wear and tear excepted, and repair, free and clear of all occupancies other than subleases terminable at the option of the sublessor thereof or subleases to which Landlord shall have expressly consented in writing, and free and clear of all liens and encumbrances other than those, if any, presently existing or created by Landlord, without payment or allowance whatever by Landlord on account of any such improvements. Subject to the provisions of Section 603 hereof, Tenant or any such sublessee may, upon or prior to the termination of this Lease or such sublease, remove, at Tenant's or such sublessee's sole cost and expense, all movable furniture, trade fixtures and equipment belonging to Tenant or such sublessee, provided that upon any such removal Tenant or such sublessee, at Tenant's or such sublessee's sole cost and expense, shall repair any damage, of whatever kind or nature, caused by such removal. Landlord agrees to execute a waiver of any lien of Landlord's on any equipment that has been so removed in favor of Tenant or its sublessees' lenders or equipment lessors. Property not so removed shall be deemed abandoned by Tenant and any such sublessee, and title to the same shall thereupon immediately pass to Landlord without payment or allowance whatever by Landlord on account of such property.

2. Notwithstanding any termination of this Lease, or any default by Tenant hereunder, Landlord agrees to recognize and to not disturb the right of any sublessee to use and possess all or any portion of the Premises, provided that (i) the sublessee shall not then be in default of its sublease or other applicable agreement; (ii) the sublessee shall attorn to Landlord and pay rent to Landlord from the date of such attornment; and (iii) Landlord shall not be responsible to such sublessee except for obligations arising subsequent to the date of such attornment. Landlord agrees to execute a commercially reasonable recognition and attornment agreement with any such sublessee to confirm the foregoing.

3. Concurrent with the surrender of the Premises as herein provided, Tenant agrees, if requested by Landlord and for the benefit of Landlord, to execute, acknowledge and deliver to Landlord a quitclaim deed to the Premises and such instrument as may be reasonably requested by Landlord to evidence or otherwise effect such passage and vesting of title to the improvements.

B. [§1002] Holding Over

If Tenant shall retain possession of the Premises or any part thereof without Landlord's prior written consent following the expiration or sooner termination of this Lease for any reason, then Tenant shall pay to Landlord for each day of such retention at the rate of one hundred twenty-five percent (125%) the amount of the daily Base Rent in effect on the date of such expiration or termination; and after three (3 months) of such retention, at the rate of one hundred fifty percent (150%) of the amount of the daily Base Rent in effect on the date of such expiration or termination. Tenant shall also indemnify and hold Landlord harmless from any loss

or liability resulting from delay by Tenant in surrendering the Premises, including, without limitation, any claims made by any succeeding Tenant founded on such delay. Alternatively, if Landlord in its sole discretion gives notice to Tenant of Landlord's election thereof, such holding over shall constitute renewal of this Lease for a period from month to month or for one year, whichever shall be specified in such notice. Except after delivery by Landlord of such notice, acceptance of rent by Landlord following expiration or termination shall not constitute a renewal of this Lease and nothing contained in this Section 1002 shall waive Landlord's right of re-entry or any other right. Unless Landlord exercises the option hereby given to it, Tenant shall be only a Tenant at sufferance, whether or not Landlord accepts any rent from Tenant while Tenant is holding over without Landlord's written consent.

## XI. [§1100] EMINENT DOMAIN

### A. [§1101] Definition of Taking

The term "taking" as used herein means the exercise by any governmental or other permitted authority of the power of eminent domain or the exercise of any similar governmental power and any purchase or other acquisition in lieu of condemnation, including, but not limited to, a voluntary sale or conveyance in lieu of condemnation.

### B. [§1102] Total Taking

In the case of a taking (other than for temporary use or of only the leasehold estate hereunder) of the fee of the entire Premises, this Lease shall terminate as of the date on which such taking shall be effective. In case of a taking (other than for temporary use or of only the leasehold estate hereunder) of such substantial part of the Premises as shall result, in the good faith judgment of Tenant, in the Premises remaining after such taking (even if restoration were made) being economically unsuitable for the use being made of the Premises at the time of such taking, Tenant, at its option, may terminate this Lease by written notice given to Landlord within sixty (60) days after such taking. Any taking of the Premises of the character referred to in this Section 1102, which results in the termination of this Lease is referred to as a "total taking."

### C. [§1103] Partial Taking

In the event of a taking of a portion of the Premises which is not a total taking (a "partial taking"), then and in that event:

1. This Lease shall remain in full force and effect as to the portion of the Premises remaining immediately after such partial taking, and the Base Rent and other payments calculated on the square footage of a portion of the Premises shall be proportionately and equitably reduced accordingly, but without any abatement or reduction of Base Rent as to the remainder or any other payment payable hereunder; and

2. Tenant will promptly commence and complete (subject to delay, hindrance or prevention by reason of any of the causes mentioned in Part XIII (Section 1300 et seq.)) restoration of the tenant improvements on or about the Premises as nearly as possible to its

condition and character immediately prior to such partial taking, except for any reduction in area caused thereby; provided that, in the case of a partial taking for temporary use, Tenant shall not be required to effect such restoration until such partial taking is terminated. Such restoration shall be performed in a good and workmanlike manner and undertaken in accordance with plans and specifications submitted to and approved by Landlord in accordance with Section 502 hereof unless Landlord's approval is not required pursuant to Section 504 hereof, and otherwise in accordance with the applicable provisions of this Lease.

D. [§1104] Application of Awards

Awards and other payments on account of a taking (less costs, fees and expenses incurred by Tenant and the insurance trustee in connection with the collection thereof) shall be applied as follows:

1. Net awards and payments received on account of a taking, other than (a) a taking for temporary use, (b) a taking of only the leasehold estate hereunder, or (c) a total taking, shall be held and applied to pay the cost of restoration of the Premises. The balance, if any, remaining after restoration shall be divided between Landlord and Tenant as they may agree and, in the absence of such agreement, such balance shall be paid to Landlord and Tenant in the ratio, as nearly as practicable, which (a) the sum of (1) the then Fair Market Value, as defined in Section 1107 hereof, of Landlord's reversionary interest in the improvements and (2) the Fair Market Value of the land, valued as unencumbered by this Lease, unimproved and to be used for the uses specified in this Lease bears to (b) the sum of (i) the then Fair Market Value of Tenant's interest in the improvements for the remainder of the term of this Lease and (ii) the value of the remaining term of the leasehold estate created by this Lease, provided, however, that Tenant's share of any such balance shall be applied first to the payment of any past due Base Rent, Additional Rent or any other payment payable hereunder, including, without limitation, any past due tax payments.

2. Net awards and payment received on account of (a) a taking for temporary use or (b) a taking of the leasehold estate created by this Lease shall be paid to Tenant, except that:

a. If any portion of any such award or payment is made by reason of any damage to or destruction of the Premises, such portion shall be held and applied to pay the cost of restoration thereof; provided, however, that if the Lease is terminated, the award shall be apportioned in accordance with paragraph 1., above; and

b. If any portion of any award or payment on account of a taking for temporary use relates to a period beyond the date of termination of this Lease term, such portion shall be paid to Landlord; and

c. If, at any time such award becomes payable to Tenant, any Base Rent or other payments payable hereunder (including, without limitation, any tax payments) shall be due and unpaid, such award shall be first applied to the payment thereof.

3. Net awards and payments received on account of a total taking shall be paid as set forth in the second sentence of subsection 1 of this Section 1104.

E. [§1105] Notice of Taking

In case of a taking of all or any part of the Premises or the commencement of any proceeding or negotiations which might result in such taking, the party having notice of such taking or of the commencement of any such proceeding or negotiations shall promptly give written notice thereof to the other party. Landlord and Tenant shall jointly prosecute their claims for an award in a single proceeding, in which any leasehold mortgagee may join. Landlord and Tenant shall not prosecute separate claims for an award, except that Tenant and any subtenant may prosecute separate claims for awards for moving expenses or on account of the taking of any removable trade fixtures or for the unamortized portion of any leasehold improvements made by any subtenant, loss of goodwill and any other amounts allowed by law, including, without limitation, the value of Tenant's leasehold estate, but only to the extent that any such separate award shall not diminish the award made to Landlord and Tenant in respect of their joint claim.

F. [§1106] Disbursement of Awards on Partial Taking

All awards or other payments received on account of a partial taking shall be paid to the insurance trustee, if any, referred to in Section 807 to be held and disbursed in the same manner as insurance proceeds, except that any portion of such award(s) remaining after completion of any restoration shall be disbursed by the insurance trustee to the parties pursuant to subsection 1 of Section 1104.

