

Attachment D

This page intentionally left blank.

Exhibit "A"

REDEVELOPMENT AGENCY OF THE COUNTY OF MONTEREY

DISPOSITION, DEVELOPMENT AND LEASE AGREEMENT



LEASED PREMISES:	Imjin Shoppette 2700 Imjin Road Marina, CA 93933
LESSEE:	Darryl Choates
AGENCY:	Redevelopment Agency of the County of Monterey

**REDEVELOPMENT AGENCY
OF THE COUNTY OF MONTEREY
DISPOSITION, DEVELOPMENT AND LEASE AGREEMENT**

This Disposition, Development and Lease Agreement ("Agreement") is entered into as of this _____ day of _____ by and between the **REDEVELOPMENT AGENCY OF THE COUNTY OF MONTEREY** ("AGENCY") and **DARRYL CHOATES**, ("Lessee").

RECITALS

- A. The property which is the subject of this Agreement is located on the former Fort Ord Military Installation, situated in the County of Monterey, California, and consists of approximately three (3) acres, as more particularly described in Exhibit A, attached hereto and incorporated herein by reference ("the Property").
- B. On or about June 18, 2001, the United States, through the Secretary of the Army, and the Fort Ord Reuse Authority (FORA), acting by and through their agent the County of Monterey, entered into a Lease In Furtherance of Conveyance (LIFC) under Base Realignment and Closure (BRAC) for the Property, including Building Numbers 6160, 6161, and 6165A (the "Premises"), and the adjacent area between the buildings, landscaped areas, open space and parking areas, known as the "Imjim Shoppette", as more particularly shown on Exhibit A-1, attached hereto and incorporated herein by reference.
- C. On or about June 19, 2001, FORA, acting by and through its agent the County of Monterey, entered into a sublease with Darryl Choates and Trefina Choates for the Property including the Premises for an initial term of five (5) years, for the purpose of refurbishing and operating a business for the retail sale of food, beverages, and household merchandise and small truck rentals in the building designated as 6160 on the map attached as Exhibit A-1 (known as the "Ord Market"). The sublease provided that, if FORA received conveyance of the Property from the Army and FORA then conveyed fee title of the Property to the County, the sublease would terminate and the applicable provisions of the sublease would continue to have effect as a direct lease of the Property from the County to Choates.
- D. On February 19, 2002, the Board of Supervisors of the County of Monterey adopted Ordinance No. 4136 adopting the Redevelopment Plan ("Redevelopment Plan") for the redevelopment of portions of the former Fort Ord, including the subject Property.
- E. On May 19, 2006, the Army conveyed the Property to FORA. In August 2006, FORA conveyed the Property to the Redevelopment Agency of the County of Monterey.
- F. Lessee desires to continue to lease the Property for an additional twenty (20) years following the expiration of the term of the sublease and desires to install and operate a gas station and car wash on the Property in addition to continuing to operate Ord Market

G. The Agency desires to redevelop the Property as well as adjacent property in accordance with the Redevelopment Plan and the Reuse Plan.

H. The Agency has determined that the lease of the Property in accordance with this Agreement will serve the purposes of the Redevelopment Plan by providing an interim use that is consistent with the Redevelopment Plan. The Lessee recognizes that at some time during the term of this Agreement, Agency may determine to proceed with redevelopment of the Property and adjacent properties which could result in termination of this Agreement.

NOW, THEREFORE, AGENCY and LESSEE agree as follows:

ARTICLE 1 - PREMISES

1.1 Description: Agency hereby leases to Lessee and Lessee hereby leases from Agency, upon the terms and conditions herein set forth, the Property including the Premises as more particularly described in Exhibit A and shown on Exhibit A-1. The Property includes the parking lot adjacent to the Premises.

1.2 Compliance with the "Americans with Disabilities Act of 1990" (ADA): Lessee shall ensure that the Property, Premises and the Premises Improvements (as defined below) are in compliance with the Americans with Disabilities Act of 1990 ("ADA"), as amended, and, if necessary, prior to the Commencement Date, shall modify the Premises to comply with the Act and the regulations promulgated to implement the ADA.

ARTICLE 2 - TERM

2.1 Lease Term: The term of this Agreement (the "Lease Term") shall be twenty (20) years, commencing on August 22, 2006 (the "Lease Commencement Date") and ending August 22, 2026 unless sooner terminated pursuant to the terms of this Agreement ("Lease Expiration Date").

2.2 No Extended Term: This Agreement is for a fixed twenty (20) year term and does not provide any guaranteed right of extension. If Lessee desires to extend the Lease Term, Lessee shall provide notice of such intent at least 180 days in advance of the expiration of the Lease Term. The Agency may, in its sole discretion, decide whether to enter into negotiations with Lessee to extend the Lease Term.

ARTICLE 3 -- RENT

3.1 Rent for Premises: In consideration of the continuing right of use, quiet enjoyment and possession of the Property, Lessee shall, during the first ten (10) years of the Lease Term, pay to Agency as monthly rent for the Ord Market the sum of Two Thousand Eight Hundred Fifty Dollars and 00/100 (\$2,850.00), or three percent (3%) of gross monthly sales volume for the Ord Market and the truck rentals for the immediately preceding month,

whichever is greater, in addition to any other sums due from Lessee to Agency pursuant to this Agreement. The monthly rent payable under this section 3.1 shall be referred to as the "Basic Rent."

3.2 Determination of Gross Monthly Sales Volume: The term "gross monthly sales volume" as used in this Agreement means the gross income from the operation of the Ord Market, including all revenues from the Property such as rental income from truck rentals. Lessee shall annually submit to Agency a profit and loss statement prepared and certified by a CPA acceptable to the Agency. Such statement shall contain sufficient data for Agency to verify the gross monthly sales volume for each month of the previous year. The Agency shall have the right to examine all records and documents related to said profit and loss statement and Lessee's gross monthly sales volume. If Agency discovers any irregularity or discrepancy in the Lessee's reporting of gross monthly sales, then Agency may, in Agency's sole discretion and at Lessee's sole expense, require an audit of Lessee's business operations to verify the gross monthly sales volume to be conducted by an auditor of the Agency's choosing. Lessee shall cooperate fully with any such auditor and provide full access to any of Lessee's records to such auditor. Failure of the Lessee to fully cooperate with the Agency in the inspection of Lessee's books or in any audit will be grounds for termination of this Agreement. In the event the Lessee's profit and loss statements or any audit for any year show that the Basic Rent paid by Lessee for such year was insufficient as a result of the gross monthly sales being higher than reported, the Lessee shall pay to the Agency within thirty days of the submission of any such profit and loss statement or any audit conducted by the Agency the shortfall for the previous year.

3.3 Adjustment to Basic Rent: The Agency shall adjust the Lessee's Basic Rent to account for Lessee's claimed economic losses caused by Imjin Road closure and construction work performed under the direction of FORA. This construction work occurred between July and September 2002 and according to Lessee amounted to losses of revenue to the Lessee in the amount of approximately Seventeen Thousand Dollars (\$17,000). Commencing upon the first full month following the Lease Commencement Date, Lessee's monthly Basic Rent, calculated according to section 3.1 above, shall be reduced by fifty percent (50%) until such rent reductions total Seventeen Thousand Dollars (\$17,000), after which Lessee shall pay the full monthly Basic Rent owed pursuant to Section 3.1. Lessee and Agency acknowledge that the adjustment to Basic Rent provided herein shall be solely attributable to the portion of Basic Rent that is to be paid by the Agency to FORA pursuant to the Implementation Agreement between FORA and the Agency.

3.4 Rent If Lessee Operates a Gas Station or Car Wash: In addition to the Basic Rent, if Lessee constructs in accordance with Article 6 and operates, or contracts with another to operate, a gas station on the Property, Lessee shall pay to Agency as monthly rent an additional Five Hundred Twenty-Five Dollars (\$525) ("Gas Station Rent"), beginning with the first day of operation of the gas station and continuing until the Gas Station Rent is adjusted as set forth below. In addition to the Basic Rent and the Gas Station Rent, if Lessee constructs in accordance with Article 6 and operates, or contracts with another to operate, a car wash on the Property, Lessee shall pay to Agency as monthly rent an additional Two Hundred Dollars (\$200) ("Car Wash Rent"), beginning with the first day of operation of the car wash and continuing until the Car Wash Rent is adjusted as set forth below. If the Gas Station Rent or Car Wash Rent commence on any day other than the first day of a calendar month, then the rent for that month shall be prorated on a daily basis, based on a thirty (30) day month. The Gas Station Rent, if any,

and the Car Wash Rent, if any, shall be subject to annual increases based on the annual rent adjustment set forth below. On the first anniversary of the Lease Commencement Date following the initiation of operations of the gas station or carwash and on each anniversary of the Lease Commencement Date thereafter until the eleventh anniversary of the Lease Commencement Date, the Gas Station Rent, and Car Wash Rent, to the extent applicable, shall be adjusted to reflect the annual increase in the U.S. Department of Labor Consumer Price Indexes all urban consumers for the San Francisco-Oakland-San Jose area ("CPI Increase") as calculated on the basis of the CPI Increase for the twelve months immediately preceding the anniversary of the Lease Commencement Date

In the event Lessee constructs any Major Additional Improvements on the Property pursuant to Section 6.11, the Basic Rent shall be adjusted to compensate the Agency for the increased leasehold value resulting from the Major Additional Improvements.

3.5. Rent for Final Ten Years of Lease. Beginning on the eleventh anniversary of the Lease Commencement Date, the Basic Rent, the Car Wash Rent and the Gas Station Rent shall be the fair market value of the leasehold as determined by an appraisal of the leasehold. At least one hundred eighty (180) days prior to the eleventh anniversary of the Lease Commencement Date the Agency shall obtain an appraisal for the leasehold value of the Property for the remaining term of the lease. The appraiser shall be instructed to determine the fair market value of the leasehold estate with the understanding that the leasehold estate consists of a ground lease for all of the Property and a space lease for the Ord Market building and with instructions that with respect to the Premises Improvements, consisting of the gas station and car wash and any other Major Additional Improvements that Lessee may have constructed on the Property in accordance with the terms of this Lease, the leasehold estate is to be treated as a ground lease. Agency shall provide the Lessee with a copy of the appraisal and a notice of proposed rent for the remaining ten years of the Lease Term as determined by the appraisal. In the event the Lessee disagrees with the conclusions of the Agency's appraisal, the Lessee shall so notify the Agency in writing within thirty (30) days of receipt of the appraisal and inform the Agency that Lessee intends to obtain its own appraisal of the leasehold value of the Property. The Lessee shall obtain an appraisal of the leasehold value of the Property within sixty (60) days of receipt of the Agency's appraisal and shall provide the Agency with a copy of any such appraisal. Within fifteen days of receipt of the Lessee's appraisal by the Agency, the Agency and the Lessee shall meet and confer to determine if the parties can agree on a fair market value for the rent for the Property for the remaining ten years of the Lease Term. If the parties are unable to agree upon a rent within forty-five (45) days of receipt of the Lessee's appraisal by the Agency, the Agency's appraiser and the Lessee's appraiser shall mutually select a third appraiser and provide copies of the two previously prepared appraisals to the third appraiser. The third appraiser shall, based on a review of the two appraisals, determine the fair market value of the leasehold for the remaining ten years of the Lease term, including any inflationary adjustments. The Agency and the Lessee agree to abide by the determination of the third appraiser with regards to the rent for the remaining ten year term of the lease. The Agency and the Lessee shall each bear the costs of their own appraisals and shall mutually share the cost of the third appraiser.

3.6 Rent payments: The Basic Rent, any Gas Station Rent and any Car Wash Rent (collectively "Rent") are payable in advance on or before the first day of each month. Lessee shall commence rental payments upon the Lease Commencement Date. If the Lease

Commencement Date is other than the first day of a calendar month, then the Basic Rent for that month shall be prorated on a daily basis, based on a thirty (30) day month. Basic Rent shall be payable to Agency at the address specified in Article 5 or at such other address as Agency may from time to time designate in writing.

3.7 Net-Net-Net Lease: This lease is net-net-net lease and Basic Rent and other payments payable to or on behalf of the Agency shall (a) be paid without notice or demand and without offset, counterclaim, abatement, suspension, deferment, deduction or defense; and (b) be an absolute net return to the Agency, free and clear of any expenses, charges or offsets whatsoever.

