

# **GROUND LEASE AGREEMENT**

FOR  
REAL PROPERTY LOCATED AT:

**1630 San Pablo Ave  
Oakland, CA 94612**

Between:

**Rotunda Garage, LP**

**&**

**ACCESS BUILDING, LLC**

July 1, 2006

② 4/1

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## GROUND LEASE

This GROUND LEASE (this "Lease") is dated as of July 1, 2006, by and between ROTUNDA GARAGE, LP, a California limited partnership ("Landlord"), and ACCESS BUILDING, LLC, a California limited liability company ("Tenant")

### WITNESSETH:

For and in consideration of the rent hereinafter provided, and for and in consideration of the mutual agreements herein set forth and for other good and valuable consideration, Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the Premises (as defined below), upon and subject to the terms and conditions herein set forth, for the term herein stated, as follows:

### ARTICLE 1:DEFINITIONS

Section 1.1 Definitions. The underscored terms set forth below shall, for all purposes of this Lease, have the meanings specified in this Article 1, unless provided otherwise:

- (a) Rent. The term "Rent" has the meaning set forth in Article 4.
- (b) Commencement Date. The term "Commencement Date" means the date of commencement of the Term of this Lease, as set forth in Article 2.
- (c) Impositions. The term "Impositions" means the taxes, assessments and other rates, levies and governmental charges described in Article 5.
- (d) Improvements. The term "Improvements" means the buildings and improvements constructed or erected on the Land by or through Tenant for Tenant's own account, as well as any future additions, replacements, or alterations thereto, and any attachments, appliances, equipment, machinery, and other fixtures attached to said buildings and improvements or otherwise located on the Premises.
- (e) Land. The term "Land" means the parcel of land described in Exhibit A attached hereto and by this reference made a part hereof and the easements, rights, and other appurtenances now or hereafter appurtenant to, benefiting or serving such parcel described in such Exhibit but not including any Improvements.
- (f) Landlord. "Landlord" means the Landlord named herein and any person, firm, corporation or other legal entity who or which shall succeed to Landlord's legal and equitable fee simple title to the Land (any such successor to be conclusively deemed to have assumed the obligations of "Landlord" herein by virtue of such succession).
- (g) Tenant's Mortgage. The term "Tenant's Mortgage" means any mortgage made by Tenant granting to Tenant's Lender (as defined below) a first deed of trust and shall include whatever security instruments are reasonably necessary to secure the lender's interest including, without limitation, financing statements, security agreements, mortgages, deeds of trust, and any other documentation reasonably required by the Tenant's Lender.

- (h) Tenant's Lender. The term "Tenant's Lender" means the payee of a loan to be used by Tenant to build the Improvements or the payee of any loan used by Tenant to repay or refinance such loan.
- (i) Lease Year. The term "Lease Year" means each successive twelve month period during the term commencing on the Commencement Date.
- (j) Option Price. The term "Option Price" has the meaning set forth in Paragraph 2.4(a).
- (k) Permitted Exceptions. The term "Permitted Exceptions" has the meaning set forth in Section 2.4(d) hereof.
- (l) Premises. The term "Premises" means the Land.
- (m) Tenant. "Tenant" means the Tenant named herein, and any person, firm, corporation or other legal entity to whom or to which Tenant's interest in this Lease shall be assigned.

## ARTICLE 2: LEASE OF THE PREMISES

Section 2.1 Demise. Landlord hereby leases, transfers and demises to Tenant, and Tenant hereby leases and takes from Landlord, the Premises upon the agreements, covenants and conditions set forth in this Lease, from the Commencement Date and continuing thereafter for the remaining term of this Lease (the "Term"). Notwithstanding the foregoing, the parties hereby acknowledge and agree that the City of Oakland's approval of this Lease is a condition precedent to the effectiveness of this Lease. Landlord shall use its diligent, good faith efforts to obtain the City of Oakland's written approval of the transactions contemplated hereunder. On June 30, 2006, the Landlord received a letter from the City approving the Ground Lease and the Tenant's experience, ability, and financial capacity to develop the subject Parcel (see Exhibit E). Further, in the event that the Landlord is in substantial breach of this agreement or any parts thereof according to Section 14.5, Landlord shall immediately reimburse Tenant for all expenses incurred by Tenant in connection with this Lease and the proposed development of the Land. Also, Tenant may terminate this Lease if, despite its good faith efforts, Tenant is unable to obtain building permits for the Improvements on or before July 1, 2008. If Tenant elects to terminate this Lease, Tenant shall be fully responsible for any rental obligations, deferred rent or any other monetary obligations to Landlord as specifically specified in this lease.

Section 2.2 Term. The parties acknowledge and stipulate that the Commencement Date of the Term is July 1, 2006. Unless otherwise extended or sooner terminated as provided herein, the Term shall expire at, 11:59 p.m., Pacific Time, on July 1, 2056 (the "Expiration Date").

Section 2.3 Option to Purchase Premises. Landlord hereby grants to Tenant an option to purchase the Premises on the following terms and conditions:

- (a) Tenant shall exercise its right to purchase the Premises by delivery of written notice to Landlord on or before January 1, 2016. The parties hereby acknowledge that Tenant will likely, but is not obligated to, exercise this option upon completion of the Improvements hereunder. Tenant's notice shall constitute an acceptance by Tenant of Landlord's irrevocable offer to sell and convey the Premises to Tenant. The "Option Price" is the purchase price listed on Exhibit B,

attached hereto and incorporated herein, for the first day of the month in which escrow is scheduled to close.

- (b) If Tenant exercises its option to purchase the Premises, the closing of such purchase and the conveyance by Landlord to Tenant of the Premises (the "Closing") shall take place on such date designated by Tenant in its notice of exercise, but no later than six (6) months after the date of exercise of the option, at the offices of a national title company designated by Tenant.
- (c) On the date of Closing, Tenant or its designee shall pay to Landlord the Option Price, and Landlord shall convey to Tenant or its designee, by grant deed, fee simple title to the Premises, free and clear of all liens, encumbrances and exceptions to title except for the Permitted Exceptions.
- (d) Landlord shall execute and furnish Tenant with a standard "owner's affidavit" so as to enable Tenant to obtain an owner's policy of title insurance at Closing, issued by a title insurance company reasonably acceptable to Tenant, and in an amount equal to the Option Price. The title policy shall show fee title to the Premises vested solely in Tenant, or its successor in interest, subject only to standard preprinted exceptions and other title exceptions approved by Tenant in writing (collectively "Permitted Exceptions").
- (e) In connection with the Closing, Landlord shall also duly execute and acknowledge any documents or instruments reasonably requested by Tenant or the escrow agent to cause Tenant to obtain title to the Premises in accordance herewith.
- (f) Recording, transfer and escrow fees shall be paid by the parties in accordance with customary practices in Alameda County, but otherwise Landlord and Tenant shall pay their own respective costs. At Closing, all rent, taxes and charges under the Lease shall be prorated through the date of Closing. All other closing matters shall be handled in accordance with the standard closing practices of the title company.

### ARTICLE 3: TITLE; QUIET ENJOYMENT

Section 3.1 Warranty of Title. Landlord hereby represents and warrants to Tenant that, as of the Commencement Date and throughout the Term of this Lease and at Closing, (i) the Premises will be vacant and no person or entity except Tenant shall have the right to use, occupy or possess the Premises or any part thereof and (ii) Landlord holds good fee simple title to the Premises, free and clear of any and all easements, rights of way, restrictions, conditions, covenants, encumbrances, liens, or other exceptions to title of any kind whatsoever (collectively "Liens") other than the Liens or encumbrances created by Tenant subsequent to the Commencement Date. Landlord shall not cause any Lien to be filed or recorded against the Land either prior to or during the term of this Lease. In the event any Lien shall be filed against the Land based upon any action or inaction of Landlord or its employees, agents, representatives, contractors, invitees, tenants (other than Tenant) or any other person acting at the request of Landlord, Landlord shall promptly remove or satisfy such Lien. Tenant hereby represents that he has reviewed the sections of the City of Oakland Disposition and Development Agreement (DDA) related to the subject Parcel included under Exhibit E and agreed that the proposed improvements to be constructed on the Parcel will be in compliance with such section and City Planning and Building codes.



Section 3.2 Additional Warranties and Representations. Landlord represents and warrants that (i) it has full right, title, authority, and capacity to execute and perform this Lease, the Memorandum of Lease (as defined below), and any other agreements and documents to which Landlord is a party and referred to or required by this Lease (collectively, the "Lease-Related Documents"); (ii) the execution and delivery of the Lease-Related Documents have been duly authorized by all requisite actions of Landlord; (iii) the Lease-Related Documents constitute valid, binding, and enforceable obligations of Landlord; (iv) to the best of Landlord's knowledge, and subject to the terms and conditions of the D.D.A., neither the execution of the Lease-Related Documents nor the consummation of the transactions they contemplate violates any agreement (including Landlord's organizational documents), contract, or other restriction to which Landlord is a party or is bound; (v) there are no judicial, quasi-judicial, administrative or other orders, injunctions, moratoria or pending proceedings against Landlord or the Premises which preclude or interfere with, the occupancy and use of the Premises; (vi) there is no existing or, to Landlord's knowledge, pending or threatened condemnation affecting any portion of the Premises or any pending public improvements in, about, outside, or appurtenant to the Premises that will materially adversely affect the use and operation of the Premises, the value of the Premises, or access to the Premises or that will create additional cost to any owner or tenant of the Premises by means of special assessments or otherwise. Landlord makes no representations or warranties regarding the presence of hazardous materials with the Premises. Tenant accepts the Premises AS-IS and shall be solely responsible for any remediation costs. In the event of any breach of Landlord's warranties under this Lease, Landlord shall promptly rectify the same at its sole cost and expense and shall indemnify, defend, and hold Tenant harmless from and against any damages, liability, suits, losses, claims, actions, costs or expenses (including attorneys' and consultants' fees and costs) suffered by Tenant in connection with any such breach. Landlord's obligations pursuant to the foregoing indemnity shall survive the expiration or termination of this Lease.

Section 3.3 Encumbrances. Landlord shall not voluntarily execute any documents or otherwise take any action which will have the result of conveying, transferring or encumbering the Land or any portion thereof in any fashion whatsoever, or that may affect Tenant's rights under this Lease, including entering into any new leases, loans, notes, deeds of trust or any other instrument.

Section 3.4 Covenant of Quiet Enjoyment. Landlord covenants that so long as Tenant is performing its covenants and agreements herein and observing the provisions of this Lease after giving effect to all applicable grace, notice and cure periods, Tenant shall peaceably and quietly have possession of and enjoy the Premises in accordance with the terms of this Lease, without hindrance or molestation by Landlord or any persons claiming by, through or under Landlord.

Section 3.5 Title Insurance. Tenant shall obtain a leasehold policy of title insurance prior to the Commencement Date insuring Tenant's leasehold interest subject only to Liens approved in writing by Tenant. The leasehold policy shall include a binder provision which binds the title company to issue an ALTA owner's policy of title insurance to Tenant in the event Tenant exercises its option to purchase the Land.



## ARTICLE 4:RENT

Section 4.1 Base Rent. From and after the Commencement Date through January 1, 2008, Tenant shall pay to Landlord base rent ("Base Rent") for the Premises in the amount of two thousand dollars (\$2,000) per month. From February 1, 2008 through June 1, 2009, Tenant shall pay to Landlord Base Rent in the amount of two thousand two hundred dollars (\$2,200). Thereafter, on July 1 of each Lease Year, Base Rent shall be increased by three percent (3%) of the Base Rent in effect for the immediately preceding period. Base Rent shall be due and payable in advance on the first (1st) day of each month, without set-off or deduction.