G. [§1107] Fair Market Value

The term "Fair Market Value" as used in this Part XI (Section 1100 et seq.) means an amount to be determined through the appraisal process described hereinafter as if the Premises and the improvements thereon were for sale on the open market. Each party shall at its own cost select an M.A.I. appraiser to make an independent fair market evaluation of the land and improvements within the Premises. If the two appraisers are in dispute as to the Fair Market Value for the Premises and all the improvements thereon, they shall meet and confer and attempt to establish an agreed value. If the two appraisers cannot agree on the Fair Market Value, the two appraisers shall select a third appraiser who shall select one of the appraisals prepared by the initial two appraisers as being the appraisal of the Fair Market Value. The cost of the third appraiser shall be borne equally by the parties. After the Fair Market Value is determined, the Fair Market Value so stated shall be considered Fair Market Value for the purposes of this Lease and shall be binding upon Landlord and Tenant until such time as a new determination (if any) of such Fair Market Value shall be required to be made under the terms of this Lease.

XII. [§1200] DEFAULT

A. [§1201] Default by Tenant

1. Any of the following occurrences or acts shall constitute an "Event of

Default" under this Lease:

a. If Tenant at any time during the term (and regardless of the pendency of any bankruptcy, reorganization, receivership, insolvency or other proceedings, in law, in equity or before any administrative tribunal which have or might have the effect of preventing Tenant from complying with the terms of this Lease) shall fail (1) to make payment of any installment of Base Rent or of any other payment herein specified to be paid by Tenant, or (2) to observe or perform any of Tenant's other covenants, agreements or obligations hereunder or under the DDA with respect to the Premises or under the Building REA; and if any such default shall not be cured as to any default referred to in clause (1) within ten (10) days after receipt of written notice thereof by Tenant or as to any default referred to in clause (2) within thirty (30) days after Landlord shall have given to Tenant written notice specifying such default (or, in the case of any default referred to in clause (2) which cannot with diligence be cured within such thirty-day period, if Tenant shall fail to proceed promptly to cure the same and thereafter prosecute the curing of such default with diligence, it being intended, in connection with a default not susceptible of being cured with diligence within such thirty-day period, that the time within which to cure the same shall be extended for such period as may be necessary to complete the curing of the same with diligence); or

b. If Tenant shall file a petition in bankruptcy or for reorganization or for any arrangement pursuant to any present or future federal bankruptcy act or under any similar federal or state law, or shall be adjudicated a bankrupt or insolvent or shall make an assignment for the benefit of its creditors or shall admit in writing its inability to pay its debts generally as they become due, or if a petition or answer proposing the adjudication of Tenant as a bankrupt or its reorganization under any present or future federal bankruptcy act or any similar federal or state law shall be filed in any court and such petition or answer shall not be discharged or denied within sixty (60) days after the filing thereof; or

c. If a receiver, trustee or liquidator of Tenant or of all or substantially all of the property of Tenant or of the Premises shall be appointed in any proceeding brought by Tenant, or if any such receiver, trustee or liquidator shall be appointed in any proceeding brought against Tenant and if such receiver, trustee or liquidator shall not be discharged within sixty (60) days after such appointment, or if Tenant shall acquiesce in or consent to such appointment; or

d. If Tenant shall be liquidated or dissolved or shall begin proceedings toward its liquidation or dissolution.

2. Upon the occurrence of any such Event of Default, in addition to any and all other rights or remedies of Landlord hereunder or by law or in equity, it shall be, at the option of Landlord, without further notice or demand of any kind to Tenant or any other person:

a. The right of Landlord to declare the term hereof ended and to terminate this Lease, in which event Tenant shall promptly surrender possession of the Premises to Landlord, and pay to Landlord all Base Rent, Additional Rent and all other payments due Landlord hereunder to the date of such termination. If Tenant does not so promptly surrender the

Premises, Landlord shall have the immediate right to re-enter the Premises and take possession thereof pursuant to lawful proceedings and remove all persons therefrom, and Tenant shall have no further claim thereon or thereunder;

b. If Tenant has abandoned the Premises, the right of Landlord, without terminating this Lease, to enter the Premises and occupy the whole or any part thereof for and on account of Tenant and to collect said rent and any other rent that may thereafter become payable, to refuse, notwithstanding any other term or provision of this Lease, to permit and to deny the right of Tenant to remove any or all of Tenant's movable furniture, trade fixtures, equipment, improvements or personal property located in, on or upon the Premises, and to use and take exclusive possession of same without payment to Tenant or cost to Landlord for so long as Landlord so occupies the Premises or until this Lease is terminated pursuant to subsection c. below; and

c. The right of Landlord, even though it may have re-entered the Premises pursuant to subsection b. above, to thereafter elect to terminate this Lease.

3. In the event Landlord re-enters the Premises pursuant to the provisions of subsection 2.b. above, Landlord shall not be deemed to have terminated this Lease and the liability of Tenant to pay Base Rent, Additional Rent and sums payable hereunder thereafter shall continue unless Landlord notifies Tenant in writing that Landlord has so elected to terminate this Lease. Tenant further acknowledges and agrees that the service by Landlord of any notice pursuant to the unlawful detainer or similar such statute of the State of California and the surrender of possession pursuant to such notice shall not be deemed to be a termination of this Lease. Tenant hereby irrevocably appoints Landlord as agent and attorney-in-fact of and for Tenant to so enter upon the Premises by lawful process in the Event of Default by Tenant hereunder, to remove any and all furniture and personal property whatsoever situated upon the Premises, and to place such furniture and personal property in storage for the account of and at the expense of Tenant. In the event that Tenant shall not have paid the cost of such storage after ninety (90) days, Landlord may, at its discretion, sell any or all of such furniture and personal property at public or private sale in such manner and at such times and places as Landlord in its sole discretion may deem proper, without notice to Tenant or any demand upon Tenant. If Landlord so elects to sell such furniture and personal property, Landlord shall apply the proceeds of such sale first, to the cost and expenses of such sale, including reasonable attorneys' fees actually incurred, second, to the payment of the costs of or charges for removing and storing any such furniture and personal property, third, to the payment of any other sums of money which may then or thereafter be due to Landlord from Tenant under any of the terms of this Lease, and fourth, the balance, if any, to Tenant. Tenant hereby waives all claim for damages that may be caused by Landlord's re-entering and taking possession of the Premises or removing and storing furniture and personal property as herein provided, and will save Landlord harmless from any losses, costs or damages occasioned thereby. No such re-entry shall be considered or construed to be a forcible entry as the same is defined in the Code of Civil Procedure of the State of California.

4. Should Landlord elect to terminate this Lease pursuant to the provisions of subsection 2.a. or 2.c. above, Landlord may recover from Tenant as damages:

a. The worth at the time of award of any unpaid rent which had been earned at the time of such termination; plus

b. 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 Tenant proves could have been reasonably avoided; plus

c. 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 Tenant proves could be reasonably avoided; plus

d. Any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant'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, any costs or expenses incurred by Landlord in maintaining or preserving the Premises after such default, preparing the Premises for reletting to a new tenant, any repairs or alterations to the Premises for such reletting, leasing commissions or any other costs necessary or proximate to reletting the Premises; plus

e. At Landlord's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by the laws of the State of California.

As used hereinabove, the term "worth at the time of award" is computed by allowing interest at the maximum rate permitted under Section 1(2) of Article XV of the California Constitution (not to exceed ten percent (10%) per annum). For purposes of determining Landlord's damages under this subsection 4, the annual rent payable hereunder shall be deemed to be equal to the average rent paid by Tenant for the three (3) calendar years immediately preceding the date of Tenant's default.

5. Personal Property. If there occurs an Event of Default, all of Tenant's fixtures, furniture, equipment and other personal property shall remain on the Premises and in that event, and continuing during the length of said default, Landlord shall have the right to take the exclusive possession of same and to use same without payment to Tenant or any other party.

6. Remedies Not Exclusive. No right or remedy herein conferred upon or reserved to Landlord or Tenant is intended to be exclusive of any other right or remedy, except as expressly stated herein, and each and every right and remedy shall be cumulative and in addition to any other right or remedy given hereunder, or now or hereafter existing at law or in equity or by statute, except such rights or remedies as are expressly limited herein.

7. Waiver of Rights of Redemption. Tenant hereby waives for itself and all those claiming under it all rights which it may have under any present or future constitution, statute or rule of law (a) to redeem the Premises after termination of Tenant's right of occupancy by order or judgment of any court or by any legal process or writ or (b) which exempts property from liability for debt or for distress for rent.

B.     [§1202] Right of Landlord To Perform

All covenants and agreements to be performed by Tenant under any of the terms of this Lease shall be performed by Tenant at Tenant's sole cost and expense and without any abatement of rent. Subject to any rights of Tenant to contest, if Tenant shall fail to pay any sum of money, other than Base Rent and Additional Rent, required to be paid by it hereunder or shall fail to perform any other act on its part to be performed hereunder, and such failure shall continue for fifteen (15) days after notice thereof by Landlord, Landlord may, but shall not be obligated so to do, and without waiving or releasing Tenant from any obligations of Tenant, make any such payment or perform any such act on Tenant's part to be made or performed as in this Lease provided. All sums so paid by Landlord and all necessary incidental costs and expenses, including, without limitation, reasonable attorneys' fees, together with interest thereon at the maximum rate permitted under Section 1(2) of Article XV of the California Constitution (not to exceed ten percent (10%) per annum) from the date of such payment by Landlord shall be payable as additional rent to Landlord on demand, and Tenant covenants to pay any such sums, and Landlord shall have, in addition to any other right or remedy of Landlord, the same rights and remedies in the event of the non-payment thereof by Tenant as in the case of default by Tenant in the payment of the rent.