3.8 No Termination: Except as otherwise expressly provided in this Agreement, this Agreement shall not terminate nor shall the Lessee be entitled to the abatement of any Basic Rent or other payment due or any reduction or allocation thereof, nor shall the obligations of the Lessee under this Agreement be otherwise affected by reasons of any damage to or destruction of all or any part of the Property, Premises or Premises Improvements from whatever cause, or a taking of the Property or any portion thereof by condemnation, requisition or otherwise for any reason whatsoever, or the prohibition, limitation or restriction of the Lessee's use of all or any part of the Property, or the interference with such use by any person, or by reason of the termination or foreclosure of any mortgage, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties that the obligations of the Lessee shall be separate and independent covenants and agreements, that the Basic Rent and all other payments payable by the Lessee under this Agreement shall continue to be payable in all events, and that the obligations of the Lessee under this Agreement shall continue unaffected, unless the requirement to pay or perform the same shall have been terminated pursuant to an express provision of this Agreement; provided, however, that during the continuance of any such damage, destruction, taking, prohibition, limitation, interference, eviction or foreclosure, the Lessee shall not be obligated to perform any obligations which are no longer capable of being performed as a result of such event.

ARTICLE 4 - TERMINATION BY AGENCY

4.1 Termination: This Agreement shall terminate upon the Lease Expiration Date.

4.2 Early Termination: The Agency may terminate this Agreement prior to the expiration of the Lease Term for any reason whatsoever by providing notice in writing at least three hundred sixty (360) days prior to the date of termination at any time after the second anniversary of the Lease Commencement Date; provided, however, the Agency may not terminate this Agreement for reasons not attributable to any fault of Lessee prior to the Lease Expiration Date unless at the time of such termination the Agency reimburses Lessee for the unrecovered portion, if any, of the cost of Premise Improvements (as defined below) and the goodwill value of the business operating on the Premises at the time of termination as determined below. For purposes of determining the unrecovered value of the Premises Improvements and the goodwill value of the business, at the time of any Lease termination notice given by the Agency pursuant to this Section 4.2, the Agency shall obtain an appraisal of the value of any improvements installed by the Lessee on the Property with the approval of the Agency as well as a goodwill appraisal for the business and shall provide the Lessee with a copy

of any such appraisals within sixty days of the date of the notice of termination. Lessee shall fully cooperate in the preparation of the goodwill appraisal by making Lessee's books and records available to the Agency's selected appraiser. Lessee understands that the Agency cannot determine the goodwill value of the business without Lessee's cooperation and Lessee's failure to cooperate will result in Lessee not receiving compensation for the goodwill value of the business. In determining the goodwill value of the business the goodwill appraiser will be instructed to consider Lessee's ability to relocate the business on the Property or the adjacent property as part of the redevelopment of the Property and the adjacent property and to mitigate any of Lessee's losses resulting from the termination by determining if relocation of the business on the Property or the adjacent property is feasible.

If the Lessee disputes the depreciated value of the Premises Improvements or the goodwill value of the business as determined by the Agency appraisers, the Lessee may, within sixty (60) days of receipt of the Agency appraisal, obtain Premises Improvement and goodwill appraisals, at the Lessee's sole cost, for the depreciated value of the Premises Improvements and the goodwill value of the business. Lessee shall provide the Agency with a copy of the Lessee's appraisals. Upon receipt of the Lessee's appraisals by the Agency, the Lessee and the Agency shall meet and confer in an effort to reach agreement on the depreciated value of the Premises Improvements and the goodwill value of the business. If the Agency and the Lessee cannot reach agreement on the depreciated value of the Premises Improvements and the goodwill value of the business within thirty (30) days of the Agency's receipt of the Lessee's appraisal, the Agency and the Lessee shall mutually select a third appraiser, or appraisers if both a Premises and good will appraiser are necessary, who shall review the Agency's and the Lessee's appraisals and determine the depreciated value of the Premises Improvements and the goodwill value of the business. The determination of the third appraiser or appraisers shall be conclusive of value. In no event shall the amount paid by the Agency for the Premises Improvements be less than the outstanding amount of principal and interest due on any loan Lessee obtained to finance the construction of the Premises Improvements, assuming that the loan terms are commercially reasonable and similar to those terms that would have been available to credit-worthy borrowers at the time the loan was made and assuming that the loan is current and not in default. The Agency in paying the value of the Premises Improvements will not pay any prepayment penalties that may result from early pay off of the loan or any late fees or penalties associated with Lessee's failure to maintain the loan in good standing.

The parties agree that the rent has been structured in a manner to allow Lessee to recover the entire cost of the Premise Improvements over the full term of the Agreement, and Agency shall have no reimbursement obligation for the cost of the Premises Improvements or any Additional Improvements or for the loss of goodwill for the business except in the event of early termination by Agency for reasons not attributable to any fault of Lessee. The Agency shall encourage any subsequent master developer of the Premises to work with Lessee to relocate his business within the redevelopment project area.

4.3 Relocation: Lessee acknowledges and understands that the Property is in a redevelopment project area and, pursuant to the Fort Ord Reuse Plan and Redevelopment Plan, the use of the Property contemplated by this Agreement is an interim use, pending the ultimate reconfiguration and redevelopment of the Property. Lessee further acknowledges that a portion of the Property is designated in the Fort Ord Reuse Plan for road widening and that in the event the County or FORA proceeds with the road widening at any time during this Agreement,

Agency may terminate this Agreement as provided in Section 4.2 as to some or all of the Property and Lessee may lose some or all of the use of the Property. In the event that the Agency terminate this Lease as to a portion of the Property in order to accommodate the road widening and such portion reduces the parking available to the Lessee, the Agency agrees that it shall make available to the Lessee under the same terms and conditions set forth in this Lease, a portion of the adjacent property for use as parking, provided, however, the Agency shall only be required to provide use of a portion of the adjacent property sufficient to ensure that Lessee has an adequate number of parking spaces for the uses of the Premises as they exist immediately prior to the road widening as determined by applying the County's parking standards set forth in the County zoning ordinances. In the event that after a partial termination to accommodate the road widening it is determined that Lessee has sufficient parking without using any of the Agency's adjacent property, the Agency shall have no obligation to provide the Lessee with use of the adjacent property and there shall be no change in the Basic Rent or other terms of this Lease.

Lessee acknowledges and understands that if Agency terminates the tenancy, either on the Lease Expiration Date or sooner as provided in section 4.2 above, Lessee shall not be eligible for relocation assistance, payments, or benefits of any kind. If any dispute arises as to whether Lessee is entitled to relocation assistance, payments, or benefits, Lessee further acknowledges and agrees that Agency promises to reimburse Lessee for the cost of Premise Improvements and the goodwill value of the business operating on the Premises as set forth in section 4.2 above, the Agency promises to provide the Lessee with the opportunity to reenter the Property and the Agency promises to restore any parking lost by the Lessee in the event of a partial termination in order to accommodate a road widening shall fulfill any obligation to provide any relocation payments, benefits, or assistance, any loss of goodwill compensation for and any obligation to provide owner participation rights under the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act, the California Relocation Assistance Law, Community Redevelopment Law, the Redevelopment Plan, or other law or regulation.

4.4 Re-entry: Lessee acknowledges that the Agency may seek a master developer to develop parcels of land in the Fort Ord Redevelopment Area which may include the Property. The Agency will extend reasonable preferences to businesses in the Fort Ord Redevelopment Area, including Lessee, to re-enter in business within the redeveloped area in accordance with the Redevelopment Plan and Agency requirements and rules governing re-entry into business in the Fort Ord Redevelopment Area. Lessee acknowledges that Agency may reject an offer by Lessee to participate or re-enter in business within the Fort Ord Redevelopment Area.

ARTICLE 5 - NOTICES

All notices or correspondence provided for herein shall be effective only if made in writing, addressed to the addresses listed below, and delivered by one of the following means: personal delivery; deposit in the United States mail, registered or certified, postage prepaid and return receipt requested; or mailed by commercial delivery service which furnishes signed receipts of delivery.

To
AGENCY: Redevelopment Agency of the
County of Monterey
168 W. Alisal St. 3rd Floor
Salinas, California 93901
Attn: Director
Fax: 831-755-5398

To
LESSEE: Ord Market
2700 Imjin Road
Marina, CA 93933
Attn: Darryl Choates

Any notice or correspondence shall be deemed received upon personal delivery or upon the delivery or refusal date shown on the delivery receipt if personally delivered by a commercial service or mailed by registered, certified mail. Correspondence other than notices may be given by regular mail or facsimile. Any correspondence sent by facsimile shall also be sent by United States mail. By written notice to the other, either party may change its own mailing address.

ARTICLE 6 - PREMISE IMPROVEMENTS

6.1 Premise Improvements:

(a) Lessee desires to install and operate a gas station and car wash (hereafter "the Premise Improvements") on the Property. This Article 6 shall govern the construction of the Premises Improvements and Lessee shall not construct the Premises Improvements or any other Improvements on the Property except in conformance with this Article 6. Lessee shall be obligated to file an application for all permits and approvals except for a building permit necessary for the Premises Improvements within thirty (30) days of the Lease Commencement Date and to construct the Premises Improvements within two years of receipt of all necessary permits and approvals and if Lessee fails to complete construction of the Premises Improvements within such time, any improvements Lessee desires to construct on the Property, including a gas station and car wash shall be considered Major Additional Improvements as defined in Section 6.11 and subject to renegotiation of the terms of this Agreement including the Basic Rent provisions in accordance with Sections 6.11. It shall be Lessee's obligation to comply with the requirements of this Article 6 with respect to the construction of the Premises Improvements in a time and manner that will allow for construction of the Premises Improvements within the first two years after obtaining the appropriate permits and approvals necessary to construct the Premises Improvements.

6.2 Design Development Documents.

(a) The Lessee shall submit, or shall cause to be submitted, design development documents ("Design Development Documents") for the Premises Improvements to the Agency with sufficient time to allow the Agency to review the Design Development Documents prior to Lessee submitting applications for the necessary land use permits in accordance with Section 6.3 below. During the preparation of all plans and related documents, Lessee shall communicate and consult informally, and shall hold regular progress meetings, as frequently as necessary to insure that the formal submittal of any plan or related document to the Agency and the County can receive prompt consideration.

(b) The Agency shall review the proposed Design Development Documents and shall approve or disapprove the Design Development Documents within thirty (30) days after receipt. Any disapproval shall state in writing the specific reasons for disapproval and the specific changes the Agency reasonably requests be made in order to obtain Agency's approval. The Lessee shall thereafter submit revised Design Development Documents to the Agency for approval within thirty (30) days after notification of disapproval. The Agency shall either approve or disapprove (as provided above) the revised Design Development Documents within thirty (30) days after receipt. If disapproved, the Lessee shall have forty-five (45) days to submit further revised Design Development Documents.

(c) The periods for submission of revised Design Development Documents and review and approval or disapproval by the Agency shall continue to apply until the Design Development Documents are approved by the Agency.

(d) When the Design Development Documents have been approved by the Agency, they shall form a part of this Agreement. Only upon Agency approval of Design Development Documents shall Lessee submit applications for the Land Use Approvals in accordance with Section 6.3.

(e) Any material change, modification, revision or alteration of the approved Design Development Documents shall be submitted immediately for approval to the Agency. If not so approved, the previously approved Design Development Documents shall continue to control. A "material" change, modification, revision or alteration of the approved Design Development Documents is one that would substantially alter the previously approved location, design, height, size, or exterior appearance of the Premises Improvements, including but not limited to landscaping, parking, and ingress and egress improvements, to be constructed on the Property. Changes to the building's interior shall not be considered as a material change requiring additional approval providing the changes affect only the interior of the structure. The submission, review, and resubmission provisions of subsection (b) and (c), above shall apply until the Design Development Documents have been approved.

(f) Notwithstanding the foregoing, any change in the Design Development Documents made necessary to comply with the conditions of approval imposed in connection with Land Use Approvals or the Building Permit shall be deemed approved by the Agency if such change does not change the uses of the Premises Improvements as set forth in the previously approved Design Development Documents or does not materially alter the density of the Premises Improvements as set forth in the previously approved Design Development Documents.

6.3 Land Use Approvals.

The Lessee shall after approval of the Design Development Documents by the Agency apply for and diligently pursue all necessary governmental or regulatory approvals, permits, or authority, other than a building permit necessary for the development and operation of the Premises Improvements, including but not limited to, any environmental review required by CEQA, if any, and Lessee shall comply with all conditions of any such permits in the construction of the Premises Improvements ("Land Use Approvals").