Section 4.2 Deferred Rent. Notwithstanding the foregoing, Tenant shall have the right to defer payment of Base Rent from the Commencement Date through January 31, 2008 ("Deferred Rent"). The Deferred Rent shall be payable on or before June 30, 2016 and shall earn interest at the rate of six percent (6%) per annum compounded monthly. In the event Tenant exercises its right to purchase the Premises pursuant to Section 2.4, the Deferred Rent shall be become due and payable at Closing. However, the Security Deposit shall be credited against the purchase price.

Section 4.3 Proration. All payments due hereunder for any fractional month at the commencement or end of this Lease shall be prorated based upon the number of days in such fractional month during the Term.

Section 4.4 Place of Payment. All rentals payable hereunder shall be paid to Landlord at the address set forth in Article 19, unless Tenant is otherwise instructed in writing by Landlord.

Section 4.5 Absolute Net Lease. It is the purpose and intent of Landlord and Tenant that the Base Rent be absolutely net to Landlord, and that all costs, expenses, obligations, assessments or impositions which Tenant assumes or agrees to discharge pursuant to this Lease, which may arise or become due during the Term, shall be paid by Tenant as "Additional Rent". As used herein, the terms "Rent" or "rent" shall mean Base Rent and Additional Rent.

## ARTICLE 5:PAYMENT OF TAXES, ASSESSMENTS, AND OTHER IMPOSITIONS

Section 5.1 Payment of Impositions. Tenant agrees to pay, as Additional Rent, and prior to the imposition of any fines, penalties or interest thereon, all real estate taxes (except as specifically provided otherwise in Section 5.4), assessments, water rates, and other governmental charges, including but not limited to assessments for public improvements or benefits (all of which taxes, assessments, water rates, levies and other governmental charges are hereinafter sometimes referred to as "Impositions"), which as a result of the existence of the Land or the Improvements or both, are assessed, levied, confirmed, imposed or become a lien upon the Land or upon the Improvements or both during the Term; provided, however, that Landlord shall cause the tax bills or copies thereof in respect of such Impositions to be furnished to Tenant at least thirty (30) days in advance of the due date of any Imposition. Any Imposition relating to a fiscal period of the taxing authority, a part of which is included within the Term and a part of which is included in a period of time before commencement or after the expiration of the Term, shall be adjusted as between Landlord and Tenant, upon commencement or expiration of the Lease, as the case may be, so that Landlord shall pay an amount which bears the same ratio to such Imposition which

that part of such fiscal period included in the period of time before commencement or after the expiration of the Term bears to such fiscal period. With respect to any Imposition for public improvements or benefits which by law is payable, or at the option of the taxpayer may be paid, in installments, Landlord shall pay the installments thereof which become due and payable prior to commencement or subsequent to the expiration of the Term, and Tenant shall pay only those installments which become due and payable during the Term.

Section 5.2 Place of Payment. All Impositions payable hereunder shall be paid directly to the relevant payees of such Impositions or, if Tenant shall so elect, to Landlord at the address set forth in Article 19.

Section 5.3 Other Taxes. Nothing herein shall obligate Tenant to pay federal, state or City taxes such as (i) franchise, capital stock or similar taxes, if any, of Landlord, (ii) any tax determined on the basis of Landlord's net income including, without limitation, income, excess profits or other taxes, if any; (iii) any estate, inheritance, succession, gift or similar tax, or (iv) any capital gains tax imposed on Landlord in connection with the sale of the Premises.

Section 5.4 Right to Contest Impositions. If Tenant shall in good faith, desire to contest the validity or amount of any Imposition, Tenant shall have the right to do so without being in default hereunder provided that: (i) Tenant shall give Landlord prompt written notice of Tenant's intention to institute such legal proceedings; (ii) such proceedings shall be promptly instituted and conducted in good faith and with due diligence, and (iii) the Premises shall not be in danger of being sold, forfeited or lost. Such written notice shall be given by Tenant to Landlord or the appropriate governmental agency not less than five (5) days before the Imposition proposed to be contested would otherwise become delinquent. Landlord agrees to cooperate with Tenant in any such proceeding, at no cost to Landlord. All costs associated with such contest, including attorney fees, shall be the responsibility of Tenant.

Section 5.5 Failure to Pay Impositions. If Tenant shall fail, refuse, or neglect to pay any Imposition prior to the date of delinquency, then Landlord may pay such Imposition, at its option and without waiving any of its other rights under this Lease, upon ten (10) days prior written notice to Tenant. Upon receipt of written demand from Landlord, Tenant shall promptly reimburse Landlord for such Imposition, together with interest at the rate set forth in Section 14.4, reasonable attorneys' fees and other expenses incurred with such payment.

## **ARTICLE 6: CONSTRUCTION OF IMPROVEMENTS**

Section 6.1 Improvements: The Tenant, at its sole risk, cost and expense, shall construct and develop the Improvements within Parcel 2 which may include a 30,000 square feet building with seven levels of office spaces above a ground retail level. In addition, Tenant shall have the right at any time during the Term to demolish, improve, alter, modify or replace the initially constructed Improvements. The construction and development of the Improvements, and any and all subsequent work on or about the Premises shall be done in compliance with applicable building and zoning laws and all other laws, ordinances, orders, rules, regulations and requirements of all Federal, State and municipal governments. Tenant acknowledges that improvements on parcel 2 may trigger some modifications to the adjacent garage building. The

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tenant is solely responsible for the risk, cost and expense to make any required modifications to the garage subject to the following:

The extent of the Garage Modifications shall be completed according to City of Oakland requirements and subject to City approval. Landlord understands that Modifications may include but are not limited to closing the garage openings facing San Pablo Ave, installing ducts and Air handling units, modifying the parking striping, electrical, mechanical, and fire sprinkler systems, etc. Tenant may elect to either pay Landlord for cost of Modifications at fair market cost or complete the work by Tenant's contractor(s) according to Tenant's construction schedule for the proposed building subject to Landlord's reasonable requests and requirements. Landlord shall allow Tenant and/or Tenant's contractors to access to the Garage to install required Modifications within a reasonable time frame and with the least amount of inconvenience to the Landlord. Modifications shall become the property of the Landlord upon certificate of completion and Tenant shall not be responsible for operating or maintaining any such improvements or modifications after its completion, subject to reasonable warranties. However, if the hard cost of any required modifications to the garage exceeds \$25,000, Landlord shall contribute on a 50/50 basis (up to \$50,000) towards the next \$100,000 of improvements or modifications. Landlord's total monetary obligation shall not exceed \$50,000.

Section 6.2 Cooperation. Landlord shall, at no cost to Landlord, assist Tenant in its efforts in connection with the construction of the Improvements. Landlord agrees to fully and reasonably cooperate with Tenant in obtaining all approvals from all governmental bodies having jurisdiction over the Improvements. Such cooperation shall include, without limitation, signing necessary applications needed to obtain governmental approval, granting reasonable utility and other public or private easements, making reasonable dedications in fee for utility purposes, and signing other documents necessary for any such construction of the Improvements on the Land.

Section 6.3 Title to Improvements. All Improvements on the Land shall be vested in and owned by Tenant for all purposes including, without limitation, income tax purposes.

## **ARTICLE 7: USE AND OPERATION OF THE PREMISES**

Section 7.1 Permitted Use. Tenant shall use the Premises for the development and operation of retail, commercial, or food services project and for any other use permitted under applicable law.

Section 7.2 Compliance with Laws and Governmental Requirements. Tenant shall, at its sole cost and expense, obtain all governmental permits, approvals, licenses, and authorizations needed by Tenant to conduct its business on the Premises, and shall maintain the same during the Term. Landlord covenants and agrees to cooperate with Tenant, at Tenant's expense, to obtain all such permits, approvals, licenses and authorizations. Tenant covenants and agrees that it will, at its sole cost and expense, take such actions as may be lawfully required by any public body having jurisdiction over the Premises in order to comply with sanitary, zoning, and other similar requirements designed to protect the public, in effect during the Term, applicable to the Premises or the manner of Tenant's use and occupancy of the Premises. Tenant shall, at Tenant's expense, make any alterations or repairs to the Premises that may be necessary to comply with any of the foregoing.



## ARTICLE 8: SECURITY DEPOSIT

Tenant shall pay to Landlord a security deposit of \$85,000 upon full execution of this Lease. The security deposit shall be credited to Tenant against the purchase price in the event Tenant elects to purchase the Land. Otherwise, the security deposit shall be returned to the Tenant upon termination or expiration of this Lease, subject to any payment to Landlord of overdue rent or any costs or deductions incurred due to Tenant's default under the provisions of the lease and all applicable laws.

## ARTICLE 9: CONDITION OF IMPROVEMENTS

Section 9.1 Mechanic's Lien: Tenant will pay or cause to be paid all charges for all work done by Tenant, including, without limitation, all labor and materials for all repairs, alterations, additions, and/or demolition work to or upon the Premises during the Term. Tenant shall not suffer or permit any mechanic's liens to be filed against the Premises or against Tenant's leasehold interest in the Premises and/or Improvements by reason of work, labor, services or materials supplied to Tenant or as a result of an agreement with, or the assent of, Tenant, including, without limitation, any mechanic's liens arising out of or in connection with the construction of the Improvements. If any such mechanic's liens shall at any time be filed against the Premises or any part thereof, Tenant shall promptly cause the same to be discharged of record or bonded over as may be necessary to prevent a foreclosure of the Premises or any part thereof. Tenant shall have the right, at its sole cost and expense, to contest any such lien, provided the existence of such lien pending such contest shall not jeopardize Landlord's interest in the Premises. Tenant shall indemnify Landlord against, and save Landlord harmless from, any and all loss, damage, claims, liabilities, judgments, interest, costs, expenses, and attorney's fees arising out of the filing of any such lien. Tenant's indemnification obligation pursuant to the preceding sentence shall survive the expiration or termination of this Lease.

### Section 9.2 Environmental Matters.

A. The term "Environmental Laws" shall mean and include the Resource Conservation and Recovery act, as amended by the Hazardous and Solid Waste Amendments of 1984, the Comprehensive Environmental Response, Compensation and Liability Act, the Hazardous Materials Transportation Act, the Toxic Substances Control Act, the Federal Insecticide, Fungicide and Rodenticide Act and all applicable state and local environmental laws, ordinances, rules, requirements, and regulations, as any of the foregoing may have been or may be from time to time amended, supplemented or supplanted and any and all other federal, state or local laws, ordinances, rules, requirements and regulations, now or hereafter existing, relating to the preservation of the environment or the regulation or control of toxic or hazardous substances or materials; and

B. The term "Regulated Substance" shall mean and include any, each and all substances or materials now or hereafter regulated pursuant to any Environmental Laws, including, but not limited to, any such substance or material now or hereafter under any Environmental Law defined as or deemed to be a "regulated substance," pesticide, "hazardous substance" or "hazardous waste" or included in any similar or like classification or categorization thereunder.



