



**Marin Clean Energy
Executive Committee Meeting
Wednesday, February 18, 2015
10:00 A.M.**

Kathrin Sears
Chair
County of Marin

Tom Butt
Vice Chair
City of Richmond

Bob McCaskill
City of Belvedere

Alan Schwartzman
City of Benicia

Sloan C. Bailey
Town of Corte Madera

Barbara Coler
Town of Fairfax

Kevin Haroff
City of Larkspur

Garry Lion
City of Mill Valley

Brad Wagenknecht
County of Napa

Denise Athas
City of Novato

Carla Small
Town of Ross

Ford Greene
Town of San Anselmo

Genoveva Calloway
City of San Pablo

Andrew McCullough
City of San Rafael

Ray Withy
City of Sausalito

Emmett O'Donnell
Town of Tiburon

1 (888) 632-3674
mceCleanEnergy.org

781 Lincoln Ave., #320
San Rafael, CA 94901

**San Rafael Corporate Center, Boro Room
750 Lindero Street, San Rafael, CA 94901**

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1. Board Announcements (Discussion)
2. Public Open Time (Discussion)
3. Report from Chief Executive Officer (Discussion)
4. Approval of 12.17.14 and 1.21.15 Meeting Minutes (Discussion/Action)
5. Agreements with 700 Fifth Avenue, LLC (Discussion/Action)
6. New MCE Staff Position (Discussion/Action)
7. Regulatory and Legislative Update (Discussion)
8. Review 3.5.15 Draft Board Agenda (Discussion)
9. Members & Staff Matters (Discussion)
10. Adjourn



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**MARIN CLEAN ENERGY
EXECUTIVE COMMITTEE MEETING
WEDNESDAY, DECEMBER 17, 2014
10:00 A.M.
SAN RAFAEL CORPORATE CENTER, BORO ROOM
750 LINDARO STREET, SAN RAFAEL, CA 94901**

Roll Call

Present:

Kate Sears, County of Marin
Tom Butt, City of Richmond
Sloan Bailey, Town of Corte Madera
Kevin Haroff, City of Larkspur
Bob McCaskill, City of Belvedere
Ford Greene, Town of San Anselmo

Absent:

Denise Athas, City of Novato

Staff:

Dawn Weisz, Chief Executive Officer
Shalini Swaroop, Legal Counsel
Greg Brehm, Director of Power Resources
Alex DiGiorgio, Community Affairs Representative
Emily Goodwin, Director of Internal Operations
Jennifer Dowdell, Technical Consultant

Agenda Item #4 – Approval of 11.19.14 Minutes (Discussion/Action)

M/s Bailey/Sears (passed 5-0) the approval of the 11.19.14 Executive Committee minutes. Director Greene abstained. Director Athas was absent.

Tom Butt, Executive Committee Chair

ATTEST:

Dawn Weisz, Chief Executive Officer

**MARIN CLEAN ENERGY
EXECUTIVE COMMITTEE MEETING
WEDNESDAY, JANUARY 21, 2015
10:00 A.M.
SAN RAFAEL CORPORATE CENTER, BORO ROOM
750 LINDARO STREET, SAN RAFAEL, CA 94901**

Roll Call

Present: Kate Sears, County of Marin
Tom Butt, City of Richmond
Sloan Bailey, Town of Corte Madera
Kevin Haroff, City of Larkspur
Bob McCaskill, City of Belvedere
Denise Athas, City of Novato
Ford Greene, Town of San Anselmo

Staff: Dawn Weisz, Chief Executive Officer
Beth Kelly, Legal Director
Jamie Tuckey, Communications Director
Jennifer Dowdell, Deputy Director
John Dalessi, Technical Consultant
Alex DiGiorgio, Community Affairs Coordinator

Agenda Item #6 – Approval of proposed budget for fiscal year 2016. (Discussion/Action)

M/s McCaskill/Bailey (passed 7-0) the approval of proposed budget for fiscal year 2016.

Tom Butt, Executive Committee Chair

ATTEST:

Dawn Weisz, Chief Executive Officer



February 18, 2015

TO: Marin Clean Energy Executive Committee

FROM: Emily Goodwin, Director of Internal Operations
Jennifer Dowdell, Interim Deputy Director

RE: Agreements with 700 Fifth Avenue, LLC for MCE Office Space (Agenda Item #05)

ATTACHMENTS:

- A. Fully Executed 9.04.14 AIR Lease Agreement with 700 Fifth Avenue, LLC
- B. Draft First Agreement with 700 Fifth Avenue, LLC
- C. Draft Amendment to 9.04.14 AIR Lease Agreement with 700 Fifth Avenue, LLC

Dear Board Members:

SUMMARY:

Background:

On September 4, 2014 your Board entered into the AIR Lease Agreement with 700 Fifth Avenue, LLC. This Lease Agreement was for a ten year lease for a 10,710 square foot commercial space in downtown San Rafael located at 700 Fifth Avenue. Your Board's approval of the Lease Agreement included a budget allocation of \$165,570.19 to fund identified tenant improvements. The lease pricing also anticipated significant building upgrades by the Lessor as detailed in Exhibit B and C of the attached Lease Agreement.

Description of Lessor upgrades included in Lease Agreement:

- 1. Structural building upgrades for code and safety compliance
- 2. New carpet, paint, and cabinets
- 3. New windows throughout the building
- 4. New fire sprinkler system
- 5. American's with Disability Act-compliant (ADA) accessibility throughout the building including a new elevator
- 6. New asphalt paved parking lot with perimeter fencing and lot security
- 7. Landscaping upgrades

The Board approved budget allocation of \$165,570.19 for MCE to fund tenant improvements is detailed below:

Itemized Tenant Budget	Cost
Project supervision and management costs	\$ 30,238.19
Interior demolition	\$ 4,500.00
Building improvement to support ADA access at the main building entrance	\$ 20,000.00
Doors, frames, hardware, countertops	\$ 15,400.00
Expansion of Board meeting room	\$ 16,000.00
Restroom expansion and upgrades (plumbing, stall adjustments, etc.)	\$ 57,100.00
Main staircase reconfiguration (from solid to wire rail)	\$ 12,000.00
Contingency	\$ 9,190.00
Insurance	\$ 1,142.00
Approved Budget Total	\$ 165,570.19

MCE proposes to fund additional costs of approximately \$75,335 which are necessary to complete the build-out while leveraging the renovation process to adapt the building for MCE needs. These costs (detailed in the attached Budget Schedule) include both additional scope and items where the initially approved budgetary estimate was insufficient to meet MCE's needs. The scope of work and associated costs are also shown in the attached draft Agreement with 700 Fifth Avenue, LLC.

The proposed additional tenant improvements would allow MCE to follow through on several needed components of the building plan before occupancy, including sufficient space to support expected growth of the agency and associated accommodations needed for public meeting space. The tenant improvements will also reflect MCE's core values at its new headquarters by ensuring a professional, secure, energy efficient, working environment which incorporates the use of sustainable and environmentally friendly building materials. The improvements will remain in place to benefit both staff and visitors throughout the ten year lease term, and the meeting space has the potential to benefit other community organizations when not in use by MCE.

Additionally, MCE has proposed a right of first offer via a Draft Amendment to AIR Lease Agreement to preserve our option to purchase the building at a future time, given our contribution to building upgrades. The proposed right of first offer amendment would include the following provisions:

- The Owner cannot sell the building without first offering it to MCE, and MCE would have 30 days to accept the Owner's offer.
- If MCE does not accept the Owner's offer within the specified time, the Owner is free to sell the building to a third party.
- If MCE accepts the Owner's offer, MCE has 120 days to close escrow
- If MCE declines the Owner's offer, the Owner cannot sell the property to a third party for more than 5% less than it was offered to MCE without first re-offering it to MCE.

Fee and Payment Schedule

Invoicing and payments will be based on milestones completed. The proposed fee schedule covers all key aspects (design, materials and installation costs included) of the proposed additional scope of work.

#	Item	Cost
1	Bathrooms Including Reconfiguration for ADA Access, Bike Commuter Shower and Integrated Environmentally Friendly Products	\$ 20,166.10
2	Solar and IT Data Room HVAC and Infrastructure	\$ 10,282.00
3	Secure Stair and Secure Entry to First and Second Floor Offices	\$ 33,698.71
4	Doors, Skylights, Hardware and Finishes	\$ 5,348.00
5	Final Certificate of Occupancy and Final Punch-out Items Including: <ul style="list-style-type: none">• Completion of quality assurance checklist for all tenant improvements• Tile, counter tops and flooring, paint finishes sealed and complete• New HVAC output flow checked and operating properly• Finishes on stringer stairs and concrete treads sealed and complete• Glass stair enclosure sealed and security key card access door secure• Secure access to staff deck area (complete with seating, shade and landscaping) complete• Roof penetrations caulked and sealed• 4 new faux windows installed, sealed and finished on building exterior• New 1st floor doors spring hinges and locking capability• New 1st floor door key-pad hardware and finishes complete• Repair of any outstanding details	\$ 5,879.58
Total		\$ 75,374.39

Recommendation: Recommend approval of the First Agreement with 700 Fifth Avenue, LLC and the Amendment to the AIR Lease Agreement with 700 Fifth Avenue, LLC.



AIR COMMERCIAL REAL ESTATE ASSOCIATION

STANDARD INDUSTRIAL/COMMERCIAL SINGLE-TENANT LEASE -- GROSS

(DO NOT USE THIS FORM FOR MULTI-TENANT BUILDINGS)

1. Basic Provisions ("Basic Provisions").

1.1 **Parties:** This Lease ("Lease"), dated for reference purposes only September 8, 2014,
is made by and between 700 FIFTH AVENUE, LLC, a California limited liability company ("Lessor")
and MARIN CLEAN ENERGY, a not for profit governmental agency/joint powers authority ("Lessee"),
(collectively the "Parties," or individually a "Party").

1.2 **Premises:** That certain real property, including all improvements therein or to be provided by Lessor under the terms of this Lease,
and commonly known as 700 Fifth Avenue, San Rafael,
located in the County of Marin, State of California,
and generally described as (describe briefly the nature of the property and, if applicable, the "Project", if the property is located within a Project)
a two-story building consisting of approximately 10,710 rentable square feet and adjoining
parking lot currently containing approximately 35 parking spaces

1.3 **Term:** ten (10) years and no months ("Original Term") commencing March 9, 2015 ("Premises"). (See also Paragraph 2)
("Commencement Date") and ending March 8, 2025 ("Expiration Date").
(See also Paragraph 3)

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

1.5 **Base Rent:** \$19,890.00 per month ("Base Rent"), payable on the first
day of each month commencing fourth month after the Commencement Date. (See also Paragraph 4)

☒ If this box is checked, there are provisions in this Lease for the Base Rent to be adjusted. See Paragraph 50.

1.6 Base Rent and Other Monies Paid Upon Execution:

(a) **Base Rent:** \$19,890.00 for the period fourth month of the Original Term

(b) **Security Deposit:** \$44,877.00 ("Security Deposit"). (See also Paragraph 5)

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

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

(e) **Total Due Upon Execution of this Lease:** \$64,767.00

1.7 **Agreed Use:** General office for the conduct of Lessee's business, including public
assembly for meetings and storage (See also Paragraph 6)

1.8 **Insuring Party:** Lessor is the "Insuring Party". The annual estimated "Base Premium" is \$19,500.00 (See also
Paragraph 8) and 54.

1.9 Real Estate Brokers: (See also Paragraph 15 and 25)

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

☒ Cassidy Turley Commercial represents Lessor exclusively ("Lessor's Broker");

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☒ Cornish & Carey Commercial

represents Lessee exclusively ("Lessee's Broker"); or

☐

represents both Lessor and Lessee ("Dual Agency").

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

See Paragraph 60.

1.10 **Guarantor.** The obligations of the Lessee under this Lease are to be guaranteed by none

("Guarantor"). (See also Paragraph 37)

1.11 **Attachments.** Attached hereto are the following, all of which constitute a part of this Lease:☒ an Addendum consisting of Paragraphs 50 through 62 ;☒ a plot plan depicting the Premises (Exhibit A and A-1);☐ a current set of the Rules and Regulations;☒ a Work Letter (Exhibits B, B-1 and C);☐ other (specify): _____**2. Premises.**

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

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

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

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

(b) If such Capital Expenditure is not the result of the specific and unique use of the Premises by Lessee (such as, governmentally mandated seismic modifications), then Lessor shall pay for such Capital Expenditure and Lessee shall only be obligated to pay, each month during the remainder of the term of this Lease or any extension thereof, on the date that on which the Base Rent is due, an amount equal to 1/144th of the portion of such costs reasonably attributable to the Premises. Lessee shall pay interest on the balance but may prepay its obligation at any time. If, however, such Capital Expenditure is required during the last 2 years of this Lease or if Lessor reasonably determines that it is not economically feasible to pay

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its share thereof, Lessor shall have the option to terminate this Lease upon 90 days prior written notice to Lessee unless Lessee notifies Lessor, in writing, within 10 days after receipt of Lessor's termination notice that Lessee will pay for such Capital Expenditure. If Lessor does not elect to terminate, and fails to tender its share of any such Capital Expenditure, Lessee may advance such funds and deduct same, with interest, from Rent until Lessor's share of such costs have been fully paid. If Lessee is unable to finance Lessor's share, or if the balance of the Rent due and payable for the remainder of this Lease is not sufficient to fully reimburse Lessee on an offset basis, Lessee shall have the right to terminate this Lease upon 30 days written notice to Lessor.

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

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

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

3. Term.

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

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

3.3 Delay In Possession. Lessor agrees to use its best commercially reasonable efforts to deliver possession of the Premises to Lessee by the originally scheduled Commencement Date of March 9, 2015. If, despite said efforts, Lessor is unable to deliver possession by such date, Lessor shall not be subject to any liability therefor, nor shall such failure affect the validity of this Lease or change the Expiration Date. Lessee shall not, however, be obligated to pay Rent or perform its other obligations until Lessor delivers possession of the Premises and any period of rent abatement that Lessee would otherwise have enjoyed shall run from the date of delivery of possession and continue for a period equal to what Lessee would otherwise have enjoyed under the terms hereof, but minus any days of delay caused by the acts or omissions of Lessee. If possession is not delivered within 60 days after the originally scheduled Commencement Date of March 9, 2015, as the same may be extended under the terms of any Work Letter executed by Parties, Lessee may, at its option, by notice in writing within 10 days after the end of such 60 day period, cancel this Lease, in which event the Parties shall be discharged from all obligations hereunder. If such written notice is not received by Lessor within said 10 day period, Lessee's right to cancel shall terminate. If possession of the Premises is not delivered within 120 days after the originally scheduled Commencement Date of March 9, 2015, this Lease shall terminate unless other agreements are reached between Lessor and Lessee, in writing.

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

4. Rent.

4.1 Rent Defined. All monetary obligations of Lessee to Lessor under the terms of this Lease (except for the Security Deposit) are deemed to be rent ("Rent").

4.2 Payment. Lessee shall cause payment of Rent to be received by Lessor in lawful money of the United States, without offset or deduction (except as specifically permitted in this Lease), on or before the day on which it is due. All monetary amounts shall be rounded to the nearest whole dollar. In the event that any invoice prepared by Lessor is inaccurate such inaccuracy shall not constitute a waiver and Lessee shall be obligated to pay the amount set forth in this Lease. Rent for any period during the term hereof which is for less than one full calendar month shall be prorated based upon the actual number of days of said month. Payment of Rent shall be made to Lessor at its address stated herein or to such other persons or place as Lessor may from time to time designate in writing. Acceptance of a payment which is less than the amount then due shall not be a waiver of Lessor's rights to the balance of such Rent, regardless of Lessor's endorsement of any check so stating. In the event that any check, draft, or other instrument of payment given by Lessee to Lessor is dishonored for any reason, Lessee agrees to pay to Lessor the sum of \$25 in addition to any Late Charge and Lessor, at its option, may require all future payments to be made by Lessee to be by cashier's check. Payments will be applied first to accrued late charges and attorney's fees, second to accrued interest, then to Base Rent, Insurance and Real Property Taxes, and any remaining amount to any other outstanding charges or costs.

4.3 Association Fees. In addition to the Base Rent, Lessee shall pay to Lessor each month an amount equal to any owner's association or condominium fees levied or assessed against the Premises. Said monies shall be paid at the same time and in the same manner as the Base Rent.

5. Security Deposit. Lessee shall deposit with Lessor upon execution hereof the Security Deposit as security for Lessee's faithful performance of its obligations under this Lease. If Lessee fails to pay Rent, or otherwise Defaults under this Lease, Lessor may use, apply or retain all or any portion of said Security Deposit for the payment of any amount already due Lessor, for Rents which will be due in the future, and/ or to reimburse or compensate Lessor for any liability, expense, loss or damage which Lessor may suffer or incur by reason thereof. If Lessor uses or applies all or any portion of the Security Deposit, Lessee shall within 10 days after written request therefor deposit monies with Lessor sufficient to restore said Security

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Deposit to the full amount required by this Lease. If the Base Rent increases during the term of this Lease, Lessee shall, upon written request from Lessor, deposit additional monies with Lessor so that the total amount of the Security Deposit shall at all times bear the same proportion to the increased Base Rent as the initial Security Deposit bore to the Initial Base Rent. Should the Agreed Use be amended to accommodate a material change in the business of Lessee or to accommodate a sublessee or assignee, Lessor shall have the right to increase the Security Deposit to the extent necessary, in Lessor's reasonable judgment, to account for any increased wear and tear that the Premises may suffer as a result thereof. If a change in control of Lessee occurs during this Lease and following such change the financial condition of Lessee is, in Lessor's reasonable judgment, significantly reduced, Lessee shall deposit such additional monies with Lessor as shall be sufficient to cause the Security Deposit to be at a commercially reasonable level based on such change in financial condition. Lessor shall not be required to keep the Security Deposit separate from its general accounts. Within 90 days after the expiration or termination of this Lease, Lessor shall return that portion of the Security Deposit not used or applied by Lessor. No part of the Security Deposit shall be considered to be held in trust, to bear interest or to be prepayment for any monies to be paid by Lessee under this Lease.

6. Use.

6.1 **Use.** Lessee shall use and occupy the Premises only for the Agreed Use, or any other legal use which is reasonably comparable thereto, and for no other purpose. Lessee shall not use or permit the use of the Premises in a manner that is unlawful, creates damage, waste or a nuisance, or that disturbs occupants of or causes damage to neighboring premises or properties. Other than guide, signal and seeing eye dogs, Lessee shall not keep or allow in the Premises any pets, animals, birds, fish, or reptiles. Lessor shall not unreasonably withhold or delay its consent to any written request for a modification of the Agreed Use, so long as the same will not impair the structural integrity of the improvements on the Premises or the mechanical or electrical systems therein, and/or is not significantly more burdensome to the Premises. If Lessor elects to withhold consent, Lessor shall within 7 days after such request give written notification of same, which notice shall include an explanation of Lessor's objections to the change in the Agreed Use.