6.4 Final Construction Plans.

(a) The Lessee shall submit, or shall cause to be submitted, to the Agency, all construction documentation upon which Lessee and its contractors shall rely in building the Premises Improvements ("Final Construction Plans") for the Premises Improvements which shall meet the components set forth in the Scope of Development. The Final Construction Plans shall be based upon the approved Land Use Approvals, the approved Design Development Documents, and shall not materially deviate therefrom without the express written consent of the Agency.

(b) If the Final Construction Plans submitted to the Agency conform to the provisions of this Agreement, the approved Design Development Documents, the Redevelopment Plan, the Agency shall approve in writing such Final Construction Plans. Unless rejected by the Agency for their failure to comply with the foregoing requirements within sixty (60) days of submission by the Lessee, the submitted Final Construction Plans shall be deemed accepted.

(c) If rejected by the Agency in whole or in part, the Lessee shall submit new or corrected Final Construction Plans within thirty (30) days of notification of the Agency's rejection and the reasons therefore. If the Agency disapproves or rejects the Final Construction Plans, the Agency shall specifically describe all changes necessary to obtain the Agency's approval. The Agency shall then have thirty (30) days to review and approve the Lessee's new or corrected Final Construction Plans. The provisions of this Section 6.4 relating to time periods for approval, rejection, or resubmission of new or corrected Final Construction Plans shall continue to apply until Final Construction Plans have been approved by the Agency at which time they shall be attached to and become a part of this Agreement as if fully set forth herein.

6.5 Financing Plan.

(a) At the time the Lessee submits its Design Development Documents to the Agency, the Lessee shall submit for Agency's approval evidence of the availability of the funds necessary to construct the Premises Improvements (the "Financing Plan"). The Financing Plan shall include:

(1) An estimated cost breakdown for development and construction of the Premises Improvements;

(2) A copy of a commitment to execute a construction contract, approved and accepted by the Lessee, containing a guaranteed maximum cost for construction of the Premises Improvements, which specifies the expected guaranteed maximum cost;

(3) A copy of the commitment or commitments obtained by the Lessee for the loan or loans for interim construction financing (and permanent financing, if any) and other financing from external sources (including proposed joint ventures and partnerships), certified by the Lessee to be a true and correct copy or copies thereof; and

(4) A certified financial statement of the Lessee evidencing other sources of capital sufficient to demonstrate that the Lessee has adequate funds available and is committing such funds to cover the difference, if any, between costs of the acquisition,

development and construction of the Premises Improvements and the amount available to the Lessee from external sources.

(5) A copy of any operating agreement or other agreement proposed to be entered into by the Lessee with an operator of the gas station and/or car wash as well as information on the proposed operator including financing statements.

(b) Upon receipt by the Agency of the proposed Financing Plan, the Agency shall promptly review the Financing Plan and shall approve or disapprove it within thirty (30) days after submission if it conforms to the provisions of this Agreement. The Agency's review of the Financing Plan shall be limited to determining if the financing contemplated in the Financing Plan would provide sufficient and reasonably available funds to undertake and complete the development and construction of the Premises Improvements, whether the proposed operator has a sufficient track record to ensure operation of the gas station and/or car wash in conformance with this Agreement and determining if it is consistent with the terms of this Agreement.

(c) If the Financing Plan is not approved by the Agency, the Agency shall set forth in writing and notify the Lessee of the reasons therefore. The Lessee shall thereafter resubmit a revised Financing Plan to the Agency for its approval within thirty (30) days of the Agency's notification of disapproval. The Agency will either approve or disapprove the revised Financing Plan within fifteen (15) days of resubmission by the Lessee.

(d) Prior to the recordation of the Certificate of Completion of the Premises Improvements, any material change, modification, revision or alteration of the approved Financing Plan must first be submitted to, and approved by, the Agency for conformity to the provisions of this Agreement. If not so approved by the Agency, the existing Financing Plan shall continue to control.

6.6. Building Permit. The Lessee shall apply for the Building Permit from the County allowing the construction on the Property of the Premises Improvements in accordance with the Final Construction Plans. The Agency shall render all reasonable assistance to the Lessee to obtain such Building Permit, at no cost to the Agency.

6.7 Evidence of Availability of Funds. Prior to receipt of the Building Permit for the Premises Improvements, the Lessee shall submit to the Agency evidence reasonably satisfactory to the Agency that any conditions to release or expenditure of funds described in the approved Financing Plan for the purpose of paying the costs of constructing the Premises Improvements have been met or will be met prior to commencement of construction and that such funds will be available for construction of the Premises Improvements.

6.8 Insurance.

(a) The Lessee shall submit to Agency evidence of the insurance coverage meeting the general requirements set forth in Article 11 below, not less than ten (10) days prior to initiating any work on the Property. The Agency shall review and reasonably approve or disapprove of the evidence of insurance not less than ten (10) days after submission of complete information in the form required by the Agency or the County. If the Agency disapproves the

evidence of insurance, it shall specify in writing the reasons for such disapproval. The Lessee shall resubmit the information required within fifteen (15) days of the Lessee's receipt of the Agency's written notification. The review and submission periods shall continue to apply until the Agency approves the evidence of insurance coverage. No work shall be initiated on the Property prior to receipt of the Agency's approval of the Lessee's insurance.

(b) Each contractor and each sub-contractor shall have furnished the Agency with evidence of the insurance coverage meeting the general insurance requirements set forth in Article 11, below, prior to initiating any work on the Property. The periods for submission, review and approval shall apply as stated in subsection (a) above.

6.9 Environmental Review.

(a) The Agency and the Lessee agree that the CEQA documents prepared by the Agency for approval of this Agreement include analysis of schematic plans for the construction of the Premises Improvements and it is assumed that the Lessee will be able to rely upon this CEQA documentation for the construction of the Premises Improvements. Following execution of this Agreement, the Lessee shall diligently submit applications to the County for the construction of the Premises Improvements. The Lessee acknowledges that the County may require additional environmental review for the Premises Improvements, if the submitted application for the Premises Improvements is substantially different from what was submitted to the Agency prior to approval of this Agreement or if Lessee fails to submit applications within the time periods required in this Agreement. In that instance, the Lessee acknowledges that the environmental review process under CEQA may involve preparation and consideration of additional information, at Lessee's cost, as well as consideration of input from interested organizations and individuals; that approval or disapproval of the Premises Improvements following completion of the environmental review process is within the discretion of the County without limitation by this Agreement; and that the Agency makes no representation regarding the ability of the County to approve the Premises Improvements at the conclusion of the environmental review process required by CEQA, or regarding the imposition of any mitigation measures as conditions of any approval that may be granted.

(b) If the County approves the Premises Improvements following completion of the environmental review process and such approval is conditioned upon implementation of specified environmental mitigation measures, then unless the Lessee determines that implementation by the Lessee of any required environmental mitigation measures would cause the Premises Improvements to become economically infeasible and therefore elects not to construct the Premises Improvements, the Lessee shall be responsible for implementing such mitigation measures as part of the Premises Improvements.

6.10 Construction.

(a) Commencement and Completion. At least thirty (30) days prior to commencement of construction of the Premises Improvement, the Lessee shall provide the Agency with written notice that Lessee intends to commence construction of the Premises Improvements. Once the Lessee commences construction of the Premises Improvements, the Lessee shall not halt, or permit the cessation of construction for such work for a period of more than thirty (30) days, subject to excused delays.

(b) Certificate of Completion. Promptly after completion of the Premises Improvements, in accordance with those provisions of this Agreement relating solely to the obligations of the Lessee to construct, or cause the construction of, the Premises Improvements, the Agency will provide an instrument so certifying (the "Certificate of Completion"). This certification shall constitute a conclusive determination that the covenants in this Agreement with respect to the obligations of the Lessee to construct the Premises Improvements have been met. This certification and determination shall not constitute evidence of compliance with or satisfaction of any obligation of the Lessee to any holder of a deed of trust securing money loaned to finance the Premises Improvements or any part thereof, shall not be deemed a notice of completion under the California Civil Code, and shall not constitute evidence of compliance with any requirement regarding the payment of prevailing wages as set forth in this Agreement.

6.11 Additional Construction on Property:

(a) General Standards. Any additional building erected on any portion of the Property permitted under this Agreement (other than the initial construction of the Premises Improvements pursuant to Section 6.1), and any alteration, construction, remodeling, reconstruction or repair work undertaken on or within any existing building or the Premises Improvements, once constructed, on any portion of the Property shall at all times be of first-class construction and architectural design. All such additional alteration, construction, remodeling, reconstruction or repair work shall be diligently prosecuted, and completed (1) without cost to the Agency, (2) in good and workmanlike manner, and (3) in accordance with any plans and specifications approved by the Agency pursuant to subsection (b) below. The Lessee shall secure all permits and approvals necessary for such construction, prior to submitting any construction plans to the Agency under this Section 6.11.

(b) Approval of Plans: Prior to commencing construction of any Major Additional Improvements (as defined below), the Lessee shall submit to the Agency for the Agency's approval plans and specifications for such work which, to the extent relevant, shall contain the same information required for the Final Construction Plans required for the Premises Improvements in Section 6.4 above. The Agency shall approve or disapprove such plans and specifications in writing within sixty (60) days of submission. Any disapproval shall state with specificity the reasons for such disapproval. The Agency's approval of such plans shall be conditioned on the parties negotiating revised Rent provisions to compensate the Agency for the increased value of the leasehold estate resulting from the Major Additional Improvements. If the Agency and the Lessee cannot agree on the terms of additional Rent as a result of the Major Additional Improvements, the Lessee may not construct the Major Additional Improvements.

If rejected by the Agency in whole or in part, the Lessee shall submit new or corrected construction plans within thirty (30) days of notification of the Agency's disapproval. The Agency shall then have thirty (30) days to review and approve the Lessee's new or corrected construction plans. The provisions of this Section 6.11 relating to time periods for approval, rejection, or resubmission of new or corrected construction plans shall continue to apply until construction plans have been approved by the Agency at which time they shall be attached to and become a part of this Agreement as if fully set forth herein. Only upon approval of the construction plans shall this condition be met.

In the event that prior to or during the course of construction, the Lessee desires to make any material change in the Major Additional Improvements from that contemplated in the approved plans and specifications, the Lessee shall, prior to making such change, submit to the Agency such plans or other information which document the desired change. The Agency shall approve or disapprove such change within thirty (30) days of its submission to the Agency. Any disapproval shall state with reasonable specificity the basis for such disapproval. Unless such change is approved, the previously approved plans and specifications shall remain in effect.

"Major Additional Improvements" means any of the following: (1) any new buildings, structures or outdoor facilities to be located on the Property, (2) any substantial alterations, remodeling or rehabilitation of existing buildings, structures, including the Premises Improvements once constructed which cost in excess of Ten Thousand Dollars (\$10,000); (3) construction of additional spaces or facilities that allow for increased capacity for existing uses or for new uses on the Property; or (4) any other alteration, construction, remodeling or reconstruction with a cost in excess of Fifty Thousand Dollars (\$50,000). Alteration, construction, remodeling, or reconstruction not constituting a Major Additional Improvement shall not require the Agency's approval of plans and specifications, but must be designed and performed in accordance with the General Standards set forth in subsection (a) above.

6.12 Construction Standards:

(a) General Standards. All construction of the Premises Improvements, Major Additional Improvements and alteration or repair work permitted by this Agreement shall be accomplished expeditiously and diligently by reputable licensed contractor(s), approved by the Agency in accordance with the provisions of Section 6.12 (j), below.

The Lessee shall take all reasonably necessary measures to minimize any damage, disruption or inconvenience caused by such work and make adequate provision for the safety and convenience of all persons affected thereby. The Lessee shall repair, at the Lessee's own cost and expense any and all damage caused by such work and shall restore the area upon which such work is performed to a condition which is equal to or better than the condition which existed prior to the beginning of such work. In addition, the Lessee shall pay all costs of and expenses associated herewith, and shall indemnify and hold the Agency, the County and each of their officers, board members, agents and employees, harmless from all damages, losses or claims attributable to the performance of such work, except to the extent that such damage, loss, or claim arises from the gross negligence or willful misconduct of the Agency, or its respective officers, agents, and employees.

(b) Compliance with Construction Documents and Laws; Issuance of Permits. The Premises Improvements and any Major Additional Improvements shall be constructed in compliance with the requirements of the construction documents approved by the Agency in accordance with this Agreement, and also in strict compliance with all applicable local, state and federal laws and regulations. The Lessee shall have the sole responsibility for obtaining all necessary permits and shall make any application for such permit directly to any governmental authority having jurisdiction.

(c) Construction Safeguards. The Lessee shall erect and properly maintain at all times, as required by the conditions and the progress of work performed by the Lessee, all reasonable safeguards for the protection of workers and the public.