Tenant shall not cause or permit any Regulated Substance to be placed, held, located, released, transported or disposed of on, under, at or from the Premises in violation of any Environmental Laws or permit any Regulated Substance to otherwise adversely affect the Premises and/or the Improvements in violation of any Environmental Laws. Tenant shall, at its own cost and expense, contain at or remove from the Premises and/or the Improvements or perform any other necessary remedial action regarding any Regulated Substance in any way affecting the Premises and/or the Improvements if such containment, removal or other remedial action is required of the owner and/or operator of the Premises and/or the Improvements under any Environmental Laws and, to the extent Tenant takes any remedial action with respect to any Regulated Substance whether or not so required, Tenant shall perform any containment, removal or remediation of any kind involving any Regulated Substance in any way affecting the Premises and/or the Improvements in compliance with the requirements of all Environmental Laws. Tenant shall provide Landlord with written notice (and a copy as may be applicable) of any of the following within thirty (30) days thereof. (i) Tenant's obtaining knowledge or notice of any kind of the presence, or any actual or threatened release, of any Regulated Substance in any way affecting the Premises and/or the Improvements; (ii) Tenant's receipt or submission, or Tenant's obtaining knowledge or notice of any kind, of any report, citation, notice or other communication from or to any federal, state or local governmental or quasi-governmental authority regarding any Regulated Substance in any way affecting the Premises and/or the Improvements; or (iii) Tenant's obtaining knowledge or notice of any kind of the incurrence of any cost or expense by any federal, state or local governmental or quasi-governmental authority or any private party in connection with the assessment, monitoring, containment, removal or remediation of any kind of any Regulated Substance in any way affecting the Premises and/or the Improvements, or of the filing or recording of any lien on the Premises and/or the Improvements or any portion thereof in connection with any such action or Regulated Substance in any way affecting the Premises and/or the Improvements.

Tenant shall defend all actions against the Landlord and Landlord's mortgagee and pay, protect, indemnify and save harmless Landlord, its directors, officers, employees and agents and the mortgagee from and against any and all liabilities, losses, damages, costs, expenses (including, without limitation, reasonable attorneys' and consultant's fees, response and cleanup costs, court costs, and litigation expenses), causes of action, suits, claims, demands or judgments of any nature relating to any action brought against Landlord arising out of or in any way relating to any violation or claimed violation of Environmental Laws by Tenant and/or the Premises and/or the Improvements other than in connection with a Pre-Term Condition. If at the expiration or other termination of this Lease any response or clean up of a condition involving Regulated Substances is required of Tenant and/or the Premises and/or the Improvements by any federal, state or local governmental authority and such condition first arose during the Term as a result of Tenant's acts or omissions, then Tenant shall remain solely responsible for such requirement and Landlord's damages for breach hereof may include consequential loss of rent. The foregoing indemnity shall survive the expiration or earlier termination of this Lease. Notwithstanding anything to the contrary in this Lease, Landlord, and not Tenant, is responsible for any remediation of the Premises required as a result of any environmental condition of the Premises which existed prior to Commencement Date (a "Pre-Term Condition").





## ARTICLE 10:DAMAGE OR DESTRUCTION

No Abatement of Rent. Notwithstanding any contrary law, Rent shall not be suspended or abated as a result of any damage or destruction to, and/or during any restoration or rebuilding of, the Premises and/or the Improvements.

## ARTICLE 11:SUBLETTING AND ASSIGNMENT

Section 11.1 Transactions Requiring Landlord's Consent. Except as permitted under Article 15 in connection with or arising out of a grant by Tenant of a Tenant's Mortgage, Tenant shall not, without the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed, and shall be given or denied (and if denied with reasons therefor) within twenty five (25) days after a request for such consent from Tenant, (a) assign this Lease or any interest hereunder, or (b) permit any assignment of this Lease by operation of law. Tenant may sublet the Premises or any part thereof and may permit the use or occupancy of all or any part of the Premises by any parties other than Tenant, its agents, employees and invitees without the consent of Landlord.

Section 11.2 Transactions Excluded from Consent Requirement. Notwithstanding anything to the contrary in Section 11.1 above, Tenant shall have the right, without the prior consent of Landlord, to assign this Lease to any of Tenant's subsidiaries, affiliates or any parent or controlled corporation of Tenant or to any third party purchasing all or substantially all of the assets of Tenant in a bona fide transaction and not in liquidation, as a result of which such successor shall continue to operate the business of Tenant from the Premises as a going concern. The merger of Tenant into or with another entity shall not be deemed an assignment of Tenant's interest in this Lease, nor shall any change of control of Tenant resulting from the sale or transfer of membership interests in Tenant be deemed an assignment; provided the surviving or successor entity shall continue to operate the business of Tenant from the Premises as a going concern.

Section 11.3 Effectiveness of Assignment/Sublease; No Avoidance of Liability. Except as permitted in Article 15 in connection with or arising out of a grant by Tenant of a Tenant's Mortgage, Tenant shall give Landlord written notice of any proposed assignment or subletting under Section 11.1, which notice shall contain the proposed principal terms thereof. Except as permitted in Article 15 in connection with or arising out of a grant by Tenant of a Tenant's Mortgage, no assignment of this Lease shall be effective unless the assignee shall execute an appropriate instrument assuming all of the obligations of Tenant hereunder and unless Tenant acknowledges therein its continued liability under this Lease. Landlord's consent to any proposed assignment (when such consent is required pursuant to Section 11.1), shall not constitute a waiver of Landlord's right to reasonably approve or disapprove of any subsequent assignment.

Section 11.4 Transfer by Landlord. In the event that Landlord desires to sell, transfer or convey ("Transfer") the Premises during the Term, Landlord shall promptly deliver to Tenant written notice thereof setting forth with specificity the terms and conditions upon which Landlord is willing to Transfer the Premises. Landlord shall cause any transferee of Landlord's interest in the Premises to assume all Landlord's obligations under this Lease.

## ARTICLE 12: CONDEMNATION

Section 12.1 Temporary or Partial Taking by Eminent Domain. If, during the Term, (i) the temporary use of the whole or any portion of the Premises shall be taken or (ii) an immaterial portion of the Premises shall be permanently taken, as a result of the exercise of the power of eminent domain, Tenant shall be entitled to the entire compensation and award for any and all damage, loss or injury suffered as a result of such taking, and this Lease shall continue in full force and effect without any abatement of the rental or other payments required to be made by Tenant hereunder.

Section 12.2 Permanent Taking by Eminent Domain. If, during the Term, the whole or any material portion of the Premises shall be permanently taken as a result of the exercise of the power of eminent domain (resulting in damages to the remaining portion that cannot practicably be rehabilitated), then Tenant may terminate this Lease effective on the date of vesting of title with the condemning authority or its designee. A portion of the award shall first be allocated to Tenant as a reimbursement of the total cost of developing, building, and installing the Improvements. The balance of the award, if any, shall then be apportioned between Landlord and Tenant in accordance with their interests in the condemned property.

Section 12.3 Voluntary Transfers in Lieu of Condemnation. Landlord shall not voluntarily transfer all or any part of the Premises or Landlord's interest therein in lieu of the actual exercise of the power of eminent domain without the prior written consent of Tenant, which Tenant may withhold in its reasonable discretion.

## ARTICLE 13: UTILITIES; EASEMENTS; LANDLORD'S ACCESS

Section 13.1 Payment of Public Utility Charges. Tenant shall pay or cause to be paid all charges for gas, water, sewer, electricity, light, heat or power, telephone or other communication service used, rendered or supplied upon in connection with the Improvements.

Section 13.2 Easements. Landlord agrees, upon request of Tenant at any time and from time to time, and at the sole cost of Tenant, to join in the grant of new easements and rights of way or alteration of existing easements and rights of way upon, under or over the Premises for public utilities, public purposes, access to public facilities, roads and ways, parking, and reciprocal easements, provided such grant or grants are reasonably necessary for the operation of the Premises for the uses herein permitted. Landlord will not grant any easements, licenses or other rights which would permit any third party to obtain rights to the Premises.

Section 13.3 Landlord's Access to Premises. Other than in the event of an emergency involving an imminent threat to persons or property, in which event Landlord may gain such access to the Premises and Improvements as is necessary to protect such persons and/or property, Landlord may not enter the Premises or Improvements (i) without at least twenty four (24) hours prior written notice to Tenant, (ii) except at reasonable times, (iii) without being accompanied by Tenant's authorized representative, (iv) other than in accordance with Tenant's reasonable security procedures, or (v) in any manner which interrupts, interferes with, or diminishes the operations of Tenant in the Premises or would cause Tenant to incur costs or expenses that Tenant would not have incurred but for such entry.

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## ARTICLE 14:DEFAULT PROVISIONS

Section 14.1 Tenant's Default. Tenant shall be in default under this Lease if (i) Tenant fails to make timely payment of Rent or any installment thereof or any other sum required to be paid by Tenant under this Lease and such failure continues for thirty (30) days after Tenant's receipt of written notice from Landlord, or (ii) Tenant fails to observe or perform any of the other covenants or conditions in this Lease, which Tenant is required to observe or perform, and such failure continues for thirty (30) days after Tenant's receipt of written notice from Landlord, provided, however, that if such default cannot be reasonably cured within such thirty (30) day period, Tenant shall have such additional reasonable period of time as is necessary to cure such default. Upon the occurrence of any one or more of the foregoing events, Landlord may, with or without further notice or demand of any kind to Tenant, be entitled to bring an action to recover damages or specific performance of Tenant's obligations hereunder. In no event shall any breach of this Lease by Tenant or the occurrence of any of the foregoing events in this Section 14.1 provide a basis for termination of this Lease or of Tenant's right to possession of the Premises, and Landlord shall not attempt to terminate or to cause the termination of Lease or in any way seek to terminate Tenant's right to possession of the Premises as a result of Tenant's default. Landlord hereby acknowledges and agrees that its remedies in the event of Tenant's default shall be limited to the recovery of damages or obtaining specific performance of Tenant's covenants hereunder.

Section 14.2 Tenant's Lender's Right to Cure. Concurrent with any notice from Landlord to Tenant of a failure, breach or default by Tenant in the performance or observance of any of the terms, conditions or agreements in this Lease, Landlord shall give written notice thereof to each Tenant's Lender, and each such Tenant's Lender shall have the right (but not the obligation) to cure such default. Landlord shall not take any action with respect to such failure, breach or default for a period of thirty (30) days after receipt of such written notice by each Tenant's Lender with respect to any such default capable of being cured by the payment of money and for a period of forty (45) days after receipt of such written notice by each such Tenant's Lender with respect to any other default (provided that in the case of any default which cannot be cured by the payment of money and cannot with diligence be cured within such forty five (45) day period because of the nature of such default or because any such Tenant's Lender requires time to obtain possession of the Premises in order to cure the default, if each such Tenant's Lender shall proceed promptly to obtain possession of the Premises, where possession is required, and to cure the same and thereafter shall prosecute the curing of such default with diligence and continuity, then the time within which such default may be cured shall be extended for such period as may be necessary to complete the curing of the same with diligence and continuity). Upon the written request of any Tenant's Lender or prospective Tenant's Lender, and for the exclusive benefit of said Tenant's Lender, Landlord will promptly deliver to said Tenant's Lender such form of Landlord's consent and waiver as may be reasonably required to assure such Tenant's Lender that Landlord will comply with this Section 14.2. Landlord shall accept any cure by a Tenant's Lender of a default by Tenant under this Lease as if the same had been performed by Tenant; provided, however, no Tenant's Lender shall be obligated to cure any default by Tenant or any other matter.