C.     [§1203] Tenant's Obligations

Tenant acknowledges that the Premises constitutes a major and indispensable component of Landlord's redevelopment plans for downtown Modesto and is a component of the larger joint JPA Building developed as part of the Tenth Street Place, and that, therefore, the identity of the Tenant of the Premises is of the utmost concern to Landlord and the City of Modesto. The parties acknowledge that the provisions in this Lease relating to assignment and default are based upon the particular and unique circumstances under which this Lease is made.

D.     [§1204] Default by Landlord

In the event Landlord shall fail to perform or observe any of the covenants or provisions contained in this Lease on the part of Landlord to be performed or observed within thirty (30) days after written notice from Tenant to Landlord specifying the particulars of such default or breach of performance, or if more than thirty (30) days shall be reasonably required because of the nature of the default, if Landlord shall fail to proceed diligently to cure such default after such notice, then in that event Landlord shall, in addition to any other rights and remedies Tenant may have at law or in equity, be responsible to Tenant for any and all actual damages sustained by Tenant as a direct result of Landlord's default. All covenants and agreements to be performed by Landlord under any of the terms of this Lease shall be performed by the Landlord at Landlord's sole cost and expense and without any reimbursement by Tenant, except as expressly set forth in this Lease. Subject to any rights of Landlord to contest, if Landlord shall fail to pay any sum of money required to be paid by it hereunder or shall fail to perform any other act on its part to be performed hereunder, and such failure shall continue for fifteen (15) days after notice thereof by Tenant, Tenant may, but shall not be obligated so to do, and without waiving or releasing Landlord from any obligations of Landlord, make any such payment or, subject to the Building REA and the Plaza REA, perform any such act on Landlord's

part to be made or performed as in this Lease provided. All sums so paid by Tenant and all necessary incidental costs and expenses, including, without limitation, reasonable attorneys' fees, together with interest thereon at the maximum rate permitted under Section 1(2) of Article XV of the California Constitution (not to exceed ten percent (10%) per annum) from the date of such payment by Tenant shall be payable to Tenant on demand, and Landlord covenants to pay any such sums.

E. [§1205] Abandonment

Tenant shall not vacate or abandon the Premises at any time during this Lease term, and if Tenant shall abandon, vacate or surrender said Premises or be dispossessed by process of law, or otherwise, any furniture, trade fixtures, business equipment or other personal property belonging to Tenant and left on the Premises shall, at the option of Landlord, be deemed to be abandoned and title thereto shall thereupon pass to Landlord without any payment or allowance whatever by Landlord on account of such property. In such event such property may be retained by Landlord as Landlord's property or be disposed of, without accountability, in such manner as Landlord elects, or if Landlord shall give written notice to Tenant to remove such property, such property shall be removed by Tenant at Tenant's sole cost and expense. The terms "vacate" and "abandon" mean to cease operations and payment of rent for a period of thirty (30) days after written notice from Landlord.

F. [§1206] No Recourse

Tenant agrees that it shall have no recourse with respect to any obligation of Landlord under this Lease, or for any claim based upon this Lease, or otherwise, against any incorporator, shareholder, officer, director or attorney, past, present or future of Landlord, or against any other person than Landlord, , whether by virtue of any constitution, statute, rule of law, rule of equity, enforcement of any assessment as penalty, or by reason of any matter prior to the execution and delivery of this Lease, or otherwise, all such liability, by Tenant's execution and delivery hereof and as part of the consideration for Landlord's obligations hereunder being expressly waived. However nothing in this Section 1206 shall preclude the Tenant's right to quiet enjoyment pursuant to Section 1506 and the ability to enforce such a right.

XIII. [§1300] UNAVOIDABLE DELAY; FORCE MAJEURE

If either party shall be delayed or prevented from the performance of any act required by this Lease by reason of war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restriction or priority; unusually severe weather; inability to secure necessary labor, materials or tools; acts of the other party; ; or any other similar causes, without fault and beyond the reasonable control of the party claiming an extension of time to perform, performance of such act shall be excused for the period of the delay, and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay, provided, however, that nothing in this Section 1300 shall excuse Tenant from the prompt payment of any Base Rent or other monetary charges required of Tenant, and provided, further, that the party delayed or prevented from the performance of any

act as above described has notified the other of such delay or prevention within thirty (30) days of the inception thereof, and has thereafter kept said party regularly informed of the status of such delay or prevention.

#### XIV. [§1400] INSPECTION

Landlord and its agents may enter and examine the Premises at all reasonable times in order to determine whether Tenant is in compliance with the provisions hereof, upon reasonable prior written notice.

#### XV. [§1500] GENERAL

##### A. [§1501] Estoppel Certificates

Landlord or Tenant, as the case may be, shall execute, acknowledge and deliver to or for the benefit of the other and/or to or for the benefit of any Lender, at any time, from time to time, and at the expense of the party requesting a certificate as hereinbelow described, promptly upon request, its certificate certifying (1) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect, as modified, and stating the modifications), (2) the dates, if any, to which all rents due hereunder have been paid, (3) whether there are then existing any charges, offsets or defenses against the enforcement by Landlord or Tenant of any agreement, covenant or condition hereof on the part of the other party to be performed or observed (and, if so, specifying the same), and (4) whether there are then existing any defaults by Tenant and known by Landlord in the performance or observance by Tenant of any agreement, covenant or condition hereof on the part of Tenant to be performed or observed and whether any notice has been given to Tenant of any default which has not been cured (and, if so, specifying the same) and such other information as may be reasonably requested by the requesting party, its transferee or lender. Any such certificate may be relied upon by a prospective purchaser, mortgagee or trustee or beneficiary under a deed of trust of the Premises or the leasehold estate hereunder or any part thereof.

##### B. [§1502] Waiver

No waiver of any default under this Lease shall constitute or operate as a waiver of any subsequent default hereunder, and no delay, failure or omission in exercising or enforcing any right, privilege or option under this Lease shall constitute a waiver, abandonment or relinquishment thereof or prohibit or prevent any election under or enforcement or exercise of any right, privilege or option hereunder. No waiver of any provision hereof by Landlord or Tenant shall be deemed to have been made unless and until such waiver shall have been reduced to writing and signed by Landlord or Tenant, as the case may be. The receipt and acceptance by Landlord of rent with knowledge of any default under this Lease shall not constitute or operate as a waiver of such default. Failure by Landlord or Tenant, as the case may be, to enforce any of the terms, covenants or conditions of this Lease for any length of time or from time to time shall not be deemed to waive or decrease the right of Landlord to insist thereafter upon strict performance by Tenant.

C. [§1503] Notices

If at any time after the execution of this Lease, it shall become necessary or convenient for one of the parties hereto to serve any notice, demand or communication upon the other party, such notice, demand or communication shall be in writing and shall be served personally or by depositing the same in the registered or certified United States mail, return receipt requested, postage prepaid and (1) if intended for Landlord shall be addressed to:

Redevelopment Agency of the City of Modesto  
1010 Tenth Street, Suite 3300  
Modesto, CA 95353  
Attn: Linda Boston

and (2) if intended for Tenant shall be addressed to:

Civic Partners Modesto, Inc.  
801 - Tenth Street  
Fifth Floor - Suite One  
Modesto, CA 95354  
Attn: Michael Herrero

With a copy to:

Civic Partners, Inc.  
3961 MacArthur Boulevard, Suite 212  
Newport Beach, CA 92660  
Attn: Steven P. Semingson

or to such other address as either party may have furnished to the other in writing as a place for the service of notice. Any notice so mailed shall be deemed to have been given as of the time the same is deposited in the United States mail. The provisions with respect to the form, nature and depositing of notices as set forth in this Section shall further apply to any notices to be given to any lender pursuant to Section 913 hereof.

D. [§1504] Attorneys' Fees

In the event of any action or proceeding at law or in equity between Landlord and Tenant to enforce any provision of this Lease or to protect or establish any right or remedy of either party hereunder, the unsuccessful party to such litigation shall pay to the prevailing party all costs and expenses, including reasonable attorneys' fees incurred therein by such prevailing party, and if such prevailing party shall recover judgment in any such action or proceeding, such costs, expenses and attorneys' fees shall be included in and as a part of such judgment.

E. [§1505] No Light, Air or View Easement

Tenant covenants and agrees that no diminution of light, air or view by any

structure which may hereafter be erected (whether or not by Landlord) shall entitle Tenant to any reduction or abatement of Base Rent, Additional Rent or other amount payable under this Lease, result in any liability of Landlord to Tenant or in any other way affect this Lease or Tenant's obligations hereunder.