(d) Rights of Access. Representatives of the Agency shall have the reasonable right of access to the Property and the Premises Improvements and other improvements thereon without charges or fees, at normal construction hours during the period of construction, for the purposes of ascertaining compliance with the terms of this Agreement, including, but not limited to, the inspection of the construction work being performed, provided that such representatives shall be those who are so identified in writing by the Executive Director of the Agency, shall be accompanied by the Lessee's representatives if the Lessee so desires, shall comply with the Lessee's contractor's reasonable rules for the construction site, and shall provide the Lessee with forty-eight (48) hours notice prior to any such inspection.

(e) Notice of Completion. Upon completion of any construction, the Lessee shall file or cause to be filed in the Official Records of the County of Monterey a notice of completion with respect to the applicable construction, and the Lessee shall deliver to the Agency, at no cost to the Agency, two (2) sets of the final as-built plans and specifications of the Premises Improvements, or Major Additional Improvements.

(f) Discharge of Liens. The Lessee shall not create or permit or suffer to be created or to remain, and will discharge, any lien (including, but not limited to, the liens of mechanics, laborers, materialmen, suppliers or vendors for work or materials alleged to be done or furnished in connection with the Property and the Premises Improvements thereon), encumbrances or other charge upon the Property and the Premises thereon, or any part thereof, or upon the Lessee's leasehold interest therein.

The Lessee shall have the right to contest in good faith and by appropriate legal proceedings the validity or amount of any mechanics', laborers', materialmen's, suppliers' or vendors' lien or claimed lien; provided that the Lessee shall utilize all reasonable means (including the posting of adequate security for payment) to protect the Property and any part thereof or the Improvements thereon against foreclosure, and shall indemnify and hold harmless the Agency from any adverse effects resulting from such lien.

(g) Protection of the Agency. Nothing in this Agreement shall be construed as constituting the consent of the Agency, expressed or implied, to the performance of any labor or the furnishing of any materials or any specific improvements, alterations of or repairs to the Property or the Premises thereon, or any part thereof, by any contractor, subcontractor, laborer or materialman, nor as giving the Lessee or any other person any right, power or authority to act as agent of or to contract for, or permit the rendering of, any services or the furnishing of any materials in such manner as would give rise to the filing of mechanics' liens or other claims against the fee interest of the Property or the Premises thereon. The Agency shall have the right at all reasonable times to post and keep posted on the Property any notices which the Agency may deem necessary for the protection of the Agency and of the Property and the Premises thereon from mechanics' liens or other claims. In addition, but subject to the second paragraph of subsection (f) above, the Lessee shall make, or cause to be made, prompt payment of all monies due and legally owing to all persons doing any work or furnishing any materials or

supplies to the Lessee, or any of its respective contractors or subcontractors in connection with the Property and the Premises thereon.

(h) The Lessee to Furnish and Equip the Improvements. The Lessee covenants and agrees to furnish and equip the Premises, Premises Improvements, or any Major Additional Improvements, with all fixtures, furnishings, equipment and other personal property (collectively, the "Personal Property") of a quantity as necessary to operate a retail grocery store, gas station and carwash on the Property and in accordance with the standards set forth in this Agreement. The Lessee further agrees to take good care of such Personal Property, to keep the same in good order and condition ordinary wear and tear excepted, and promptly, at the Lessee's own cost and expense, to make all necessary repairs, replacements and renewals thereof. As used in this Agreement, the term "Personal Property" includes all such replacements and renewals, and all fixtures, furnishings, equipment and other personal property of the Lessee located in, on or about the Property and the Improvements thereon. Any and all fixtures, furnishings, equipment and other personal property placed in, on or about the Property shall be the Personal Property of the Lessee during the Term of this Agreement.

(i) Performance and Payment Bonds. Prior to commencing construction of the Premises Improvements, or any Major Additional Improvements, the Lessee shall obtain and provide to the Agency evidence of labor and material and performance bonds issued by a reputable insurance company licensed to do business in California, each in a penal sum of not less than one hundred percent (100%) of the scheduled cost of construction on the Property. The Agency shall be named as an obligee under those bonds.

Within five (5) days after receipt, the Agency shall review and approve or disapprove the bonds or other security, providing said bonds meet the requirements of the Agency as to form, content, and issuer, and shall notify the Lessee of any deficiency. If the bonds are not approved, the Lessee shall resubmit updated bonds within five (5) days after receipt of notice. The review and submittal periods shall continue to apply until the bonds or other security are approved by the Agency. Only upon final approval shall this pre-disposition condition be met. No work shall be initiated until approval of the bonds or other security has been received.

(j) Contractor(s). All construction, alteration or repair work permitted herein shall be performed by reputable, licensed contractors with skills and experience necessary to perform such work to the quality standard set forth in this Article 6. In addition, the Premises Improvements and any Major Additional Improvements shall be performed by a general contractor (a "General Contractor") reasonably satisfactory to the Agency, having the reputation, experience, financial capability and qualification for serving as general contractor for similar developments in the California. The Lessee shall submit for the Agency's approval the identity of any proposed General Contractor and such additional information about the background, experience, and financial condition of any proposed General Contractor as is reasonably necessary for the Agency to determine whether the proposed General Contractor meets the standard for a qualified General Contractor set forth above. If the proposed General Contractor meets such standard, the Agency shall approve or disapprove the proposed General Contractor by notifying the Lessee in writing within thirty (30) days of the submission. Any disapproval shall state with reasonable specificity the basis for disapproval.

(k) Construction Contracts. The Lessee shall enter into contracts for the construction of the Premises Improvements or Major Additional Improvements with reputable contractors as set forth above. Those contracts shall provide for the work to be performed for fixed and specified maximum amounts or allowances pursuant to the approved Final Construction Plans and the Financing Plan for such construction.

Within ten (10) days following the issuance of a Building Permit for construction of the Premises Improvements, or any Major Additional Improvements, the Lessee shall submit a copy of all construction contracts for such construction to the Agency, for the sole and limited purposes of determining: (a) that the amount of the costs of work has been clearly fixed and determined and is consistent with the amount set forth in the approved applicable Financing Plan; (b) that no changes to the provisions of the contract requiring the approval of Agency shall be made without the prior consent of the Agency; and (c) that the covenants as to equal opportunity in construction and Prevailing Wages set forth in this Agreement have been met. Unless the Agency notifies the Lessee in writing within ten (10) days following the submittal of the contract(s) that the contract has been disapproved, it shall be deemed approved.

(l) Conditions to Commencement of Construction. In no event shall the Lessee commence any construction of the Premises Improvements or any Major Additional Improvements on the Property until the following conditions have been satisfied or waived by the Agency, in addition to other conditions and requirements imposed by this Agreement:

(1) The Agency has approved the final plans and specifications for the improvements to be constructed;

(2) The Lessee has obtained financing and equity capital necessary for the full payment of construction of the Premises Improvements (or the Major Additional Improvements), together with any required operating capital;

(3) The Lessee has obtained building permits and all other governmental approvals necessary for the construction of the Premises Improvements (or Major Additional Improvements);

(4) The Lessee has entered into complete and binding contracts with its contractor or contractors for the construction of the Premises Improvements (or Major Additional Improvements), which contracts shall meet the requirements of subsection (k) above;

(5) The Lessee has obtained Performance and Payment Bonds meeting the requirements of subsection (i) above; and

(6) There exists no Lessee Event of Default nor any act, failure, omission or condition that would constitute a Lessee Event of Default under this Agreement.

6.13 Equal Opportunity: During the construction of the Premises Improvements or any Major Additional Improvements there shall be no discrimination on the basis of race, color, creed, religion, sex, sexual orientation, marital status, ancestry or national origin in the hiring, firing, promoting or demoting of any person engaged in the construction work. The Lessee and its construction contractors, employees and agents shall comply with all applicable state laws,

including all equal opportunity and fair employment laws and regulations applicable to the Property. Moreover, the Lessee by and through its construction contractor(s), shall give preference, to the extent practicable, for employment to those individuals residing within the geographical area governed by the Redevelopment Plan, as provided by relevant State law and the FORA policy.

6.14 Prevailing Wages: The Lessee shall and shall cause the contractor and subcontractors to pay prevailing wages in the construction of the Premises Improvements (or any Major Additional Improvements) as those wages are determined pursuant to Labor Code Sections 1720 et seq., to employ apprentices as required by Labor Code Sections 1777.5 et seq. and the implementing regulations of the Department of Industrial Relations (the "DIR") and the Lessee shall and shall cause the contractor and subcontractors to comply with the other applicable provisions of Labor Code Sections 1720 et seq., 1777.5 et seq., and implementing regulations of the DIR. The Lessee shall and shall cause the contractor and subcontractors to keep and retain such records as are necessary to determine if such prevailing wages have been paid as required pursuant to Labor Code Sections 1720 et seq. and that apprentices have been employed as required by Labor Code Sections 1777.5 et seq. Copies of the currently applicable current per diem prevailing wages are available from the County's Public Works Department, Salinas, California. During the construction of the Premises Improvements (or any Major Additional Improvements), the Lessee shall or shall cause the contractor to post at the Property the applicable prevailing rates of per diem wages. The Lessee shall indemnify, hold harmless and defend (with counsel reasonably selected by the Agency) the County and the Agency against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including Lessee, its contractor and subcontractors) to pay prevailing wages as determined pursuant to Labor Code Sections 1720 et seq., to employ apprentices pursuant to Labor Code Sections 1777.5 et seq., and implementing regulations of the DIR or to comply with the other applicable provisions of Labor Code Sections 1720 et seq., 1777.5 et seq., and the implementing regulations of the DIR in connection with the construction of the Improvements or any other work undertaken or in connection with the Property. This Section 6.14 shall survive the expiration of the Term.

6.15 No Liens: The Lessee shall not have any right, authority or power to bind the Agency, or the Agency's fee interest in the Property, for any claim for labor or material or for any other charge or expense, lien or security interest incurred in connection with the development, construction or operation of the Premises, Premises Improvements or any change, alteration or addition thereto including, but not limited to any Premises Improvements or Major Additional Improvements. The Lessee shall not have any right to encumber the Lessee's estate in the Property without the written consent of the Agency. Any easements necessary and incidental to the development, construction and operation of the Premises Improvements or Major Additional Improvements are subject to the approval of the Agency, which shall not be unreasonably withheld.

6.16 Permits, Licenses and Easements: The Agency will cooperate with the Lessee in the submittal of applications for all required permits, licenses, applications for utility services and easements, provided that the Lessee shall be responsible for obtaining any and all permits, licenses, easements and other authorizations required by any governmental authorities with respect to any construction or other work to be performed on the Property and for granting or causing to be granted all permits, licenses, easements and other governmental authorizations that

are necessary or helpful for electric, telephone, gas, water, sewer, drainage, access and such other public or private utilities or facilities as may be reasonably necessary or desirable in connection with the construction or operation of the Property. The Lessee shall be entitled, without separate payment to the Agency for tap or connection fees, to tap into the existing lines, facilities and systems of applicable electric, gas, cable, water, sewer, sewer treatment and other utilities serving the Property, provided the Lessee remains responsible for payment of such fees therefore.

ARTICLE 7 - USE

7.1 Use: Lessee shall use the Premises for operating a business for the retail sale of food, beverages, and household merchandise in the building designated as 6160 on the map attached hereto as Exhibit A-1 Lessee shall have the conditional right to operate the building designated on Exhibit A-1 as 6165 as a gas station and the building designated on Exhibit A-1 as 6165A as a car wash. In order to exercise this right, Lessee must first obtain all required land use permits and entitlements and must satisfy the requirements set forth in Article 6 of this Agreement. The Lessee shall periodically upgrade the fixtures and facilities on the Property as necessary during the Agreement Term to maintain the Property in its current or better condition.

7.2 Limitations On Use: The Lessee shall use the Property and the Improvements thereon for no other purpose than those allowed in this Agreement without the prior written consent of Agency, which consent shall be subject to the sole discretion of the Agency. Further, the Lessee agrees:

- (a) Not to use or permit the Property for any disorderly or unlawful purpose;
- (b) Not to cause or permit any party from committing or maintaining any nuisance or unlawful conduct on or about the Property;
- (c) Not to cause or permit any action by any party that would cause the Lessee to violate any of the covenants and conditions of this Agreement with respect to the Improvements;
- (d) Upon notice from the Agency, to take reasonable action, if necessary, to abate any action by any party that would cause a violation of this Agreement;
- (e) To permit the Agency and its agents upon not less than forty-eight (48) hours written notice to inspect the Property or any part thereof at any reasonable time during the Term;
- (f) Not to commit or suffered to be committed any waste in, on or about the Property;
- (g) Not to cause or permit obnoxious odors to emanate or be dispelled from the Property;

(h) Not to permit undue accumulations of garbage, trash, rubbish, or any other refuse;

(i) Not to use or permit to be used the Property for any purpose inconsistent with this Agreement and the Land Use Approvals.