Section 14.3 Landlord's Cure of Tenant's Default. If Tenant shall be in default under this Lease after expiration of all applicable grace, notice and cure periods, Landlord may, at its option and



without waiving any remedy available under this Lease, cure such default for the account of Tenant, and any amount paid or any contractual liability incurred by Landlord in so doing shall be deemed paid or incurred for the account of Tenant. Notwithstanding anything to the contrary contained herein, Landlord may cure any Tenant default before expiration of all applicable grace, notice and cure periods, but after delivery of written notice to Tenant, if the prompt curing of such default is reasonably necessary to protect the Premises or Landlord's interest therein, or to prevent injury or damage to persons or property. If Tenant shall fail to reimburse Landlord upon demand for any amount paid for the account of Tenant hereunder, said amount shall be added to and become due as a part of the next payment of Rent due hereunder. Tenant hereby agrees to pay Landlord interest on such amount at the rate described below in Section 14.4.

Notwithstanding anything to the contrary contained herein, in the case of emergency, notices required pursuant to this Section 14.3 may be given verbally or in any other reasonable manner given the circumstances, then, as soon thereafter as practicable, notice shall be given in the manner prescribed in Article 19. No entry by Landlord in accordance with the provisions of this Section 14.3 shall be deemed to be an eviction of Tenant.

Section 14.4 Interest on Unpaid Sums. Tenant hereby acknowledges that late payment by Tenant to Landlord of Rent due hereunder will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be difficult to ascertain. Accordingly, if any installment of Rent due from Tenant is not received by Landlord or Landlord's designee within ten (10) days after its due date, Tenant shall pay to Landlord a late fee of \$200 plus interest on unpaid rent at a rate of eighteen percent (18%) per annum accruing from the 11<sup>th</sup> day, or the highest rate permitted by applicable law, whichever shall be less.

Section 14.5 Landlord's Default. Landlord shall be in default under this Lease if Landlord fails to observe or perform any of the covenants or conditions in this Lease, which Landlord is required to observe or perform, and such failure continues for thirty (30) days after Landlord's receipt of written notice from Tenant, provided, however, that if such default cannot be reasonably cured within such thirty (30) day period, Landlord shall have such additional reasonable period of time as is necessary to cure such default so long as Landlord is pursuing such cure with due diligence. If Landlord is in default under this Lease after expiration of applicable grace, notice and cure periods, Tenant shall have the right to seek all remedies available at law or in equity.

## ARTICLE 15: FINANCING

Section 15.1 Third Party Financing. The parties acknowledge and agree that Tenant has entered into this Lease for the purpose of developing and improving the Land. In that connection, Tenant will seek to obtain construction financing to build certain improvements on the Land, and Landlord hereby agrees to give the Tenant's Lender a deed of trust encumbering Landlord's fee interest in the Land. Thereafter, Tenant may obtain a purchase money loan to acquire the Land as improved with the Improvements from Landlord. Landlord hereby agrees to cooperate and assist Tenant, in every reasonable way, to obtain such loan(s). Landlord shall execute and deliver such agreements and other instruments as the lender or title company shall reasonably require to subordinate Landlord's fee title and the leasehold hereby created, together with all rents and other benefits due to Landlord under this Lease, to Tenant's Mortgage. Concurrently with the execution of this Lease, Landlord shall enter into a subordination agreement with



Tenant in the form attached hereto as Exhibit D if reasonably required by lender, subject to the First Deed of Trust, not to exceed ninety (90) percent Loan to Value or construction cost including reasonable soft costs, whichever is less. The parties hereby agree to amend this Lease as reasonably requested by a Tenant's Lender.

Section 15.2 Landlord Financing. Tenant shall notify Landlord in writing of the terms under which a third party lender is willing to make (i) a construction loan to Tenant for the development and construction of the Improvements or (ii) a purchase money loan to Tenant for the purchase of the Premises. Landlord shall have ten (10) days within which to advise Tenant in writing whether or not Landlord is willing to make such loan(s) to Tenant on the same terms and conditions offered by the third-party lending institution.

Section 15.3 Tenant's Mortgage. Tenant shall have the right, at any time and from time to time, in addition to any other rights herein granted and without any requirement to obtain Landlord's consent, to (i) mortgage or grant a security interest in Tenant's leasehold interest, (ii) enter into any lease or sublease of the Premises, (iii) obtain one or more Tenant's Mortgages, and/or (iv) assign this Lease and any sublease as collateral security for such Tenant's Mortgages. Tenant acknowledges that so long as any Tenant's Mortgage shall remain unsatisfied of record or until written notice of satisfaction is given by the holder to Landlord, the following provisions shall apply with respect of such Tenant's Mortgage notwithstanding any other provisions of this Lease to the contrary:

(i) Other than a cancellation or termination of this Lease as a result of the acquisition of the Premises pursuant to Article 2, there shall be no cancellation, termination, surrender, acceptance of surrender, amendment or modification of this Lease by joint action of Landlord and Tenant, nor shall Landlord recognize any such action by Tenant alone, without in each case the prior consent in writing of any Tenant's Lender (which shall not be unreasonably withheld, delayed or conditioned). Nor shall any merger result from the acquisition by, or devolution upon, any person or entity of both the fee estate in the Premises and the leasehold estate created by this Lease. Any attempted cancellation, termination, surrender, amendment, modification or merger of this Lease without the prior written consent of all Tenant's Lenders (which shall not be unreasonably withheld, delayed or conditioned) shall be of no force or effect;

(ii) Each Tenant's Lender shall be given notice of any arbitration or action, suit or other proceeding or dispute between the parties and shall have the right to intervene therein and be made a party thereto. In any event, each Tenant's Lender shall receive notice, and a copy, of any award, decision or judgment rendered in such arbitration, action, suit or other proceeding.

(iii) If there is a condemnation or taking by eminent domain in respect of the Premises, any award of payment which are to be paid to Tenant or Landlord shall, if required under any Tenant's Mortgage, be paid instead to the Tenant's Lenders in accordance with the priority of their liens and in accordance with the terms of the applicable Tenant's Mortgage. If a condemnation or taking by eminent domain results in a termination of this Lease, Tenant's portion of the award or payment shall be paid to the Tenant's Lenders in accordance with the priority of their liens and the provisions of their respective Tenant's Mortgages.

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(iv) No payment made to Landlord by any Tenant's Lender shall constitute agreement that such payment was, in fact, due under the terms of this Lease; and the Tenant's Lender having made any payment or portion thereof to Landlord pursuant to Landlord's wrongful, improper or mistaken notice or demand shall be entitled to the return of any such payment or portion thereof.

(v) In connection with the rights of a Tenant's Lender to cure Tenant's defaults under this Lease and to protect its security, Landlord and Tenant hereby expressly grant to each Tenant's Lender, and agree that each Tenant's Lender shall have, the absolute and immediate right to enter in and upon the Premises or any part thereof to such extent and as often as the Tenant's Lender, in its sole discretion, deems necessary or desirable in order to prevent or to cure any such default by Tenant, without any obligation to do so.

(vi) In the event a Tenant's Lender or its designee (by foreclosure, conveyance in lieu of foreclosure or otherwise), or the purchaser at a foreclosure sale or the assignee or designee of such purchaser, acquires Tenant's interest in this Lease, the Tenant's Lender or its designee shall not be bound by any modification or amendment to this Lease not otherwise previously approved by the Tenant's Lender.

(vii) In the event a Tenant's Lender or its designee (by foreclosure, conveyance in lieu of foreclosure or otherwise), or the purchaser at a foreclosure sale or the assignee or designee of such purchaser, acquires Tenant's interest herein, such party shall thereupon become Tenant under this Lease and hereby agrees to perform each and all of Tenant's obligations and covenants hereunder (including the payment of past due Rent); provided, however, that any defaults by Tenant under this Lease which do not involve the payment of money and which cannot be satisfied or cured by such party shall be deemed waived.

(viii) Nothing in this Section 15.3 shall be deemed or construed to create or impose any obligation, covenant or liability, whatsoever, upon a Tenant's Lender: (a) for the payment of Base Rent and Additional Rent or any additional monetary sums due under this Lease; (b) for the performance of any of Tenant's covenants and agreements hereunder; or (c) to cure any default by the Tenant under this Lease, and neither Tenant nor Landlord shall have any claims against a Tenant's Lender for its failure to make any payment or take any action which it is entitled to take under this Section 15.3 until such time as such Tenant's Lender assumes possession of the Premises or acquires the Tenant's interest in the Lease, and then only for as long as it remains in possession or the owner of the leasehold estate created thereby, and Landlord expressly waives any and all such claims.

(ix) The liability of any Tenant's Lender, its successors and assigns, shall be limited in all respects to its interest in this Lease and the leasehold estate created hereby and such Tenant's Lender shall have no personal liability hereunder and no judgment or decree shall be enforceable beyond the interest of such Tenant's Lender in the leasehold estate created under this Lease or shall be sought or entered in any action or proceeding brought in connection with this Lease.

(x) Notwithstanding anything to the contrary contained in this Lease, if a Tenant's Lender or its designee shall acquire title to Tenant's interest in this Lease, by foreclosure of its Tenant's Mortgage thereon or by assignment in lieu of foreclosure, such Tenant's Lender or designee may freely assign this Lease and shall thereupon be released from all liability for the performance or

observance of the covenants and conditions in this Lease contained on Tenant's part to be performed and observed from and after the date of such assignment.

(xi) Subject to the terms of its Tenant's Mortgage and to the extent permitted therein, should a Tenant's Lender be entitled to the appointment of a receiver for all or any part of the Premises (a "Receiver"), without regard to whether such Tenant's Lender has commenced an action to foreclose the lien of its Tenant's Mortgage and without regard to the nature of the action in which the appointment of a receiver is sought, Landlord agrees that it will not oppose any such appointment, whether or not entitled by the terms of this Lease to do so. Notwithstanding anything to the contrary contained in this Lease, the appointment of the Receiver for the Premises by any court at the request of a Tenant's Lender or by agreement between Tenant and such Tenant's Lender, or the entering into possession of the Premises by such Receiver, shall not be deemed to make such Tenant's Lender a mortgagee-in-possession" or otherwise liable in any manner with respect to the Premises and shall not, in and of itself, constitute default under this Lease.

(xii) Tenant and Landlord agree that the provisions of this Section 15.3 are for the benefit of and shall be enforceable by each Tenant's Lender, its respective successors and assigns who comply with the provisions of this Section 15.3.

#### **ARTICLE 16:HOLDING OVER AND SURRENDER**

At the expiration or sooner termination of this Lease, Tenant shall quit and surrender to Landlord the Premises in the condition required hereunder, subject to the other provisions of this Lease. If Tenant, without Landlord's written consent, remains in possession of all or part of the Premises after termination or expiration of this Lease, such occupancy shall be construed to be a tenancy from month-to-month at a monthly rent which shall be equal to one hundred twenty five percent (125%) of the monthly Base Rent payable during the last month of the Term, and shall otherwise be on the terms and conditions of this Lease.

#### **ARTICLE 17:PROPERTY OF TENANT**

Section 17.1 Personal Property, Trade Fixtures and Equipment Tenant may, at its sole cost and expense, install any trade fixtures, equipment, and other personal property of a temporary or permanent nature used in connection with its business on or at the Premises, and Tenant shall have the right at any time during the Term to remove any and all such trade fixtures, equipment, and other personal property that it may have stored or installed upon or at the Premises. Landlord hereby waives any contractual, statutory or common law "landlord's lien" as to all of Tenant's property and Landlord agrees to deliver a confirmation of such waiver from time to time as requested by Tenant.