F.     [§1506] Landlord's Covenant of Quiet Enjoyment

Landlord hereby covenants to Tenant that Landlord has good and marketable fee simple title to the Premises, free and clear of all claims, liens and encumbrances. Upon Tenant paying the Base Rent and other amounts payable hereunder and observing and performing all of the covenants, conditions and provisions on Tenant's part to be observed and performed hereunder, Tenant shall peaceably hold and quietly enjoy the Premises for the entire term hereof without hindrance, molestation or interruption by Landlord or any party claiming through or under Landlord.

G.     [§1507] Entry by Landlord

Landlord and its authorized representatives reserve and shall at all times have the right to enter upon the Premises at all reasonable times and upon reasonable notice to inspect the same, to show said Premises to prospective purchasers, mortgagees or tenants (during the last six (6) months of a lease term with respect to prospective tenants) or to post notices, including, without limitation, notices of nonresponsibility, all the foregoing without abatement of rent. In the event of an emergency, Landlord shall have the right to use any and all means which Landlord may deem necessary or proper to open any doors in order to obtain entry to any portion of the Premises, and any entry to the Premises, or portions thereof obtained by Landlord by any of said means or otherwise, shall not under any circumstances be construed or deemed to be forcible or unlawful entry into, or a detainer of, the Premises or an eviction, actual or constructive, of Tenant from the Premises or any portions thereof.

H.     [§1508] No Joint Venture

It is agreed that nothing contained in this Lease shall be deemed or construed as creating a partnership or joint venture between Landlord and Tenant or between Landlord and any other party or cause Landlord to be responsible in any way for the debts or obligations of Tenant or any other party.

I.     [§1509] Provisions Subject to Applicable Law

All rights, powers and remedies provided herein may be exercised only to the extent that the exercise thereof does not violate any applicable law and are intended to be limited to the extent necessary so that they will not render this Lease invalid, unenforceable or not entitled to be recorded under any applicable law. If any term of this Lease shall be held to be invalid, illegal or unenforceable, the validity of the other terms of this Lease shall in no way be affected thereby.

J. [§1510] Miscellaneous

1. Each party hereby agrees to indemnify the other party from and against any real estate brokerage commissions or other such obligations incurred by the indemnifying party as the result of the negotiation or execution of this Lease.

2. Tenant shall not pay any money or provide any other consideration of any kind whatsoever or employ, contract with or sublease to or with any person or entity if such payment of money or provision of other consideration would violate or would have a reasonable likelihood of violating any law, statute, ordinance, directive, regulation, decision or opinion now or hereafter enacted or promulgated by Landlord, the City of Modesto, the County of Stanislaus, the State of California or any governmental, public or judicial body, agency or department relating in any manner to conflicts of interest or if such payment or provision of consideration is to a person or entity which has discretionary authority or power of any kind over the development, use or occupancy of the Premises or any part thereof or with respect to the enforcement or interpretation of this Lease.

3. In case any one or more of the provisions contained in this Lease shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Lease, but this Lease shall be construed as if such invalid, illegal or unenforceable provisions had not been contained herein.

4. Nothing in this Lease shall be construed to create any duty to, any standard of care with reference to or any liability to anyone not a party except as otherwise expressly provided herein.

5. The words "Landlord" and "Tenant" as used herein shall include a corporation and include the plural as well as the singular. Words used in the masculine gender include the feminine and neuter. If there be more than one Landlord and Tenant, the obligations hereunder imposed upon Landlord and Tenant shall be joint and several.

6. This Lease shall not be recorded; provided, however, contemporaneously with the execution of this Lease, Landlord and Tenant will execute, acknowledge and record, at Landlord's expense, in the Official Records of the County of Stanislaus, California, the Memorandum of Lease in the form attached as Exhibit D and incorporated herein by reference.

7. The captions used herein are for convenience of reference only and are not a part of this Lease and do not in any way limit or amplify the terms and provisions hereof.

8. Time is of the essence of each and all of the agreements, covenants and conditions of this Lease.

9. This Lease shall be interpreted in accordance with and governed by the laws of the State of California. The language in all parts of this Lease shall be, in all cases, construed according to its fair meaning and not strictly for or against Landlord or Tenant.

10. RDA and Tenant agree that Tenant shall provide any contracts, leases, or other legally binding documents available to it, tending to demonstrate lost lease income to Tenant to RDA's Executive Director, who shall in his sole discretion determine whether reimbursement is due from RDA to Tenant for such income lost during the period May 15, 2000, to October 1, 2001.

11. This Lease constitutes the entire agreement between Landlord and Tenant with respect to the subject matter hereof and supersedes all prior offers and negotiations, oral and written. This Lease may not be amended or modified in any respect whatsoever except by an instrument in writing signed by Landlord and Tenant.

#### XVI. [§1600] SUBORDINATION AND NONDISTURBANCE

1. On or before the execution of the Lease by Landlord or in the event a mortgage or deed of trust against the Premises is placed of record prior to a Memorandum of this Lease becoming of record and as a condition precedent to the effectiveness of this Lease, Landlord shall provide to Tenant a commercially reasonable nondisturbance agreement ("Nondisturbance Agreement") in favor of Tenant from any lien holder(s) or any mortgage holder(s), now in existence against the Premises, and as to all advances made or hereafter to be made thereon. Unless otherwise agreed to by Landlord and Tenant, the Nondisturbance Agreement shall be in the form attached hereto as Exhibit H. The Nondisturbance Agreement shall be in recordable form and may be recorded at Tenant's election and expense. In the event that Landlord fails to execute a commercially reasonable nondisturbance agreement, Tenant may elect to terminate this Lease.

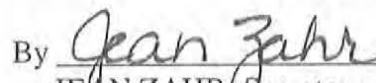
2. Upon written request of Landlord, or any mortgagee or beneficiary of Landlord, Tenant shall, in writing subordinate its rights hereunder to the interest of any future lien or any mortgage or deed of trust, recorded against the Premises after this Lease is fully executed by Landlord and Tenant, and as to all advances made or hereafter to be made thereon, provided, however, that, as a condition precedent to such subordination to such future encumbrance by Tenant, the mortgagee or trustee named in said mortgage or trust deed shall agree to execute a commercially reasonable nondisturbance agreement in favor of Tenant, in the form attached hereto as Exhibit H.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease by proper persons thereunto duly authorized as of the date first hereinabove written.


**LANDLORD:**  
REDEVELOPMENT AGENCY OF THE  
CITY OF MODESTO

By  \_\_\_\_\_  
JACK R. CRIST, Executive Director

Attest:

By  \_\_\_\_\_  
JEAN ZAHR, Secretary  
October 11, 2001  
-and-

**TENANT:**  
CIVIC PARTNERS, MODESTO, INC.

By  \_\_\_\_\_  
STEVEN F. SEMINGSON, President

By  \_\_\_\_\_  
SCOTT CLEMENTS, Chief Financial Officer

# **EXHIBIT A**

## **MAP OF THE PREMISES**

# RECORD OF SURVEY

BEING A DIVISION OF PARCEL 2 PER BOOK 50 OF PARCEL MAPS, AT PAGE 25, LOCATED IN A PORTION OF BLOCK 67 OF THE CITY OF MODESTO, ON THE OFFICIAL MAP, FILED IN BOOK 15 OF MAPS, STANISLAUS COUNTY RECORDS IN THE SOUTH HALF OF SECTION 29, T. 3 S., R. 9 E., W.D.B. & M. CITY OF MODESTO, STANISLAUS COUNTY, CALIFORNIA SCALE 1" = 30' JANUARY, 2001



**SURVEYOR'S STATEMENT:**  
THIS MAP CORRECTLY REPRESENTS A SURVEY MADE BY ME OR UNDER MY DIRECTION IN CONFORMANCE WITH THE REQUIREMENTS OF THE LAND SURVEYOR'S ACT AT THE REQUEST OF CITY OF MODESTO.

DATED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2001.

RICHARD L. FLETZ, L.S. 3870 (6-30-04)

**COUNTY SURVEYOR'S STATEMENT:**  
THIS MAP HAS BEEN EXAMINED IN ACCORDANCE WITH SECTION 8746 OF THE LAND SURVEYOR'S ACT.

DATED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2001.

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

PRINT NAME: GEORGE W. STELLMAN, COUNTY SURVEYOR

R.C.E. # \_\_\_\_\_

EXPIRES: \_\_\_\_\_

**CITY ENGINEER'S CERTIFICATE:**

THIS MAP CONFORMS WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCE.

DATED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2001.

GLEN K. LEWIS, CITY ENGINEER

BY DEPUTY: \_\_\_\_\_

PRINT NAME: \_\_\_\_\_

R.C.E. NO.: \_\_\_\_\_

EXPIRES: \_\_\_\_\_

**REFERENCES:**

1. MEASURED DISTANCE. ALL DISTANCES ARE MEASURED GROUND DISTANCES UNLESS NOTED OTHERWISE.

A. BOOK 50 OF PARCEL MAPS AT PAGE 25

B. BOOK 22 OF SURVEYS, AT PAGE 93

NOTE: ALL REFERENCES ARE TO STANISLAUS COUNTY RECORDS.