The Lessee shall maintain all portions of the Property in good repair and in a neat, clean and orderly condition. In the event that there arises at any time prior to the expiration of this Agreement a condition in contravention of these maintenance and use standards, then the Agency shall give written notice to the Lessee of the deficiency. If the Lessee fails to cure the deficiency within thirty (30) days of the Agency's notice (or, if the deficiency is not susceptible of cure within such thirty (30) day period, the Lessee fails to commence the cure and thereafter to diligently pursue the cure to completion), then the Agency shall have the right to perform all acts necessary to cure the deficiency or to take other recourse at law or in equity the Agency may then have and to receive from Lessee the Agency's cost in taking such action. The parties further mutually agree that the rights conferred upon the Agency expressly include the right to enforce or establish a lien or other such encumbrance against the Property. The foregoing provisions shall be covenants running with the land until expiration of the Agreement, enforceable by the Agency.

7.3 Cost of Operation and Maintenance of Improvements: As between the Agency and the Lessee, all costs incurred in the operation and maintenance of the Property shall be paid by the Lessee.

7.4 The Agency Not Obligated to Repair: The Agency shall not be obligated to make any repairs, replacements or renewals of any kind, nature or description whatsoever to the Property, and the Lessee hereby expressly waives all right to make repairs at the Agency's expense under Section 1941 and 1942 of the California Civil Code, as either or both may from time to time be amended, replaced or restated.

7.5 Non-discrimination: There shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, sexual orientation, age, handicap, marital status, ancestry or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, or any part thereof, and the Lessee or any person claiming under or through the Lessee, shall not establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees of the Property, or any part thereof.

The Lessee shall refrain from restricting the use of the Improvements, or any portion thereof, on the basis of race, color, creed, religion, sex, sexual orientation, age, handicap, marital status, ancestry or national origin of any person. All such deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or no segregation clause:

(a) In deeds: "The grantee herein, covenants by and for the grantee, the grantee's heirs, executors, administrators and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, sexual orientation, age, handicap, martial

status, ancestry or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the premises herein conveyed, nor shall the grantee, or any person claiming under or through the grantee, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the premises herein conveyed. The foregoing covenants shall run with the land.

(b) In leases: "The lessee herein covenants by and for the lessee, the lessee's heirs, executors, administrators and assigns, and all persons claiming under or through the lessee, and this lease is made and accepted upon and subject to the following conditions.

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

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

7.6 Compliance with Laws. The Lessee shall, at Lessee's sole cost and expense, comply with all federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations and ordinances affecting the Property, the use thereof, or construction thereon, including those which require the making of any structural, unforeseen or extraordinary changes, whether or not any such statutes, laws, rules, orders, regulations or ordinances which may be hereafter enacted were within the contemplation of the parties at the time of execution of this Agreement, or involve a change of policy on the part of the governmental authority enacting the same.

The Lessee shall comply with each and every requirement of all policies of public liability, fire and other insurance which at any time may be in force with respect to the Property.

7.7 Property Taxes. The Lessee acknowledges and agrees that this Agreement will create a possessory interest subject to property taxation and that pursuant to Health and Safety Code Section 33673, the Lessee will be taxed for the full value of the Property, not just the Leasehold interest. Subject to the Lessee's rights of contest as provided in Section 7.12, the Lessee agrees to pay and discharge, or cause the payment and discharge, during the Term of the Agreement, before delinquency, all taxes (including, without limitation, taxes assessed in accordance with Health and Safety Code Section 33673 associated with the Property, the Agreement, and any so-called value added tax), assessments (including without limitation, all assessments for public improvements or benefits, whether or not to be completed prior to the

date hereof and whether or not to be completed within the Term of the Agreement), fees, levies, water and sewer rents, rates and charges, vault license fees or rentals, license and permit fees and other governmental charges of any kind or nature whatsoever, general and special, ordinary and extraordinary, foreseen, currently or hereafter levied or assessed in lieu of or in substitution of any of the foregoing (all of the foregoing collectively called "Taxes") which are or may be at any time or from time to time during the Term of the Agreement levied, charged, assessed or imposed upon or against the Property or the Improvements which are located thereon, or against any of the Lessee's Personal Property located thereon, or which may be levied, charged, assessed or imposed upon or against the leasehold estate created hereby or which may be imposed upon any taxable interest of the Lessee acquired pursuant to the Agreement. The Lessee shall pay or reimburse the Agency, as the case may be, for any fines, penalties, interest or costs which may be added by the collecting authority for the late payment or nonpayment of any Taxes required to be paid by the Lessee hereunder.

7.8 Apportionment of Taxes. All Taxes for the fiscal or tax years in which the Term begins and ends shall be apportioned so that the Lessee shall pay only those portions thereof that will correspond with the portion of said years as are within the Term.

7.9 Tax Receipts. The Lessee, upon the request of the Agency, shall furnish to the Agency within thirty (30) days after the date when any such Taxes would become delinquent, official receipts of the appropriate taxing authority or other evidence reasonably satisfactory to the Agency or such mortgagee evidencing the payment of such Taxes.

7.10 Assistance in Making Payments. The parties acknowledge that Lessee is responsible under this Agreement for making various payments to third parties, such as tax and utility payments in accordance with the provisions of this Article 7. In case any person or entity to whom any sum is directly payable by the Lessee under any of the provisions of this Agreement (e.g., a tax collector or utility company) shall refuse to accept payment of such sum from the Lessee (due to the fact that the Lessee is not the fee owner of the Property or for any other reason), the Lessee shall thereupon give written notice of such fact to the Agency and shall pay such sum directly to Agency at the address specified in Article 5 hereof, and Agency shall thereupon pay such sum to such person or entity.

7.11 The Agency's Right Cure. If the Lessee, in violation of the provisions of this Agreement, shall fail to pay and to discharge any Taxes, or any other tax or fee, the Agency may (but shall not be obligated to) pay or discharge such Taxes, and the amount paid by the Agency and the amount of all costs, expenses, interest and penalties connected therewith, including attorneys' fees, together with interest, shall be deemed to be and shall, upon demand of the Agency, be payable by the Lessee as repayment of an Advance.

7.12 Permitted Contests. The Lessee shall not be required to pay, discharge or remove any taxes (including penalties and interest) upon or against the Property, or any part thereof, so long as the Lessee shall in good faith contest the same or the validity thereof by appropriate legal proceedings and shall give to the Agency prompt notice in writing of such contest at least ten (10) days before any delinquency occurs and such legal proceedings shall operate to prevent the collection of the taxes so contested, or the sale of the Property, or any part thereof, to satisfy the same; and the Lessee shall, prior to the date such taxes are due and payable, (a) meet all requirements for contest imposed by the taxing entity whose tax is being contested (including,

without limitation, depositing any sums required by such taxing entity), and (b) if the taxing entity does not otherwise require such a deposit, deposit with the Agency, in a form reasonably acceptable to the Agency, that portion of the tax which the Lessee in good faith does not propose to contest. In the event the final determination of any such contest is adverse to the Lessee, the Lessee shall, before any fine, interest, penalty or cost may be added thereto for nonpayment thereof, pay fully and discharge the amounts involved in or affected by such contest, together with any penalties, fines, interest, costs and expenses that may have accrued thereon or that may result from any such contest by the Lessee, and after such payment and discharge by the Lessee, the Agency will promptly return to the Lessee any deposit that the Lessee shall have placed with the Agency. Any proceedings to contest the validity or amount of taxes or to recover back any taxes paid by the Lessee shall be brought by the Lessee, at the Lessee's sole expense, in the name of the Lessee. If any such proceedings are brought by the Lessee, the Lessee shall indemnify and hold harmless the Agency against any and all loss, cost or expense of any kind (including, but not limited to, reasonable attorneys' fees and expenses) which may be imposed upon or incurred by the Agency in connection with those proceedings.

The Agency shall cooperate with the Lessee in providing the Lessee information in connection with contests permitted under this Section 7.12.

7.13 Service and Utilities. The Lessee shall pay promptly as the same become due and payable all charges, costs, bills and expenses of and for water, gas, electricity, sewer, air-conditioning, telephone and all other public or private services and utilities of whatever kind furnished or supplied to or used by the Lessee or any other party in connection with the use, occupancy, maintenance or operation of the Improvements or any part thereof, including all services and utilities set forth in Exhibit B and shall comply with all contracts relating to such services and shall do all other things necessary and required for the maintenance and continuance of such services.

Prior to the construction of Premise Improvements, Lessee's water usage shall be limited to .2 acre feet per year. After construction and installation of the Premise Improvements, Lessee's water usage shall not exceed 1.5 acre feet per year. If Lessee installs and operates a car wash, the car wash shall use all available water conserving technology

7.14 Evidence of Nonpayment. The receipt by the Agency of a certificate, advice, receipt or bill of the appropriate official designated by law to make or issue the same or to receive payment of any such Taxes, stating the nonpayment of such Taxes shall be prima facie evidence that such Taxes are due and unpaid or have not been paid at the time of the making or issuance of such certificate, advice, receipt or bill.

7.15 Hazardous Substances: Agency and the Lessee agree that the Property is part of the former Fort Ord Army Base and that the Army has primary responsibility for clean up of the Property. Agency is participating in the purchase of Pollution Legal and Liability insurance to cover certain hazardous substance claims. Agency agrees that to the extent any claim is covered by the Agency's share of the Pollution Legal and Liability insurance policy, the Agency shall look first to that policy for payment of any such claim. Except to the extent covered by the Pollution Legal and Liability insurance, Agency shall have no liability or responsibility for toxic or hazardous materials or substances in existence on the Property. Lessee, at its own expense, shall comply with all applicable laws concerning the handling and removal of hazardous material

generated as a result of Lessee's use of the Property under this Agreement. Lessee shall indemnify, defend, and hold harmless the County of Monterey and the Redevelopment Agency of the County of Monterey for any and all claims, liabilities, and losses whatsoever (together with any expenses related thereto, including but not limited to damages, court costs, and attorneys' fees) accruing or resulting to any person, firm, or corporation for damage, injury, or death as a result of Lessee's installation and operation of Ord Market and the Premise Improvements, including but not limited to the installation and operation of the gas station and car wash. In the event of any environmental contamination or environmental hazards resulting from or in connection with the operation of the gas station or the car wash, other Premise Improvements, or Lessee's use of the Property in any manner, Lessee shall be responsible to remediate and eliminate any such environmental contamination and environmental hazards to the full satisfaction of all regulatory agencies, and Lessee shall defend, indemnify, and hold harmless the County of Monterey and the Redevelopment Agency of the County of Monterey from any claims or enforcement actions connected in any way to such environmental contamination.

Lessee, its officers, employees, and agents shall not apply any substance as part of any building maintenance or repair which would introduce irritating or noxious odors or any other hazardous condition to Property without prior coordination and approval of the **Director of Housing and Redevelopment**, who can be reached by telephone at (831) 755-5390. Prior notification and approval shall be made at least 48 hours prior to the desired application time. Also, a Product Safety Data Sheet shall be furnished by the proposed applicator to the Agency. Examples of such substances or materials include, but are not limited to, the following:

- Termite Control Materials
- Pesticides
- Paint
- Water Treatment Chemicals
- Any other substance that is or could be construed as hazardous

7.16 **Acceptance of Premises:** By entry hereunder, Lessee accepts the Property as being in good and sanitary order, condition and repair.

ARTICLE 8 - SIGNS AND FIXTURES

Lessee may place such signs and advertisements upon the Property as Lessee may desire, subject to approval by the Agency which consent shall not be unreasonably withheld, provided, however, that at the expiration of the term of this Agreement, Lessee will remove said signs and will restore the Property to its original condition. Any trade fixtures, equipment, furniture, demountable walls, and other property installed in the Property or Premises by and at the expense of the Lessee shall remain the property of the Lessee, and the Agency agrees that the Lessee shall have the right at any time, and from time to time, to remove any and all of its trade fixtures, equipment and other property which it may have stored or installed in the Premises, provided the Premises are restored to a condition acceptable to the Agency. The Agency agrees not to mortgage or pledge the Lessee's trade fixtures, equipment and other property.