6.2 Hazardous Substances.

(a) **Reportable Uses Require Consent.** The term "Hazardous Substance" as used in this Lease shall mean any product, substance, or waste whose presence, use, manufacture, disposal, transportation, or release, either by itself or in combination with other materials expected to be on the Premises, is either: (i) potentially injurious to the public health, safety or welfare, the environment or the Premises, (ii) regulated or monitored by any governmental authority, or (iii) a basis for potential liability of Lessor to any governmental agency or third party under any applicable statute or common law theory. Hazardous Substances shall include, but not be limited to, hydrocarbons, petroleum, gasoline, and/or crude oil or any products, by-products or fractions thereof. Lessee shall not engage in any activity in or on the Premises which constitutes a Reportable Use of Hazardous Substances without the express prior written consent of Lessor and timely compliance (at Lessee's expense) with all Applicable Requirements. "Reportable Use" shall mean (i) the installation or use of any above or below ground storage tank, (ii) the generation, possession, storage, use, transportation, or disposal of a Hazardous Substance that requires a permit from, or with respect to which a report, notice, registration or business plan is required to be filed with, any governmental authority, and/or (iii) the presence at the Premises of a Hazardous Substance with respect to which any Applicable Requirements requires that a notice be given to persons entering or occupying the Premises or neighboring properties. Notwithstanding the foregoing, Lessee may use any ordinary and customary materials reasonably required to be used in the normal course of the Agreed Use, ordinary office supplies (copier toner, liquid paper, glue, etc.) and common household cleaning materials, so long as such use is in compliance with all Applicable Requirements, is not a Reportable Use, and does not expose the Premises or neighboring property to any meaningful risk of contamination or damage or expose Lessor to any liability therefor. In addition, Lessor may condition its consent to any Reportable Use upon receiving such additional assurances as Lessor reasonably deems necessary to protect itself, the public, the Premises and/or the environment against damage, contamination, injury and/or liability, including, but not limited to, the installation (and removal on or before Lease expiration or termination) of protective modifications (such as concrete encasements) and/or increasing the Security Deposit.

(b) **Duty to Inform Lessor.** If Lessee knows, or has reasonable cause to believe, that a Hazardous Substance has come to be located in, on, under or about the Premises, other than as previously consented to by Lessor, Lessee shall immediately give written notice of such fact to Lessor, and provide Lessor with a copy of any report, notice, claim or other documentation which it has concerning the presence of such Hazardous Substance.

(c) **Lessee Remediation.** Lessee shall not cause or permit any Hazardous Substance to be spilled or released in, on, under, or about the Premises (including through the plumbing or sanitary sewer system) and shall promptly, at Lessee's expense, comply with all Applicable Requirements and take all investigatory and/or remedial action reasonably recommended, whether or not formally ordered or required, for the cleanup of any contamination of, and for the maintenance, security and/or monitoring of the Premises or neighboring properties, that was caused or materially contributed to by Lessee, or pertaining to or involving any Hazardous Substance brought onto the Premises during the term of this Lease, by or for Lessee, or any third party.

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

(e) **Lessor Indemnification.** Lessor and its successors and assigns shall indemnify, defend, reimburse and hold Lessee, its employees and lenders, harmless from and against any and all environmental damages, including the cost of remediation, which result from Hazardous Substances which existed on the Premises prior to Lessee's occupancy or which are caused by the gross negligence or willful misconduct of Lessor, its agents or employees. Lessor's obligations, as and when required by the Applicable Requirements, shall include, but not be limited to, the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease.

(f) **Investigations and Remediations.** Lessor shall retain the responsibility and pay for any investigations or remediation measures required by governmental entities having jurisdiction with respect to the existence of Hazardous Substances on the Premises prior to Lessee's occupancy, unless such remediation measure is required as a result of Lessee's use (including "Alterations", as defined in paragraph 7.3(a) below) of the Premises, in which event Lessee shall be responsible for such payment. Lessee shall cooperate fully in any such activities at the request of Lessor, including allowing Lessor and Lessor's agents to have reasonable access to the Premises at reasonable times in order to carry out Lessor's investigative and remedial responsibilities.

(g) **Lessor Termination Option.** If a Hazardous Substance Condition (see Paragraph 9.1(e)) occurs during the term of this Lease, unless Lessee is legally responsible therefor (in which case Lessee shall make the investigation and remediation thereof required by the Applicable

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

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

6.4 Inspection; Compliance. Lessor and Lessor's "Lender" (as defined in Paragraph 30) and consultants shall have the right to enter into Premises at any time, in the case of an emergency, and otherwise at reasonable times after reasonable notice, for the purpose of inspecting the condition of the Premises and for verifying compliance by Lessee with this Lease. The cost of any such inspections shall be paid by Lessor, unless a violation of Applicable Requirements, or a Hazardous Substance Condition (see paragraph 9.1) is found to exist or be imminent, or the inspection is requested or ordered by a governmental authority. In such case, Lessee shall upon request reimburse Lessor for the cost of such inspection, so long as such inspection is reasonably related to the violation or contamination. In addition, Lessee shall provide copies of all relevant material safety data sheets (MSDS) to Lessor within 10 days of the receipt of a written request therefor.

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

7.1 Lessee's Obligations.

(a) **In General.** Subject to the provisions of Paragraph 2.2 (Condition), 2.3 (Compliance), 6.3 (Lessee's Compliance with Applicable Requirements), 7.2 (Lessor's Obligations), 9 (Damage or Destruction), and 14 (Condemnation), Lessee shall, at Lessee's sole expense, keep the Premises, Utility Installations (intended for Lessee's exclusive use, no matter where located), and Alterations in good order, condition and repair (whether or not the portion of the Premises requiring repairs, or the means of repairing the same, are reasonably or readily accessible to Lessee, and whether or not the need for such repairs occurs as a result of Lessee's use, any prior use, the elements or the age of such portion of the Premises), including, but not limited to, all equipment or facilities, such as plumbing, HVAC equipment, electrical, lighting facilities, boilers, pressure vessels, fire protection system, fixtures, walls (interior and exterior), ceilings, floors, windows, doors, plate glass, skylights, landscaping, driveways, parking lots, fences, retaining walls, signs, sidewalks and parkways located in, on, or adjacent to the Premises. Lessee is also responsible for keeping the roof and roof drainage clean and free of debris. Lessor shall keep the surface and structural elements of the roof, foundations, and bearing walls in good repair (see paragraph 7.2). Lessee, in keeping the Premises in good order, condition and repair, shall exercise and perform good maintenance practices, specifically including the procurement and maintenance of the service contracts required by Paragraph 7.1(b) below. Lessee's obligations shall include restorations, replacements or renewals when necessary to keep the Premises and all improvements thereon or a part thereof in good order, condition and state of repair. Lessee shall, during the term of this Lease, keep the exterior appearance of the Building in a first-class condition (including, e.g. graffiti removal) consistent with the exterior appearance of other similar facilities of comparable age and size in the vicinity, including, when necessary, the exterior repainting of the Building.

(b) **Service Contracts.** Lessee shall, at Lessee's sole expense, procure and maintain contracts, with copies to Lessor, in customary form and substance for, and with contractors specializing and experienced in the maintenance of the following equipment and improvements, if any, if and when installed on the Premises: (i) HVAC equipment, (ii) boiler, and pressure vessels, (iii) fire extinguishing systems, including fire alarm and/or smoke detection, (iv) landscaping and irrigation systems, and (v) clarifiers. However, Lessor reserves the right, upon notice to Lessee, to procure and maintain any or all of such service contracts, and Lessee shall reimburse Lessor, upon demand, for the cost thereof. See Paragraph 53.

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

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

7.2 Lessor's Obligations. Subject to the provisions of Paragraphs 2.2 (Condition), 2.3 (Compliance), 9 (Damage or Destruction) and 14 (Condemnation), it is intended by the Parties hereto that Lessor have no obligation, in any manner whatsoever, to repair and maintain the Premises, or the equipment therein, all of which obligations are intended to be that of the Lessee, except for the surface and structural elements of the roof, foundations and bearing walls, the repair of which shall be the responsibility of Lessor upon receipt of written notice that such a repair is necessary. It is the intention of the Parties that the terms of this Lease govern the respective obligations of the Parties as to maintenance and repair of the Premises, and they expressly waive the benefit of any statute now or hereafter in effect to the extent it is inconsistent with the terms of this Lease.

7.3 Utility Installations; Trade Fixtures; Alterations.

(a) **Definitions.** The term "Utility Installations" refers to all floor and window coverings, air and/or vacuum lines, power panels,

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electrical distribution, security and fire protection systems, communication cabling, lighting fixtures, HVAC equipment, plumbing, and fencing in or on the Premises. The term "**Trade Fixtures**" shall mean Lessee's machinery and equipment that can be removed without doing material damage to the Premises. The term "**Alterations**" shall mean any modification of the improvements, other than Utility Installations or Trade Fixtures, whether by addition or deletion. "**Lessee Owned Alterations and/or Utility Installations**" are defined as Alterations and/or Utility Installations made by Lessee that are not yet owned by Lessor pursuant to Paragraph 7.4(a).

(b) **Consent.** Lessee shall not make any Alterations or Utility Installations to the Premises without Lessor's prior written consent. Lessee may, however, make non-structural Alterations or Utility Installations to the interior of the Premises (excluding the roof) without such consent but upon notice to Lessor, as long as they are not visible from the outside, do not involve puncturing, relocating or removing the roof or any existing walls, will not affect the electrical, plumbing, HVAC, and/or life safety systems, and the cumulative cost thereof during this Lease as extended does not exceed a sum equal to 3 month's Base Rent in the aggregate or a sum equal to one month's Base Rent in any one year. Notwithstanding the foregoing, Lessee shall not make or permit any roof penetrations and/or install anything on the roof without the prior written approval of Lessor. Lessor may, as a precondition to granting such approval, require Lessee to utilize a contractor chosen and/or approved by Lessor. Any Alterations or Utility Installations that Lessee shall desire to make and which require the consent of the Lessor shall be presented to Lessor in written form with detailed plans. Consent shall be deemed conditioned upon Lessee's: (i) acquiring all applicable governmental permits, (ii) furnishing Lessor with copies of both the permits and the plans and specifications prior to commencement of the work, and (iii) compliance with all conditions of said permits and other Applicable Requirements in a prompt and expeditious manner. Any Alterations or Utility Installations shall be performed in a workmanlike manner with good and sufficient materials. Lessee shall promptly upon completion furnish Lessor with as-built plans and specifications. For work which costs an amount in excess of one month's Base Rent, Lessor may condition its consent upon Lessee providing a lien and completion bond in an amount equal to 150% of the estimated cost of such Alteration or Utility Installation and/or upon Lessee's posting an additional Security Deposit with Lessor.

(c) **Liens; Bonds.** Lessee shall pay, when due, all claims for labor or materials furnished or alleged to have been furnished to or for Lessee at or for use on the Premises, which claims are or may be secured by any mechanic's or materialmen's lien against the Premises or any interest therein. Lessee shall give Lessor not less than 10 days notice prior to the commencement of any work in, on or about the Premises, and Lessor shall have the right to post notices of non-responsibility. If Lessee shall contest the validity of any such lien, claim or demand, then Lessee shall, at its sole expense defend and protect itself, Lessor and the Premises against the same and shall pay and satisfy any such adverse judgment that may be rendered thereon before the enforcement thereof. If Lessor shall require, Lessee shall furnish a surety bond in an amount equal to 150% of the amount of such contested lien, claim or demand, indemnifying Lessor against liability for the same. If Lessor elects to participate in any such action, Lessee shall pay Lessor's attorneys' fees and costs.

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

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

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

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

8. **Insurance; Indemnity.**

8.1 **Payment of Premium Increases.**

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

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

8.2 **Liability Insurance.**

(a) **Carried by Lessee.** Lessee shall obtain and keep in force a Commercial General Liability policy of insurance protecting Lessee and Lessor as an additional insured against claims for bodily injury, personal injury and property damage based upon or arising out of the ownership, use, occupancy or maintenance of the Premises and all areas appurtenant thereto. Such insurance shall be on an occurrence basis providing single limit coverage in an amount not less than \$1,000,000 per occurrence with an annual aggregate of not less than \$2,000,000. Lessee shall add Lessor as

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an additional insured by means of an endorsement at least as broad as the Insurance Service Organization's "Additional Insured-Managers or Lessors of Premises" Endorsement. The policy shall not contain any intra-insured exclusions as between insured persons or organizations, but shall include coverage for liability assumed under this Lease as an "insured contract" for the performance of Lessee's indemnity obligations under this Lease. The limits of said insurance shall not, however, limit the liability of Lessee nor relieve Lessee of any obligation hereunder. Lessee shall provide an endorsement on its liability policy(ies) which provides that its insurance shall be primary to and not contributory with any similar insurance carried by Lessor, whose insurance shall be considered excess insurance only.

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

8.3 Property Insurance - Building, Improvements and Rental Value.

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

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

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

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

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

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

(c) **Worker's Compensation Insurance.** Lessee shall obtain and maintain Worker's Compensation Insurance in such amount as may be required by Applicable Requirements.

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

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

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

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

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

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pursuant to the provisions of paragraph 8.

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

9. Damage or Destruction.

9.1 Definitions.

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

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

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

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

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

9.2 Partial Damage - Insured Loss. If a Premises Partial Damage that is an Insured Loss occurs, then Lessor shall, at Lessor's expense, repair such damage (but not Lessee's Trade Fixtures or Lessee Owned Alterations and Utility Installations) as soon as reasonably possible and this Lease shall continue in full force and effect; provided, however, that Lessee shall, at Lessor's election, make the repair of any damage or destruction the total cost to repair of which is \$10,000 or less, and, in such event, Lessor shall make any applicable insurance proceeds available to Lessee on a reasonable basis for that purpose. Notwithstanding the foregoing, if the required insurance was not in force or the insurance proceeds are not sufficient to effect such repair, the Insuring Party shall promptly contribute the shortage in proceeds (except as to the deductible which is Lessee's responsibility) as and when required to complete said repairs. In the event, however, such shortage was due to the fact that, by reason of the unique nature of the improvements, full replacement cost insurance coverage was not commercially reasonable and available, Lessor shall have no obligation to pay for the shortage in insurance proceeds or to fully restore the unique aspects of the Premises unless Lessee provides Lessor with the funds to cover same, or adequate assurance thereof, within 10 days following receipt of written notice of such shortage and request therefor. If Lessor receives said funds or adequate assurance thereof within said 10 day period, the party responsible for making the repairs shall complete them as soon as reasonably possible and this Lease shall remain in full force and effect. If such funds or assurance are not received, Lessor may nevertheless elect by written notice to Lessee within 10 days thereafter to: (i) make such restoration and repair as is commercially reasonable with Lessor paying any shortage in proceeds, in which case this Lease shall remain in full force and effect, or (ii) have this Lease terminate 30 days thereafter. Lessee shall not be entitled to reimbursement of any funds contributed by Lessee to repair any such damage or destruction. Premises Partial Damage due to flood or earthquake shall be subject to Paragraph 9.3, notwithstanding that there may be some insurance coverage, but the net proceeds of any such insurance shall be made available for the repairs if made by either Party.

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

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

9.5 Damage Near End of Term. If at any time during the last 6 months of this Lease there is damage for which the cost to repair exceeds one month's Base Rent, whether or not an Insured Loss, Lessor may terminate this Lease effective 60 days following the date of occurrence of such damage by giving a written termination notice to Lessee within 30 days after the date of occurrence of such damage. Notwithstanding the foregoing, if Lessee at that time has an exercisable option to extend this Lease or to purchase the Premises, then Lessee may preserve this Lease by, (a) exercising such option and (b) providing Lessor with any shortage in insurance proceeds (or adequate assurance thereof) needed to make the repairs on or before the earlier of (i) the date which is 10 days after Lessee's receipt of Lessor's written notice purporting to terminate this Lease, or (ii) the day prior to the date upon which such option expires. If Lessee duly exercises such option during such period and provides Lessor with funds (or adequate assurance thereof) to cover any shortage in insurance proceeds, Lessor shall, at Lessor's commercially reasonable expense, repair such damage as soon as reasonably possible and this Lease shall continue in full force and effect. If Lessee fails to exercise such option and provide such funds or assurance during such period, then this Lease shall terminate on the date specified in the termination notice and Lessee's option shall be extinguished.

9.6 Abatement of Rent; Lessee's Remedies.

(a) **Abatement.** In the event of Premises Partial Damage or Premises Total Destruction or a Hazardous Substance Condition for

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which Lessee is not responsible under this Lease, the Rent payable by Lessee for the period required for the repair, remediation or restoration of such damage shall be abated in proportion to the degree to which Lessee's use of the Premises is impaired, but not to exceed the proceeds received from the Rental Value Insurance. All other obligations of Lessee hereunder shall be performed by Lessee, and Lessor shall have no liability for any such damage, destruction, remediation, repair or restoration except as provided herein.

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

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

10. Real Property Taxes.

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

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(a) **Payment of Taxes.** Lessor shall pay the Real Property Taxes applicable to the Premises provided, however, that Lessee shall pay to Lessor the amount, if any, by which Real Property Taxes applicable to the Premises increase over the fiscal tax year during which the Commencement Date Occurs (2014-2015) ("Tax Increase"). Payment of any such Tax Increase shall be made by Lessee to Lessor within 30 days after receipt of Lessor's written statement setting forth the amount due and computation thereof. If any such taxes shall cover any period of time prior to or after the expiration or termination of this Lease, Lessee's share of such taxes shall be prorated to cover only that portion of the tax bill applicable to the period that this Lease is in effect. In the event Lessee incurs a late charge on any Rent payment, Lessor may estimate the current Real Property Taxes, and require that the Tax Increase be paid in advance to Lessor by Lessee monthly in advance with the payment of the Base Rent. Such monthly payment shall be an amount equal to the amount of the estimated installment of the Tax Increase divided by the number of months remaining before the month in which said installment becomes delinquent. When the actual amount of the applicable Tax Increase is known, the amount of such equal monthly advance payments shall be adjusted as required to provide the funds needed to pay the applicable Tax Increase. If the amount collected by Lessor is insufficient to pay the Tax Increase when due, Lessee shall pay Lessor, upon demand, such additional sums as are necessary to pay such obligations. Advance payments may be intermingled with other moneys of Lessor and shall not bear interest. In the event of a Breach by Lessee in the performance of its obligations under this Lease, then any such advance payments may be treated by Lessor as an additional Security Deposit.

(b) **Additional Improvements.** Notwithstanding anything to the contrary in this Paragraph 10.2, Lessee shall pay to Lessor upon demand therefor the entirety of any increase in Real Property Taxes assessed by reason of Alterations or Utility Installations placed upon the Premises by Lessee or at Lessee's request or by reason of any alterations or improvements to the Premises made by Lessor subsequent to the execution of this Lease by the Parties.

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

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

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

12. Assignment and Subletting.

12.1 Lessor's Consent Required.

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

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

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

(d) An assignment or subletting without consent shall, at Lessor's option, be a Default curable after notice per Paragraph 13.1(c), or a noncurable Breach without the necessity of any notice and grace period. If Lessor elects to treat such unapproved assignment or subletting as a

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noncurable Breach, Lessor may either: (i) terminate this Lease, or (ii) upon 30 days written notice, increase the monthly Base Rent to 110% of the Base Rent then in effect. Further, in the event of such Breach and rental adjustment, (i) the purchase price of any option to purchase the Premises held by Lessee shall be subject to similar adjustment to 110% of the price previously in effect, and (ii) all fixed and non-fixed rental adjustments scheduled during the remainder of the Lease term shall be increased to 110% of the scheduled adjusted rent.