Section 17.2 Abandonment of Property. In case Tenant shall decide not to remove any part of its trade fixtures, equipment, or other personal property upon expiration or earlier termination of this Lease, Tenant shall notify Landlord in writing not fewer than ninety (90) days prior to the scheduled expiration of the Term, or within thirty (30) days after the earlier termination of this Lease, specifying those items of trade fixtures, equipment, installations made pursuant to Section 17.2, or other personal property that Tenant has decided not to remove. If, within thirty (30) days





after service of such notice, Landlord shall request Tenant to remove any of said trade fixtures, equipment, or other personal property, Tenant shall, at its own expense, at or before the scheduled expiration of the Term, or within ninety (90) days after the earlier termination of this Lease, remove said trade fixtures, equipment, and other personal property and, in case of damage by reason of such removal, restore the Premises to good order and condition. Any of Tenant's trade fixtures, equipment, and other personal property not removed by Tenant upon the expiration or earlier termination of this Lease shall be considered abandoned by Tenant, ("Abandoned Property") and may be appropriated, sold, destroyed, or otherwise disposed of by Landlord without liability or obligation on Landlord's part to pay or account for, same. Tenant will pay all reasonable costs and expenses incurred by Landlord in removing, sorting, or disposing of Tenant's trade fixtures, equipment, and other personal property and repairing all damage to the Premises caused by removal of Tenant's trade fixtures, equipment, and other personal property which Tenant has failed to remove despite Landlord's request therefor. At the request of Landlord, Tenant will, at such time, execute, acknowledge, and deliver to Landlord a bill of sale or other appropriate conveyance document evidencing the transfer to Landlord of all right, title and interest of Tenant in and to the Abandoned Property.

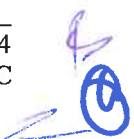
#### **ARTICLE 18:ESTOPPEL CERTIFICATES**

Landlord and Tenant each agree to furnish, at any time and from time to time, so long as this Lease shall remain in effect, upon not less than thirty (30) days prior written request by the other party, a statement in writing certifying (i) that this Lease is unmodified and in full force and effect (or if there have been modifications that the same is in full force and effect as modified, stating the modifications), (ii) that the dates to which the Rent and other charges have been paid in advance, if any, (iii) that to the best knowledge of the parties, there are no defaults under the Lease by Landlord or Tenant.

#### **ARTICLE 19:NOTICES**

All notices, requests or demands to a party hereunder shall be in writing and shall be given or served upon the other party by personal service, by certified return receipt requested or registered mail, postage prepaid, or by Federal Express or other nationally recognized commercial courier, charges prepaid, addressed as set forth below. Any such notice, demand, request or other communication shall be deemed to have been given upon the earlier of personal delivery thereof, three (3) business days after having been mailed as provided above, or one (1) business day after delivery through a commercial courier, as the case may be. Notices may be given by facsimile and shall be effective upon the transmission of such facsimile notice provided that the facsimile notice is transmitted on a business day and a copy of the facsimile notice together with evidence of its successful transmission indicating the date and time of transmission is sent on the day of transmission by recognized overnight carrier for delivery on the immediately succeeding business day. Each party shall be entitled to modify its address by notice given in accordance with this Article 19.

If to Landlord:           Rotunda Garage, LP  
                                  300 Frank Ogawa Pl, Suite 340, Oakland, CA 94612



If to Tenant:

ACCESS BUILDING, LLC  
11 Embarcadero W, Suite 215, Oakland, CA 94607

## ARTICLE 20: MISCELLANEOUS

Section 20.1 Covenants to Run with the Land. All the covenants, agreements, conditions and undertakings in this Lease shall extend and inure to and be binding upon the successors and permitted assigns of each of the parties hereto, the same as if they were in every case named and expressed, and the same shall be construed as covenants running with the land. Wherever in this Lease reference is made to any of the parties hereto, it shall be held to include and apply to, wherever applicable, the successors and permitted assigns of each such party, the same as if in each and every case so expressed.

Section 20.2 Survival of Indemnity and Payment Obligations. Each obligation to indemnify, defend and hold harmless provided for in this Lease and to pay any amounts accruing under this Lease prior to the date of expiration or termination of this Lease shall survive the expiration or termination of this Lease.

Section 20.3 No Merger of Estates. The leasehold estate shall not merge with the fee estate in the event that the same person or entity acquires, owns or holds, directly or indirectly, the fee estate and the leasehold estate in the Premises.

Section 20.4 Relationship of Parties. Neither anything in this Lease nor any acts of the parties shall be construed or deemed by the parties, or by any third person, to create the relationship of principal and agent, or of partnership, or of joint venture, or of any association between the parties.

Section 20.5 Successors and Assigns. The words "Landlord" and "Tenant" and the pronouns referring thereto, as used in this Lease, shall mean, where the context requires or permits, the persons named herein as Landlord and as Tenant, respectively, and their respective heirs, legal representatives, successors, and assigns, irrespective of whether singular or plural, or masculine, feminine, or neuter. The agreements and conditions in this Lease contained on the part of Landlord to be performed and observed shall be binding upon Landlord and its heirs, legal representatives, successors, and assigns, and shall inure to the benefit of Tenant and its heirs, legal representatives, successors, and assigns; and the agreements and conditions on the part of Tenant to be performed and observed hereunder shall be binding upon Tenant and its heirs, legal representatives, successors, and assigns, and shall inure to the benefit of Landlord and its heirs, legal representatives, successors, and assigns.

Section 20.6 Entire Agreement. This Lease shall not be modified, amended, canceled, surrendered, or terminated in any way except by a writing, subscribed by authorized representatives of the party against whom it is to be enforced, which writing shall contain the written consent of the Tenant's Lender, if any.

Section 20.7 Force Majeure. If any work or act required to be performed by a party under this Lease shall be delayed due to strikes, lockouts, acts of God, fire or other casualty, the breach or

default of the other party in the performance of its obligations under this Lease, or other similar cause beyond the reasonable control of the first party, not including the first party's insolvency or financial condition, the time within which the first party is to perform such work or act shall be extended for the period of time the first party is so delayed.

Section 20.8 Memorandum of Lease. Landlord and Tenant shall, concurrently with the execution of this Lease, execute a memorandum of Lease in the form attached hereto as Exhibit C, setting forth the parties hereto, the date hereof, the term hereof, any option to extend hereunder, any option to purchase the Land or right of first refusal. The memorandum of Lease shall be promptly recorded by Tenant.

Section 20.9 Invalidity of Provisions. If any provision of this Lease or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

Section 20.10 Remedies Cumulative. No remedy herein or otherwise conferred upon or reserved to Landlord or Tenant shall be considered exclusive of any other remedy, but the same shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute; and every power and remedy given by this Lease to Landlord or Tenant may be exercised from time to time and as often as occasion may arise or as may be deemed expedient by Landlord or Tenant, as the case may be. No delay or omission of Landlord or Tenant to exercise any right or power arising from any default shall impair any such right or power, nor shall it be construed to be a waiver of any such default or an acquiescence therein.

Section 20.11 Waiver of Remedies Not to be Inferred. No waiver of any breach of any of the covenants or conditions of this Lease shall be construed to be a waiver of any other breach or to be a waiver of, acquiescence in, or consent to any further or succeeding breach of the same or similar covenant or condition.

Section 20.12 Modification. None of the covenants, terms or conditions of this Lease to be kept and performed by Landlord or Tenant shall in any manner be waived, modified, changed or abandoned except by a written instrument, duly signed and acknowledged by Landlord and Tenant.

Section 20.13 Singular and Plural. Any word contained in the text of this Lease, including but not by way of limitation "Tenant" and "Landlord", shall be read as the singular or the plural and as the masculine, feminine or neuter gender as may be applicable in the particular context.

Section 20.14 Captions. The captions of this Lease are for convenience and reference only and in no way define, limit or describe the scope or intent of this Lease.

Section 20.15 Law. This Lease shall be construed and enforced in accordance with the laws of the State of California.

Section 20.16 Attorneys' Fees. In the event of a dispute between the parties, the prevailing party shall have the right to recover its reasonable attorneys' fees and expenses from the non-prevailing party.

Section 20.17 Landlord Bankruptcy. Notwithstanding anything herein, should the Lease be rejected by Landlord (and its assigns) pursuant to an order of the U.S. Bankruptcy Court, Tenant will continue to have all of its rights of election provided for in 11 USC 365 (h) (i) (A) (2) as well as any other rights available to it under applicable federal or state bankruptcy or non-bankruptcy law.

Section 20.18 Counterparts. This Lease may be executed in one or more counterparts, with signatures to one being deemed signatures to each such counterpart, each of which shall be deemed one and the same instrument. The parties agree that signature pages sent by facsimile shall be deemed originals.

## ARTICLE 21:INSURANCE

Section 21.1 Commercial General Liability Insurance. At all times during the Term, Tenant shall provide and maintain, at Tenant's sole cost and expense throughout the Term, commercial general liability insurance, including blanket contractual liability coverage (or its equivalent) specifically endorsed to provide coverage for the obligations assumed by Tenant pursuant to this Lease, against claims and liability for personal injury, bodily injury, death, or property damage occurring on, in, or about the Premises, with limits of liability of not less than Two Million Dollars (\$2,000,000.00) for liability arising out of any one occurrence, Tenant shall cause such insurance policy or policies to name Landlord as additional insured.

Section 21.2 Employer's Liability Insurance. At all times during the Term, Tenant shall also provide and maintain, at Tenant's sole cost and expense, throughout the Term or any extensions hereof, worker's compensation insurance with statutory limits of liability and employer's liability insurance with limits of liability of not less than One Million Dollars (\$1,000,000.00) in respect of any work or other operations done or performed on or about the Premises.

Section 21.3 Casualty Insurance. During the first ten (10) years of the Term commencing on the date of the Certificate of Occupancy, Tenant will procure and maintain in effect at all times and at Tenant's expense insurance policy insuring Tenant against loss or damage to the Improvements by fire, lightning, windstorm, smoke, vandalism, malicious mischief, vehicle damage and other risks from time to time included under a so called "Special Form Causes of Loss" policy (or its equivalent) together with earthquake insurance. Such insurance shall provide coverage in an amount sufficient to prevent Tenant from being a co-insurer of any loss under the policy or policies, but in no event less than 100% of the full replacement cost of the Improvements;

Section 21.4 Certificates of Insurance and Payment of Premiums. Tenant shall deliver certificates of insurance evidencing the required coverages and limits of liability. Said certificates shall be delivered immediately after the writing and effective date of said policies but in no event less frequently than annually, along with receipts evidencing payment of the premiums therefor;





provided, however, that Tenant may finance the premiums when the terms of said policies are for two (2) years or more and, in such event, said receipts shall evidence the installment premium payment having been paid before its maturity. Tenant will pay the premiums for all insurance policies which Tenant is obligated to carry under the terms of this Lease and will deliver to Landlord evidence of such payment before the payment of any such premiums become in default; and Tenant will cause renewals of expiring policies to be written and the binders therefor to be delivered to Landlord at least thirty (30) days before the expiration date of such expiring policies, with certificates to be delivered to Landlord, as set out herein, promptly upon their preparation.

**Section 21.5 Liability for Deductible Amounts.** Tenant, as principal named insured for all property insurance required hereunder, retains full responsibility for payment of all deductibles under each of said policies. Nothing herein contained shall be construed as rendering Landlord personally liable for the payment of any such insurance premiums but if, at any time during the Term or any extensions hereof, Tenant shall fail, refuse, or neglect to effect, maintain, or renew any of the policies of insurance required by this Lease, or fail, refuse or neglect to keep and maintain same in full force and effect, or to pay premiums therefor promptly when due, or to deliver to Landlord and/or mortgagee any of such policies or certificates, then Landlord at its sole option but without obligation to do so, may effect, maintain or renew such insurance, and the amount of money paid as the premium thereon shall be collectible as though it were rent then matured hereunder and due and payable forthwith.