ARTICLE 9 - ASSIGNMENT AND SUBLETTING

This Agreement is granted to the Lessee solely for the purpose of development and operation of the Property, and its subsequent use in accordance with the terms of this Agreement, and not for speculation in landholding. The Lessee recognizes that, in view of the following factors, the qualifications and identity of the Lessee are of particular concern to the community and Agency:

(a) The importance of the redevelopment of the Property to the general welfare of the community;

(b) The fact that a sublease or assignment of this Agreement is for practical purposes a transfer or disposition of the leasehold interest in the Property then owned by Lessee.

(c) The fact that the Leasehold and the Property are not to be acquired, developed or used for speculation, but only for development and operation by Lessee in accordance with this Agreement and the DDA.

Lessee further recognizes that it is because of such qualifications and identity that Agency is entering into this Agreement with Lessee and for these reasons Lessee shall not assign or sublet all or any portion of the Property without the prior written consent of Agency, which consent may be withheld in the Agency's sole and absolute discretion.

ARTICLE 10 - ENTRY BY AGENCY

Lessee shall permit Agency and Agency's agents to enter the Premises, with reasonable advance notice (except in the case of emergency), provided such entry is made in a reasonable manner and does not unreasonably interfere with the conduct of Lessee's business.

ARTICLE 11 - INSURANCE AND INDEMNIFICATION

11.1 Indemnification. Lessee, during the term hereof, agrees to indemnify, defend, and save harmless Agency and the County of Monterey and their officers, agents, and employees from and against any and all claims, liabilities or losses whatsoever arising out of or in any way related to Lessee's use of the Property under this agreement, including but not limited to, claims for property damage, personal injury, death, injuries to reputation, economic losses, and emotional distress, and any legal expenses (such as attorney's fees, court costs, investigation costs, and expert fees) incurred by the Agency or the County of Monterey in connection with such claims. "Lessee's use" includes Lessee's action or inaction and the action or inaction of its officers, employees, and agents, including but not limited to Lessee's invitees. The obligation of Lessee to indemnify does not extend to claims or losses arising out of the sole negligence or willful misconduct of the Agency or the County of Monterey or Agency's or County's officers, agents, or employees.

Agency shall not be liable to Lessee, or to anyone whatsoever for any damages caused by plumbing, gas, water, steam, sprinkler or other pipe and sewage system, or by the bursting, running

or leaking of any tank, washstand, closet, or waste or other pipe, in and about the Premises or the buildings of which they are a part, or for any damage caused by water being upon or coming in through the roof, skylight, vent, trap door or otherwise, provided that Agency shall not be relieved from any of its obligations for maintenance and repair as otherwise set forth in this Agreement.

11.2 Insurance Requirements. Without limiting Lessee's duty to indemnify, Lessee shall maintain in effect through the Lease Term a policy or policies of insurance with the following minimum limits of liability:

(a) Lessee shall maintain commercial general liability coverage with liability limits of not less than \$2,000,000 for injury or death to one or more persons and property damage limits of not less than \$1,000,000 per occurrence insuring against all liability of Lessee and its authorized representatives arising out of and in connection with Lessee's use or occupancy of the Property. The commercial general liability coverage obtained by Lessee shall include the entire Property and all structures thereon, including Ord Market, the parking lot, the gas station if built, and the car wash if built.

(b) Lessee agrees that it will keep insured against loss or damage by fire, to at least eighty percent (80%) of the full fair insurable value thereof, all buildings currently on the Property or constructed on the Property.

(c) Prior to installation of any Premise Improvements, Lessee shall maintain pollution liability insurance for underground storage tanks, with a limit not less than \$1 million each claim combined single limit for Bodily Injury, Property Damage and cleanup expenses and any deductible not to exceed \$10,000 each claim.

(d) Other Insurance Requirements. All insurance required by this Agreement shall be with a company acceptable to the Agency and issued and executed by an admitted insurer authorized to transact Insurance business in the State of California. Unless otherwise specified by this Agreement, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of three (3) years following the termination of the Agreement.

Each liability policy shall provide that the Agency shall be given notice in writing at least thirty (30) days in advance of any endorsed reduction in coverage or limit, cancellation, or intended non-renewal thereof. Each policy shall provide coverage for Agency and additional insureds with respect to claims arising from each subcontractor, if any, performing work under this Agreement, or be accompanied by a certificate of insurance from each subcontractor showing each subcontractor has identical insurance coverage to the above requirements.

Commercial general liability and automobile liability policies shall provide an endorsement naming the Agency and the County of Monterey, and their officers, agents, and employees as Additional Insureds and shall further provide that such insurance is primary insurance to any insurance or self-insurance maintained by the County or Agency and that the insurance of the Additional Insureds shall not be called upon to contribute to a loss covered by the Lessee's insurance.

Prior to the execution of this Agreement by the Agency, Lessee shall file certificates of insurance with the Agency's contract administrator and County's Purchasing Division, showing that the Lessee has in effect the insurance required by this Agreement. The Lessee shall file a new or amended certificate of insurance within five (5) calendar days after any change is made in any insurance policy which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this Agreement, which shall continue in full force and effect.

Lessee shall at all times during the term of this Agreement maintain in force the insurance coverage required under this Agreement and shall send, without demand by Agency, annual certificates to Agency. If the certificate is not received by the expiration date, Agency shall notify Lessee and Lessee shall have five (5) calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by Lessee to maintain such insurance is a default of this Agreement which entitles Agency, at its sole discretion, to terminate this Agreement immediately.

ARTICLE 12 – WAIVERS OF SUBROGATION

Agency and Lessee each hereby waive any right of recovery against the other due to loss of or damage to the property of either Agency or Lessee when such loss of or damage to property arises out of the acts of God or any of the property perils whether or not such perils have been insured, self-insured or non-insured.

ARTICLE 13 - DESTRUCTION

13.1 No Termination of Agreement; Obligation to Restore. Except as otherwise provided in Section 13.2 or 13.3, no loss or damage by fire or any other cause resulting in either partial or total destruction of any buildings on the Property now or hereafter located in, upon or on the Property, or any fixtures, equipment or machinery used or intended to be used in connection with the Lessee's use of the Property shall operate to terminate this Agreement, or to relieve or discharge the Lessee from the payment of any Rent or other amounts payable under this Agreement, as Rent or otherwise, as and when they become due and payable, or from the performance and observance of any of the agreements, covenants and conditions herein contained to be performed and observed by the Lessee. The Lessee hereby waives the provisions of Section 1932, subsection 2, and of Section 1933, subsection 4, of the California Civil Code, as either or both may from time to time be amended, replaced or restated. Except as provided in Section 13.2 and 13.3, the Lessee shall promptly repair, or cause the prompt repair of, any damage or destruction caused to the Property and restore the Property to at least as good a condition as existed prior to the damage or destruction, as more specifically provided in Section 13.4. The Lessee's failure to make such full repair and restoration under any conditions in which it has elected or is required so to do shall constitute a Lessee Event of Default under this Agreement.

13.2 Damage or Destruction Occurring Prior to Final Years of Term.

The following provisions shall apply in cases of damage or destruction not described in Section 13.3:

(a) If the Premises or Premises Improvements on the Property are damaged or destroyed by any casualty where (1) the casualty causing such damage or destruction is required to be insured against under the terms of this Agreement, and (2) the insurance proceeds available are in an amount of not less than eighty percent (80%) of the amount necessary to repair and restore such Improvements, then the Lessee shall make full repair of such damage and shall restore the Premises or Premises Improvements in accordance with the provisions of Sections 13.1 and 13.4.

(b) If the Premises or Premises Improvements on the Property are damaged or destroyed by any casualty where (1) the casualty causing such damage or destruction is required to be insured against under the terms of this Agreement, (2) the Lessee is not in default with respect to its obligation under this Agreement to maintain insurance against the casualty causing such damage or destruction, and (3) the insurance proceeds available are in an amount that is less than eighty percent (80%) of the amount necessary to repair and restore such Premises or Premises Improvements, then the Lessee shall have the right, at the Lessee's election, to (1) terminate this Agreement in accordance with the provisions of Section 13.5, or (2) make full repair of such damage and to restore the Premises or Premises Improvements in accordance with the provisions of Sections 13.1 and 13.4, or (3) repair such damage or restore the Premises or Premises Improvements to the extent necessary to preserve them and make them safe, and in addition, to the extent of the insurance proceeds available.

(c) If the Premises or Premises Improvements on the Property are damaged or destroyed by any casualty where (1) the casualty causing such damage or destruction is required to be insured against under the terms of this Agreement, and (2) the Lessee is in default with respect to its obligation under this Agreement to maintain insurance against the casualty causing such damage or destruction, then the Lessee shall make full repair of such damage and shall restore the Improvements in accordance with the provisions of Section 13.1 and 13.4.

(d) If the Premises or Premises Improvements on the Property are damaged or destroyed by any casualty where the casualty causing such damage or destruction is not required to be insured against under the terms of this Agreement, then the Lessee shall have the right, at the Lessee's election, to (1) terminate this Agreement in accordance with the provisions of Section 13.5, or (2) make full repair of such damage and to restore the Improvements in accordance with the provisions of Section 13.1 and 13.4, or (3) repair such damage or restore the Premises or Premises Improvements to the extent necessary to preserve them and make them safe, and in addition, to the extent of the insurance proceeds available.

13.3 Damage or Destruction During Final Years of Term.

In the event of major damage or destruction to the Improvements on the Property during the last five (5) years of the Term, the Lessee shall have the right, at the Lessee's election, to either make full repair of such damage and fully restore the Premises or Premises Improvements on the Property in accordance with the provisions of Sections 13.1 and 13.4 or to terminate this

Agreement, and provided that if the Lessee elects to terminate this Agreement, the Lessee shall comply with all of the following conditions:

- (a) The Lessee shall give the Agency written notice of the damage or destruction within ten (10) days after the event causing such damage or destruction;
- (b) There shall not then exist an Event of Default (or an event which, after notice and the passage of time as required by this Agreement without cure of such event, would constitute an Event of Default);
- (c) As promptly as is feasible, the Lessee shall repair or restore the damaged Premises or Premises Improvements to the extent necessary to preserve them and make them safe from immediate danger to the public; and
- (d) The Lessee shall deliver possession of the Property and the Premises or Premises Improvements thereon to the Agency and shall quitclaim to the Agency all right, title and interest in the Property and the Improvements thereon.

Major damage or destruction to the Premises or Premises Improvements on the Property (as used in this Section 13.3) means damage or destruction where the cost to make full repair of such damage and restore the Improvements in accordance with the provisions of Sections 13.1 and 13.4 would be twenty-five percent (25%) or more of the replacement cost of all of the Premises or Premises Improvements on the Property in their entirety. The calculation of such percentage shall be based upon the replacement cost of the Premises or Premises Improvements on the Property as of the date of the damage or destruction. The determination of whether any particular damage or destruction constitutes major damage or destruction within the meaning of this paragraph shall be determined and certified by a professional cost estimator experienced in such matters and mutually designated by the Agency and the Lessee within ten (10) days of the occurrence of such damage or destruction. If the parties are unable to designate a mutually acceptable cost estimator within such period, either party may apply to the presiding judge of the Superior Court of Monterey County who shall appoint such cost estimator.

13.4 Procedure for Repair and Restoration.

The provisions of this Section 13.4 shall apply whenever the Premises or Premises Improvements on the Property are to be repaired or restored under the provisions of this Article 13.

- (a) In the event of any damage or destruction to the Property or the Premises or Premises Improvements, the Lessee shall promptly give the Agency written notice of such damage or destruction, setting forth the cause (if known), the date on which such damage or destruction occurred, and the estimated cost of repair and restoration as certified by a professional cost estimator experienced in such matters. Whenever any part of the Property or the Premises or Premises Improvements shall have been damaged or destroyed, the Lessee shall promptly make proof of loss and shall proceed promptly to collect, or cause to be collected, all valid claims which the Lessee may have against insurers or others based upon any such damage or destruction. Except as otherwise provided below, sums of money received as payments for any losses pursuant to said insurance policies shall be used and expended for the purpose of fully

repairing or reconstructing the portions of the Property or the Improvements which have been destroyed or damaged in accordance with the procedures of subsections (b) and (c) below, unless the Lessee has established alternate procedures that, in the Agency's reasonable judgment, will accomplish the use and expenditure of the insurance proceeds to effectuate full repair or reconstruction of the portions of the Property or the Premises or Premises Improvements which have been destroyed or damaged in a more effective manner than the procedures set forth in subsections (b) and (c).