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

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

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

12.2 Terms and Conditions Applicable to Assignment and Subletting.

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

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

(c) Lessor's consent to any assignment or subletting shall not constitute a consent to any subsequent assignment or subletting.

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

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

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

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

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

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

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

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

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

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

13. Default; Breach; Remedies.

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

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

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

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

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

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

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

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

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

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

(a) Terminate Lessee's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Lessee shall immediately surrender possession to Lessor. In such event Lessor shall be entitled to recover from Lessee: (i) the unpaid Rent which had been earned at the time of termination; (ii) the worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that the Lessee proves could have been reasonably avoided; (iii) the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that the Lessee proves could be reasonably avoided; and (iv) any other amount necessary to compensate Lessor for all the detriment proximately caused by the Lessee's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including but not limited to the cost of recovering possession of the Premises, expenses of reletting, including necessary renovation and alteration of the Premises, reasonable attorneys' fees, and that portion of any leasing commission paid by Lessor in connection with this Lease applicable to the unexpired term of this Lease. The worth at the time of award of the amount referred to in provision (iii) of the immediately preceding sentence shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of the District within which the Premises are located at the time of award plus one percent. Efforts by Lessor to mitigate damages caused by Lessee's Breach of this Lease shall not waive Lessor's right to recover damages under Paragraph 12. If termination of this Lease is obtained through the provisional remedy of unlawful detainer, Lessor shall have the right to recover in such proceeding any unpaid Rent and damages as are recoverable therein, or Lessor may reserve the right to recover all or any part thereof in a separate suit. If a notice and grace period required under Paragraph 13.1 was not previously given, a notice to pay rent or quit, or to perform or quit given to Lessee under the unlawful detainer statute shall also constitute the notice required by Paragraph 13.1. In such case, the applicable grace period required by Paragraph 13.1 and the unlawful detainer statute shall run concurrently, and the failure of Lessee to cure the Default within the greater of the two such grace periods shall constitute both an unlawful detainer and a Breach of this Lease entitling Lessor to the remedies provided for in this Lease and/or by said statute.

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

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

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

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

13.5 Interest. Any monetary payment due Lessor hereunder, other than late charges, not received by Lessor, when due as to scheduled payments (such as Base Rent) or within 30 days following the date on which it was due for non-scheduled payment, shall bear interest from the date when due, as to scheduled payments, or the 31st day after it was due as to non-scheduled payments. The interest ("Interest") charged shall be computed at the rate of 10% per annum but shall not exceed the maximum rate allowed by law. Interest is payable in addition to the potential late charge provided for in Paragraph 13.4.

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13.6 Breach by Lessor.

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

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

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

15. Brokerage Fees.

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

15.2 **Assumption of Obligations.** Any buyer or transferee of Lessor's interest in this Lease shall be deemed to have assumed Lessor's obligation hereunder. Brokers shall be third party beneficiaries of the provisions of Paragraphs 1.0, 15, 22 and 31. If Lessor fails to pay to Brokers any amounts due as and for brokerage fees pertaining to this Lease when due, then such amounts shall accrue interest. In addition, if Lessor fails to pay any amounts to Lessee's Broker when due, Lessee's Broker may send written notice to Lessor and Lessee of such failure and if Lessor fails to pay such amounts within 10 days after said notice, Lessee shall pay said monies to its Broker and offset such amounts against Rent. In addition, Lessee's Broker shall be deemed to be a third party beneficiary of any commission agreement entered into by and/or between Lessor and Lessor's Broker for the limited purpose of collecting any brokerage fee owed.

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

16. Estoppel Certificates.

(a) Each Party (as "Responding Party") shall within 10 days after written notice from the other Party (the "Requesting Party") execute, acknowledge and deliver to the Requesting Party a statement in writing in form similar to the then most current "Estoppel Certificate" form published by the AIR Commercial Real Estate Association, plus such additional information, confirmation and/or statements as may be reasonably requested by the Requesting Party.

(b) If the Responding Party shall fail to execute or deliver the Estoppel Certificate within such 10 day period, the Requesting Party may execute an Estoppel Certificate stating that: (i) the Lease is in full force and effect without modification except as may be represented by the Requesting Party, (ii) there are no uncured defaults in the Requesting Party's performance, and (iii) if Lessor is the Requesting Party, not more than one month's rent has been paid in advance. Prospective purchasers and encumbrancers may rely upon the Requesting Party's Estoppel Certificate, and the Responding Party shall be estopped from denying the truth of the facts contained in said Certificate.

(c) If Lessor desires to finance, refinance, or sell the Premises, or any part thereof, Lessee and all Guarantors shall within 10 days after written notice from Lessor deliver to any potential lender or purchaser designated by Lessor such financial statements as may be reasonably required by such lender or purchaser, including but not limited to Lessee's financial statements for the past 3 years. All such financial statements shall be received by Lessor and such lender or purchaser in confidence and shall be used only for the purposes herein set forth.

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

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

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

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

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of Lessor with respect to this Lease, and shall not seek recourse against Lessor's partners, members, directors, officers or shareholders, or any of their personal assets for such satisfaction.

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

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

23. **Notices.**

23.1 **Notice Requirements.** All notices required or permitted by this Lease or applicable law shall be in writing and may be delivered in person (by hand or by courier) or may be sent by regular, certified or registered mail or U.S. Postal Service Express Mail, with postage prepaid, or by facsimile transmission, and shall be deemed sufficiently given if served in a manner specified in this Paragraph 23. The addresses noted adjacent to a Party's signature on this Lease shall be that Party's address for delivery or mailing of notices. Either Party may by written notice to the other specify a different address for notice, except that upon Lessee's taking possession of the Premises, the Premises shall constitute Lessee's address for notice. A copy of all notices to Lessor shall be concurrently transmitted to such party or parties at such addresses as Lessor may from time to time hereafter designate in writing.

23.2 **Date of Notice.** Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, the postmark thereon. If sent by regular mail the notice shall be deemed given 72 hours after the same is addressed as required herein and mailed with postage prepaid. Notices delivered by United States Express Mail or overnight courier that guarantees next day delivery shall be deemed given 24 hours after delivery of the same to the Postal Service or courier. Notices transmitted by facsimile transmission or similar means shall be deemed delivered upon telephone confirmation of receipt (confirmation report from fax machine is sufficient), provided a copy is also delivered via delivery or mail. If notice is received on a Saturday, Sunday or legal holiday, it shall be deemed received on the next business day.

24. **Waivers.**

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

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

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

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

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

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

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

(iii) **Agent Representing Both Lessor and Lessee.** A real estate agent, either acting directly or through one or more associate licenses, can legally be the agent of both the Lessor and the Lessee in a transaction, but only with the knowledge and consent of both the Lessor and the Lessee. In a dual agency situation, the agent has the following affirmative obligations to both the Lessor and the Lessee: a. A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either Lessor or the Lessee. b. Other duties to the Lessor and the Lessee as stated above in subparagraphs (i) or (ii). In representing both Lessor and Lessee, the agent may not without the express permission of the respective Party, disclose to the other Party that the Lessor will accept rent in an amount less than that indicated in the listing or that the Lessee is willing to pay a higher rent than that offered. The above duties of the agent in a real estate transaction do not relieve a Lessor or Lessee from the responsibility to protect their own interests. Lessor and Lessee should carefully read all agreements to assure that they adequately express their understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36. **Consents.** Except as otherwise provided herein, wherever in this Lease the consent of a Party is required to an act by or for the other Party, such consent shall not be unreasonably withheld or delayed. Lessor's actual reasonable costs and expenses (including but not limited to architects', attorneys', engineers' and other consultants' fees) incurred in the consideration of, or response to, a request by Lessee for any Lessor consent, including but not limited to consents to an assignment, a subletting or the presence or use of a Hazardous Substance, shall be paid by Lessee upon receipt of an invoice and supporting documentation therefor. Lessor's consent to any act, assignment or subletting shall not constitute an

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acknowledgment that no Default or Breach by Lessee of this Lease exists, nor shall such consent be deemed a waiver of any then existing Default or Breach, except as may be otherwise specifically stated in writing by Lessor at the time of such consent. The failure to specify herein any particular condition to Lessor's consent shall not preclude the imposition by Lessor at the time of consent of such further or other conditions as are then reasonable with reference to the particular matter for which consent is being given. In the event that either Party disagrees with any determination made by the other hereunder and reasonably requests the reasons for such determination, the determining party shall furnish its reasons in writing and in reasonable detail within 10 business days following such request.

37. Guarantor.

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

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

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

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

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

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

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

39.4 Effect of Default on Options.

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

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

(c) An Option shall terminate and be of no further force or effect, notwithstanding Lessee's due and timely exercise of the Option, if, after such exercise and prior to the commencement of the extended term or completion of the purchase, (i) Lessee fails to pay Rent for a period of 30 days after such Rent becomes due (without any necessity of Lessor to give notice thereof), or (ii) if Lessee commits a Breach of this Lease.

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

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

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

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

44. Authority; Multiple Parties; Execution.

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

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

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

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

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

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

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

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

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

LESSOR AND LESSEE HAVE CAREFULLY READ AND REVIEWED THIS LEASE AND EACH TERM AND PROVISION CONTAINED HEREIN, AND BY THE EXECUTION OF THIS LEASE SHOW THEIR INFORMED AND VOLUNTARY CONSENT THERETO. THE PARTIES HEREBY AGREE THAT, AT THE TIME THIS LEASE IS EXECUTED, THE TERMS OF THIS LEASE ARE COMMERCIALY REASONABLE AND EFFECTUATE THE INTENT AND PURPOSE OF LESSOR AND LESSEE WITH RESPECT TO THE PREMISES.

ATTENTION: NO REPRESENTATION OR RECOMMENDATION IS MADE BY THE AIR COMMERCIAL REAL ESTATE ASSOCIATION OR BY ANY BROKER AS TO THE LEGAL SUFFICIENCY, LEGAL EFFECT, OR TAX CONSEQUENCES OF THIS LEASE OR THE TRANSACTION TO WHICH IT RELATES. THE PARTIES ARE URGED TO:

1. SEEK ADVICE OF COUNSEL AS TO THE LEGAL AND TAX CONSEQUENCES OF THIS LEASE.
2. RETAIN APPROPRIATE CONSULTANTS TO REVIEW AND INVESTIGATE THE CONDITION OF THE PREMISES. SAID INVESTIGATION SHOULD INCLUDE BUT NOT BE LIMITED TO: THE POSSIBLE PRESENCE OF HAZARDOUS SUBSTANCES, THE ZONING OF THE PREMISES, THE STRUCTURAL INTEGRITY, THE CONDITION OF THE ROOF AND OPERATING SYSTEMS, AND THE SUITABILITY OF THE PREMISES FOR LESSEE'S INTENDED USE.

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

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

Executed at: Franklin, IN
 On: September 11, 2014
 By LESSOR:
700 FIFTH AVENUE, LLC.

Executed at: 781 Lincoln Avenue, Suite 320, San Rafael CA 94901
 On: September 10, 2014
 By LESSEE:
MARIN CLEAN ENERGY

By: Ted B. Shuel
 Name Printed: Ted B. Shuel
 Title: Manager

By: Dawn Weisz
 Name Printed: Dawn Weisz
 Title: Executive Officer

By: _____
 Name Printed: _____
 Title: _____
 Address: PO Box 573
FRANKLIN, IN 46131
 Telephone: (415) 516-0926
 Facsimile: () _____
 Email: TED.SHUEL@GMAIL.COM
 Email: TSHUEL1@COMCAST.NET
 Federal ID No. 20-1147806

By: Damon Connolly
 Name Printed: Damon Connolly
 Title: Chairman of the Board
 Address: 781 Lincoln Avenue, Suite 320
San Rafael, CA 94901
 Telephone: (415) 464-6010
 Facsimile: (415) 459-8095
 Email: dweisz@mccleanenergy.org
 Email: damon@damonconnollylaw.com
 Federal ID No. 26-4300997

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ADDENDUM TO LEASE

The following paragraphs shall constitute a part of the Standard Industrial/Commercial Single-Tenant Lease – Gross dated as of September 8, 2014, being entered into concurrently between **700 FIFTH AVENUE, LLC**, a California limited liability company, as Lessor, and **MARIN CLEAN ENERGY**, a not for profit governmental agency, joint powers authority, as Lessee, covering certain premises located at 700 Fifth Avenue, San Rafael, California. The provisions of this Addendum shall modify any inconsistent provisions in the Lease.

50. **Base Rent.** The monthly Base Rent payable by Lessee to Lessor shall be as follows:

Months 1 through 3	\$0
Months 4 through 12	\$19,890
Months 13 through 24	\$26,790
Months 25 through 36	\$34,768
Months 37 through 48	\$35,812
Months 49 through 60	\$36,886
Months 61 through 72	\$38,361
Months 73 through 84	\$39,896
Months 85 through 96	\$41,492
Months 97 through 108	\$43,151
Months 109 through 120	\$44,877

51. **Commencement Date Adjustment.** The Commencement Date shall be (and Lessee agrees to occupy the Premises) on the date that Lessor substantially completes the Tenant Improvements and Additional Tenant Improvements (collectively, "Lessor's Work") and delivers the Premises to Lessee. In the event Lessor is unable to substantially complete Lessor's Work and the Additional Tenant Improvements and deliver the Premises to Lessee by the scheduled Commencement Date of March 9, 2015, the following provisions shall apply, notwithstanding anything to the contrary in the Lease:

(a) Lessee agrees to take occupancy of the Premises prior to completion of the following improvements:

(i) the Marin Municipal Water District main being installed and operational in order to connect to the fire sprinklers;

(ii) the new exterior Building elevator to be installed under Section 9.a. of the Work Letter Agreement being installed and operational; and

(iii) the new fence, parking lot repairs and landscaping as permitted by paragraph 9 of the Work Letter Agreement to accommodate installation of the Building elevator or connection to the new water main for the sprinklers.

(b) Subject to Paragraph 51 (a) above, should Lessor not deliver possession of the Premises to Lessee by March 9, 2015, Lessor shall pay to Lessee the sum of \$775 per calendar day for each day after March 9, 2015 until possession of the Premises is delivered to Lessee. Lessee's failure to timely approve the preliminary Construction Drawings in accordance with paragraph 2 of the Work Letter Agreement or Lessee's failure to approve the final Construction Drawings by the fifty-second (52nd) day after execution of this Lease shall be added on a day for day basis to the March 9, 2015 delivery date and shall not be subject to a late delivery charge.

BROKER:

Cassidy Turley Commercial

BROKER:

Cornish & Carey Commercial

Att: STEVE LEONARD
Title: VICE PRESIDENT
Address: 181 LINCOLN AVE SUITE 100
SAN RAFAEL, CA 94901
Telephone: (415) 722-1080
Facsimile: (415) 925-2128
Email: SLEONARD@CBT.COM
Federal ID No.
Broker/Agent DRE License #: 00 90 96 04

Att: Kevin Delehanty
Title: Senior Vice President
Address: One Bush Street
San Francisco, CA 94104
Telephone: (415) 445-5132
Facsimile: (415) 445-8886
Email: kdelehanty@newmarkccarey.com
Federal ID No.
Broker/Agent DRE License #: 00843404

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

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(c) Should Lessor not deliver possession of the Premises to Lessee by March 9, 2015 due to unavoidable delays in obtaining permits for Lessor's Work (a "Permit Delay"), Lessor shall pay Lessee the sum of \$387.50 per calendar day for each day after March 9, 2015 until possession of the Premises is delivered to Lessee. For purposes of this Paragraph 51 (c) a "Permit Delay" can only occur if it is solely due to an unreasonable delay despite Lessor's diligent prosecution of best commercially reasonable efforts in attaining the permits required to perform Lessor's Work. The permits Lessor will be required to apply for are: (i) basic building permit for Lessor's Work, (ii) fire department permit, (iii) State of California permit to operate the new exterior elevator, (iv) Planning Department approval for exterior work on the Building, and (v) application to the Marin Municipal Water District to install a dedicated fire sprinkler service to connect to the fire sprinklers in the Premises. The actions or conduct of the Lessor or its contractors and/or a lack of timely response to requests from a public agency by the Lessor or its contractors shall not constitute a Permit Delay. To qualify as a Permit Delay, evidence of the reason for the Permit Delay must be provided in writing or by email by Lessor to Lessee within two (2) business days after Lessor becomes aware of a circumstance which Lessor reasonably and in good faith believes constitutes a Permit Delay.

(d) The amounts to be paid by Lessor to Lessee under this Paragraph 51, are in the opinions of Lessor and Lessee reasonable sums considering all of the circumstances existing on the Effective Date, including the relationships of the respective sums to the harm that Lessee could reasonably anticipate if possession of the Premises is not delivered to Lessee by March 9, 2015 and the anticipation that proof of actual damages would be costly or inconvenient. By placing their initials below, Lessor and Lessee specifically confirm the accuracy of the statements made in this subparagraph 51(d) and the fact that Lessor and Lessee were each represented by counsel who explained the consequences of this liquidated damages provision at the time this Lease was made.

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Lessor's Initials

DW/DMC

Lessee's Initials

(e) In the event that the Building or Premises are damaged by a "major casualty" prior to the Commencement Date, which would require longer than sixty (60) days to repair, either Landlord or Tenant may terminate this Lease by notice to the other within ten (10) days from the date Landlord notifies Tenant (which notice shall be given within ten (10) business days from the date of the "major casualty") of the estimated time to repair the damage from the "major casualty" and both parties shall be released from any further liability hereunder..

In the event the Commencement Date is delayed, the Expiration Date shall be adjusted accordingly. Promptly after the Original Term commences, Lessor and Lessee shall execute a further addendum to this Lease setting forth the actual Commencement Date and Expiration Date.

52. Option to Extend.

(a) Lessor hereby grants to Lessee one (1) option (the "Extension Option") to extend the Original Term of the Lease for an additional period of five (5) years each (the "Option Term") on the same terms, covenants and conditions as provided for in the Lease during the Original Term, except for Base Rent which shall be the greater of (i) 104% of the Base Rent payable by Lessee during the last year of the then current Term, or (b) the "fair market rental rate" for the Premises at the commencement of the Option Term as defined and determined in accordance with the provisions of subparagraphs (d) and (e), below, except that Lessor shall not be required to make any tenant improvements in connection with the Option Term.

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(b) The Extension Option must be exercised, if at all, by written notice ("Extension Notice") delivered by Lessee to Lessor no earlier than nine (9) months, and no later than six (6) months, prior to expiration of Original Term of the Lease. The Extension Option shall, at Lessor's sole option, not be deemed to be properly exercised if, at the time such Extension Option is exercised or on the scheduled commencement date for the Option Term, Lessee has (i) committed a Breach of the Lease which has not been cured, (ii) assigned all or any portion of the Lease or its interest therein, or (iii) sublet more than 4,200 square feet of the Premises. Provided that Lessee has properly and timely exercised the Extension Option, the Term of the Lease shall be extended by the Option Term and all terms, covenants and conditions of the Lease shall remain unmodified and in full force and effect, except that the Base Rent shall be as set forth herein.