**Section 21.6 Tenant's Indemnity.** Unless due to the intentional misconduct or negligence of Landlord or Landlord's officers, agents, contractors, employees or invitees, Tenant will defend, indemnify, and hold harmless Landlord, its officers, employees and agents (the "Indemnified Parties") from and against any and all liabilities, claims, losses, damages, actions, judgments, costs, and expenses (including without limitation reasonable attorney's fees and expenses) of every kind imposed upon or asserted against the Indemnified Parties or Landlord's title in the Premises arising by reason of or in connection with (a) Tenant's possession, use, occupancy, or control of the Premises; (b) any accident, injury to or death of persons, or loss of or damage to property occurring on or about the Premises (c) the possession, operation, use, misuse, maintenance, or repair of the Premises; or (d) any failure on the part of Tenant to perform or comply with any of the terms of this Lease. If it becomes necessary for Landlord to defend any action seeking to impose any such liability, Landlord may elect to notify Tenant and tender defense of such action to Tenant. Tenant shall accept such tender of defense (with counsel reasonably acceptable to the Landlord) and Tenant will pay all costs, expenses, and reasonable attorney's fees incurred in effecting such defense, in addition to any other sums which Landlord may be called upon to pay by reason of the entry of a judgment against Landlord in the litigation in which such claim is asserted. Landlord shall not be responsible for the loss of or damage to property or injury to or death of persons occurring in or about the Premises by reason of any future condition, defect, matter, or thing in the Premises, or for the acts, omissions, or negligence of other persons or tenants in and about the Premises, and Tenant agrees to defend (with counsel reasonably acceptable to the Landlord), indemnify, and hold the Indemnified Parties harmless from and against all claims and liability for same.





## **ARTICLE 22:EXHIBITS AND ADDENDA TO LEASE**

Attached to this Lease, and incorporated into and made a part of this Lease by this reference, are the following:

EXHIBIT A – Legal Description of the Land

EXHIBIT B – Schedule of Lease Payments & Basis of Purchase Price

EXHIBIT C – Memorandum of Lease

EXHIBIT D – Subordination Agreement

EXHIBIT E – Provisions from Disposition and Development Agreement



IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this Lease, effective as of the day and year first above written.

LANDLORD:

Rotunda Garage, LP, a California limited partnership

By:   
LEONARD EPSTEIN


Title: 


By:   
PHILIP TAGAMI

Title: 

TENANT:

ACCESS BUILDING, LLC, a California limited liability company

By:   
FUAD SWEISS

Title: 

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## **EXHIBIT A**

### **LEGAL DESCRIPTION OF LAND**

**1630 San Pablo Ave  
Oakland, CA 94612**



## **EXHIBIT B**

### **SCHEDULE OF LEASE PAYMENTS & PURCHASE PRICE**



## SCHEDULE OF LEASE PAYMENTS & PURCHASE PRICE

- A:** Date.
- B:** Deferred Rent for the period between July 1, 2006 and January 1, 2008.
- C:** Interest on Deferred Rent (total Deferred Rent shall accrue interest on a monthly basis at the rate of six percent (6%) per year).
- D:** Cumulative amount due for Deferred Rent and accrued interest.
- E:** Monthly Base Rent from February 1, 2008 to January 1, 2016.
- F:** Purchase Price to be paid to Landlord by Tenant upon closing of Tenant's purchase of the Premises.
- G:** Amount due to Landlord upon close of escrow which is calculated based on following formula:

**Amount = Purchase Price plus Deferred Rent (\$39,759) minus Security Deposit (\$85,000)**

A	B	C	D	E	F	G
DATE	DEFERRED RENT	INTEREST	ACCRUED RENT	RENT PAYMENTS	PURCHASE PRICE	Amount Due at COE
7/1/2006	\$ 2,000	\$ -	\$ 2,000			
8/1/2006	\$ 2,000	\$ 10	\$ 4,010			
9/1/2006	\$ 2,000	\$ 20	\$ 6,030			
10/1/2006	\$ 2,000	\$ 30	\$ 8,060			
11/1/2006	\$ 2,000	\$ 40	\$ 10,101			
12/1/2006	\$ 2,000	\$ 51	\$ 12,151			
1/1/2007	\$ 2,000	\$ 61	\$ 14,212			
2/1/2007	\$ 2,000	\$ 71	\$ 16,283			
3/1/2007	\$ 2,000	\$ 81	\$ 18,364			
4/1/2007	\$ 2,000	\$ 92	\$ 20,456			
5/1/2007	\$ 2,000	\$ 102	\$ 22,558			
6/1/2007	\$ 2,000	\$ 113	\$ 24,671			
7/1/2007	\$ 2,000	\$ 123	\$ 26,794			
8/1/2007	\$ 2,000	\$ 134	\$ 28,928			
9/1/2007	\$ 2,000	\$ 145	\$ 31,073			
10/1/2007	\$ 2,000	\$ 155	\$ 33,228			
11/1/2007	\$ 2,000	\$ 166	\$ 35,395			
12/1/2007	\$ 2,000	\$ 177	\$ 37,572			
1/1/2008	\$ 2,000	\$ 188	\$ 39,759			
2/1/2008				\$ 2,200		
3/1/2008				\$ 2,200		
4/1/2008				\$ 2,200		
5/1/2008				\$ 2,200		
6/1/2008				\$ 2,200		
7/1/2008				\$ 2,200		
8/1/2008				\$ 2,200		
9/1/2008				\$ 2,200		



10/1/2008	\$	2,200		
11/1/2008	\$	2,200		
12/1/2008	\$	2,200		
<b>1/1/2009</b>	\$	2,200		
2/1/2009	\$	2,200		
3/1/2009	\$	2,200		
4/1/2009	\$	2,200		
5/1/2009	\$	2,200		
6/1/2009	\$	2,200		
<b>7/1/2009</b>	\$	<b>2,266</b>	\$ 485,000	\$ 439,759
8/1/2009	\$	2,266	\$ 487,000	\$ 441,759
9/1/2009	\$	2,266	\$ 489,000	\$ 443,759
10/1/2009	\$	2,266	\$ 491,000	\$ 445,759
11/1/2009	\$	2,266	\$ 493,000	\$ 447,759
12/1/2009	\$	2,266	\$ 495,000	\$ 449,759
<b>1/1/2010</b>	\$	2,266	\$ 497,000	\$ 451,759
2/1/2010	\$	2,266	\$ 499,000	\$ 453,759
3/1/2010	\$	2,266	\$ 501,000	\$ 455,759
4/1/2010	\$	2,266	\$ 503,000	\$ 457,759
5/1/2010	\$	2,266	\$ 505,000	\$ 459,759
6/1/2010	\$	2,266	\$ 507,000	\$ 461,759
<b>7/1/2010</b>	\$	<b>2,334</b>	\$ 509,000	\$ 463,759
8/1/2010	\$	2,334	\$ 511,000	\$ 465,759
9/1/2010	\$	2,334	\$ 513,000	\$ 467,759
10/1/2010	\$	2,334	\$ 515,000	\$ 469,759
11/1/2010	\$	2,334	\$ 517,000	\$ 471,759
12/1/2010	\$	2,334	\$ 519,000	\$ 473,759
<b>1/1/2011</b>	\$	2,334	\$ 521,000	\$ 475,759
2/1/2011	\$	2,334	\$ 523,000	\$ 477,759
3/1/2011	\$	2,334	\$ 525,000	\$ 479,759
4/1/2011	\$	2,334	\$ 527,000	\$ 481,759
5/1/2011	\$	2,334	\$ 529,000	\$ 483,759
6/1/2011	\$	2,334	\$ 531,000	\$ 485,759
<b>7/1/2011</b>	\$	<b>2,404</b>	\$ 533,000	\$ 487,759
8/1/2011	\$	2,404	\$ 535,000	\$ 489,759
9/1/2011	\$	2,404	\$ 537,000	\$ 491,759
10/1/2011	\$	2,404	\$ 539,000	\$ 493,759
11/1/2011	\$	2,404	\$ 541,000	\$ 495,759
12/1/2011	\$	2,404	\$ 543,000	\$ 497,759
<b>1/1/2012</b>	\$	2,404	\$ 545,000	\$ 499,759
2/1/2012	\$	2,404	\$ 547,000	\$ 501,759
3/1/2012	\$	2,404	\$ 549,000	\$ 503,759
4/1/2012	\$	2,404	\$ 551,000	\$ 505,759
5/1/2012	\$	2,404	\$ 553,000	\$ 507,759
6/1/2012	\$	2,404	\$ 555,000	\$ 509,759
<b>7/1/2012</b>	\$	<b>2,476</b>	\$ 557,000	\$ 511,759

8/1/2012	\$	2,476	\$ 559,000	\$ 513,759
9/1/2012	\$	2,476	\$ 561,000	\$ 515,759
10/1/2012	\$	2,476	\$ 563,000	\$ 517,759
11/1/2012	\$	2,476	\$ 565,000	\$ 519,759
12/1/2012	\$	2,476	\$ 567,000	\$ 521,759
1/1/2013	\$	2,476	\$ 569,000	\$ 523,759
2/1/2013	\$	2,476	\$ 571,000	\$ 525,759
3/1/2013	\$	2,476	\$ 573,000	\$ 527,759
4/1/2013	\$	2,476	\$ 575,000	\$ 529,759
5/1/2013	\$	2,476	\$ 577,000	\$ 531,759
6/1/2013	\$	2,476	\$ 579,000	\$ 533,759
7/1/2013	\$	2,550	\$ 581,000	\$ 535,759
8/1/2013	\$	2,550	\$ 583,000	\$ 537,759
9/1/2013	\$	2,550	\$ 585,000	\$ 539,759
10/1/2013	\$	2,550	\$ 587,000	\$ 541,759
11/1/2013	\$	2,550	\$ 589,000	\$ 543,759
12/1/2013	\$	2,550	\$ 591,000	\$ 545,759
1/1/2014	\$	2,550	\$ 593,000	\$ 547,759
2/1/2014	\$	2,550	\$ 595,000	\$ 549,759
3/1/2014	\$	2,550	\$ 597,000	\$ 551,759
4/1/2014	\$	2,550	\$ 599,000	\$ 553,759
5/1/2014	\$	2,550	\$ 601,000	\$ 555,759
6/1/2014	\$	2,550	\$ 603,000	\$ 557,759
7/1/2014	\$	2,627	\$ 605,000	\$ 559,759
8/1/2014	\$	2,627	\$ 607,000	\$ 561,759
9/1/2014	\$	2,627	\$ 609,000	\$ 563,759
10/1/2014	\$	2,627	\$ 611,000	\$ 565,759
11/1/2014	\$	2,627	\$ 613,000	\$ 567,759
12/1/2014	\$	2,627	\$ 615,000	\$ 569,759
1/1/2015	\$	2,627	\$ 617,000	\$ 571,759
2/1/2015	\$	2,627	\$ 619,000	\$ 573,759
3/1/2015	\$	2,627	\$ 621,000	\$ 575,759
4/1/2015	\$	2,627	\$ 623,000	\$ 577,759
5/1/2015	\$	2,627	\$ 625,000	\$ 579,759
6/1/2015	\$	2,627	\$ 627,000	\$ 581,759
7/1/2015	\$	2,706	\$ 629,000	\$ 583,759
8/1/2015	\$	2,706	\$ 631,000	\$ 585,759
9/1/2015	\$	2,706	\$ 633,000	\$ 587,759
10/1/2015	\$	2,706	\$ 635,000	\$ 589,759
11/1/2015	\$	2,706	\$ 637,000	\$ 591,759
12/1/2015	\$	2,706	\$ 639,000	\$ 593,759
1/1/2016	\$	2,706	\$ 641,000	\$ 595,759
<b>TOTAL</b>		<b>\$ 232,226</b>	<b>\$ 641,000</b>	<b>\$ 873,226</b>

## EXHIBIT C

### MEMORANDUM OF LEASE

This Memorandum of Lease ("Memorandum") is entered into as of the Fifth day of June, 2006 by and between ROTUNDA GARAGE, LP, a California limited partnership ("Landlord"), and ACCESS BUILDING, LLC, a California limited liability company ("Tenant") with reference to the following facts:

A. Landlord and Tenant entered into that certain Ground Lease (the "Lease") of even date herewith for the "Premises" described in Section 1 below.