The provisions of subsection (d) below shall apply regardless of the procedure employed for the use and expenditure of insurance proceeds.

(b) Within one hundred eighty (180) days after the event of damage or destruction, the Lessee shall make available to the Insurance Trustee, described in subsection (c) below, the difference, if any, between the certified estimated cost of repair and restoration and the amount of insurance proceeds anticipated to be received for such repair and restoration (such amount is hereinafter referred to as the "Lessee Contribution").

(c) All proceeds of insurance together with the Lessee Contribution, if any, shall be paid by the Lessee to the insurance trustee, which insurance trustee shall be a commercial bank or trust company experienced in such matters and designated by the Agency (the "Insurance Trustee"). The Insurance Trustee shall hold such proceeds in trust and shall disburse same to the Lessee as follows: from time to time as the work of restoration progresses, the Lessee shall submit to the Insurance Trustee a certificate of the Lessee, signed by an authorized officer or representative thereof, and approved by an architect selected by the Lessee and approved by the Agency (the "Architect"), which certificate shall (1) accurately describe the work for which the Lessee is requesting payment and the cost incurred by the Lessee in connection therewith, (2) certify that the Lessee has not theretofore received payment for such work, and (3) contain or be accompanied by a statement by the Lessee that the work for which the Lessee is requesting payment has been performed substantially in accordance with plans and specifications therefore approved by the Agency. Within five (5) days after receipt of any such certificate, the Insurance Trustee shall pay to the Lessee, from the funds on hand, an amount equal to ninety percent (90%) of the amount of the cost of the work for which the Lessee is requesting payment, as shown on such certificate. Upon completion of such work, the remainder of such cost (to the extent of the balance of the funds held by the Insurance Trustee) and all other insurance proceeds held by the Insurance Trustee shall be paid to the Lessee within five (5) days after the delivery to the Insurance Trustee of a certificate of the Lessee, signed by an authorized officer or representative thereof and approved by the Architect for the work, stating that the work has been completed and setting forth the total cost thereof, which certificate shall: (1) contain or be accompanied by a statement by the Lessee that the work has been completed substantially in accordance with plans and specifications therefore approved by the Agency, and (2) be accompanied by either (A) an unconditional waiver or release of mechanics' and materialmen's liens executed by all persons or entities supplying labor or materials in connection with such work or (B) other evidence reasonably satisfactory to the Agency that the period for filing any such lien has expired and no such lien has been filed, or, if filed, has been bonded by the Lessee to the reasonable satisfaction of the Agency and the Insurance Trustee. The Insurance Trustee shall not be required to invest or pay interest on any funds held by such trustee, except in accordance with any agreement between the Lessee and the Insurance Trustee.

(d) The Lessee shall promptly commence and complete, in a good and workmanlike manner and in accordance with Article 6, the reconstruction or repair of any part of the Property or the Premises or Premises Improvements thereon damaged or destroyed after (1) the Agency has approved the Lessee's plans, drawings, specifications and construction schedule for such reconstruction or repair as such approval may be required under Article 6, and (2) the proceeds of insurance, if any, applicable to such reconstruction or repair have been made available for such purpose.

13.5 Procedures Upon Permitted Termination.

(a) Permitted Terminations. Upon termination of this Agreement pursuant to Section 13.2 or 13.3, insurance proceeds for the Premises or Premises Improvements not used in repair or restoration shall be distributed as follows:

(1) First, at the option of the Agency, to the Agency in the amount necessary to raze the remaining Premises or Premises Improvements, clear the Property, make it safe, and return the Property to the condition of a developable pad.

(2) Second, any balance shall be divided between the Agency and the Lessee on the following basis: Proceeds for Premises or Premises Improvements having a remaining useful life less than the remaining Term as of the termination date shall be paid to the Lessee. A proportionate share of proceeds for the Premises or Premises Improvements having a remaining useful life greater than the remaining Term as of the termination date, calculated by the ratio that the remaining Term bears to the remaining useful life, shall be paid to the Lessee, and the balance of such proceeds for such Premises or Premises Improvements shall be paid to the Agency.

(3) Proceeds for the Premises in existence at the Lease Commencement Date shall be paid to the Lender.

All other insurance proceeds shall be paid to and become the sole property of the Lessee.

13.6 Prosecution of Claims. In connection with and as a condition of any termination pursuant to Section 13.2 or 13.3, the Lessee shall make proof of loss and proceed to collect or commence collection of all valid claims which the Lessee may have against insurers or others based upon such damage or destruction, and shall assign and transfer to the Agency all rights under insurance policies and against others and proceeds of insurance and other claims resulting from the casualty.

Upon termination of this Agreement, the Lessee shall deliver possession of the Property and the Premises or Premises Improvements thereon to the Agency and quitclaim to the Agency all right, title and interest in the Property and the Premises or Premises Improvements thereon.

ARTICLE 14 - DEFAULT BY LESSEE

14.1 Default. If any of the following events occur, each such event shall constitute a material breach of this Agreement, and Agency may, at Agency's option, exercise any or all rights available to a Agency under the laws of the State of California:

(a) A default in the payment of Rent when such default continues for a period of thirty (30) days after written notice, or

(b) Lessee fails to faithfully perform or observe any other covenant or undertaking required under this Agreement and such failure continues for a period of thirty (30) days after written notice thereof, or

(c) Lessee is adjudicated bankrupt, or

(d) Lessee's lease interest is sold under execution of judgment.

(e) Lessee assigns, sublets or attempts to assign or sublet the Property in violation of Article 9.

14.2 Remedies. If Lessee fails to cure a default within thirty (30) days after receipt of notice thereof from Agency or fails to commence to cure such default within thirty (30) days if such default cannot reasonably be cured within thirty (30) days and diligently continues to prosecute such cure to completion, Agency shall have all rights and remedies in law including the right to terminate this Agreement by giving the Lessee written notice thereof setting forth in such notice an effective date for termination which is not less than thirty (30) days after the date of such notice, in which event this Agreement and Lessee's estate created hereby and all interest of the Lessee and all parties claiming by, through or under the Lessee shall automatically terminate upon the effective date for termination as set forth in such notice, with the same force and effect and to the same extent as if the effective date of such notice had been the date originally fixed in Article 2 hereof for the expiration of the Term. In such event, the Agency, its agents or representatives, shall have the right, without further demand or notice, to re-enter and take possession of the Property (including all buildings, the Premises or Premises Improvements, and other improvements comprising any part thereof) at any time from and after the effective termination date without being deemed guilty of any manner of trespass and without prejudice to any remedies for arrears of Rent or existing breaches of covenants or any other remedy available at law or equity to the Agency. Lessee shall execute such releases, deeds or other instruments in recordable form as the Agency shall reasonably request in order to accurately set forth of record the then current status of the Lessee's estate in the Property and the Lessee's rights hereunder.

ARTICLE 15 - DEFAULT BY AGENCY

15.1 Default. Agency shall not be in default unless Agency fails to perform its obligations under this Agreement within a reasonable time, but in no event later than thirty (30) days after written notice by Lessee to Agency specifying wherein Agency has failed to perform such obligations. If the nature of Agency's obligation is such that more than thirty (30) days are required for performance, then Agency shall not be in default if Agency commences performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion. Lessee's obligation to provide written notice to Agency of a default by Agency is

limited to those instances where knowledge of Agency's default is within the actual knowledge of Lessee.

15.2 Remedies. If Agency fails to cure a prospective default within the time periods outlined above, Lessee shall have the option to cure the default or to terminate this Agreement, in addition to any other remedies at law not inconsistent herewith. Should Lessee elect to cure the default itself, all costs associated with such cure shall be reimbursed by Agency to Lessee within thirty (30) days of receipt of Lessee's invoice for said costs. However, upon Agency's failure to so reimburse or, at Lessee's option, said costs shall be held from Rent due hereunder.

ARTICLE 16 -- HOLDING OVER

16.1 Surrender of Property.

(a) The Lessee shall, at least ninety (90) days before the last day of the Term, give to Agency a written notice of Lessee's intention to surrender the Property and the improvements thereon on that date, but nothing contained in this Section shall be construed as an extension of the Term of this Agreement or as consent of Agency to any holding over by Lessee.

(b) At the end of the Term or other sooner termination of this Agreement, Lessee shall surrender and deliver to Agency the Property and the possession of the Property, together with all improvements, including the Premises Improvements, in condition required for the Property, and Premises or Premises Improvements to be maintained under this Agreement, free and clear of all occupancies other than those granted nondisturbance pursuant to the provisions of this Agreement, and free and clear of all liens and encumbrances other than those, if any, presently existing or created by Agency, without payment or allowance whatever by Agency on account of any such Improvements.

(c) Concurrently with the surrender of the Property, the Lessee agrees, if requested by Agency and for the benefit of Agency, to execute, acknowledge and deliver to the Agency a quitclaim deed to the Property and such instruments as may be reasonably requested by the Agency to evidence or otherwise effect such passage and vesting of title to the Premises or Premises Improvements and Personal Property, if any, retained on the Property to the Agency.

16.2 Holding Over.

If the Lessee shall retain possession of the Property, the Premises or Premises Improvements thereon or any part thereof without the Agency's prior written consent following the expiration or sooner termination of this Agreement for any reason, then the Lessee shall pay to the Agency an amount equal to two hundred percent (200%) of the Rent and other payments that would have been due had the Agreement not expired or been terminated and had the Rent and other payment terms in effect at the time of the expiration or sooner termination of the Agreement remained in effect; provided, however, that if the Lessee prevails in an action determining that the Agreement has not in fact expired or been sooner terminated in accordance with the terms hereof, the Agency shall promptly return to the Lessee the portion of the amount set forth in this sentence that is in excess of the Rent and other payments due under the Agreement absent this sentence. These payments shall be applicable to a holding over of any kind by the Lessee. The Lessee shall also indemnify and hold the Agency harmless from any

loss or liability resulting from delay by the Lessee in surrendering the Property, including, without limitation, any claims made by any succeeding Lessee founded on such delay. Acceptance of Rent by the Agency following expiration or termination shall not constitute a renewal of this Agreement and nothing contained in this Section 16.2 shall waive the Agency's right of reentry or any other right. The Lessee shall be only a Lessee at sufferance, whether or not the Agency accepts any Rent from the Lessee while the Lessee is holding over without the Agency's written consent.

16.3 No Merger. Except upon expiration of the Term or upon termination of this Agreement pursuant to an express right of termination set forth herein, there shall be no merger of either this Agreement or the Lessee's estate created hereunder with the fee estate of the Property or any part thereof by reason of the fact that the same person may acquire, own or hold, directly or indirectly, (a) this Agreement, the Lessee's estate created hereunder or any interest in this Agreement or the Lessee's estate (including the Improvements), and (b) the fee estate in the Property or any part thereof or any interest in such fee estate (including the Improvements), unless and until all persons, including any assignee of the Agency, having an interest in (i) this Agreement or the Lessee's estate created hereunder, and (ii) the fee estate in the Property or any part thereof, shall join in a written instrument effecting such merger and shall duly record the same.

ARTICLE 17 - EMINENT DOMAIN

17.1 Total Taking.

If either the entire Property (or any improvements thereon) or a substantial and essential portion of the Property (or any improvements thereon), the taking of which portion materially impairs the use of the Premises or Premises Improvements then being made by Lessee and renders the remainder of the Premises or Premises Improvements unsuitable or economically not feasible for such use, as reasonably determined by Lessee in good faith, is taken under the power of eminent domain during the Term of this Agreement, then this Agreement shall terminate as of the date of such taking. The Agency and the Lessee shall together make one claim for an award for their combined interests in the Property and all buildings, structures, Premises or Premises Improvements and fixtures thereon which are so taken. Such award shall be paid to and divided between the Agency and the Lessee in priority as follows:

(a) All compensation and damages payable for or on account of the underlying fee title to the Property, assuming that the Property were unimproved but encumbered by this Agreement, shall be payable to and be the sole property of the Agency.

(b) All compensation and damages payable for or on account of the buildings and Premises or Premises Improvements located on the Property shall be divided between the Agency and the Lessee in the manner specified in Section 13.5(a) of this Agreement.

17.2 Partial Taking.

If less than the whole of the Property is taken under the power of eminent domain during the Term of this Agreement and this Agreement is not terminated as provided in Section 17.1

hereof, then this Agreement shall terminate only with respect to the portion of the Property taken and this Agreement shall continue in full force and effect with respect to the portion of the Property not taken. The Lessee shall, but only to the extent of the amount of the award received, promptly reconstruct and restore the portion of the Property not taken and the buildings and Improvements located on the portion of the Property not taken as an integral unit of the same general quality and character as existed prior to such taking. Such reconstruction and restoration shall be performed in a good and workmanlike manner and undertaken in accordance with plans and specifications submitted to and approved by the Agency in accordance with Article 6, and otherwise in accordance with the applicable provisions of this Agreement.