(c) Lessee's Extension Option is personal to the original Lessee executing this Lease and may not be exercised or assigned, voluntarily or involuntarily, by or to any person or entity other than the original Lessee.

(d) Within sixty (60) days after receipt of Lessee's Extension Notice, Lessor shall notify Lessee of its determination of the Base Rent for the Option Term ("Lessor's Notice"). If Lessor determines that the Base Rent for the Option Term shall be the 104% of the Base Rent payable by Lessee during the last year of the then current Term, such determination shall be conclusive on the parties and the market rental rate shall not apply. If, however, Lessor determines that the Base Rent for the applicable Option Term shall be the fair market rental rate, then the parties shall endeavor by good faith negotiations to agree upon the Base Rent for the Option Term within thirty (30) days after Lessor's Notice. In the event the parties cannot agree on the Base Rent in the thirty-day period, the Base Rent shall be determined as follows:

(i) Within fifteen (15) days after expiration of the thirty-day negotiation period, each party, at its own cost and by giving notice to the other party, shall appoint a real estate appraiser, with a membership in the American Institute of Estate Appraisers or the Society of Real Estate Appraisers and at least five (5) years full-time commercial appraisal experience in the San Francisco Bay Area, to appraise and determine the Base Rent. If in the time provided only one party shall give notice of appointment of an appraiser, the single appraiser appointed shall determine the Base Rent. If two (2) appraisers are appointed by the parties, the two (2) appraisers shall independently, and without consultation prepare an appraisal of the Base Rent within 15 days. Each appraiser shall seal its respective appraisal after completion. After both appraisals are completed, the resulting estimates of the Base Rent shall be opened and compared. If the values of the appraisals differ by no more than ten percent (10%) of the value of the higher appraisal, then the Base Rent shall be the average of the two (2) appraisals.

(ii) If the values of the appraisals differ by more than ten percent (10%) of the value of the higher appraisal, the two (2) appraisers shall designate a third appraiser meeting the qualifications set forth in subparagraph (i), above. If the two (2) appraisers have not agreed on a third appraiser after ten (10) days, either Lessee or Lessor, by giving ten (10) days notice to the other party, may apply to the then Presiding Judge of the Superior Court for the county in which the Premises are located for the selection of a third appraiser who meets the qualifications set forth in subparagraph (i), above. The third appraiser, however, selected, shall be a person who has not previously acted in any capacity for either party. The third appraiser shall make an appraisal of the Base Rent within fifteen (15) days after selection and without consultation with the first two (2) appraisers. The three (3) appraisals shall then be added together and their total divided by three (3), and the resulting quotient shall be the Base Rent. If, however, the low appraisal and/or the high appraisal are/is more than 15% lower and/or higher than the middle appraisal, the low appraisal and/or the high appraisal shall be disregarded. If one (1) appraisal is disregarded, the remaining two (2) appraisals shall be added together and their

total divided by two (2), and the resulting quotient shall be the Base Rent. If both the low appraisal and the high appraisal are disregarded as provided in this subparagraph, the middle appraisal shall be the Base Rent.

If the determination of the Base Rent is delayed beyond the commencement of the applicable Option Term, Lessee shall continue to pay the Base Rent due during the last month of Original Term. On the first day of the month following the determination of the Base Rent, there shall be an adjustment made to the Base Rent payment then due for the difference between the amount of Base Rent Lessee has paid to Lessor since the applicable Option Term commencement and the amount that Lessee would have paid if the Base Rent as adjusted pursuant to this subparagraph had been in effect as of the applicable Option Term commencement.

Each party shall pay the fees and expenses of their own appraiser, and 50% of the fees and expenses of the third appraiser.

(e) The appraisers shall determine the fair market rental rate using the "market comparison approach" with the relevant market being that for Class "A" office buildings in the downtown San Rafael area as of the Option Term commencement, taking into consideration location, condition and improvements to the space, and assuming that the relevant comparison office building leases are so-called "full-service" leases, including janitorial services. Once the fair market rental rate is determined, there shall be deducted from the rate so determined the sum of \$0.20 times 10,710 (which the parties agree is the square footage of the Premises) to allow for the fact that Lessee is providing some of its own services. For example, if the appraisal process determines that the monthly fair market rental rate for full-service, Class "A" office buildings in the downtown San Rafael Area is \$3.00 per square foot (or \$32,130 per month for the Premises), then the monthly Base Rent for the first year of the Option Term would be \$29,988 (\$32,130 less \$2,142 (\$0.20 times 10,710 square feet)).

(f) On the first anniversary of the Option Term, and annually thereafter, the Base Rent shall be increased by one hundred four percent (104%) of the previous year's Base Rent.

53. **Repairs and Maintenance.** Sections 7.1 and 7.2 of the Lease are modified in the following respects only: Unless the need for maintenance or repair is caused by the negligence or willful act of Lessee, its agents or contractors, Lessor shall perform the following maintenance and repair obligations (in addition to maintaining the surface and structural elements of the roof, foundations and bearing walls):

(i) Lessor shall maintain the Building's skylights and exterior windows in watertight condition (Lessee shall remain responsible for cleaning the exterior windows and skylights);

(ii) Lessor shall maintain the exterior of the Building, including painting when necessary;

(iii) Lessor shall be responsible for resurfacing the parking lot when necessary (Lessee shall remain responsible for keeping the parking lot in a clean condition and shall be responsible for restriping the parking lot as needed); and

(iv) Lessor shall maintain in good condition and repair the electrical, gas and plumbing systems installed by Lessor in the Building (Lessee shall maintain all such systems installed by Lessee).

Lessee at its sole cost and expense shall provide for janitorial services and supplies (including light bulbs) to the Premises and shall pay for all utilities supplied to the Premises, including water, electricity, gas, telephone, trash removal, and security maintenance and services, and will reimburse Lessor quarterly for maintenance service contracts obtained by Lessor on the HVAC systems in

the Building. Lessee will maintain service contracts covering (a) the landscaping and irrigation systems, (b) the fire extinguishing systems and fire sprinklers (if installed), and (c) the security and fire alarm system. Lessor shall have the right to approve Lessee's service contracts, which approval will not be unreasonably withheld or delayed.

54. **Increased Insurance Premium Expenses.** As provided in Section 8.1 of the Lease, Lessee shall pay to Lessor any Insurance Cost Increase over the Base Premium. Insurance Premium Expenses shall include the premiums for Lessor's fire, casualty, liability and earthquake insurance on the Premises. The current annual premiums for the foregoing insurance are \$17,385 and Lessor estimates that the annual estimated Base Premium will be approximately \$19,500.

55. **Increased Building Expenses.** In addition to paying any Insurance Cost Increase (Section 8.1) and Tax Increase (Section 10.2), Lessee shall pay to Lessor all increased costs incurred by Lessor in connection with its maintenance and repair of the roof, foundations, bearing walls, skylights, exterior window, parking lot and those service and maintenance items provided by Lessor under Paragraph 53, above, to the extent those costs exceed the sums expended for those items during the first year of the Original Term. Lessee shall pay any such increased costs within thirty (30) days after receipt by Lessee of reasonably detailed statement prepared by Lessor showing the amount of the increase. During the first year of the Original Term, Lessor shall perform all required maintenance and repairs and not defer required maintenance and repairs.

Lessor shall keep accurate books and records in accordance with generally-accepted accounting principles applied on a basis consistent with prior years reflecting Building Expenses, Real Property Taxes and Insurance Cost Increase. Lessee shall have the right, at any time by written notice to Lessor within six (6) months after Lessee's receipt of the applicable bill from Lessor, during normal business hours upon reasonable advance notice to Lessor, to use a certified public accountant selected by Lessee and subject to Lessor's reasonable right of approval to inspect and copy such books and records and/or to audit Lessor's charges for Building Expenses, Real Property Taxes and Insurance Cost Increase, and other similar charges for which Lessor has billed Lessee during the preceding year. Lessee agrees that Lessee will not employ, in connection with any dispute under this Lease, any person or entity who is to be compensated, in whole or in part, on a contingent fee basis. If such audit discloses any overcharge to Lessee, it shall be credited against the next payment of rent due from Lessee to Lessor or refunded to Lessee within twenty (20) days if at the end of the term. Unless Lessee gives the foregoing notice to Lessor within the six-month period after Lessee's receipt of the applicable bill from Lessor, the bill shall be considered as final and accepted by Lessee.

56. **Parking.** Reference is made to the Agreement regarding parking dated as of January 22, 2003, between Lessor and the owner of the real property located at 704 Mission Street in San Rafael, California. During the term of this Lease, Lessor shall be deemed to have assigned to Lessee all of its parking rights under the Agreement relating to parking and Lessee agrees to abide by all of the terms and conditions of said Agreement, including the obligation to permit the other party to the Agreement to use the parking lot on the Premises for parking by its customers. The termination of the Agreement shall not affect this Lease or Lessee's obligations hereunder.

57. **Assignment and Subletting.** In connection with any assignment of this Lease or subletting of the Premises, Lessee shall abide by the requirements of Paragraph 12 of the Lease and Lessor agrees that it will not unreasonably withhold, condition or delay its approval of any assignment or subletting. Any assignment or subletting shall be deemed approved if Lessor fails to respond within fourteen (14) days to a written request (and email sent to Lessor's email address) from Lessee to approve an assignment or subletting provided such request is accompanied by financial and other information regarding the assignee or subtenant as Lessor may reasonably request.

Any rent or other consideration realized by Lessee in excess of the Base Rent payable hereunder in connection with any sublease, license or similar arrangement collectively covering less than

4,200 square feet of the Premises, after amortization of Lessee's reasonable subletting and assignment costs, shall be divided and paid fifty percent (50%) to Lessor and fifty percent (50%) to Lessee. Any rent or other consideration realized by Lessee in excess of the Base Rent payable hereunder in connection with any assignment of this Lease or any sublease, license or similar arrangement covering 4,200 square feet or more of the Premises, after amortization of Lessee's reasonable costs of assignment, subletting, licensing or similar arrangement, shall be paid one-hundred percent (100%) to Lessor.

58. **Signage.** Lessee shall have the right to place its name (signage) on the front door of the Building and on the exterior of the Building and at both exterior street-fronting corners of the Premises (Mission Avenue and Fifth Avenue). All signage is subject to Lessor's prior written approval, which shall not be unreasonably withheld, conditioned or delayed, and to the review and approval of all governmental requirements and restrictions of the City of San Rafael. All signage shall be at Tenant's sole cost and expense. Upon lease termination Lessee shall remove its signage and restore the building and all exterior monuments to their condition prior to commencement of the Original Term.

59. **Disability Access Requirements.**

(a) Pursuant to California Civil Code Section 1938, Lessor has advised Lessee that neither the Premises nor the Building have been inspected by a Certified Access Specialist.

(b) Except as otherwise provided in (c), below, Lessor shall be responsible for making and paying for all required disability access improvements on the exterior and in the common areas of the Building.

(c) Lessee shall be responsible for making and paying for all required disability access improvements within the Premises and for all required disability access improvements on the exterior and in the common areas of the Building that are triggered by Lessee's Alterations.

60. **Brokers' Commission.** Lessor agrees to pay to the Brokers the following fees upon occurrence of the following events: (i) The sum of \$50,735 to Lessee's Broker and \$22,700.50 to Lessor's Broker upon full execution of this Lease, and (ii) The sum of \$50,735 to Lessee's Broker and \$22,700.50 to Lessor's Broker upon Lessor's receipt of the first payment of Base Rent (scheduled for June 9, 2015).

61. **Condition of Premises.** Lessor represents and warrants to Lessee that Lessor has not received any notice of any violation of building codes or the Americans with Disabilities Act with respect to the Premises.

62. **No Recourse Against Constituent Members of Lessee.** Lessee is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) pursuant to the Joint Powers Agreement and is a public entity separate from its constituent members. Lessee shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Lease. No contractor shall have any rights and shall not make any claims, take any actions or assert any remedies against any of Lessee's constituent members in connection with this Lease.

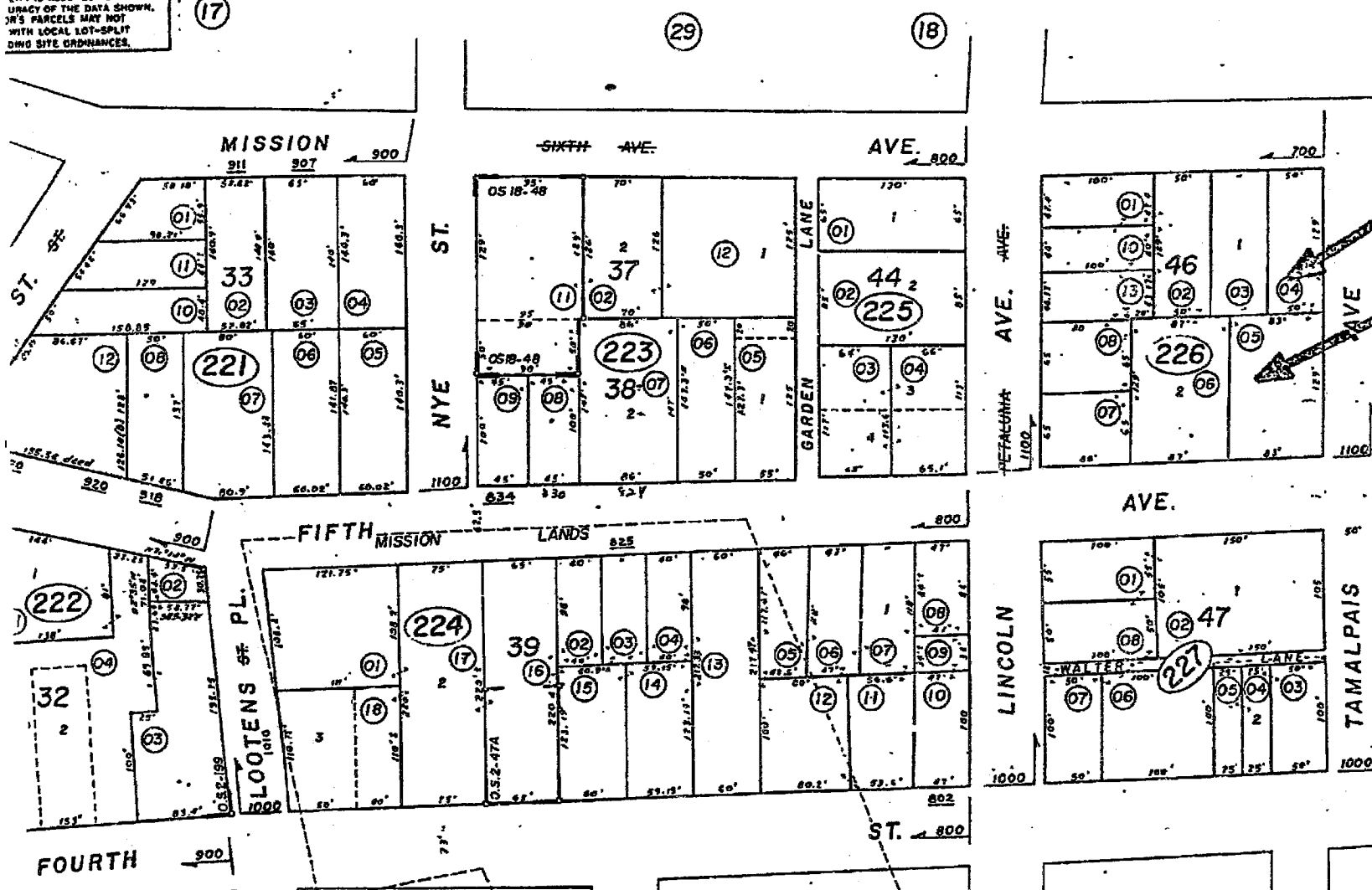
EXHIBIT A

DIAGRAM OF PREMISES SHOWING THE BUILDING AND ADJOINING PARKING LOT

MAP
 WAS PREPARED FOR
 VENT PURPOSES ONLY.
 CITY IS ASSUMED FOR
 URACY OF THE DATA SHOWN.
 SE'S PARCELS MAY NOT
 WITH LOCAL LOT-SPLIT
 DING SITE ORDINANCES.

10x RUIE AVE
 8-023

11-22



Building LOT
 Subject Property
 Parking Lot
 Subject Property

Bk. 14
 08

EXHIBIT A

This plat is for your aid in locating your land with references to streets and other parcels. It is not a survey. While this plat is believed to be correct, the company assumes no liability for any loss occurring by reason of reliance thereon.

CALIFORNIA LAND TITLE COMPANY
 700 IRWIN STREET at SECOND
 SAN RAFAEL, CALIFORNIA 94901

NOTE—Assessor's Block Numbers Shown in Ellipses.
 Assessor's Parcel Numbers Shown in Circles.

CITY OF SAN RAFAEL
 Assessor's Map Bk. 11-Pg. 22
 County of Marin, Calif.

Johnette of San Rafael, Rack 1 Pull 4

EXHIBIT A-1

**DIAGRAM SHOWING CURRENT LAYOUT OF PARKING SPACES
IN LESSOR'S PARKING LOT**

Current Parking Scheme at 700 Fifth Ave San Rafael, CA 94901 - Office Building August 25 2014

Space # 8	Space # 7	Space # 6	Space # 5	Space # 4	Space # 3	Space # 2	Space # 1 Handicap	
Space # 17	Space # 16	Space # 15	Space # 14	Space # 13	Space # 12	Space # 11	Space # 10	Space # 9
Space # 26	Space # 25	Space # 24	Space # 23	Space # 22	Space # 21	Space # 20	Space # 19	Space # 18
Space # 35	Space # 34	Space # 33	Space # 32	Space # 31	Space # 30	Space # 29	Space # 28	Space # 27

EXhibit A-1

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EXHIBIT B

WORK LETTER AGREEMENT

THIS WORK LETTER AGREEMENT supplements that certain Standard Industrial/Commercial Single-Tenant Lease dated September 8, 2014 ("Lease"), executed by 700 Fifth Avenue, LLC, as Lessor, and Marin Clean Energy, a not for profit governmental agency, joint powers authority, as Lessee. All capitalized terms not otherwise defined herein shall have the same meaning as those capitalized terms contained in the Lease.

1. Lessor shall be responsible for diligently constructing within the Building the tenant improvements ("Tenant Improvements") described in the preliminary space plan attached hereto as Exhibit B-1 ("Preliminary Space Plan"). The Tenant Improvements for the Premises will be more particularly described in the plans and construction drawings ("Construction Drawings") as approved below. Any additional work in the Building shall be at Lessee's sole cost and expense.

2. Using best commercially reasonable efforts, and in no event more than fifty-two (52) days after execution of the Lease, Lessor shall provide Lessee with the final Construction Drawings and Specifications showing the details of the Tenant Improvements. The final Construction Drawings shall be prepared by Lessor's architect, WK Design Group, and shall be in conformity with the Preliminary Space Plan. The Construction Drawings shall include full energy calculations as required by the State of California and the city agencies. In no event more than forty-seven (47) days after execution of the Lease, Lessor shall provide Lessee with preliminary Construction Drawings which are approximately ninety percent (90%) complete, with the exception of mechanical, electrical and plumbing drawings. Within five (5) days after receipt of the preliminary Construction Drawings, Lessee shall approve the drawings and/or request changes or modifications thereto. Any such request for changes or modifications shall be subject to Lessor's reasonable approval. Lessor shall not be required to approve any change in Construction Drawings which is inconsistent with the Preliminary Space Plan.