B. Landlord and Tenant wish to record this Memorandum to put all parties on notice of the existence of the Lease and of the terms thereof, including without limitation the following:

1. Premises. The real property which is the subject of the Lease (the "Premises") consists of that parcel of land located in the City of Oakland, County of Alameda, State of California, described in Exhibit A, attached hereto and by this reference made a part hereof, together with all easements, rights, and other appurtenances now or hereafter appurtenant to, benefiting or serving such parcel.

2. Term. The term for which the Premises have been leased is for fifty (50) years, subject to extension pursuant to the option to extend referred to in Section 3 below.

3. Options to Extend. Tenant has one (1) option to extend the term of the Lease for a period of forty-nine (49) years, subject to and as further set forth in the Lease.

4. Option to Purchase. Tenant has the option to purchase the Premises upon completion of the Improvements (as defined in the Lease). Additionally, Tenant has a right of first refusal with respect to any offer by Landlord to transfer the Premises.

5. Successors. Subject to the terms of the Lease, the rights and obligations created therein shall bind and inure to the benefit of Landlord and Tenant and their respective devisees, heirs, executors, administrators, successors and assigns.

6. Incorporation and Conflicts. All of the terms and conditions of the Lease are incorporated herein by this reference as if fully set forth herein. In the event of any conflict between the terms hereof and of the Lease, the Lease shall prevail.

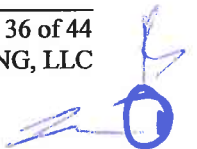
IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Lease as of the date set forth above.

## **EXHIBIT D**

### **SUBORDINATION AGREEMENT**

**1630 San Pablo Ave**

**Oakland, CA 94612**



## SUBORDINATION AGREEMENT

NOTICE: THIS SUBORDINATION AGREEMENT MAY RESULT IN YOUR SECURITY INTEREST IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER SECURITY INSTRUMENT.

THIS SUBORDINATION AGREEMENT (the "Subordination Agreement") is made and entered into this Fifth day of July 2006, by and between ACCESS BUILDING, LLC, a California limited liability company ("Tenant") and Leonard Epstein and Philip Tagami (both of whom are collectively referred to herein as "Landlord").

This Subordination Agreement is made with reference to the following facts:

A. This Subordination Agreement is attached to that certain Ground Lease of even date herewith executed by Tenant (the "the Ground Lease").

B. Landlord and Tenant have entered into the Ground Lease whereby Tenant has leased from Landlord certain real property located in the Oakland, State of California, as more particularly described in Exhibit A to the Ground Lease (the "Subject Property").

C. As part of said Ground Lease transaction, Landlord has agreed to subordinate its interest in the Ground Lease to Tenant's Construction Loan ("Construction Loan") in the original principal amount of no more than Six Million Dollars (\$6,000,000.00). Said Construction Loan will be secured by a deed of trust encumbering Landlord's fee interest in the Subject Property; however, the loan amount shall not exceed ninety percent (90%) of Loan to Value or ninety percent (90%) of construction costs including reasonable soft costs, whichever is less, as determined by a mutually approved appraiser.

D. As a material part of the Ground Lease transaction, Landlord agrees to subordinate Landlord's fee interest in the Subject Property to the first deed of trust securing the Construction Loan and a permanent loan on the terms and subject to the conditions herein below set forth.

ACCORDINGLY, in consideration of Tenant's execution of the Ground Lease and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

7. RECORDATION: This Subordination Agreement shall be recorded concurrently with the Ground Lease and the terms hereof shall be incorporated in the Ground Lease both by this reference and by reference to this Subordination Agreement in the Ground Lease.

8. SUBORDINATION TO CONSTRUCTION LOAN: Provided that Tenant is not then in default under the Ground Lease, then upon ten (10) days written notice to Landlord enclosing true and correct copies of the Construction Loan Documents (as hereinafter defined), Landlord shall at any time or times requested by Tenant in writing execute and record a subordination agreement (hereinafter the "Construction Lender's Subordination Agreement") in such form as may be satisfactory to the Construction Lender(s) (as hereinafter defined)



subordinating the Landlord's fee interest in the Subject Property to one or more Construction Deed(s) of Trust securing the Construction Loan:

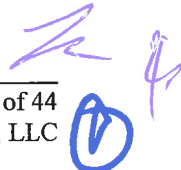
8.1 The Construction Deed of Trust shall secure a Construction Loan to Tenant from a solvent bank or savings and loan association, mortgage company or from any other institutional lender (the "Construction Lender").

8.2 The Construction Loan shall be evidenced by a promissory note (the "Construction Promissory Note") evidencing a sum which does not exceed, in the aggregate, Six Million Dollars (\$6,000,000) and such Construction Loan shall have a term of not less than six (6) months and not greater than thirty (30) years. The loan amount shall not exceed ninety percent (90%) of Loan to Value or ninety percent (90%) of construction costs including reasonable soft costs, whichever is less. The Construction Promissory Note and the Construction Deed of Trust, together with all other guarantees, security agreements, financing statements, collateral assignments and other documents and instruments customarily required by the Construction Lender are herein referred to collectively as the "Construction Loan Documents." All of the Construction Loan Documents shall be in the standard forms customarily used by the Construction Lender(s) in making loans similar to any such Construction Loan on the Subject Property.

8.3 Landlord shall also execute any and all customary guarantor or surety waiver forms which the Construction Lender may reasonably require. Landlord hereby acknowledges that it is anticipated that the Construction Lender will require Landlord to waive all guarantor and/or surety defenses based upon the fact that in the event Construction Lender attempts to exercise its rights under the Construction Deed of Trust, such efforts may be construed as an effort to enforce a guaranty or surety.

8.4 Landlord hereby acknowledges that as of the date of this Subordination Agreement, Landlord owns the Subject Property free and clear of all exceptions to title whatsoever other than those certain exceptions to title referred to in the Preliminary Title Report issued by Chicago Title Company on \_\_\_\_\_, a copy of which is attached hereto as Exhibit "B." All of the exceptions to title referred to in the Preliminary Title Report other than exceptions \_\_\_ and \_\_\_ are herein referred to as the "Permitted Exceptions." Landlord hereby agrees not to encumber the Subject Property with any encumbrances whatsoever other than the Permitted Exceptions either prior to or following the recordation of the Construction Deed of Trust due to the fact that the recordation of any additional encumbrance may make it impossible for Tenant to obtain the Construction Loan and/or the Permanent Loan referred to below.

8.5 The principal amount of any Construction Loan shall, by the terms of the Construction Promissory Note, bear interest initially at a note rate (exclusive of loan fees, escrow fees, "points," loan administration fees, late charges, penalties and other fees payable by Tenant) not to exceed five percentage points (5%) over the "prime rate," "reference rate" or similar rate announced from time-to-time by Bank of America at its San Francisco, California, headquarters. The rate of interest may vary during the term of any Construction Loan pursuant to any formula or standard customarily used by the Construction Lender for similar construction loans.



8.6 Any and all fees and "points" incurred upon origination of any Construction Loan shall either be paid from separate funds of Tenant or shall be included in the original principal amount limitation set forth in Paragraph 2.2, above, and in no event shall the loan fees, escrow fees and "points" so included in the original principal amount of any Construction Loan exceed five percent (5%) of the original principal amount of such Construction Loan.

8.7 Each Construction Promissory Note may include late charges, prepayment penalties and other fees or penalties that are customarily included in similar loans by institutional lenders.

8.8 The written notice to Landlord requesting execution of any Construction Lender's Subordination Agreement shall be accompanied by true and correct copies of all of the Construction Loan Documents, and of all other documents, including escrow instructions, required by the Construction Lender in connection with the closing of such Construction Loan.

8.9 Landlord shall be permitted access to the escrow for closing of each Construction Loan and shall have no obligation to execute any Construction Lender's Subordination Agreement unless Landlord has verified that the Construction Loan Documents have not been substantially modified and that they will upon recordation of the Construction Lender's Subordination Agreement be in force in substantial accordance with the terms of the copies thereof provided to Landlord with the written notice requesting Landlord's execution of such Construction Lender's Subordination Agreement.

8.10 Landlord shall be obligated to subordinate the Ground Lease as many times as Tenant requests, so long as all of the conditions set forth in this section 2 are satisfied each time Tenant requests such subordination.

8.11 In order to repay the Construction Loan, Landlord hereby acknowledges that Tenant will need to obtain a permanent loan and that such permanent loan will also have to be secured by a first deed of trust encumbering Landlord fee interest in the Subject Property. The loan amount shall not exceed ninety percent (90%) of Loan to Value or ninety percent (90%) of construction costs including reasonable soft costs, whichever is less. Therefore, Landlord hereby agrees to subordinate its fee interest in the Subject Property to a permanent loan in an amount not to exceed Six Million Dollars (\$6,000,000) which shall be secured by a deed of trust encumbering Landlord's fee interest in the Subject Property. Such permanent loan shall have an interest rate not to exceed five percentage points (5%) over the "prime rate," "reference rate" or similar rate announced from time-to-time by Bank of America at its San Francisco, California, headquarters, amortized over a period up to 30 years and with customary fees, points, and closing costs.

9. MODIFICATION OF CONSTRUCTION LOAN DOCUMENTS: Upon execution and recordation of any Construction Lender's Subordination Agreement by Landlord and thereafter, any modification, amendment or extension of any provisions of such Construction Loan Documents without prior written consent of Landlord shall not be binding or enforceable against Landlord. Landlord agrees that Landlord shall not unreasonably withhold its consent to

modifications or amendments of the Construction Loan Documents provided the modifications or amendments do not conflict with the terms of the Ground Lease and which do not adversely affect Landlord's security interest in the Subject Property in any manner.

10. TERM, CONTINUING OBLIGATION: The term of this Subordination Agreement shall commence upon execution of Landlord's Promissory Note and shall continue for the entire term thereof and any and all mandatory or discretionary future extensions or renewals thereof.

11. NOTICES: All notices required or permitted to be given hereunder shall be given by personal delivery or by deposit into the United States Mail, certified or registered, return receipt requested, postage prepaid to the following addresses, or to any other mailing address as may hereafter be given by notice as herein provided, and notices shall be deemed given on the date of personal delivery or the date shown on the return receipt, or if no return receipt is returned, forty-eight (48) hours after deposit in the mail:

To Tenant: 11 Embarcadero W, Suite 215  
Oakland, CA 94607

To Landlord: 300 Frank Ogawa Pl, Suite 340  
Oakland, CA 94612

12. TIME OF ESSENCE: Time is of the essence of all of Tenant's and Landlord's obligations hereunder.

13. SEVERABILITY: In the event that any provision or clause of the Ground Lease or this Subordination Agreement conflicts with applicable law, such conflict shall not affect other provisions of Landlord's Promissory Note, the Ground Lease or this Subordination Agreement which can be given effect without the conflicting provision and to this end the provisions of Landlord's Promissory Note, the Ground Lease and this Subordination Agreement are declared to be severable.