**MONUMENTS:**

—○— INDICATES MOVEMENT FOUND AS NOTED.

**BASIS OF BEARINGS:**

THE BEARING OF NORTH 46°17'30" EAST FROM THE CENTERLINE OF "J" STREET AS SHOWN IN BOOK 50 OF PARCEL MAPS AT PAGE 25, STANISLAUS COUNTY RECORDS, WAS USED AS THE BASIS FOR ALL BEARINGS SHOWN.

**BASIS OF VERTICAL DATUM:**

SQUARE ON THE TOP OF CURB AT THE SOUTHERLY END OF THE RETURN ON THE EAST CORNER OF "J" STREET AND TENTH STREET, ELEVATION = 93.34 (CITY OF MODESTO DATUM).

**RECORDER'S STATEMENT:**

FILED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2001, AT \_\_\_\_\_ M., IN

VOLUME \_\_\_\_\_ OF SURVEYS, AT PAGE \_\_\_\_\_, AT THE REQUEST OF

RICHARD L. FLETZ

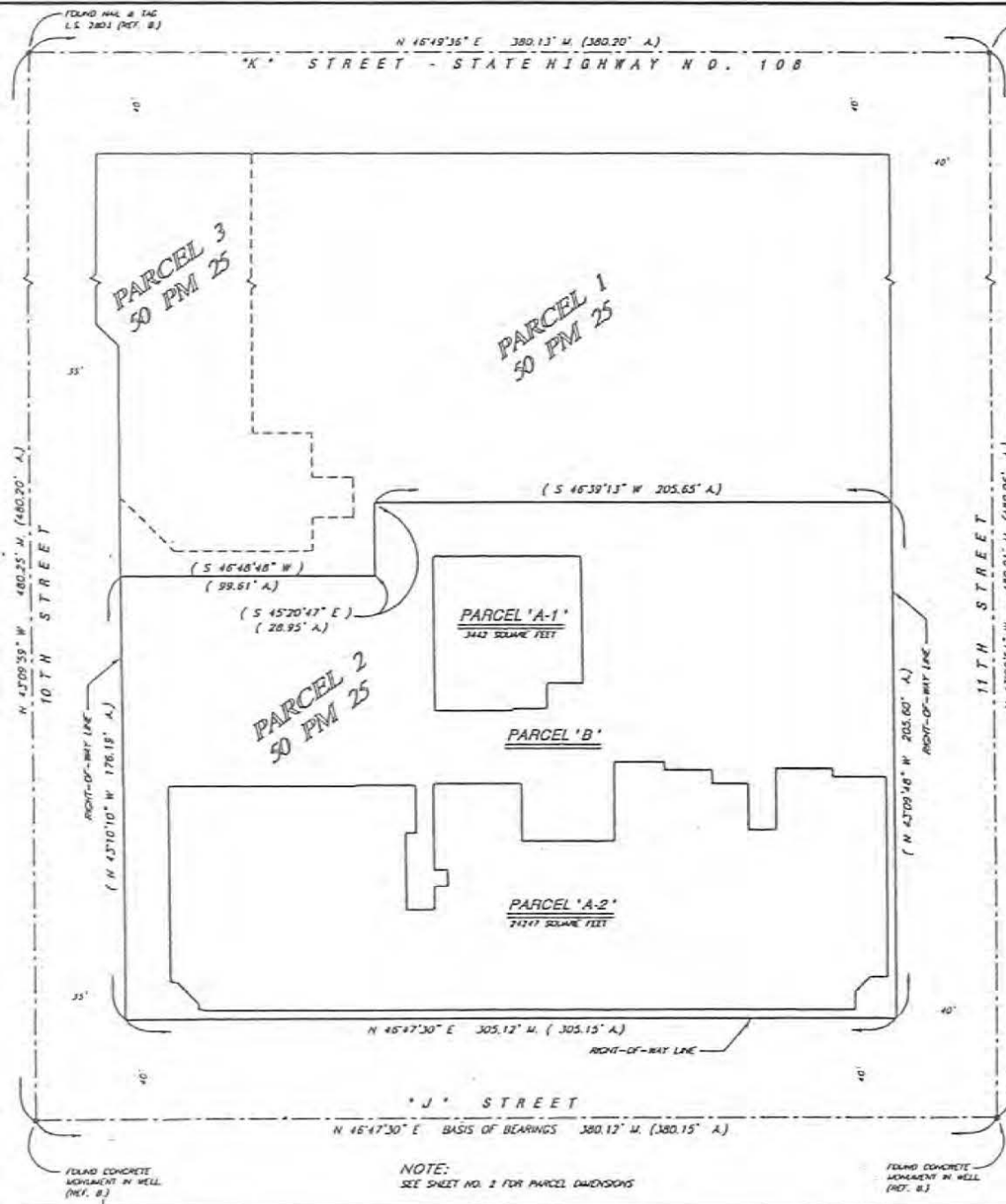
FEE \$ \_\_\_\_\_ PAID

INSTRUMENT NO. \_\_\_\_\_

KAREN ALLIEN  
COUNTY RECORDER

BY: \_\_\_\_\_, DEPUTY  
PRINT NAME: \_\_\_\_\_

SHEET 1 OF 2 SHEETS



**AREA:**  
PARCEL A-1 = 3442 SQUARE FEET  
PARCEL A-2 = 24247 SQUARE FEET  
TOTAL AREA = 27689 SQUARE FEET



**CHIEF BUILDING OFFICIAL'S CERTIFICATE:**

THIS MAP, AND THE AIRSPACE DIVISION OF THE BUILDING SHOWN THEREON, COMPLY WITH APPLICABLE PROVISIONS OF ADOPTED EDITIONS OF THE BUILDING CODE, ELECTRICAL CODE, PLUMBING CODE, MECHANICAL CODE AND FIRE CODE AS REQUIRED BY WOODSTOCK MUNICIPAL CODE SECTIONS 4-4.303 AND 4-4.308.