The final Construction Drawings must be completed and approved by Lessee no more than fifty-two (52) days after execution of this Lease. In the event Lessee has not approved the final Construction Drawings by that date, the March 9, 2015 scheduled Commencement Date shall be extended on a day for day basis and shall not be subject to a late delivery charge.

3. Lessee acknowledges that the Construction Drawings are subject to the approval of the appropriate government authorities. It shall be Lessee's responsibility to ensure that the design and function of the Tenant Improvements are suitable for Lessee's business and needs. It shall be Lessor's responsibility to construct the Tenant Improvements in accordance with current building standards, laws, regulations, ordinances and codes. Except as provided in paragraph 9, below, Lessor shall not be required to install any Tenant Improvements which do not conform to the Construction Drawings.

3.a. Lessor agrees to cause its general contractor to obtain at least three (3) bids from every subcontractor where the total cost of the subcontract is expected to exceed Twenty-Five Thousand Dollars (\$25,000.00). The contractor shall be required to accept the lowest bid for the portion of the work covered by the particular subcontract unless Lessor agrees to be responsible for any amount in excess of the lowest bid.

3.b. Lessor shall cause Lessor's contractor or architect to keep Lessee fully advised in writing or by email of the status of each application for permits to perform Lessor's Work and notify Lessee if any delays in obtaining permits are anticipated to cause a delay in Lessor's Work such that

Lessor will not be able to deliver possession of the Premises to Lessee by March 9, 2015, or that the completion of items 9.a. or 9.e. of this Work Letter would be delayed. The purpose of this provision is so that Lessee will be able to independently determine if there is a legitimate permit delay.

4. The total cost of the Tenant Improvements to be paid by Lessor shall not exceed Four Hundred Thirty Thousand Three Hundred Ninety-Seven Dollars (\$430,397.00). The total "cost" includes the following:

- (a) All construction costs and expenses associated with the Tenant Improvements;
- (b) The reasonable costs of the Preliminary Space Plan (including one revision thereto) and final Construction Drawings and engineering costs associated with completion of the State of California energy utilization calculations under Title 24 legislation and any engineering fees associated with the project; and
- (c) The reasonable costs of obtaining building permits and other necessary authorizations from the city, county and the State of California.

The cost allocation between Lessor and Lessee for Building improvements is detailed in Exhibit C attached as the "Improvement Budget". Any total costs associated with the Tenant Improvements in excess of \$430,397.00 shall be paid by Lessee within thirty (30) days after billing by Lessor; however, Lessee shall not be responsible for any costs not shown in Exhibit C if they are solely due to elevator installation, fire sprinkler installation, or are required to bring the Building into code compliance.

5. The Commencement Date of the Lease shall be determined in accordance with Paragraph 51 of the Lease.

6. Lessee may, with Lessor's written consent which consent shall not be unreasonably withheld, enter the Premises prior to the Commencement Date solely for the purpose of installing its Personal Property as long as such entry will not interfere with the orderly construction and completion of the Tenant Improvements by Lessor's contractor. Lessee shall notify Lessor of its desired time(s) of entry and shall submit for Lessor's written approval the scope of the Tenant's Work to be performed and the name(s) of the contractor(s) who will perform such work. Lessee agrees to indemnify, defend and hold harmless Lessor from and against any and all claims, actions, losses, liabilities, damages, costs or expenses (including, without limitation, reasonable attorneys' fees and claims for worker's compensation) of any nature whatsoever, arising out of or in connection with the Tenant's Work (including, without limitation, claims for breach of warranty, bodily injury or property damage).

7. The Premises shall be deemed "substantially completed" as of the date that all of the following conditions are satisfied ("Substantial Completion"):

- (a) Except as otherwise provided in Paragraph 51.a., the Tenant Improvements have been substantially completed in accordance with the approved Construction Drawings (except for minor punch list items); and
- (b) A temporary certificate of occupancy and/or a signed building permit, except for the items listed in Paragraph 9.a. (new exterior elevator) and 9.e. (fire sprinklers) of this Work Letter, has been issued for the Premises.

8. Pursuant to Paragraph 2 of the Lease, Lessee shall immediately prior to occupancy inspect the Premises and compile and furnish Lessor with an initial punch list of any missing or deficient Tenant Improvements. Within the first thirty (30) days after occupancy of the Premises, Lessee shall make a final punch list and submit this list to Lessor. Lessor shall diligently prosecute and use its best commercially reasonable efforts to complete the corrective work in a prompt, good and workman-like manner. Punch list corrections not corrected to the reasonable satisfaction of Lessee promptly following Lessor's receipt of the final punch list shall not be grounds for a delay or reduction in any rent payments due Lessor unless such corrections materially interfere with the use by Lessee of the Premises, in which case rent shall be abated as to the portion of the Premises rendered unusable on a day for day basis.

9. In addition to the Tenant Improvements, Lessor shall provide the following Additional Tenant Improvements at Lessor's sole cost and expense:

a. Installation of a new elevator on the outside of the Building from the parking lot to provide elevator access to the first and second floors, as well as exterior work which is affected by the installation of the elevator, such as replacement of the current fence (as described in Paragraph 9.b. below) and replacement of the current landscaping (as described in Paragraph 9.b. below). This work must be completed within ninety (90) days of the date possession of the Premises is delivered to Lessee or Lessor shall pay to Lessee the sum of \$4,000 per month prorated for each day of delay in completing this item of the Additional Tenant Improvements. The parties agree that the provisions of Paragraph 51 (d) regarding liquidated damages shall also apply to this Paragraph 9.a.

b. Replace the current fence in the parking lot;

c. Mill the current asphalt in the parking lot, repair the surface as needed, apply a new topcoat, and restripe (the configuration and number of parking spaces in the parking lot may change based on requirements of existing laws, ordinances and rules);

d. Replace the current landscaping per Lessor's design; and

e. Install Fire Sprinklers if required by the San Rafael Building Department. This work must be completed within ninety (90) days of the date possession of the Premises is delivered to Lessee or Lessor shall pay to Lessee the sum of \$4,000 per month prorated for each day of delay in completing this item of the Additional Tenant Improvements, provided, however, Lessor must have had a period of at least thirty (30) days after the Marin Municipal Water District has completed the installation of the new water main in order to perform the work to connect the fire sprinklers to the new water main, before Lessor shall be liable for any payment to Lessee under this Paragraph 9.e. The parties agree that the provisions of Paragraph 51 (d) regarding liquidated damages shall also apply to this Paragraph 9.e. In connection with securing the written consent of the City of San Rafael Fire Marshall to permit the Premises to be occupied by Lessee prior to the fire sprinklers being connected to a water source and being in operating condition, Lessor and Lessee each agrees to execute an agreement to indemnify, defend, protect and hold harmless the City of San Rafael and the San Rafael Fire Department from any claims or causes of action related to the fire sprinklers not being operational when the Premises are delivered.

The Additional Tenant Improvements described in b. (new fence), c. (parking lot repairs) and d. (landscaping), above, may be deferred by Lessor if Lessor reasonably determines that some or all of those Additional Tenant Improvements should not be installed until after installation of the Building elevator

and water main for the sprinkler system connection.. The design and materials used to construct the foregoing Additional Tenant Improvements shall be at Lessor's sole discretion.

EXHIBIT B-1

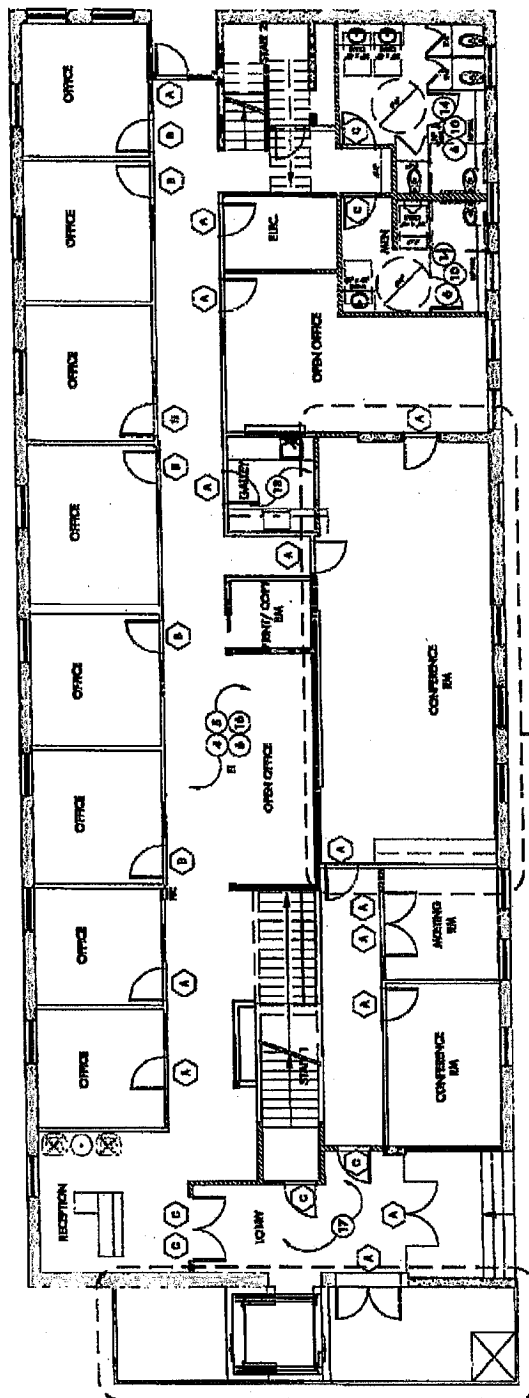
PRELIMINARY SPACE PLAN

ATTACH HERE PRICING PLAN PAGES PP1.1 AND PP1.2

PREPARED BY WESKE KARR DESIGN GROUP ISSUED FOR REVIEW 08.28.14

GENERAL PRICING NOTES

25



IN ELEVATOR DECK AND CHAIR LIFT.
NOTES ALL WORK IN THIS AREA
SUBJECT TO FUTURE DESIGN
DEVELOPMENT AND PLANNING,
BUILDING, FIRE DEPT. NOT

- **EXTEND STEPPED CARE:**
- **DEMO 3 PENDANT FURTHER, ADD 2, ALLOW \$750 EACH**
- **ADDED 12 MONTHS CARE**

FIRST FLOOR CONSTRUCTION PLAN

$$1/16'' = 1'-0''$$

PARTIAL IMAGE OF SHEET: PP1.1

357 supplies & info 350 van franchises ca. 94104
franchise 418.537.9400 fax 418.863.4209

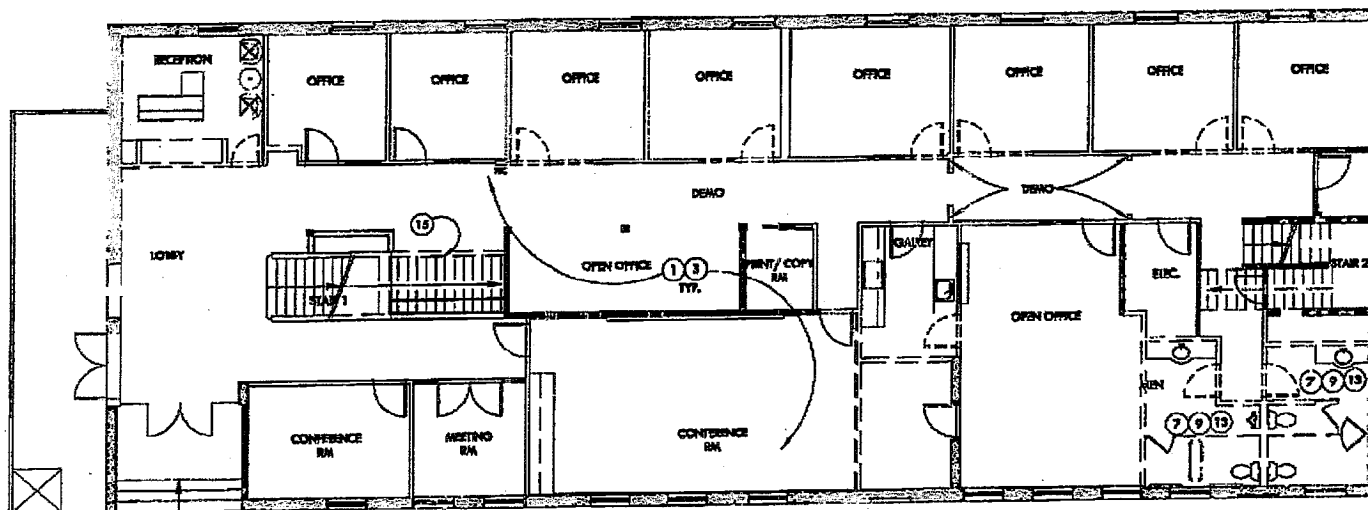
MARIN CLEAN ENERGY

700 5TH AVENUE
SAN RAFAEL, CA 94901

MCSE

TBS

1 FIRST FLOOR DEMO PLAN
1/16" = 1'-0"














PARTIAL IMAGE OF SHEET: PP1.1



357 California St. Suite 350 San Francisco Ca. 94104
phone: 415.537.9400 fax: 415.863.4209

MARIN CLEAN ENERGY
700 5TH AVENUE
SAN RAFAEL, CA 94901

MCE

KEY NOTES	DOOR NOTES
<p>1 DEMO (R) FLOOR FINISHES THROUGHOUT AND PREP FOR NEW.</p> <p>2 NOT USED.</p> <p>3 DEMO (R) CEILING AND LIGHTING.</p> <p>4 INSTALL (N) CEILING & LIGHTING THROUGHOUT SUITE. CEILING GRID: DOWN FISHING 2X2. ACoustICAL TIES: ARMSTRONGS 2X2 SECOND LOCK) DUNE WHITE LIGHTING: LITONINGA "AVANTE" 2X4" LED DIRECT/INDIRECT OR EQUAL.</p> <p>5 PREP. AND PAINT ENTIRE SUITE.</p> <p>6 PATCH, REPAIR, PAINT WALL DAMAGE FROM ABANDONED DEVICES AND 1-BORES.</p> <p>7 DEMO (R) TIE AND BASE THROUGHOUT AND PREP FOR NEW.</p> <p>8 PAINT ALL HM OR ALUM. DOOR FRAMES ON BOTH SIDES. SEE FINISH NOTES FOR SPEC.</p> <p>9 DEMO (R) PLUMBING FIXTURES THROUGHOUT, SALVAGE LAVS, TOILETS, AND WALL ACCESSORIES IF POSSIBLE FOR REINTEGRATION IF POSSIBLE.</p> <p>10 PREP. AND PAINT ENTIRE RESTROOM, EXCEPT FOR AREAS OF (R) TILE. SEE FINISH NOTES.</p> <p>11 REUSE (R) RECEPTION DESK.</p> <p>12 NOT USED.</p> <p>13 DEMO (R) TOILET ROOM FINISHES AND FIXTURES THROUGHOUT AND PREP FOR NEW.</p> <p>14 <u>RESTROOM CORE</u></p> <ul style="list-style-type: none"> REWORK (R) RESTROOM CORE AS SHOWN FOR ADA COMPLIANCE. REINSTALL SALVAGED TOILETS, LAVS AND WALL ACCESSORIES. (R) PAINT (P-1), (P-2) SEE FINISH NOTES. (R) FLOOR TILES (T-1), SEE FINISH NOTES. (R) WET WALL TILES (T-2) @ 4'-4" AFF, SEE FINISH NOTES. (R) GRANITE (G-1) COUNTERTOPS, SEE FINISH NOTES. (R) PLUMB (P-1) FULL HEIGHT PARTITIONS. NOTE FULL HEIGHT PARTITIONS. (R) GFI OUTLETS @ 4'-4" AFF, EACH RESTROOM. EXACT LOCATIONS T.B.D. (R) SENSORED PULCERS AND SOAP DISPENSERS. (R) ALL ACCESSORIES TO REWORK OR EQUAL. (R) INSULATION IN ALL SURROUNDING WALLS. <p>15 EXPOSE STUDS.</p> <p>16 (R) CARPET THROUGHOUT UOAL. SEE FINISH NOTES.</p> <p>17 (R) SLATE. SEE FINISH NOTES.</p> <p>18 <u>GALLERY</u></p> <ul style="list-style-type: none"> (R) PLUMB UPFERS AND LOWERS. (R) VCT. SEE FINISH NOTES. (R) SERVICE WINDOW. <p>NOTE: THIS DRAWING IS INTENDED FOR GENERAL PRICING PURPOSES ONLY AND SHOULD NOT BE USED FOR COMPETITIVE BID PRICING, DESIGN DETAIL, MATERIAL TAKE OFFS OR CONSTRUCTION METHODS.</p> <p>FINAL PROJECT COST MAY VARY SIGNIFICANTLY BASED ON A VARIETY OF FACTORS.</p>	<p>A (R) DOOR TO EXHIBIT.</p> <p>B (R) MULTI-PANE GLASS DOOR TO MATCH (R) ON SECOND FLOOR. ADD (R) FORTHWARD LITE TO MATCH (R) RESSORVED LITE ON SECOND FLOOR. (TYP. OF A).</p> <p>C (R) SOLID CORE WOOD DOOR.</p> <p>NOTE: SALVAGE DOOR FROM DEMO FOR REUSE WHERE FEASIBLE.</p>
	FINISH NOTES
	<p>P-1 PAINT: GENERAL PAINT, T.B.D.</p> <p>P-2 PAINT: ACCENT PAINT, T.B.D.</p> <p>P-3 PAINT: ACCENT PAINT, T.B.D.</p> <p>CARPET: SHAW CARPET TILE, ALLOW \$32/ SQ. YD INSTALL.</p> <p>R-1 RUBBER BASE, BUKE OR EQUAL.</p> <p>R-2 SLATE MATCH (R) @ LOWRY.</p> <p>VCT: ARMSTRONG EXCELLENT OR EQUAL.</p>
	WALL, SYMBOL, & DETAIL LEGEND
	<p><u>WALL LEGEND</u></p> <p> DOOR TO BE DEMOLISHED</p> <p> WALL OR PARTITION TO BE DEMOLISHED</p> <p> EXISTING PARTITION OR WALL</p> <p> NEW PARTITION</p> <p><u>SYMBOL LEGEND</u></p> <p> DUPLEX OUTLET</p> <p> WALL MOUNTED SWITCH</p> <p> WALL MOUNTED THERMOSTAT</p> <p> FIRE EXTINGUISHER CABINET</p> <p> PHONE/DATA OUTLET</p> <p><u>DETAIL LEGEND</u></p> <p> DELINEATES AREA OF SPECIFIC WORK</p> <p> SPECIALIZED AREA OF WORK - SEE KEY NOTE WHEN INDICATED</p>
ALLOWANCES	
<p>1 IF CONSTRUCTION VALUATION IS LESS THAN OR EQUAL TO \$140,000.00, ADD 20% FOR MISCELLANEOUS ADA UPGRADES.</p> <p>2 PROVIDE NEW AUTOMATIC SPRINKLER SYSTEM.</p>	