14. CAPTIONS: The title, captions and headings to paragraphs herein are for identification only and are not to be considered part of the substance of the provisions.

15. CONSTRUCTION: This Subordination Agreement is and shall be construed and interpreted as a part of the Ground Lease, including the fictitious deed of trust therein referred to. In the event any provision of the Ground Lease fails to include, or imposes lesser obligations upon Landlord than the provisions of this Subordination Agreement, or is less specific, the additional, more specific or greater requirements of this Subordination Agreement shall govern without affecting the balance of the Ground Lease or the remaining portions of such provision in the Ground Lease.

16. EXECUTION OF ADDITIONAL DOCUMENTS: Both parties hereto agree to execute any and all additional documents and/or instruments necessary to carry out the



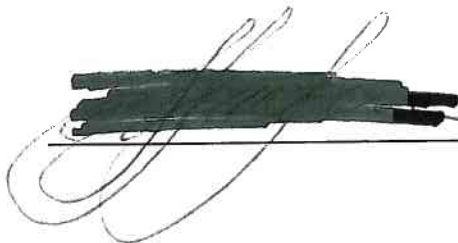
terms of this Subordination Agreement. All documents to be prepared to carry out the terms of this Subordination Agreement, other than those documents specifically to be provided by any particular party, shall be prepared by such persons mutually acceptable to both parties, and the costs incurred in the preparation of any such documents shall be borne by the party for whose behalf the documents were prepared.

17. ATTORNEYS' FEES: If legal action is instituted by any party hereto for damages or to interpret or enforce any of the terms or provisions of this Subordination Agreement, the prevailing party shall be entitled to reasonable attorneys' and experts' fees in addition to such other recoverable costs and damages as may be awarded by the Court.

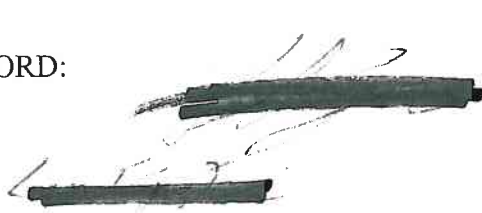
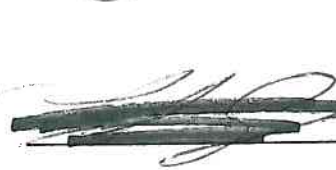
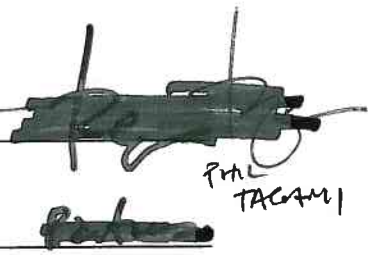
18. BINDING: This Subordination Agreement shall inure to and be binding on all of the parties, their estates, heirs, personal representatives and assigns.

IN WITNESS WHEREOF, the undersigned have executed this Subordination Agreement on the date and year first above written.

TENANT:

  
Fuad Sweiss

LANDLORD:

  
  
  
PML TACAM



STATE OF CALIFORNIA

COUNTY OF Alameda

)  
) ss.  
)

On July 26, 2006 before me, Melanie Cockerham, Notary Public,  
personally appeared Leonard Epstein, personally known to me (or proved to me  
on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the  
within instrument and acknowledged to me that he/she/they executed the same in his/her/their  
authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or  
the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

M. Cockerham  
Notary Public



STATE OF CALIFORNIA

COUNTY OF Alameda

)  
) ss.  
)

On July 26, 2006 before me, Melanie Cockerham, Notary Public,  
personally appeared Phillip Tagami, personally known to me (or proved to me  
on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the  
within instrument and acknowledged to me that he/she/they executed the same in his/her/their  
authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or  
the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

M. Cockerham  
Notary Public





STATE OF CALIFORNIA

COUNTY OF Alameda

)  
) ss.  
)

On July 26, 2006 before me, Melanie Cockerham, Notary Public,  
personally appeared Fuad Sweiss, personally known to me (or proved to me  
on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the  
within instrument and acknowledged to me that he/she/they executed the same in his/her/their  
authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or  
the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

M. Cockerham  
Notary Public



**EXHIBIT E**

**PROVISIONS FROM  
DISPOSITION AND DEVELOPMENT AGREEMENT**

**Pages 11, 12, 13, and 14**

**1630 San Pablo Ave**

**Oakland, CA 94612**

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- (b) All costs and expenses, if any, necessary to place title to the Site in the condition set forth in Section 4.07;
- (c) All costs and expenses of preparing, executing, acknowledging, and delivering the Grant Deeds to Parcels 1, 2, and 3, and Ground Lease for Parcel 4; and
- (d) The cost, if any, of preliminary title reports ordered by Agency.

**4.11 Developer's Closing Costs.**

At the Closing Date, Developer shall pay:

- (a) Alameda County documentary transfer taxes;
- (b) City of Oakland real estate transfer taxes; and
- (c) The cost of title insurance premiums on the Title Policy.

**4.12 Shared Closing costs.**

Any escrow fees and other costs of escrow charged by the Title Company and not specifically allocated by this Agreement shall be shared equally by Agency and Developer.

**Article V Development and Other Requirements for Parcels 2, 3, and 4**

**5.01 Requirements for Development on Parcels 2, 3 and 4.**

This Article sets out the requirements for development on the Site for Parcels 2, 3, and 4.

**5.02 Parcel 2.**

- (a) Within one year following the Closing Date, Developer must have completed the following on Parcel 2:
  - (i) Demolish the existing structure located at 1630 San Pablo Avenue (formerly known as the "Lai Insurance Building");
  - (ii) Remove and/or remediate, mitigate, encapsulate, contain, and/or manage all Hazardous Materials that may be on or below the surface of Parcel 2 as required by law and appropriate governmental agencies;
  - (iii) Hardscape and landscape Parcel 2 by installing decorative scored concrete, adequate lighting, trees and tree wells consistent with the Broadway and Telegraph Street Improvement Plan of 2002, and appropriate fencing on Parcel 2, subject to Agency's reasonable approval; and
  - (iv) Maintain landscape, lighting, and hardscape and keep Parcel 2 clean and orderly until Parcel 2 is developed according to this Agreement, or Parcel 2 is returned to Agency.

**(b) Development on Parcel 2.**

- (i) Within five (5) years of the date of issuance of the certificate of occupancy for the Garage Project, Developer must have must have commenced development on Parcel 2 for retail, commercial, and/or food service, or other uses approved by the Agency.
- (ii) For purposes of this Section 5.02, Developer is deemed to have commenced construction if Developer has performed all of the following:

  - 1) Agency approval for the development plans;
  - 2) Obtained all required zoning and building permits for the development;
  - 3) An executed contract with a construction contractor who is experienced in retail construction of a similar size and type;
  - 4) Have a construction loan approved by an institutional lender together with sufficient other monies to fund the proposed construction, or sufficient funds set aside in an escrow account to fund the construction, including a reasonable amount for contingencies;
  - 5) A construction completion bond or other security approved by Agency sufficient to complete the proposed construction and ensure payment of all construction cost pursuant to Article XIX, and
  - 6) Developer's contractor has begun pouring the foundation for the development approved by Agency. The performance of grading or excavation work alone is not considered commencement of construction.
- (iii) Should Developer propose development for Parcel 2, such development will be subject to the following terms and conditions:

  - 1) The development must be for retail, commercial and/or food service uses, unless otherwise approved by Agency;
  - 2) The development's design must act to maintain the street edge around the garage;
  - 3) The development must cover at least seventy percent (70%) of Parcel 2;
  - 4) The development will conform to Parcel 2's zoning, and will be subject to approval by the City Planning Department or Planning Commission, as appropriate.
- (c) Agency option for repurchase of Parcel 2. If Developer does not commence construction of development on Parcel 2 within five (5) years after Developer receives the certificate of occupancy for the Garage Project, Agency will have the option to repurchase Parcel 2 on the following terms:

- (i) Agency may exercise the option to repurchase with ninety (90) days advance notice at any time after the expiration of the five (5) year period and development has not commenced as set out in Section 5.02(b)(ii).
- (ii) Agency's responsibilities on exercise of its option:
  - 1) Repayment of Developer's purchase price for Parcel 2 of \$99.
  - 2) Agency will reimburse Developer for:
    - a) All reasonable costs of demolishing that portion of the building at 1630 San Pablo Avenue that was not necessary to be demolished for the Garage Project allocated on a square footage basis, subject to Agency's certification of the costs;
    - b) The cost of any improvements to Parcel 2 required by this Agreement or approved by Agency, less the amount of any depreciation over the useful life of the improvements, subject to Agency's certification of the costs; and
    - c) One-half of the closing costs, including title insurance.
  - 3) Developer's responsibilities on exercise of Agency's option:
    - a) All costs of removing any liens or encumbrances not authorized by this Agreement or approved by Agency;
    - b) The costs of removing any improvements not authorized by this Agreement or approved by Agency;
    - c) Property taxes or other assessments to the date of closing; and
    - d) One-half of the closing costs, including title insurance.
- (d) Liens or Encumbrances on Parcel 2.
  - (i) Developer must not cause or permit any liens or other encumbrances on Parcel 2 except:
    - 1) Those that are required to finance development on Parcel 2 and such development is approved by Agency, or
    - 2) Those that Agency approves in advance, in writing, which Agency may approve or disapprove in its sole and absolute discretion, or
    - 3) Any liens or encumbrances placed after Developer has met its development obligation for Parcel 2 pursuant to Subsection 5.02(b).
  - (ii) The following are required from Developer for Agency to approve liens or encumbrances for development:



- 1) Submission of proposed plans.
- 2) Approval by Agency for the proposed development.
- 3) Approval of all permits.
- 4) Executed construction contract.
- 5) Adequate bonding or other security to assure completion of development and payment of all construction costs.
- 6) Construction financing approved subject only to closing escrow on the lien securing the construction financing.

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5.03 Parcel 3. *Small parcel*

- (a) Within one year following the Closing Date, Developer will hardscape with decorative scored concrete and landscape Parcel 3 consistent with the Broadway and Telegraph Street Improvement Plan of 2002 and install adequate lighting, trees and tree wells, and appropriate fencing, and all such improvements as are necessary to prevent public and transient access to the alley immediately adjacent to Parcel 3.
- (b) Developer is required to keep Parcel 3 secure and maintained at all times until such time as it may be developed.
- (c) Development on Parcel 3.
  - (i) Within five (5) years of the date of issuance of the certificate of occupancy for the Garage Project, Developer must have commenced development on Parcel 3 for its approved uses.
  - (ii) For purposes of this Section 5.03, Developer is deemed to have commenced construction if Developer has all of the following:
    - 1) Agency approval for the development plans;
    - 2) Obtained all required zoning and building permits for the development;
    - 3) An executed contract with a construction contractor who is experienced in retail construction of a similar size and type;
    - 4) Have a construction loan approved by an institution lender who meets the together with sufficient other monies to fund the proposed construction, or sufficient funds set aside in an escrow account to fund the construction, including a reasonable amount for contingencies; and
    - 5) A construction completion bond or other security approved by Agency sufficient to complete the proposed construction and ensure payment of all construction costs pursuant to Article XIX;