DATE: \_\_\_\_\_  
 DAVID WILLEY, CHIEF BUILDING OFFICIAL

BY: \_\_\_\_\_  
 PRINT NAME: \_\_\_\_\_  
 R.C.E. NO.: \_\_\_\_\_  
 EXPRES: \_\_\_\_\_

**LINE TABLE**

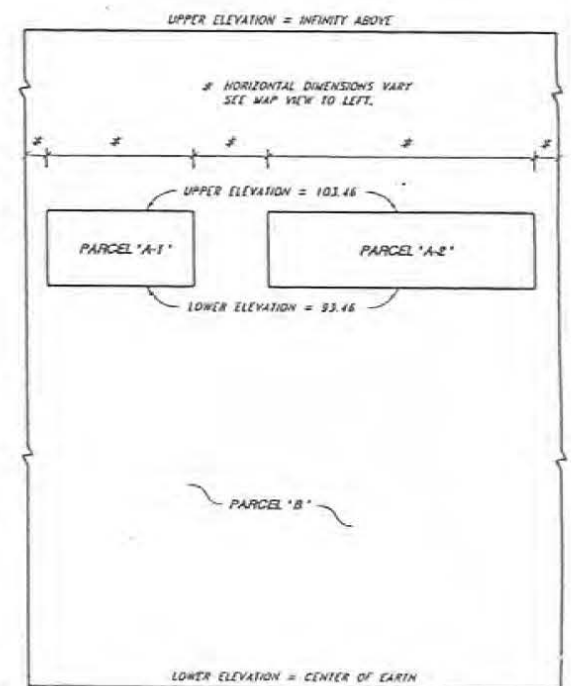
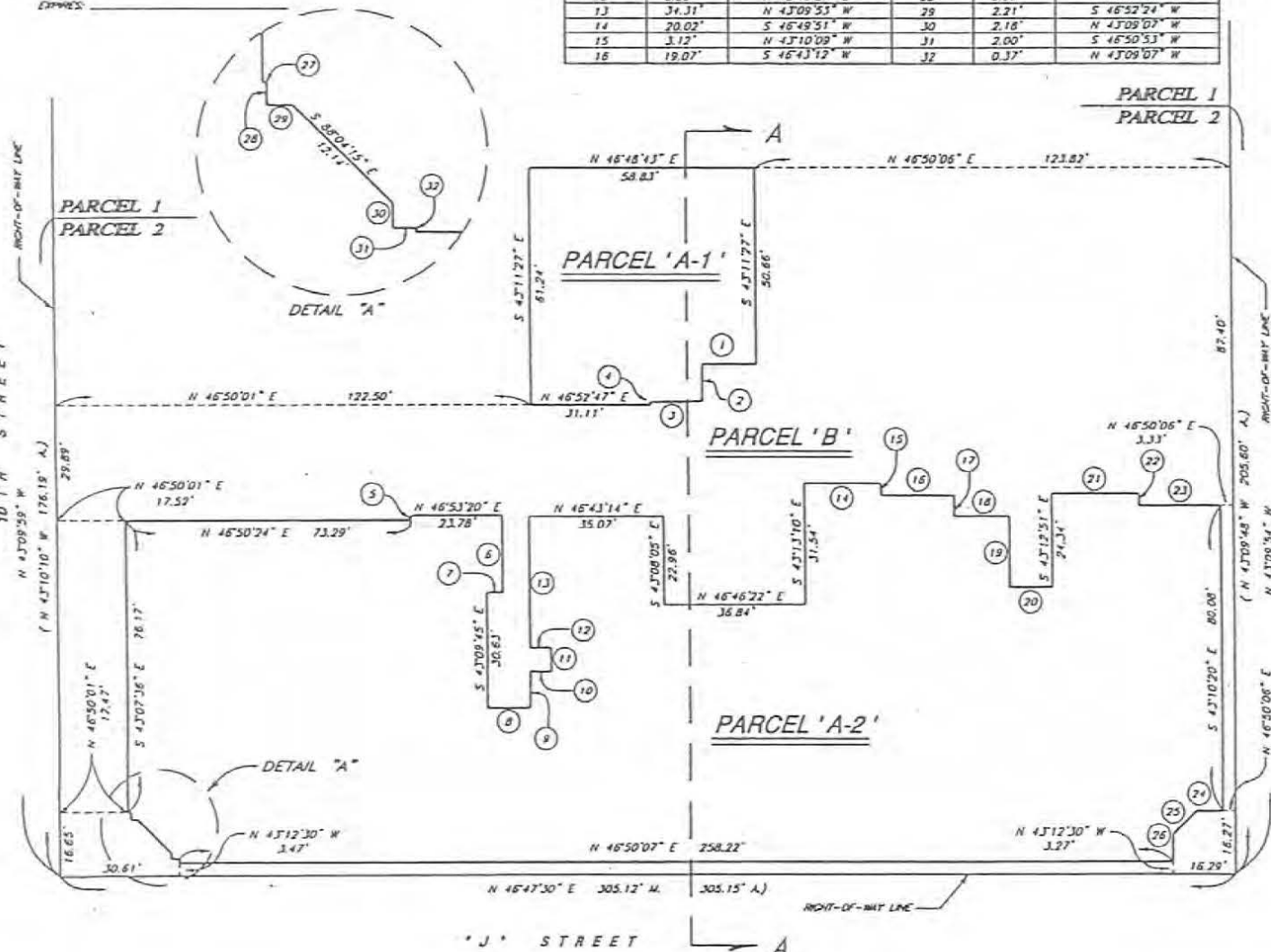
LINE NO.	LENGTH	BEARING	LINE NO.	LENGTH	BEARING
1	14.25'	N 46°50'36" E	17	5.52'	S 42°43'36" E
2	9.76'	S 43°21'32" E	18	14.33'	S 46°40'16" W
3	13.45'	N 46°25'09" E	19	18.43'	S 43°06'30" E
4	0.27'	S 39°14'47" E	20	11.10'	N 46°37'48" E
5	0.31'	N 43°06'40" W	21	22.67'	N 46°52'07" E
6	19.09'	N 43°11'41" W	22	1.16'	N 43°07'53" W
7	4.19'	S 47°09'30" W	23	21.27'	S 46°49'06" W
8	11.16'	S 46°38'46" W	24	6.89'	S 48°58'33" W
9	9.60'	S 43°23'23" E	25	8.65'	N 1°12'54" E
10	5.48'	N 47°43'45" E	26	6.89'	N 43°12'01" W
11	6.50'	S 43°45'34" E	27	0.35'	S 48°52'24" W
12	5.39'	N 45°40'27" E	28	2.00'	N 43°07'36" W
13	34.31'	N 43°09'53" W	29	2.21'	S 46°52'24" W
14	20.02'	S 46°49'51" W	30	2.18'	N 43°09'07" W
15	3.12'	N 43°10'09" W	31	2.00'	S 46°50'53" W
16	19.07'	S 46°43'12" W	32	0.37'	N 43°09'07" W

**RECORD OF SURVEY**

BEING A DIVISION OF PARCEL 2 PER BOOK 50 OF PARCEL MAPS, AT PAGE 25, LOCATED IN A PORTION OF BLOCK 67 OF THE CITY OF WOODSTOCK, ON THE OFFICIAL MAP, FILED IN BOOK 15 OF MAPS, STANISLAUS COUNTY RECORDS IN THE SOUTH HALF OF SECTION 29, T. 3 S., R. 9 E., W.D.B. & M. CITY OF WOODSTOCK, STANISLAUS COUNTY, CALIFORNIA SCALE 1" = 20' JANUARY, 2001

PREPARED BY:

**DELAMARE-FULTZ**  
 ENGINEERING AND SURVEYING  
 3421 TULLY ROAD SUITE J WOODSTOCK CA 95369  
 TELEPHONE (209) 278-1428



**SECTION A - A**

## EXHIBIT B

### OPTION TO PURCHASE

In consideration of Tenant's entering into this Lease, Landlord grants to Tenant an exclusive right and option to purchase the Premises at any time during the term of this Lease on the following terms:

1. Tenant shall exercise the option by giving written notice to Landlord no later than thirty (30) days prior to the date on which Tenant desires to exercise the option.

2. Option cannot be exercised until all Lease payments are paid current. Then, the purchase price to be paid by the Tenant for the Premises, including the retail shell improvements to be developed by the JPA pursuant to the Master Agreement, shall be equal to (a) the total remaining amount of the unpaid principal balance under Schedule C at the date of closing (calculated at the rate of \$58.00 per square foot of the Retail Airspace Parcel which is 27,689 square feet, more or less) plus (b) any costs of sale, plus (c) a fee to the Landlord of Five Percent (5%) of the Landlord's cost of acquiring the Premises from the JPA.

3. Upon the exercise of the option by Tenant, there shall be deemed to exist between Landlord and Tenant a contract of purchase and sale upon the terms and conditions contained herein. Either party shall be entitled to specific performance and/or damages in the event of a breach of such terms.

4. The sale shall be consummated through an escrow with Fidelity National Title Insurance Company, Modesto, California to be opened within ten (10) days after Tenant has delivered written notice to Landlord of Tenant's exercise of the option. Escrow shall close no later than thirty (30) days after the date of Tenant's notice. Landlord and Tenant shall deliver to the escrow agent any such instructions as are necessary to complete the sale transaction and convey fee title of the Premises to Tenant.

5. The escrow instructions shall provide that Landlord will pay documentary transfer taxes, if any, recording fees and the costs of premium for a CLTA standard form title insurance policy and that Tenant shall pay for any additional premium cost for an ALTA title insurance policy. All other escrow costs and other charges, if any, shall be allocated between Landlord and Tenant in accordance with the customary practice in Stanislaus County.

6. Landlord shall convey good, marketable and insurable fee simple title to the Premises. Upon conveyance of title to the Premises to Tenant, the interest of Landlord in this Lease shall be deemed assigned to Tenant.

7. This option to purchase is not transferable or assignable except to any approved or permitted assignee of Tenant's interest in this Lease, as set forth in the Lease. The option to purchase shall automatically terminate upon termination of the Lease.

**EXHIBIT C**  
**Schedule of Developer Lease Payments**  
**+ Outstanding Principal**

Rent Due Date	Base Rent Payment	Amount Paid to Principal	Unpaid Principal Balance on Purchase Amount
8/21/98	\$ 5,569		
2/19/99	\$ 5,897		
8/21/99	\$ 16,295		
2/19/00	\$ 19,084		
8/21/00	\$ 36,895		
2/19/01	\$ -		
8/21/01	\$ -		
2/19/02	\$ -		
8/21/02	\$ 48,629		
2/19/03	\$ 57,204	\$ 8,575	\$ 1,597,387
8/21/03	\$ 48,457		
2/19/04	\$ 57,382	\$ 8,925	\$ 1,588,462
8/21/04	\$ 48,279		
2/19/05	\$ 57,904	\$ 9,625	\$ 1,578,837
8/21/05	\$ 48,086		
2/19/06	\$ 58,936	\$ 10,850	\$ 1,567,987
8/21/06	\$ 47,869		
2/19/07	\$ 59,769	\$ 11,900	\$ 1,556,087
8/21/07	\$ 47,625		
2/19/08	\$ 60,925	\$ 13,300	\$ 1,542,787
8/21/08	\$ 47,353		
2/19/09	\$ 61,258	\$ 14,175	\$ 1,528,612
8/21/09	\$ 47,055		
2/19/10	\$ 62,805	\$ 15,750	\$ 1,512,862
8/21/10	\$ 46,720		
2/19/11	\$ 63,870	\$ 17,150	\$ 1,495,712
8/21/11	\$ 46,345		
2/19/12	\$ 66,820	\$ 20,475	\$ 1,475,237
8/21/12	\$ 45,885		
2/19/13	\$ 60,409	\$ 23,975	\$ 1,451,262
8/21/13	\$ 45,582		
2/19/14	\$ 73,407	\$ 27,825	\$ 1,423,437
8/21/14	\$ 44,928		
2/19/15	\$ 76,778	\$ 31,850	\$ 1,391,587
8/21/15	\$ 44,164		
2/19/16	\$ 80,039	\$ 35,875	\$ 1,355,712