FIRST FLOOR KEY NOTES & LEGENDS

1

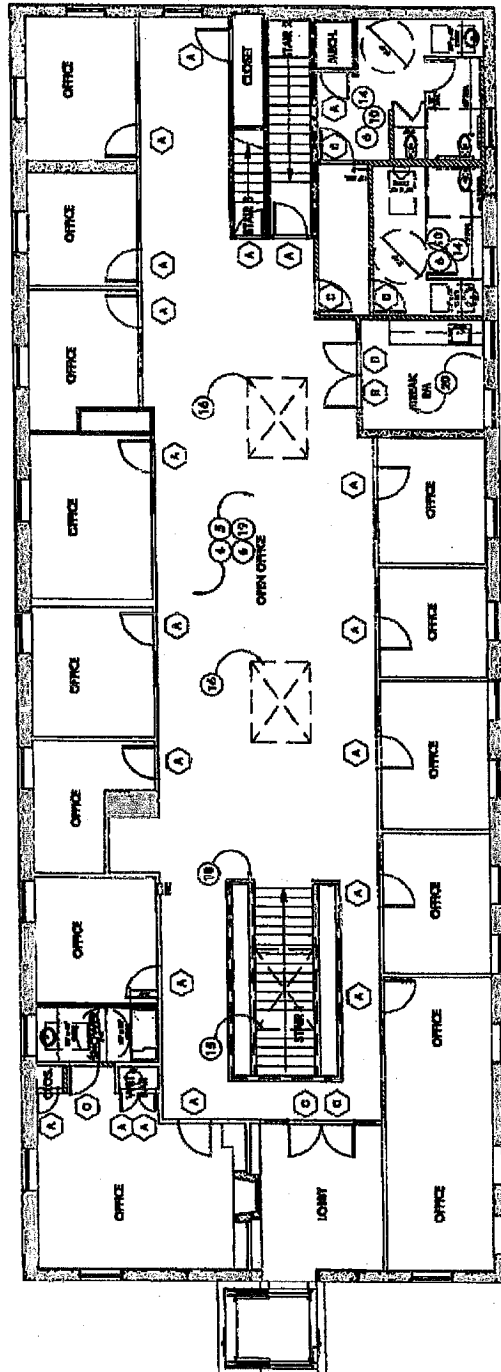
NTS

PARTIAL IMAGE OF SHEET: PP1.1

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GENERAL PRICING NOTES

SLN



SECOND FLOOR CONSTRUCTION PLAN

$$1/16'' = 1'-0''$$











PARTIAL IMAGE OF SHEET: PP1.2

MARIN CLEAN ENERGY
700 5TH AVENUE
SAN RAFAEL, CA 94901

WCS

Westco
387 California st. suite 350 san francisco ca 94104
phone 415.337.9400 fax 415.363.2869

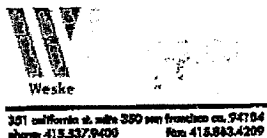
TBS

KEY NOTES		ALLOWANCES
1	DEMO (R) FLOOR FINISHES THROUGHOUT AND PREP FOR NEW.	1 IF CONSTRUCTION VALUATION IS LESS THAN OR EQUAL TO \$140,000.00, ADD 20% FOR MISCELLANEOUS ADA UPGRADES.
2	NOT USED.	2 PROVIDE NEW AUTOMATIC SPRINKLER SYSTEM.
3	DEMO (R) CEILING AND LIGHTING.	
4	INSTALL (N) CEILING & LIGHTING THROUGHOUT SUITE. CEILING GRID: DOWN FINELINE 202 ACOUSTICAL TILES: ARMSTRONG 202 SECOND LOOK, DUNE WHITE LIGHTING: NITRONA "AVANTAGE" 224 LED DIRECT/INDIRECT OR EQUAL.	DOOR NOTES
5	PREP. AND PAINT ENTIRE SUITE.	(A) (R) DOOR TO REMAIN.
6	PATCH, REPAIR, PAINT WALL DAMAGE FROM ABANDONED DEVICES AND J-BOXES.	(B) RELOCATED ANGLE-PANE GLASS DOOR FROM DEMO.
7	DEMO (R) TILE AND BASE THROUGHOUT AND PREP FOR NEW.	(C) (N) SOLID CORE WOOD DOOR.
8	PAINT ALL HM OR ALUM. DOOR FRAMES ON BOTH SIDES. SEE FINISH NOTES FOR SPEC.	NOTE: SALVAGE DOOR FROM DEMO FOR REUSE WHERE FEASIBLE.
9	DEMO (R) PLUMBING FIXTURES THROUGHOUT, SALVAGE SINKS, TOILETS, AND WALL ACCESSORIES IF POSSIBLE FOR REINSTALLATION IF POSSIBLE.	FINISH NOTES
10	PREP. AND PAINT ENTIRE RESTROOM, EXCEPT FOR AREA OF (N) TILE. SEE FINISH NOTES.	(F-1) PAINT: GENERAL PAINT, T.B.D.
11	NOT USED.	(F-2) PAINT: ACCENT PAINT, T.B.D.
12	NOT USED.	(F-3) PAINT: ACCENT PAINT, T.B.D.
13	DEMO (R) TOILET ROOM FINISHES AND FIXTURES THROUGHOUT AND PREP FOR NEW.	(C-1) CARPET: BUNKY CARPET TILE, ALLOW \$35/SQ. YD. TO BE INSTALLED.
14	RESTROOM CODE	(F-4) FLOOR BASE: DUNCE OR EQUAL.
	<ul style="list-style-type: none">REWORK (R) RESTROOM CORE AS SHOWN FOR ADA COMPLIANCE.REINSTALL SALVAGED TOILETS, SINKS AND WALL ACCESSORIES.(N) PAINT (7-1), (7-2) SEE FINISH NOTES.(N) FLOOR TILES (7-1), SEE FINISH NOTES.(N) WET WALL TILES (7-2) @ 4" A.F.U., SEE FINISH NOTES.(N) GRANITE (8-1) COUNTERTOPS, SEE FINISH NOTES.(N) 1-1/2" (1-1) NOTCH FULL HEIGHT PARTITIONS.(N) GFI OUTLETS @ 4-1/2' A.F.U., EACH RESTROOM. EXACT LOCATIONS T.B.D.(N) SENSORED FAUCETS AND SOAP DISPENSERS.(N) ALL ACCESSORIES TO BE BOWEN OR EQUAL.(N) INSULATION IN ALL SURROUNDING WALLS.	(V-1) V.C.T. ARMSTRONG EXCELLENT OR EQUAL.
15	(R) SKYLIGHT TO REMAIN, LOCATION SHOWN APPROXIMATE.	WALL, SYMBOL, & DETAIL LEGEND
16	(R) SKYLIGHT, (SEE AND LOCATION SHOWN APPROXIMATE).	WALL LEGEND
17	REPLACE (R) BORROWED LITES WITH (N) FULL DOOR HEIGHT BORROWED LITES, TYP. @ WHERE APPLIES @ SECOND FLOOR.	 DOOR TO BE DEMOLISHED
18	(N) CAMERA RAIL SYSTEM @ GALLERY AND STAIR RAIL.	 WALL OR PARTITION TO BE DEMOLISHED
19	(N) CARPET THROUGHOUT (SEE FINISH NOTES).	 EXISTING PARTITION OR WALL
20	BREAK ROOM	 NEW PARTITION
	<ul style="list-style-type: none">(N) 7-LAM LITTERS AND LOWERS.(N) V.C.T. SEE FINISH NOTES.	SYMBOL LEGEND
NOTE:	THIS DRAWING IS INTENDED FOR GENERAL PRICING PURPOSES ONLY AND SHOULD NOT BE USED FOR COMPETITIVE BID PRICING, DESIGN DETAIL, MATERIAL TAKEOFFS OR CONSTRUCTION METHODS.	 DUCT OUTLET
	FINAL PROJECT COST MAY VARY SIGNIFICANTLY BASED ON A VARIETY OF FACTORS.	 WALL MOUNTED SWITCH
		 WALL MOUNTED THERMOSTAT
		 FIRE EXTINGUISHER CABINET
		 PHONE/DATA OUTLET
		DETAIL LEGEND
		 DELINEATES AREA OF SPECIAL WORK
		SPECIALIZED AREA OF WORK - SEE KEY NOTE WHEN INDICATED

1 SECOND FLOOR KEY NOTES & LEGENDS

NTS

PARTIAL IMAGE OF SHEET: PP1.2



MARIN CLEAN ENERGY
700 5TH AVENUE
SAN RAFAEL, CA 94901

MCE

EXHIBIT B-1
Page 6 of 6

7B5

EXHIBIT C

IMPROVEMENT BUDGET

		<u>Lessee's scope</u>	<u>Lessor's scope</u>	
Basic Scope				
06/26/14 Budget Items 1-19 Basic Scope	430,397.00		430,397.00	
08/12/14 Budget Items 1-20 Basic Scope	493,196.00			
Difference between 06/26/14 budget and 08/12/budget		62,799.00		
Alternates				
Alts. from 08/12/14 Budget				
alt. 1 stairway relocate	n/a			
alt. 2 Elev.				
Elevator			70,000.00	Will be affected by Planning Dept. impositions on Parking. May be limited to recapture of 2 or less stalls.
Structural @ shaft			75,000.00	
ADA contingency @ lobbies*		20,000.00 *		
alt. 3 Exterior improvements				
Fencing			9,000.00	
ADA access			13,000.00	
Deck		4,000.00		Will be affected by Planning Dept. impositions on Parking, appearance, etc. May be limited to recapture of only 2 stalls.
alt. 4 Asphalt/Paving			15,000.00	
alt. 5 Landscape			10,000.00	
alt. 6 All new doors	n/a			
alt. 7 Fire sprinklers			150,000.00	Includes allowance of \$45,000.00 for City Hook up. Allow 12 - 14 weeks
alt. 8 Restroom expansion and upgrades*		53,100.00 *		
alt. 9 Exterior Window upgrade	** n/a			City has not said that this is a title 24 requirement. Budget is \$112,000.00
Est. Const. Subtotal		139,899.00	772,397.00	
Est. Total Const.		912,296.00		
Soft Costs				
Allocation of Soft Costs				
A&E Fees	65,000.00			allowance
Bldg. Dept	25,000.00			allowance {quoted by the City}
Planning Dept.	5,000.00			allowance
Architect's reimbursables	3,000.00			allowance
Total Soft Costs est. (10.7% of Const. est.)		98,000.00		
Soft Costs Allocated by scope				
Tenant basic scope	62,799.00 @10.7	6,719.49		
Tenant alts.	77,100.00 @10.7	8,249.70		
Basic Scope	430,397.00 @10.7	10,702.60	35,350.48	
Landlord basic alts.	342,000.00 @10.7		36,594.00	
Est. Total by scope		165,570.19	844,341.48	TOTAL 1,009,911.67

NOTE: BUDGET ESTIMATES:
Any Budget or Budgeting Assistance offered by WK design group for the project, or for a component of the project, is for estimating Rough Order of Magnitude (ROM) only, based on available information and industry standards. Budgets are not a guaranteed maximum, and the final project cost may vary based on a variety of factors. WK design group assumes no liability for any variation in final project cost.

*Up to reference for ADA contingency at lobbies and alt. 8 restroom expansion and upgrades assumes that these are not to exceed amounts.

785

**MARIN CLEAN ENERGY
STANDARD SHORT FORM CONTRACT**

**FIRST AGREEMENT
BY AND BETWEEN
MARIN CLEAN ENERGY AND 700 FIFTH AVENUE, LLC**

THIS FIRST AGREEMENT ("Agreement") is made and entered into this day March 5, 2015 by and between MARIN CLEAN ENERGY, hereinafter referred to as "MCE" and 700 FIFTH AVENUE, LLC, hereinafter referred to as "Contractor."

RECITALS:

WHEREAS, MCE desires to retain a person or firm to provide the following services: tenant improvements at new MCE office located at 700 Fifth Avenue in San Rafael;

WHEREAS, Contractor warrants that it is qualified and competent to render the aforesaid services;

NOW, THEREFORE, for and in consideration of the agreement made, and the payments to be made by MCE, the parties agree to the following:

1. SCOPE OF SERVICES:

Contractor agrees to provide all of the services described in **Exhibit A** attached hereto and by this reference made a part hereof.

2. FURNISHED SERVICES:

MCE agrees to make available all pertinent data and records for review, subject to 700 Fifth Avenue, LLC MCE Policy 001 - Confidentiality.

3. FEES AND PAYMENT SCHEDULE; INVOICING:

The fees and payment schedule for furnishing services under this Agreement shall be based on the rate schedule which is attached hereto as **Exhibit B** and by this reference incorporated herein. Said fees shall remain in effect for the entire term of the Agreement. Contractor shall provide MCE with his/her/its Federal Tax I.D. number prior to submitting the first invoice. Contractor is responsible for billing MCE in a timely and accurate manner. Contractor shall invoice MCE on a monthly basis for any services rendered or expenses incurred hereunder. Fees and expenses invoiced beyond 90 days will not be reimbursable. The final invoice must be submitted within 30 days of completion of the stated scope of services or termination of this Agreement.

4. MAXIMUM COST TO MCE:

In no event will the cost to MCE for the services to be provided herein exceed the maximum sum of **\$75,375**.

5. TIME OF AGREEMENT:

This Agreement shall commence on **March 5, 2015**, and shall terminate on **March 31, 2015**. Certificate(s) of Insurance must be current on the day the Agreement commences and if scheduled to lapse prior to termination date, must be automatically updated before final payment may be made to Contractor.

6. INSURANCE:

All required insurance coverages shall be substantiated with a certificate of insurance and must be signed by the insurer or its representative evidencing such insurance to MCE. The general liability policy shall be endorsed naming the Marin Clean Energy and its employees, officers and agents as additional insureds. The certificate(s) of insurance and required endorsement shall be furnished to MCE prior to commencement of work. Each certificate shall provide for thirty (30) days advance written notice to MCE of any cancellation or reduction in coverage. Said policies shall remain in force through the life of this Agreement and shall be payable on a per occurrence basis only, except those required by paragraph 6.4 which may be provided on a claims-made basis consistent with the criteria noted therein.

Nothing herein shall be construed as a limitation on Contractor's obligations under paragraph 16 of this Agreement to indemnify, defend and hold MCE harmless from any and all liabilities arising from the Contractor's negligence, recklessness or willful misconduct in the performance of this Agreement. MCE agrees to timely notify the Contractor of any negligence claim.

Failure to provide and maintain the insurance required by this Agreement will constitute a material breach of the agreement. In addition to any other available remedies, MCE may suspend payment to the Contractor for any services provided during any time that insurance was not in effect and until such time as the Contractor provides adequate evidence that Contractor has obtained the required coverage.

6.1 GENERAL LIABILITY

The Contractor shall maintain a commercial general liability insurance policy in an amount of no less than one million dollars (\$1,000,000) with a two million dollar (\$2,000,000) aggregate limit. MCE shall be named as an additional insured on the commercial general liability policy and the Certificate of Insurance shall include an additional endorsement page. (see sample form: ISO - CG 20 10 11 85).

6.2 AUTO LIABILITY

Where the services to be provided under this Agreement involve or require the use of any type of vehicle by Contractor in order to perform said services, Contractor shall also provide comprehensive business or commercial automobile liability coverage including non-owned and hired automobile liability in the amount of one million dollars combined single limit (\$1,000,000.00).

6.3 WORKERS' COMPENSATION

The Contractor acknowledges the State of California requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Labor Code. If Contractor has employees, a copy of the certificate evidencing such insurance or a copy of the Certificate of Consent to Self-Insure shall be provided to MCE prior to commencement of work.

6.4 PROFESSIONAL LIABILITY INSURANCE

Coverages required by this paragraph may be provided on a claims-made basis with a "Retroactive Date" either prior to the date of the Agreement or the beginning of the contract work. If the policy is on a claims-made basis, coverage must extend to a minimum of twelve (12) months beyond completion of contract work. If coverage is cancelled or non-renewed, and not replaced with another claims made policy form with a "retroactive date" prior to the Agreement effective date, the contractor must purchase "extended reporting" coverage for a minimum of twelve (12) months after completion of contract work. Contractor shall maintain a policy limit of not less than \$1,000,000 per incident. If the deductible or self-insured retention amount exceeds \$100,000, MCE may ask for evidence that contractor has segregated amounts in a special insurance reserve fund or contractor's general insurance reserves are adequate to provide the necessary coverage and MCE may conclusively rely thereon.

7. NONDISCRIMINATORY EMPLOYMENT:

Contractor and/or any permitted subcontractor, shall not unlawfully discriminate against any individual based on race, color, religion, nationality, sex, sexual orientation, age or condition of disability. Contractor and/or any permitted subcontractor understands and agrees that Contractor and/or any permitted subcontractor is bound by and will comply with the nondiscrimination mandates of all Federal, State and local statutes, regulations and ordinances.

8. SUBCONTRACTING:

The Contractor shall not subcontract nor assign any portion of the work required by this Agreement without prior written approval of MCE except for any subcontract work identified herein. If Contractor hires a subcontractor under this Agreement, Contractor shall require subcontractor to provide and maintain insurance coverage(s) identical to what is required of Contractor under this Agreement and shall require subcontractor to name Contractor as additional insured under this Agreement. It shall be Contractor's responsibility to collect and maintain current evidence of insurance provided by its subcontractors and shall forward to MCE evidence of same.

9. ASSIGNMENT:

The rights, responsibilities and duties under this Agreement are personal to the Contractor and may not be transferred or assigned without the express prior written consent of MCE.

10. RETENTION OF RECORDS AND AUDIT PROVISION:

Contractor and any subcontractors authorized by the terms of this Agreement shall keep and maintain on a current basis full and complete documentation and accounting records, employees' time sheets, and correspondence pertaining to this Agreement. Such records shall include, but not be limited to, documents supporting all income and all expenditures. MCE shall have the right, during regular business hours, to review and audit all records relating to this Agreement during the Contract period and for at least five (5) years from the date of the completion or termination of this Agreement. Any review or audit may be conducted on Contractor's premises or, at MCE's option, Contractor shall provide all records within a maximum of fifteen (15) days upon receipt of written notice from MCE. Contractor shall refund any monies erroneously charged.

11. WORK PRODUCT:

All finished and unfinished reports, plans, studies, documents and other writings prepared by and for Contractor, its officers, employees and agents in the course of implementing this Agreement shall become the sole property of MCE upon payment to Contractor for such

work. MCE shall have the exclusive right to use such materials in its sole discretion without further compensation to Contractor or to any other party. Contractor shall, at MCE's expense, provide such reports, plans, studies, documents and writings to MCE or any party MCE may designate, upon written request. Contractor may keep file reference copies of all documents prepared for MCE.