**\* Payments deferred for non-occupancy**

**EXHIBIT C**  
**Schedule of Developer Lease Payments**  
**+ Outstanding Principal**

Rent Due Date	Base Rent Payment	Amount Paid to Principal	Unpaid Principal Balance on Purchase Amount
8/21/16	\$ 43,267		
2/19/17	\$ 83,692	\$ 40,425	\$ 1,315,287
8/21/17	\$ 42,256		
2/19/18	\$ 87,406	\$ 45,150	\$ 1,270,137
8/21/18	\$ 41,128		
2/19/19	\$ 91,353	\$ 50,225	\$ 1,219,912
8/21/19	\$ 39,841		
2/19/20	\$ 95,666	\$ 55,825	\$ 1,164,087
8/21/20	\$ 38,410		
2/19/21	\$ 100,185	\$ 61,775	\$ 1,102,312
8/21/21	\$ 36,827		
2/19/22	\$ 104,902	\$ 68,075	\$ 1,034,237
8/21/22	\$ 35,083		
2/19/23	\$ 109,633	\$ 74,550	\$ 959,687
8/21/23	\$ 33,312		
2/19/24	\$ 114,512	\$ 81,200	\$ 878,487
8/21/24	\$ 31,384		
2/19/25	\$ 119,584	\$ 88,200	\$ 790,287
8/21/25	\$ 29,289		
2/19/26	\$ 125,189	\$ 95,900	\$ 694,387
8/21/26	\$ 27,011		
2/19/27	\$ 130,786	\$ 103,775	\$ 590,612
8/21/27	\$ 24,417		
2/19/28	\$ 137,117	\$ 112,700	\$ 477,912
8/21/28	\$ 21,599		
2/19/29	\$ 143,399	\$ 121,800	\$ 356,112
8/21/29	\$ 18,554		
2/19/30	\$ 150,154	\$ 131,600	\$ 224,512
8/21/30	\$ 15,264		
2/19/31	\$ 153,514	\$ 138,250	\$ 86,262
8/21/31	\$ 11,808		
2/19/32	\$ 157,583	\$ 86,262	\$ -
	<b>\$ 4,032,348</b>	<b>\$ 1,605,962</b>	<b>\$ 1,605,962</b>

# EXHIBIT D

## DEFINITION OF SHELL SPACE FOR RETAIL

The following is a scope of the retail shell space the JPA will construct for the Landlord and Tenant, pursuant to the Master Agreement. The following is intended to form the bases upon which the space will be developed at a cost of \$58 per square foot.

Other systems could be developed or these systems modified at the request of the Tenant subject to an equitable cost adjustment.

1. Floors. The floor will be hard troweled, natural colored concrete. The floor will be flat within standard tolerances, F (F) 20, floor flatness, and F (L) 17, floor levelness, measured according to ASTM E1155. There will be no recesses or pads.

2. Walls:

A. The Storefront system will be Kynar finished Aluminum. Typical mullions will be nominal 2-1/2" x 5-1/2".

B. Storefront Entry Doors will be medium style, Kynar finish to match the storefront system. The typical hardware will include mortise locksets, surface closure, and kickplates, stops, seals, etc. Allowance has been made for 6 pair of doors to retail areas.

C. The interior of the perimeter wall will be fiberglass batt insulation, friction fit between metal studs.

D. Demising Wall between the core areas, exit corridors and the retail wall will be unpainted, gypsum wallboard. The walls will be fire taped per code. There will be no demising walls to separate retail tenancies. There are no doors in the demising walls.

E. Exposed Columns and Beams in the retail stall will be fire proofed with a spray on fire proofing.

3. The Ceiling is not included for the retail shell; although, hangar wires will be placed at standard spacing. There are no light fixtures included for the retail space.

4. The HVAC will be designed for standard retail space. There will be no extraordinary design for high heat generating spaces nor exhaust systems.

5. A. A One and a Half Inch (1-1/2"). Gas Line will be stubbed into the retail space.

B. A One Inch (1") conduit for Cable TV will be stubbed into the retail space.

C. A Four Inch (4") conduit for Data/Communication will be stubbed into the retail

space. The conduct could be installed with 2 or 4 interducts at the Tenant's preference.

D. A One Inch (1") Water Line for domestic water will be stubbed to the retail space.

E. A Four Inch (4") Sewer and a Three Inch (3") Vent will be installed under the slab at the back of each retail space.

6. A Fire Sprinkler System will be installed in the space per code.

7. Electrical Service will consist of at least 14 electrical services with a minimum of 200 amperes per service stubbed into the space. The conduits will be connected to 480 V main switchgear in the main electrical room, with a circuit breaker sized for lighting, power and convenience electrical service for standard retail space and as restricted by Title 24.

If the retail space must be separated by an entry way exit corridor, fire wall, etc., then appropriate services shall be supplied for each space.

# **EXHIBIT E**

## **MEMORANDUM OF LEASE**

**Recording Requested By:**

City of Modesto

**When Recorded, Return To:**

City of Modesto

City Attorney's Office

P. O. Box 642

Modesto, CA 95353

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(Space above this line reserved for Recorder's use only)

**MEMORANDUM OF LEASE AGREEMENT**  
**WITH OPTION TO PURCHASE**

**MEMORANDUM OF LEASE AGREEMENT**  
**WITH OPTION TO PURCHASE**

This Memorandum of Lease ("Memorandum") is entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2001, by and between the REDEVELOPMENT AGENCY OF THE CITY OF MODESTO ("Landlord") and CIVIC PARTNERS MODESTO, Inc. ("Tenant"), with respect to that certain Lease Agreement with Option to Purchase (the "Lease") dated \_\_\_\_\_, 2001, between Landlord and Tenant.

Pursuant to the Lease, Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the retail shell space (the "Premises"), more particularly described in Attachment No. 1, attached hereto, which Premises is located on the ground floor of the JPA Building constructed as part of the Tenth Street Place in the Modesto Redevelopment Project Area in the City of Modesto. The Lease is for a term of \_\_\_\_\_ ( ) years commencing on \_\_\_\_\_, 2001, and ending on \_\_\_\_\_, \_\_\_\_\_, which term is subject to one (1) \_\_\_\_\_ ( ) year renewal option on the terms and conditions set forth in the Lease.

Landlord also grants Tenant certain options to purchase the Premises upon the terms and conditions set forth in Section 103 and Exhibit C of the Lease.

This Memorandum shall incorporate herein all of the terms and provisions of the Lease as though fully set forth herein.

This Memorandum of Lease is solely for recording purposes and shall not be construed to alter, modify, amend or supplement the Lease, of which this is a memorandum.

Executed on \_\_\_\_\_, 2001, at \_\_\_\_\_, California.

**LANDLORD:**  
REDEVELOPMENT AGENCY OF THE  
CITY OF MODESTO

By \_\_\_\_\_  
JACK R. CRIST, Executive Director

Attest:

By \_\_\_\_\_  
JEAN ZAHR, Secretary

-and-

**TENANT:**  
CIVIC PARTNERS MODESTO, INC.

By \_\_\_\_\_  
STEVEN P. SEMINGSON, President

By \_\_\_\_\_  
SCOTT CLEMENTS, Chief Financial Officer

## **ATTACHMENT NO. 1**

### **Legal Description of the Premises**

All that portion of Parcels A-1 and A-2 as per the official map thereof filed in Book 26 of Surveys, at Page 29, Stanislaus County Records, lying in the south half of Section 29, Township 3 South, Range 9 East, Mount Diablo Base and Meridian, City of Modesto, County of Stanislaus, State of California.

payment as shown on the attached Exhibit D. Tenant acknowledges that Base Rent payments commenced prior to completion of construction and occupancy of the Premises by Tenant. Notwithstanding, Tenant shall pay Base Rent payments in the full amount and at the times set forth in the attached Exhibit D.

Following retirement or other termination of the Agency's debt service payments associated with the Premises, and on each anniversary thereafter, the Base Rent for the Premises shall be equal to the annual Base Rent payment for the previous twelve (12) month period, adjusted upward or downward by the same percentage as the average increase or decrease for all rents for subtenants of Tenant of the retail space comprising the Premises during the previous twelve (12) months, provided, however, that Base Rent shall not exceed fair market rental for the Premises.

2. [\$109] Additional Rent

In addition to and not by way of limitation of Landlord's rights under specific provisions of this Lease, Landlord shall at all times have the right (at its sole election and without any obligation to do so) to advance on behalf of Tenant any amount payable and delinquent under the terms hereof by Tenant, or to otherwise satisfy any of Tenant's obligations hereunder, provided that (except in cases of emergency calling for immediate payment) Landlord shall first have given Tenant no less than ten (10) days advance written notice of Landlord's intent to advance such amounts on behalf of Tenant and Tenant shall have failed to make such payment within such period of time. No advance by Landlord shall operate as a waiver of any of Landlord's rights under this Lease and Tenant shall remain fully responsible for the performance of its obligations under this Lease. All amounts advanced by Landlord shall constitute "Additional Rent" under this Lease, shall be immediately due and payable by Tenant to Landlord, and shall bear interest at the maximum rate permitted on the date of such advance by Section 1(2) of Article XV of the California Constitution (not to exceed ten percent (10%) per annum) from the date of advance until paid in full.