12. TERMINATION:

- A. If the Contractor fails to provide in any manner the services required under this Agreement or otherwise fails to comply with the terms of this Agreement or violates any ordinance, regulation or other law which applies to its performance herein, MCE may terminate this Agreement by giving five (5) calendar days written notice to the party involved.
- B. The Contractor shall be excused for failure to perform services herein if such services are prevented by acts of God, strikes, labor disputes or other forces over which the Contractor has no control.
- C. Either party hereto may terminate this Agreement for any reason by giving thirty (30) calendar days written notice to the other parties. Notice of termination shall be by written notice to the other parties and be sent by registered mail.
- D. In the event of termination not the fault of the Contractor, the Contractor shall be paid for services performed to the date of termination in accordance with the terms of this Agreement so long as proof of required insurance is provided for the periods covered in the Agreement or Amendment(s).

13. AMENDMENT:

This Agreement may be amended or modified only by written agreement of all parties.

14. ASSIGNMENT OF PERSONNEL:

The Contractor shall not substitute any personnel for those specifically named in its proposal unless personnel with substantially equal or better qualifications and experience are provided, acceptable to MCE, as is evidenced in writing.

15. JURISDICTION AND VENUE:

This Agreement shall be construed in accordance with the laws of the State of California and the parties hereto agree that venue shall be in Marin County, California.

16. INDEMNIFICATION:

Contractor agrees to indemnify, defend, and hold MCE, its employees, officers, and agents, harmless from any and all liabilities including, but not limited to, litigation costs and attorney's fees arising from any and all claims and losses to anyone who may be injured or damaged by reason of Contractor's negligence, recklessness or willful misconduct in the performance of this Agreement.

17. NO RECOURSE AGAINST CONSTITUENT MEMBERS OF MCE:

MCE is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) pursuant to the Joint Powers Agreement and is a public entity separate from its constituent members. MCE shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Contractor shall have no rights and shall not make any claims, take any actions or assert any remedies against any of MCE's constituent members in connection with this Agreement.

18. COMPLIANCE WITH APPLICABLE LAWS:

The Contractor shall comply with any and all Federal, State and local laws and resolutions (including, but not limited to the County of Marin Nuclear Free Zone, Living Wage Ordinance, and Resolution #2005-97 of the Board of Supervisors prohibiting the off-shoring of professional services involving employee/retiree medical and financial data) affecting services covered by this Agreement. Copies of any of the above-referenced local laws and resolutions may be secured from MCE's contact person referenced in paragraph 19. NOTICES below.

19. NOTICES

This Agreement shall be managed and administered on MCE's behalf by the Contract Manager named below. All invoices shall be submitted and approved by this Agreement Manager and all notices shall be given to MCE at the following location:

Contract Manager: Sarah Estes-Smith, Administrative Associate

MCE Address: 781 Lincoln Ave., Suite 320

San Rafael, CA 94901

Email Address: invoices@mcecleanenergy.org

Telephone No.: (415) 464-6028

Notices shall be given to Contractor at the following address:

Contractor:	700 Fifth Avenue, LLC
Address:	PO Box 573
	Franklin, IN 46131-0573
Email Address:	ted.shuel@gmail.com
Telephone No.:	P: (317) 560-5915 C: (415) 516-0726

20. ACKNOWLEDGEMENT OF EXHIBITS

	<input checked="" type="checkbox"/> <u>Check applicable Exhibits</u>	<u>CONTRACTOR'S INITIALS</u>
<u>EXHIBIT A.</u>	<input checked="" type="checkbox"/> Scope of Services	
<u>EXHIBIT B.</u>	<input checked="" type="checkbox"/> Fees and Payment	

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first above written.

APPROVED BY

Marin Clean Energy:

By: _____
Chief Executive Officer
Date: _____

By: _____
Chairperson
Date: _____

CONTRACTOR:

By: _____
Name: _____
Date: _____

MCE COUNSEL REVIEW AND APPROVAL *(Only required if any of the noted reason(s) applies)*

REASON(S) REVIEW:

- ☐ Standard Short Form Content Has Been Modified
- ☐ Optional Review by MCE Counsel at Marin Clean Energy's Request

MCE Counsel: _____

Date: _____

EXHIBIT A
SCOPE OF SERVICES (required)

Contractor will make tenant improvements to new MCE office located at 700 Fifth Avenue in San Rafael, as requested and directed by MCE staff, up to the maximum time/fees allowed under this Agreement.

Key components of the scope including but not limited to the following are detailed by category below. In general the intention of this agreement is installation of structure, facilities and equipment reasonable suitable to the purposes intended including any hardware, finishes, and appurtenance installed in a professional manner.

Bathroom:

- Private stalls
- Tile
- Recycled counter tops
- Flooring and paint

Solar and IT Data Room Infrastructure:

- Solar conduits to allow for solar car port shade structure power feed to building meter
- Dedicated HVAC unit to ensure air temperature control for server room and large conference room

Secure stair and 2nd floor office access:

- Switchback stringer stairs
- Stained and finished concrete treads
- Glass enclosure surrounding the entire staircase from main lobby
- Secure key card access door at main lobby for MCE staff only

Skylights:

- Addition of two large skylights on 2nd floor
- Includes triple pane glass for maximum light and heat efficiency while protecting for comfort

Doors, hardware and finishes:

- Glass doors on 1st floor offices
- Security hardware on 1st floor doors
- Matching hardware and finishes

Final Certificate of Occupancy and Final Punch-out Items

- Completion of quality assurance checklist for all tenant improvements aforementioned
- New bathroom plumbing flowing and enclosure hardware locking properly
- New tile, counter tops and flooring, paint finishes sealed and complete
- New HVAC output flow checked and running properly
- New finishes on stringer stairs and concrete treads sealed and complete
- New glass stair enclosure sealed and security key card access door secure
- Secure access to staff deck area (complete with seating, shade and landscaping) complete
- Roof penetrations caulked and sealed properly
- 4 new faux windows installed, sealed and finished on building exterior
- New 1st floor doors spring hinges and locking capability checked and complete
- New 1st floor door key-pad hardware and finishes complete
- Repair of any outstanding details

EXHIBIT B
FEES AND PAYMENT SCHEDULE

For services provided under this agreement, MCE shall pay the Contractor in accordance with the following milestone payment schedule:

#	Item	Amount	Conditions Precedent
1	Bathrooms (including ADA compatible, private stalls, tile, recycled counter tops, flooring and shower for bike commuters)	\$ 20,166.10	Upon presentation and validation of invoices against work completed by and payments made to Bryson Burns
2	Solar and IT Data Room HVAC and Infrastructure	\$ 10,282.00	Upon presentation and validation of invoices against work completed by and payments made to Bryson Burns
3	Secure Stair/2nd Floor Agency Office Access (including switchback stringer stairs with concrete treads and glass enclose from the main lobby for 2 nd floor security) and Temporary Certificate of Occupancy	\$ 33,698.71	Upon presentation and validation of invoices against work completed by and payments made to Bryson Burns and presentation of temporary certificate of occupancy and full access by MCE
4	Doors, Skylights , Hardware and Finishes	\$ 5,348.00	Upon presentation and validation of invoices against work completed by and payments made to Bryson Burns
5	Final Certificate of Occupancy and Final Punch-out Items <ul style="list-style-type: none"> • Completion of quality assurance checklist for all tenant improvements aforementioned • New bathroom plumbing flowing and enclosure hardware locking properly • New tile, counter tops and flooring, paint finishes sealed and complete • New HVAC output flow checked and running properly • New finishes on stringer stairs and concrete treads sealed and complete • New glass stair enclosure sealed and security key card access door secure • Secure access to staff deck area (complete with seating, shade and landscaping) complete • Roof penetrations caulked and sealed properly • 4 new faux windows installed, sealed and finished on building exterior • New 1st floor doors spring hinges and locking capability checked and complete • New 1st floor door key-pad hardware and finishes complete • Repair of any outstanding details 	\$ 5,879.58	Upon presentation and validation of invoices against work completed by and payments made to Bryson Burns and presentation of Final Certificate of Occupancy and punch-out list walk-through
Total Unapproved Proposed Build-out Costs			\$ 75,374.39

In no event shall the total cost to MCE for the service provided herein exceed the maximum sum of **\$75,375.00** for the term of the agreement.

**RIGHT OF FIRST OFFER AGREEMENT
TO BE ADDED IN AN AMENDMENT TO THE LEASE BETWEEN 700 FIFTH
AVENUE, LLC, AS LESSOR, AND MARIN CLEAN ENERGY, AS LESSEE,
DATED SEPTEMBER 8, 2014**

Section 1. Right of First Offer

1.01 Lessor shall not sell or agree to sell the Project without first offering to sell it to Lessee. The word “sell” shall include any transfer, conveyance, assignment, lease, hypothecation, or pledge of all or any portion of the Project or Lessor's interest in the Project.

1.02 Prior to Lessor entering into an agreement for the marketing of the Project or otherwise selling or agreeing to sell the Project, Lessor shall offer in writing (“First Offer”) to sell the Project to Lessee on the same terms and conditions that Lessor would then be willing to offer to a third party. The First Offer shall, at a minimum, include the following information:

- (i) the purchase price, which shall reflect a credit to Lessee of \$_____, for capital improvements made to the Premises by Lessee and paid for by Lessee;
- (ii) the method of payment of the purchase price;
- (iii) the amount and terms of any Lessor financing;
- (iv) the amount of the required earnest money deposit; and
- (v) the time and location for the close of escrow.

1.03 Lessee shall have thirty (30) days from the date of the First Offer to accept the First Offer (“Acceptance Period”) by delivering to Lessor acceptance on or before 5:00 p.m. Pacific Standard or Daylight Savings time on the last day of the Acceptance Period. If Lessee fails to accept the First Offer before the Acceptance Period ends, the First Offer shall be deemed rejected.

1.04 If Lessee responds to the First Offer with anything other than an unequivocal, unconditional acceptance or rejection, the right of first offer shall terminate and the response shall be deemed an offer to purchase the Project on the terms and conditions in the response (“Counter Offer”). Lessor shall be entitled to accept or reject the Counter Offer at Lessor's sole discretion, and if Lessor rejects the Counter Offer, Lessor shall have no further obligations under this Agreement.

1.05 If Lessee accepts the First Offer, Lessee shall have one hundred twenty (120) days following acceptance of the First Offer (“Closing Period”) to consummate the purchase of the Project pursuant to the terms and conditions of the First Offer. If Lessee fails to consummate the purchase of the Project within the Closing Period, any earnest money paid by Lessee pursuant to the acceptance shall be paid to Lessor as Lessor's liquidated damages, and the agreement to purchase the Project together with this Amendment shall be terminated. After the termination, Lessor shall be free to enter into an agreement for the sale of the Project with a third party on whatever terms Lessor may choose to offer without further obligation under this Amendment.

Lessor's Initials

Lessee's Initials

1.06 If after Lessee rejects the First Offer, Lessor negotiates with a third party and is otherwise willing to enter into an agreement with that party on terms five percent (5%) or more less favorable to Lessor than those contained in the First Offer, Lessor shall offer to sell the Project to Lessee on those new terms by giving Lessee written notice ("Second Offer"). Lessee shall have ten (10) business days from receipt of the Second Offer to accept the new terms. If Lessee fails to accept the new terms or rejects the new terms in writing, Lessor shall be free to consummate the transaction with the third party without any liability to Lessee. If Lessee accepts the new terms, Lessee shall then immediately consummate the transaction with Lessor on the terms and conditions in the Second Offer on the later of:

- (i) the time for consummation in the Second Offer, or
- (ii) ninety (90) days following the date of the Second Offer.

Section 2. Consideration

2.01 The consideration for this Amendment is One Hundred Dollars ((\$100.00)) to be paid by Lessee to Lessor concurrent with the execution of this Amendment.

Section 3. Term

3.01 Lessee's right of first offer shall begin with the date of this Amendment and continue throughout the Term, of the Lease ("Term"), unless terminated sooner in accordance with the terms of this Lease.

Section 4. Termination

4.01 This Amendment shall automatically terminate and have no further effect upon the first of the following events to occur:

- (i) The expiration of the Term, as it may be extended;
- (ii) Lessee, in contravention of this Amendment, assigns or attempts to assign Lessee's rights under this Amendment;
- (iii) Lessee rejects a First Offer or a Second Offer and Lessor subsequently consummates a sale of the Project to a third party pursuant to the terms of this Amendment;
- (iv) Lessee is in Default under the Lease beyond an notice and cure period; or
- (v) The purchase of the Project by Lessee.

Section 5. Time of Essence

5.01 Time is of the essence for the terms of this Amendment.

Section 6. Memorandum for Recordation

6.01 Immediately following the execution of this Amendment, the Memorandum of Right of First Offer Agreement attached as Exhibit A shall be recorded by Lessor in the official records of Marin County, California.

Section 7. Quitclaim Deed

7.01 Concurrent with the execution of this Amendment, Lessee has delivered to Lessor a signed and acknowledged quitclaim deed in the form of attached Exhibit B. Lessor may record the quitclaim deed following the termination of this Amendment. If Lessee purchases the Project, Lessor shall return to Lessee the quitclaim deed at the consummation of the purchase.

Section 8. Entire Agreement

8.01 This Amendment and the Exhibits contain the entire agreement of the parties and supersede all prior agreements or understandings of the parties, whether written or oral, regarding the subject matter of this Amendment.

Section 9. Exhibits

9.01 All attached exhibits are incorporated in this Amendment by this reference.

Section 10. Counterparts and Facsimile Signatures

10.01 This Amendment may be executed in counterparts which when taken together shall constitute one fully executed original. Facsimile signatures and PDF signatures by e-mail on this Amendment shall be treated and have the same effect as original signatures.

Section 11. Ratification

11.01 Lessor and Lessee hereby ratify and confirm all of the terms and provisions of the Lease as modified by Sections 1 through 10 above. Except as specifically amended hereby, the Lease remains in full force and effect.

[SIGNATURES APPEAR ON THE NEXT PAGE.]

IN WITNESS WHEREOF, the parties have executed this Amendment as of the date first written above.

[ADD BELOW SIGNATURE BLOCKS FOR LESSOR AND LESSEE.]

DRAFT

EXHIBIT A

ATTACH HERE MEMORANDUM OF RIGHT OF FIRST OFFER

DRAFT

EXHIBIT B

ATTACH HERE FORM OF QUITCLAIM DEED

DRAFT



February 18, 2015

TO: Marin Clean Energy Executive Committee

FROM: Katie Gaier, Human Resources Coordinator

RE: New MCE Positions (Agenda Item # 06)

ATTACHMENTS: A. Job Description for Manager of Business and Community Development
B. Job Description for Creative Content Designer
C. Job Description for Power Supply Contracts Manager – Tier II
D. Job Description for Administrative Assistant

SUMMARY:

As MCE has grown in its service offerings to more communities, our staffing needs have grown in three areas including public affairs, power supply contracts management and administrative support. In the Public Affairs area, engagement in the community has increased. Due to the current span of authority assigned to the Director of Public Affairs, an additional level of management is needed within the division. In particular, a supervisory manager is needed in the area of business and community development. In addition, the volume of advertising and outreach to the existing and new communities calls for a position dedicated to the design of materials both for print media and the web. To address these needs, staff recommends the addition of two new positions for the Public Affairs team as follows:

- Manager of Business and Community Development
- Creative Content Designer

The attached draft job descriptions and compensation level recommendations have been developed for consideration by the MCE Executive Committee and if approved, would subsequently be brought for consideration by the MCE Board of Directors.

Manager of Business and Community Development

Working primarily with the Public Affairs team, the Manager of Business and Community Development will develop data-driven strategies and plans to educate and motivate employees to implement effective sales and outreach in MCE's service areas and plans for future development. Due to an existing Manager within the Public Affairs team, an internal comparison was done to link the Manager of Business and Community Development to other manager positions at this level within the team in order to provide compensation within the same salary range. Therefore, the salary for this position is linked to the Manager of Account and Billing Services.

Recommendation: Approve the job description for the new position of Manager of Business and Community Development and set the salary range at \$77,883 - \$ 96,657 with exact compensation to be determined by the Executive Officer within the existing Board approved budget.

Creative Content Designer

The Creative Content Designer will work to develop marketing and branding strategies and design content for MCE's wide array of communication sources for the Public Affairs Team, as well as for the Energy Efficiency and Regulatory teams. In order to align the position internally, the vacant position of Account Manager II was reviewed as its level of education and experience are similar and it is also assigned to the Public Affairs Team. Therefore, the salary is linked to the Account Manager II position.

Recommendation: Approve the job description for the new position of Creative Content Designer and set the salary range at \$58,000 – \$80,000 with exact compensation to be determined by the Executive Officer within the existing Board approved budget.

Power Supply Contracts Manager – Tier II

In recruiting for the Power Supply Contracts Manager, the caliber of the candidates indicated that more responsibility, autonomy and even supervisory duties could be assigned to the position if at a Tier II level, freeing the Director of Power Resources for the highest level of work within the procurement division. In addition with the customer base increasing so rapidly and the number of suppliers and agreements to track has increased substantially, higher level work would be a benefit in managing the necessary generation resources for MCE-served communities. The salary for this position was set by reviewing both similarly-situated internal positions as well as job descriptions from similar outside agencies.

Recommendation: Approve the job description for the new position of Power Supply Contracts Manager and set the salary range at \$77,833 - \$96,657 with exact compensation to be determined by the Executive Officer within the existing Board approved budget.

Administrative Assistant

Due to organizational changes within the Internal Operations team, it is necessary to create a position that would handle the less complex duties of an Administrative Associate position, to provide support to all MCE teams by providing clerical and basic administrative duties, such as reception and phone answering, meeting coordination and management, and office management, as well as handling tasks in accounts payable. In order to keep salary ranges consistent internally, it is recommended that the salary for this position be set at 10% below that of the Administrative Associate.

Recommendation

Approve the job description for the new position of Administrative Assistant and set the salary at \$40,000 - \$52,000 with exact compensation to be determined by the Executive Officer within the existing Board approved budget.



JOB DESCRIPTION

MANAGER OF BUSINESS AND COMMUNITY DEVELOPMENT

Summary

Under general direction of the Director of Public Affairs, the Manager of Business and Community Development will drive and facilitate the growth of Marin Clean Energy (MCE), both by generating new customers and by motivating and challenging employees and the customer services company under contract, through a variety of strategies, as described below. Working primarily with the Public Affairs team, the Manager of Business and Community Development develops data-driven strategies and plans to educate and motivate employees to implement effective sales and outreach, in collaboration with MCE's marketing staff, and other duties as assigned.

Class Characteristics

This single position class works independently under general direction from the Director of Public Affairs. With the assistance of subordinate staff, the Manager of Business and Community Development generates new MCE customers by developing and implementing data-driven strategic plans. The incumbent will motivate and challenge employees to implement effective community outreach and sales in line with MCE's current goals as well as for future development. The Manager of Business and Community Development will interface with MCE's internal staff, consultants and contractors, and residential, commercial and government entities.

Supervisory Responsibilities

The Manager of Business and Community Development supervises other members of the Public Affairs Team.

Essential Duties and Responsibilities (Illustrative Only)

- Reviews and analyzes data necessary for strategic planning
- Plans, organizes and implements business and community development strategies and goals for marketing and sales of MCE services to the general public, business customers and public agencies
- Develops strategies to increase Deep Green, Light Green, and Local Sol customer bases
- Develop and implements a sales contact plan to include cold-calling, direct marketing, and attending industry events to build relationships with key prospects
- Supervises, challenges and motivates staff to carry out sales, outreach goals and objectives

- Contributes to the learning environment by identifying areas where there is potential for learning and building knowledge with others
- Assists with performance reviews
- Works with other MCE divisions to promote and encourage participation in MCE's energy efficiency program
- Identifies trendsetter ideas by researching industry and related events, publications, and announcements
- Locates or proposes potential business deals by contacting potential partners; discovering and exploring opportunities
- Screens potential business deals by analyzing market strategies, deal requirements, potential, and financials; evaluating options; resolving internal priorities; recommending marketing investments to support sales acquisition
- Creates and maintains a target list of potential customers and identifies high value potential customers
- Creates and tracks sales targets
- Works closely with marketing communications staff to identify appropriate go to market messaging for specific business sectors

Education/Experience

Education and/or experience equivalent to a Bachelor's degree in communications, public administration, business administration, community development or a related field and six years of experience in business and community development and outreach.

Knowledge of

- Marin Clean Energy electric service options and customer programs
- The mission and goals of Marin Clean Energy
- Environmental policy, public administration, and energy regulation
- Microsoft Office Suite including Excel, Word, PowerPoint and Adobe Acrobat
- Diverse communities and cultures
- Effective sales and negotiations tactics
- Principles and practices of effective supervision

Ability to

- Take a client from initial introductory steps, pitching, and closing
- Respond to incoming requests for information in a professional and creative manner
- Enhance own development by taking responsibility for staying informed and up to date with industry knowledge
- Contribute to the learning environment by identifying areas where there is potential for learning and building knowledge with others
- Adopt the performance management scheme by setting objectives, participating in performance reviews and building a personal development plan for assigned staff
- Work with and develop the current prospect database within specified business sectors to generate effective leads & exceed sales targets for the business

- Develop effective tactical marketing strategies to support sales acquisition
- Manage and track lead generation and a sales pipeline through CRM system
- Communicate effectively in writing and in oral conversation as a strong presenter, negotiator, and influencer
- Organize work with attention to detail
- Work independently as well as work as part of a wide and varied team

Language and Reasoning Skills

- Exercise sound judgment, creative problem solving, and commercial awareness.
- Develop high-quality writing, research and communication work products.
- Deliver clear oral and written communication.
- Interact professionally and effectively with customers, commercial partners, MCE staff team and Board of Directors.
- Apply strong analytical and problem-solving skills.
- Manage projects and time efficiently.
- Organized with good attention to detail.

Mathematical Skills

Ability to add, subtract, multiply, and divide in all units of measure, using whole numbers, common fractions, and decimals. Ability to compute rate, ratio, and percent and to draw and interpret bar graphs.

Physical Demands

The physical demands described here are representative of those that must be met by an employee to successfully perform the essential functions of this job. While performing the duties of this job, the employee is frequently required to use hands to finger, handle, or feel and reach with hands and arms. The employee is occasionally required to stand. The employee must occasionally lift and/or move up to 20 pounds.

Work Environment

The work environment characteristics described here are representative of those an employee encounters while performing the essential functions of this job. The noise level in the office work environment is usually moderate. The incumbent also works in the field at community meetings and other functions.

ADA Compliance

MCE will make reasonable accommodation of the known physical or mental limitations of a qualified applicant with a disability upon request.



JOB DESCRIPTION

CREATIVE CONTENT DESIGNER

Summary

Under general supervision of the Director of Public Affairs, the Creative Content Designer will strategize and create MCE marketing and branding content including graphic design and copy for print collateral, advertisements, newsletters, social media, and MCE's website, and other duties as assigned.

Class Characteristics

This single position class works independently under general supervision of the Director of Public Affairs and is responsible for the conceptualization and implementation of design and content to fulfill MCE marketing strategies.

Essential Duties and Responsibilities (Illustrative Only)

- Creates marketing materials to support MCE programs and services including, but not limited to, Deep Green, Light Green, Local Sol and Energy Efficiency
- Creates marketing materials, as needed, to support MCE's Legal and Regulatory team
- Identifies trendsetter ideas by researching industry and related events, publications, and announcements
- Attends and directs MCE photo shoots

Web Work

- Creates and designs new webpages
- Writes and edits web content
- Maintains and updates website to be up-to-date and functional
- Solves website code problems

Advertisements & Print Collateral

- Develops art and copy for print, outdoor and online advertisements, signs, flyers, brochures, presentations, and booklets
- Plans, illustrates and presents ad concepts
- Prepares and finalizes finished copy and art

Education/Experience

Education and experience equivalent to a Bachelor's degree in Graphic Design, Fine Arts or a related field and four years of creative, innovative design experience. Renewable energy and utility industry knowledge are desirable.

Knowledge of

- Microsoft Office Suite including Excel, Word, and PowerPoint
- Adobe Creative Suite including Photoshop, Illustrator, and InDesign
- HTML coding, WordPress programming, web design and content management
- Photography procedures
- Printing processes and specifications
- Marin Clean Energy electric service options and customer programs
- The mission and goals of Marin Clean Energy
- Diverse communities and cultures

Ability to

- Work closely with marketing communications staff to identify appropriate go to market messaging for specific sectors
- Develop effective tactical marketing strategies to support sales acquisition
- Create exceptional artistic and creative graphic design materials
- Communicate effectively in writing and in oral conversation
- Organize work with attention to detail
- Work independently as well as work as part of a wide and varied team
- Establish and maintain effective working relationships with persons encountered during the performance of duties

Language and Reasoning Skills

- Exercise sound judgment, creative problem solving, and commercial awareness.
- Develop high-quality writing, research and communication work products.
- Deliver clear oral and written communication.
- Interact professionally and effectively with customers, commercial partners, MCE staff team and Board of Directors.
- Apply strong analytical and problem-solving skills.
- Manage projects and time efficiently.

Mathematical Skills

Ability to add, subtract, multiply, and divide in all units of measure, using whole numbers, common fractions, and decimals. Ability to compute rate, ratio, and percent and to draw and interpret bar graphs.

Physical demands

The physical demands described here are representative of those that must be met by an employee to successfully perform the essential functions of this job. While performing the duties of this job, the employee is frequently required to use hands to finger, handle, or feel and reach with hands and arms. The employee is occasionally required to stand. The employee must occasionally lift and/or move up to 20 pounds.

Work Environment

The work environment characteristics described here are representative of those an employee encounters while performing the essential functions of this job. The noise level in the office work environment is usually moderate. The incumbent also works in the field at community meetings and other functions.

ADA Compliance

MCE will make reasonable accommodation of the known physical or mental limitations of a qualified applicant with a disability upon request.



JOB DESCRIPTION

POWER SUPPLY CONTRACTS MANAGER – TIER II

SUMMARY

The Power Supply Contracts Manager, under general direction of the Director of Power Resources, has responsibility for contract monitoring, facilitation, and management as well as invoice review and validation to support Marin Clean Energy (MCE) power supply contracts. The incumbent may assist in the administration of RFP proposal processes, MCE open season procurement process, ongoing correspondence with counterparties including contract development and performance tracking, and other duties as assigned in support of the power supply procurement process.

CLASS CHARACTERISTICS

The Power Supply Contracts Manager Tier II performs assignments under general direction of the Director of Power Resources as part of the Power Resources and Procurement team and works closely with MCE's technical team including external consultants. This position provides support to the Director of Power Resources by developing and reviewing contracts for power supply and reviewing, validating and processing power supply invoices for payment. The position differs from the Power Supply Contracts Manager – Tier I in its higher level of autonomy and work assignments.

SUPERVISORY RESPONSIBILITIES

This position may have lead worker and/or supervisory responsibilities.

ESSENTIAL DUTIES AND RESPONSIBILITIES (ILLUSTRATIVE ONLY)

Power Supply Contract Facilitation

- Under direction of the Director of Power Resources, establish standard operating procedures , protocols and safeguards to ensure procurement team decision making processes are aligned with agency goals
- Assist with drafting of new vendor and supplier agreements
- Serve as point of contact for counterparties in negotiations for supply agreements demonstrating excellent interpersonal skills and project management acumen
- Assist with creation of materials to facilitate Board review of potential supplier agreements include staff reports, supporting information, and presentation materials
- Manage stakeholder relationships, including PPAs, interconnection, staff and consultants, permitting agencies, community and public relations
- Conduct research and other due diligence to compile relevant information as needed for staff, technical consultants, legal consultants and Board members
- Track all steps needed to reach contract finalization, up to, and including, contract execution

- Maintain current knowledge of regulatory/ legislative trends and changes as well as current and future market conditions

Performance Monitoring

- Monitoring and management of assigned counterparty relationships as required to improved performance and contract compliance
- Assist with performance auditing and monitoring for existing MCE contracts
- Track counterparty compliance with contract milestones and other deliverables
- Manage vendor and contractor agreements
- Maintain and update files as needed
- Maintain, update, and track contract files through contract management system

Invoice Management and Validation

- Identify opportunities for portfolio optimization, budget savings, congestion cost avoidance and project development
- Interface with power suppliers and contractors regarding timely invoicing
- Receive, file and process invoices in a timely and correct manner
- Perform validation on invoices as assigned to insure accurate charges and credits have been applied
- Track invoice payments and prepare related reports to management, technical team and external accountant
- Resolve, or provide support in resolving invoice and billing issues
- Provide information to assist external accountant with problem resolution

Other duties

- Develop project management
- Prepare materials for the MCE staff to facilitate policy discussions related to procurement and resource planning
- Assist with the administration of RFP processes, the open season process and the assessment of unsolicited proposals
- May review and analyze proposals for electric power supply submitted to MCE by developers and brokers and provide summary information for staff and technical team
- May assist in preparation and presentation of information and recommendations to assist MCE staff and Board in assessing and identifying 'best fit' market opportunities for MCE
- May assist in tracking changes during contract negotiation for the purchase and/or sales of electric resources and Renewable Energy Credits (RECs)
- May assist in managing MCE's various renewable energy certificate accounts within the WREGIS system
- May assist with preparation of compliance reports and materials related to MCE power supply, including those required by the California Public Utilities Commission (CPUC), California Energy Commission (CEC), The Climate Registry, and the Department of Energy (DOE).

BREAKDOWN OF TIME

- | | |
|-------------------------------------|-----|
| • Contract Development | 30% |
| • Vendor Performance Monitoring | 25% |
| • Invoice Management and Validation | 25% |
| • Other as assigned | 20% |

MINIMUM QUALIFICATIONS

Experience/Education

Education and experience equivalent to a Bachelor's degree in business, economics or accounting, supplemented by a minimum of 5 years of progressively responsible experience at an electric utility, municipal utility, a Community Choice Aggregation program or in a closely related field. Technical experience in the management of contracts is required.

Knowledge of

- Contracts management best practices
- Microsoft Office software including Excel, Word and PowerPoint, Project.
- Energy generation technologies including carbon neutral electric energy, conventional energy, and renewable energy such as wind, biomass, geothermal, solar, concentrating solar, and hydroelectric
- Procurement process and use of renewable energy certificates to support mandatory and voluntary compliance programs
- The California Independent System Operator (CAISO) settlement process
- The structure and content of standard power purchase agreements for various resource types
- Renewable energy project development including environmental and local use permitting, interconnection agreements and processes
- California's Renewables Portfolio Standard, Power Content Label and Power Source Disclosure program
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- Power scheduling
- Power purchase agreement structures, general terms and conditions and basic requirements.
- The Western Renewable Energy Information System (WREGIS)
- Regulatory reporting and compliance requirements of the California Public Utilities Commission (CPUC).

Language and Reasoning Skills

- Manage projects and time efficiently with a high level of attention to detail.
- Apply strong task prioritization, analytical and problem-solving skills.
- Exercise sound judgment, creative problem solving, and commercial awareness.
- Develop high-quality writing, research and communication work products.
- Deliver clear oral communications.
- Effectively interpret and apply contract language and commercial agreements.
- Analytical skills to evaluate contractor performance and potential project opportunities, and project siting, permitting and interconnection issues.
- Interact professionally and effectively with counterparties, consultants, MCE staff team and, when necessary, the Board of Directors.

Skills and Abilities

- Be thorough and detail-oriented.
- Manage multiple priorities and quickly adapt to changing priorities in a fast paced dynamic environment.
- Establish and maintain effective working relationships with persons encountered during the performance of duties.
- Take responsibility and work independently, as well as work as a team member
- Prepare professional written work products.
- Perform quantitative data and statistical analysis and effectively communicate results to others.

- Work accurately and swiftly under pressure.
- Demonstrate patience, tact, and courtesy.

MATHEMATICAL SKILLS

Ability to add, subtract, multiply, and divide in all units of measure, using whole numbers, common fractions, and decimals; compute rate, ratio, and percent and to create and interpret bar graphs

PHYSICAL DEMANDS

The physical demands described here are representative of those that must be met by an employee to successfully perform the essential functions of this job. While performing the duties of this job, the employee is frequently required to use hands to finger, handle, or feel and reach with hands and arms. The employee is occasionally required to stand. The employee must occasionally lift and/or move up to 20 pounds.

WORK ENVIRONMENT

The work environment characteristics described here are representative of those an employee encounters while performing the essential functions of this job.
The noise level in the work environment is usually moderate.

ADA COMPLIANCE

MCE will make reasonable accommodation of the known physical or mental limitations of a qualified person with a disability upon request.



Job Description

Administrative Assistant

Summary

The Administrative Assistant, under supervision of the Internal Operations Coordinator, supports Marin Clean Energy staff by providing clerical and basic administrative level duties, such as reception and phone answering, meeting coordination, supply maintenance, records management and other duties as assigned.

Class Characteristics

The Administrative Assistant performs assignments under the supervision of the Internal Operations Coordinator. The incumbent provides administrative support to MCE staff works collaboratively with all MCE teams to ensure smooth office operations, meeting coordination, customer service and handles accounts payable and document management.

Supervisory Responsibilities

This job has no supervisory responsibilities.

Essential Duties and Responsibilities (Illustrative Only)

Accounts Payable

- Interface with vendors and contractors for all MCE teams
- Receive and process invoices in a timely and correct manner
- Track invoices and prepare related reports to management
- Resolve invoice and billing issues, as requested
- Maintain organization of hard copy and electronic files

Meeting Coordination/Management

- Coordinate conference room and equipment reservations
- Order and prepare refreshments for meetings, as requested
- Schedule conference calls
- Communicate directions and parking instructions to MCE visitors
- Organize and coordinate staff events, including staff birthdays

- Assist with coordination of conference registrations and related logistics
- Assist with logistical arrangements, equipment set up and printing of materials for on-site meetings

Office Management

- Interface with building management
- Maintain and update all agency insurance coverage
- Interface with IT consultants and resolve computer, phone, and system issues promptly
- Maintain office equipment
- Maintain, track, and replenish office, kitchen, and operational supplies
- Assist with maintaining overall tidiness of kitchen and office areas
- Receive and distribute mail
- Assist with tracking and execution of quarterly document purge
- Update office calendars as requested
- Assist MCE staff with preparation of printed materials and other administrative support as needed

Customer Service

- Respond to and direct incoming calls
- Greet customers, visitors, and other guests who come into the MCE office
- May assist walk-in customers with informational requests

Break-Down of Time Spent on Various Work Areas

Administrative Support to Staff	50%
Document Management	10%
Accounts Payable, Meeting Coordination & Management	20%
Customer Service	20%

Minimum Qualifications

To perform this job successfully, an individual must be able to perform each essential duty satisfactorily. The requirements listed below are representative of the knowledge, skill, and/or ability required.

Experience/Education

Education and experience equivalent to an Associate degree and two (2) years of progressively responsible experience as an administrative support professional working in complex work environments, or an equivalent combination of education, training, and experience. A background in business administration, accounting, and office management is preferred.

Knowledge of

- Principles and practices of administrative support and office management
- Advanced Microsoft Office Suite (Excel, Word, Adobe, PowerPoint, Outlook)
- Business management including, but not limited to accounting practices, financial analysis, and budgeting concepts
- Document retention requirements and practices

Ability to

- Take responsibility and work independently
- Coordinate team efforts
- Work accurately and swiftly under pressure
- Handle multiple ongoing projects in a fast-paced, team-oriented environment
- Demonstrate patience, tact, and courtesy
- Communicate effectively in written and verbal form
- Establish and maintain effective working relationships with persons encountered during the performance of duties
- Demonstrate highest level of accountability, integrity, judgment, and confidentiality

Language and Reasoning Skills

- Exercise sound judgment, creative problem solving, and commercial awareness
- Manage multiple priorities and quickly adapt to changing priorities in a fast-paced, dynamic environment
- Develop high-quality writing, research, and communication work products
- Deliver clear and persuasive oral communication
- Interact effectively with administrative bodies, MCE's Executive Officer and Board of Directors, MCE staff, and external vendors and contractors
- Apply strong problem-solving skills
- Be thorough and detail-oriented and focus on work at hand

Mathematical Skills

- Add, subtract, multiply, and divide in all units of measure, using whole numbers, common fractions, and decimals
- Compute rate, ratio, and percent
- Draw and interpret bar graphs

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Kathrin Sears, Chair
County of Marin

Tom Butt, Vice Chair
City of Richmond

Bob McCaskill
City of Belvedere

Alan Schwartzman
City of Benicia

Sloan C. Bailey
Town of Corte Madera

Barbara Coler
Town of Fairfax

Kevin Haroff
City of Larkspur

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City of Novato

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Town of Ross

Ford Greene
Town of San Anselmo

Genoveva Calloway
City of San Pablo

Andrew McCullough
City of San Rafael

Ray Withy
City of Sausalito

Emmett O'Donnell
Town of Tiburon

1 (888) 632-3674
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781 Lincoln Ave., #320
San Rafael, CA 94901

**Marin Clean Energy
Board of Directors Meeting
Thursday, March 5, 2015
7:00 P.M.**

**San Rafael Corporate Center, Tamalpais Room
750 Lindero Street, San Rafael, CA 94901**

Agenda Page 1 of 2

1. Swearing In of New Board Member
2. Board Announcements (Discussion)
3. Public Open Time (Discussion)
4. Report from Chief Executive Officer (Discussion)
5. Consent Calendar (Discussion/Action)
 - C.1 2.5.15 Meeting Minutes
 - C.2 Approved Contracts Update
 - C.3 First Agreement with 700 Fifth Avenue, LLC
 - C.5 Seventh Agreement with Maher Accountancy
 - C.6 Fourth Agreement with Jay Marshall
 - C.7 Third Agreement with Braun Blaising McLaughlin & Smith
 - C.8 Fifth Agreement with Niemela Pappas & Associates (formerly Lehman, Levi, Pappas & Sadler)
 - C.8 Sixth Agreement with Richards Watson & Gershon
 - C.9 Third Agreement with Troutman Sanders
 - C.10 Sixth Agreement with Green Ideals





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6. Monthly Budget Report (Discussion)
7. Ad Hoc Contracts Committee (Discussion/Action)
8. Power Purchase Agreement with Stion Corporation (Discussion/Action)
9. New MCE Staff Positions (Discussion/Action)
10. Energy Efficiency Update (Discussion)
11. Board Member & Staff Matters (Discussion)
12. Adjourn