3. [\$110] Late Charges

Tenant recognizes that late payment of Base Rent, Additional Rent or any other payment due hereunder from Tenant to Landlord will result in administrative and other additional expenses to Landlord, the extent of which additional expense is extremely difficult and economically impractical to ascertain. Tenant therefore agrees that if Base Rent, Additional Rent or any other payment due hereunder from Tenant to Landlord remains unpaid five (5) days after said payment is due, Tenant shall pay to Landlord a late charge equal to interest on the amount of the delinquent Base Rent, Additional Rent or other payment at the maximum rate permitted under Section 1(2) of Article XV of the California Constitution (not to exceed ten percent (10%) per annum) from the date when said payment should have been made, which late charge shall be added to and become part of the delinquent Base Rent, Additional Rent or other payment. The amount of the late charge to be paid Landlord by Tenant on any unpaid Base Rent, Additional Rent or other payment shall be reassessed and added to Tenant's obligation for each successive monthly period accruing after the date on which the late charge is initially imposed. Tenant agrees that such amount is a reasonable estimate of the loss and expense to be suffered by

## AMENDMENT TO PARKING AGREEMENT

**THIS AMENDMENT** (hereinafter referred to as the "AMENDMENT") is entered into this 4 day of May, 2004, by and between the REDEVELOPMENT AGENCY OF THE CITY OF MODESTO, a public body, corporate and politic (the "Agency") and CIVIC PARTNERS MODESTO, INC, a California Corporation ("Developer").

### RECITALS

A. On June 12, 2000 the Agency and Developer entered into a Parking Agreement wherein terms and conditions were set forth for use of parking in the public Parking Garage identified in said Parking Agreement (the "Parking Garage").

B. Subsequent to the execution of said Parking Agreement, there has been a dispute between the parties with regard to the provision of employee parking and whether or not the Parking Payments set forth in said Parking Agreement are for both employees and customers.

C. The Agency and Developer have determined that it is in the best interest of both parties to resolve this dispute as provided below.

### AMENDMENT

1. Section (C) of said Parking Agreement shall be amended in its entirety to read as follows:

"Pursuant to the DDA, the Agency shall implement a validation or similar system to permit employees and customers of the businesses on the JPA Retail Parcel to park in the Parking Garage pursuant to a validation or similar system to be established by Agency, and Developer shall make certain annual parking payments to Agency as consideration for such use"

2. Section 1 of the Parking Agreement shall be amended in its entirety to read as follows:

"1. Use of Parking. Subject to the terms and conditions of this Agreement, employees and customers of the businesses on the JPA Retail Parcel shall have the right to use and occupy available parking spaces (the "Parking Spaces) in the Parking Garage"

"a. Parking Validations. Commencing upon the date of issuance of a Certificate of Completion for any portion of the improvements to be constructed on the JPA Retail Parcel (the "Effective Date"), and for the balance of the term of this

Agreement, Agency shall establish and implement a validation or other similar system to permit employees and customers of the businesses on the JPA Retail Parcel to park in the Parking Garage free of charge in accordance with this Agreement. Agency shall provide Developer with validation stickers or an acceptable alternative method to allow employees and customers of the JPA Retail Parcel to occupy available Parking Spaces within the Parking Garage at no charge in accordance with this Agreement.”

“b. Location of Parking Spaces. The parking validation system shall be applied to employees and customers of the businesses on the JPA Retail Parcel on the same basis as it is applied to employees and customers of other portions of the Tenth Street Place Project. Such parking within the Parking Garage shall be provided on a first come, first served basis, and the validation system shall neither guarantee nor reserve parking spaces within the Parking Garage.”

“c. Non-exclusive use of Parking Spaces. The use of the Parking Spaces by employees and customers of the businesses on the JPA Retail Parcel shall be on a non-exclusive basis, during all normal operating hours of the Parking Garage.

“d. Rules and Regulations. Agency may, from time to time, adopt and/or amend rules and regulations relating to the use of the Parking Garage and operation or implementation of the validation system to be established by Agency. The rules and regulations may specify, without limitation, the period of free parking per validation per customer per day. Use of the Parking Spaces by employees or customers of the JPA Retail Parcel shall be subject to and conditioned upon compliance with any such rules and regulations adopted by the Agency.

3. Section 2 of the Parking Agreement shall be amended in its entirety to read as follows:

"Term of Agreement: Unless earlier terminated as provided below, and provided Developer is not in default under this Agreement, the term of this Agreement shall commence on the Effective Date, and shall continue so long as the Parking Garage and the retail uses on the JPA Retail Parcel are in existence and open for business.

During the term of this Parking Agreement should any of the primary users of the Parking Garage (Garage Retail Parcel, JPA Retail Parcel, JPA, Cinema Parcel) experience a frequent and significant parking shortage in the Parking Garage, Developer agrees to participate in discussions with the other primary users to resolve said parking shortage. It is expressly agreed that Developer will participate equally with other primary users in the reasonable resolution of said parking shortage. In the event of the failure of one of the primary users to participate in such discussions, Developer can, but shall not be obligated to, participate under this Section. Any shortfall in parking spaces will be allocated equitably between all the primary users, based on existing needs and agreements.

Any revisions to this Parking Agreement, including any Amendments, would require the mutual agreement of the Agency and Developer. Agency and Developer further agree to jointly pursue potential options for increasing available parking in the project vicinity.

3. Section 3(a) of the Parking Agreement shall be amended in its entirety to read as follows:

“ For all space leased as of the “Amendment Effective Date”, the Parking Payment shall be made, in advance, in the monthly amount of TEN CENTS (\$0.10) per square foot per month of the applicable net leasable square feet of retail space developed on the JPA Parcel. For purposes of this Agreement, the amount of all net leasable square feet of retail space developed on the JPA Retail Parcel shall be Twenty-Seven Thousand, Five Hundred, Thirty-Nine square feet (27,539 square feet)

"The Parking Payment shall increase to FIFTEEN CENTS (\$0.15) per square foot per month for any lease existing as of said Amendment Effective Date when any of the following occurs:

1. The initial term of any existing lease is extended or expanded. The increase shall become effective at the beginning of the extended or expanded lease term.
2. An existing lease is modified such that the lease payment increases from that certain, specific sub-leasee to the Developer for a net gain in revenue to the Developer of greater than \$0.05 per square foot per month. Exception: Automatic increases in Base and Additional Rent shall not be included in these calculations.
3. The lease for an existing use is assigned or subleased and the use permitted on the premises is different than the original use

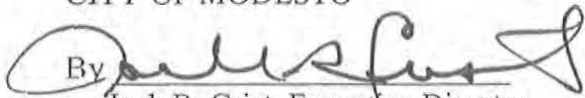
For all space leased subsequent to Amendment Effective Date, the Parking Payment shall be made, in advance, in the annual amount of FIFTEEN CENTS (\$0.15) per square foot per month of the applicable net leasable square feet of retail space developed on the JPA Parcel.”

Except as modified by this amendment, all other provisions of the Parking Agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the Redevelopment Agency of the City of Modesto has authorized the execution of this Amendment in duplicate by its Executive Director and attestation by its Secretary, respectively under authority of Resolution No. 7-2004, adopted by the Redevelopment Agency of the City of Modesto on the 4 day of May, 2004 and Civic Partners has caused this Amendment to be executed.

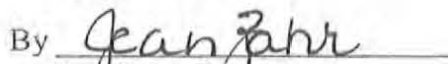
REDEVELOPMENT AGENCY OF THE  
CITY OF MODESTO

By

  
Jack R. Crist, Executive Director

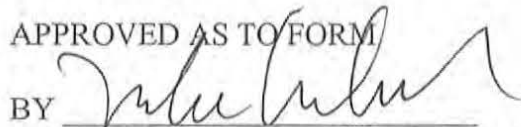
ATTEST

By

  
Jean Zahr, Secretary

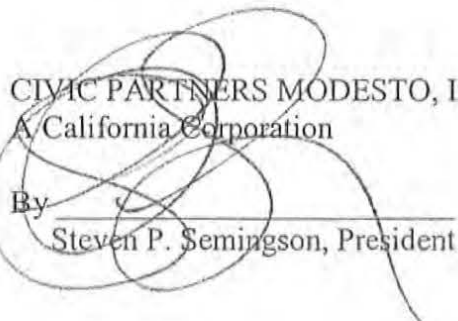
APPROVED AS TO FORM

BY

  
Michael D. Milich, General Counsel

CIVIC PARTNERS MODESTO, Inc.  
A California Corporation

By

  
Steven P. Semington, President



Julie Drake, Secretary