All awards or other payments received on account of a partial taking as described in this Section 17.2 shall be paid to the Insurance Trustee referred to in Section 13.4 above to be held and disbursed in the same manner as insurance proceeds, except that any portion of such award remaining after completion of any restoration shall be divided between the Agency and the Lessee and disbursed by the Insurance Trustee in the manner provided in Section 13.5.

17.3 Temporary Taking.

If the use of all or any part of the Property is taken under the power of eminent domain during the Term on a temporary basis for a period less than the time remaining after the date of such taking to the end of the Term, then this Agreement shall continue in full force and effect and the Lessee shall continue to be obligated to perform and observe all of the agreements, covenants and conditions on the part of the Lessee to be performed and observed as and when performance and observance is due to the full extent that such agreements, covenants and conditions are physically capable of performance and observance by the Lessee after such taking. The award payable for or on account of such taking shall be paid to the Lessee.

17.4 Notice of Taking: Single Proceeding.

In case of a taking of all or any part of the Property or the Premises or Premises Improvements thereon or the commencement of any proceeding or negotiations which might result in such taking, the party having notice of such taking or of the commencement of any such proceeding or negotiations shall promptly give written notice thereof to the other party. The Agency and the Lessee shall jointly prosecute their claims for an award in a single proceeding. In any eminent domain proceeding affecting the Property, both the Agency and the Lessee shall have the right to appear in the proceeding and to defend against the eminent domain action as they deem proper in accordance with their own interests. To the extent possible, the Agency and the Lessee shall cooperate with each other to maximize the amount of the award payable by reason of the eminent domain. Issues between the Agency and the Lessee that arise under this Article 17 shall be joined in any such eminent domain proceeding to the extent permissible under then applicable rules governing such joinder.

As used in this Agreement: (1) a "taking" means the acquisition of all or any part of the Property for a public use by exercise of the power of eminent domain; (2) the taking shall be considered to occur as of the earlier of the date on which possession of the Property by the entity exercising the power of eminent domain is authorized as stated in an order for possession, or the date on which title to the Property vests in the person exercising the power of eminent domain; and (3) "award" means the compensation paid for the taking.

ARTICLE 18 - WAIVER

The waiver by Agency or Lessee of any term, covenant or condition herein contained shall not be deemed to be a waiver of any other term, covenant or condition, nor shall either party's consent to any breach of any term, covenant or condition be deemed to constitute or imply its consent to any subsequent breach of the same or other term, covenant or condition herein contained.

ARTICLE 19 - MISCELLANEOUS PROVISIONS

19.1 Time is of the Essence. Time is of the essence of each term and provision of this Agreement.

19.2 Warranty of Authority. If Lessee is a corporation, the person executing this lease on behalf of Lessee hereby covenants and warrants that Lessee is a duly authorized and existing corporation and that he/she is duly authorized to execute this Agreement.

19.3 Release. Lessee acknowledges that this Agreement was entered into voluntarily, and Lessee further expressly acknowledges that he has been informed of and is familiar with the provisions of California Civil Code section 1542, which provides as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR."

Each of the parties hereby expressly waives the provisions of California Civil Code section 1542, and each party further expressly waives any right to invoke said provisions now or at any time in the future. The parties recognize and acknowledge that factors which may have induced them to enter into this Agreement may turn out to be incorrect or to be different from what they had previously anticipated, and the parties hereby expressly assume all of such risks and further expressly assume the risks of this waiver of the rights provided by California Code of Civil Procedure section 1542.

19.4 Conflict of Interests. No member, official or employee of the Agency shall make any decision relating to the Agreement which affects his or her personal interests or the interest of any corporation, partnership or association in which he is directly or indirectly interested.

19.5 Non-Liability of Officials, Employees and Agents. No member, official, employee or agent of the Agency or the County shall be personally liable to the Lessee, or any successor in interest, in the event of any default or breach by the Agency or for any amount which may become due to the Lessee or successor or on any obligation under the terms of this Agreement.

19.6 Enforced Delay. In addition to specific provisions of this Agreement, performance by either party shall not be deemed to be in default where delays or defaults are due

to war; acts of terrorism; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; quarantine restrictions; freight embargoes; energy shortages or rationing; lack of transportation; or court order; or any other similar causes (other than lack of funds of the Lessee or the Lessee's inability to finance the Premises Improvements) beyond the control or without the fault of the party claiming an extension of time to perform. An extension of time for any cause will be deemed granted if notice by the party claiming such extension is sent to the other within ten (10) days from the commencement of the cause and such extension of time is not rejected in writing by the other party within ten (10) days of receipt of the notice. Times of performance under this Agreement may also be extended by written agreement of the Agency and the Lessee.

19.7 Inspection of Books and Records. The Agency and its agents have the right at all reasonable times to inspect on a confidential basis the books, records and all other documentation of the Lessee pertaining to its obligations under this Agreement. The Lessee also has the right at all reasonable times to inspect the books, records and all other documentation of the Agency pertaining to its obligations under this Agreement to the extent such items to be inspected are part of the public record. The Lessee and the Agency shall retain such books, records and documentation for a period of five (5) years after their creation.

19.8 Title of Parts and Sections. Any titles of the sections or subsections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any part of its provision.

19.9 Indemnity. The Lessee shall indemnify, defend and hold the Agency, the County and their respective board members, council members, directors, officials, employees, agents, successors, and assigns harmless against all claims made against them, causes of action, administrative proceedings, arbitrations or enforcement actions which arise out of or in connection with the Lessee's ownership, occupancy, or development of the Property or construction on the Property by the Lessee or the Lessee's contractors, subcontractors, agents, employees or tenants and all damages (direct or consequential), costs, losses, injuries, fines, penalties, liens, encumbrances, charges, liabilities, demands, judgments, remedial action requirements, obligations, and all costs and expenses incurred in connection therewith (including, but not limited to, attorney fees and costs); provided, however, that this indemnity shall not extend to any claim arising solely from the Agency's failure to perform its obligations under this Agreement or solely from the gross negligence or willful misconduct of the Agency, the County, or their respective board members, council members, directors, officials, employees, agents, successors, and assigns.

19.10 Applicable Law. This Agreement shall be interpreted under and pursuant to the laws of the State of California.

19.11 Severability. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provision shall continue in full force and effect unless the rights and obligations of the parties have been materially altered or abridged by such invalidation, voiding or unenforceability.

ARTICLE 20 -LEGAL ACTIONS.

(a) In the event any legal action is commenced to interpret or to enforce the terms of this Agreement or to collect damages as a result of any breach thereof, the party prevailing

in any such action shall be entitled to recover against the party not prevailing all reasonable attorney fees and costs incurred in such action, including attorney fees and costs of any appeals.

(b) In the event legal action is commenced by a third party or parties, the effect of which is to directly or indirectly challenge or compromise the enforceability, validity, or legality of the Agreement and/or the power of the Agency to enter into this Agreement or perform its obligations hereunder, either the Agency or the Lessee may (but shall have no obligation to) defend such action. Upon commencement of any such action, the Agency and the Lessee shall meet in good faith and seek to establish a mutually acceptable method of defending such action.

20.1 Binding Upon Successors; Covenants to Run With Land. This Agreement shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest and assigns of each of the parties; provided, however, that there shall be no transfer of any interest by the Lessee except pursuant to the terms of this Agreement. Any reference in this Agreement to a specifically named party shall be deemed to apply to any successor, heir, administrator, executor or assign of such party who has acquired an interest in compliance with the terms of this Agreement, or under law.

The terms of this Agreement shall run with the land and shall bind all successors in title to the Property during the Term of this Agreement, except that the provisions of this Agreement that are specified to survive termination of this Agreement shall run with the land in perpetuity and remain in full force and effect following such termination. Every contract, deed, or other instrument hereafter executed covering or conveying the Property or the Improvements or any portion thereof shall be held conclusively to have been executed, delivered, and accepted subject to such covenants and restrictions, regardless of whether such covenants or restrictions are set forth in such contract, deed or other instrument, unless the Agency expressly releases the Property, the Improvements, or the applicable portion of the Property, from the requirements of this Agreement.

20.2 Discretion Retained by County. The Agency's execution of this Agreement does not constitute approval by the County and in no way limits the discretion of the County in the permit and approval process in connection with development of the Premises Improvements, any Major Additional Improvements, or any other use or development on the Property by the Tenant.

20.3 Parties Not Co-Venturers. Nothing in this Agreement is intended to or does establish the parties as partners, co-venturers, or principal and agent with one another.

20.4 Employment Opportunity. The Lessee and its successors, assigns, contractors and subcontractors shall not discriminate against any employee or applicant for employment in connection with the construction and operation of the Improvements because of race, color, religion, sex, sexual preference, marital status, ancestry or national origin. Each of the following activities shall be conducted in a nondiscriminatory manner: hiring; upgrading; demotion and transfers; recruitment and recruitment advertising; layoff and termination; rate of pay and other forms of compensation; and selection for training including apprenticeship.

20.5 Warranties. The Agency expresses no warranty or representation to the Lessee as to fitness or condition of the Property or any portion thereof for the building or construction to be conducted thereon.

20.6 Action by the Agency or Lessee.

(a) Except as may be otherwise specifically provided herein, whenever any approval, notice, direction, consent, request, or other action by the Agency is required or permitted under this Agreement, such action may be given, made, or taken by the Agency's Executive Director, or by any person who shall have been so designated in writing to the Lessee by the Executive Director, without further action or approval by the Agency Board, and any such action shall be in writing. The Executive Director may, in his or her discretion, agree in writing to modification of the dates by which action are to be complete or to waive any terms and conditions of this Agreement or to make reasonable modifications to the Agreement requested by the Lessee's lenders.

(b) The Lessee shall take all actions necessary to implement the provisions of this Agreement and to complete those performances required of the Lessee.

20.7 County As Third-Party Beneficiary. The County shall be a third-party beneficiary retaining enforcement rights with respect to this Agreement. Except as set forth in the preceding sentence, no person or entity other than the Lessee, the Agency, and their permitted successors and assigns shall have any right of action under this Agreement.

20.8 Amendments. The parties can amend this Agreement only by means of a writing signed by both parties; provided, however, the parties may enter into Operating Memoranda or Implementation Agreements in furtherance of the intent of this Agreement without formal amendment of this Agreement for purposes, in the manner, and with the effect set forth in Section 19.21.


20.9 Operating Memoranda; Implementation Agreements.

(a) The parties acknowledge that the provisions of this Agreement require a close degree of cooperation and that new information and future events may demonstrate that changes are appropriate with respect to the details of performance of the parties under this Agreement. The parties desire, therefore, to retain a certain degree of flexibility with respect to the details of performance for those items covered in general terms under this Agreement. If and when, from time to time during the Term of this Agreement, the parties find that refinements or adjustments through Operating Memoranda or Implementation Agreements approved by the parties which, after execution shall be attached to this Agreement as addenda and become a part hereof.

(b) Operating Memoranda or Implementation Agreements may be executed on the Agency's behalf by the Executive Director. In the event a particular subject requires notice or hearing, such notice or hearing shall be appropriately given. Any significant modification to the terms of performance under this Agreement shall be processed as an amendment of this Agreement in accordance with Section 19.20 and must be approved by the Agency Board.

IN WITNESS WHEREOF, the parties to this Agreement hereby execute this Agreement as of the day and year last written below.

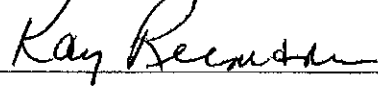
AGENCY: (Redevelopment Agency of the County of Monterey)

By: 

Title: Chair, Board of Directors of the Redevelopment Agency of Monterey County

Date: 10/4/06

APPROVED AS TO FORM: (County Counsel)

By: 

Title: Deputy County Counsel

Date: 9/28/06

By: _____

Title: _____

Date: _____

LESSEE: Darryl Choates

By: 

Title: President

Date: 9/5/06

EXHIBIT A

DESCRIPTION OF PREMISES

(legal description of the property)

Exhibit A-1

Site Map

LEGAL DESCRIPTION

ORD MARKET LEASE EXHIBIT
FORT ORD MILITARY RESERVATION
MONTEREY COUNTY, CALIFORNIA

ALL THAT CERTAIN REAL PROPERTY SITUATE IN THE FORT ORD MILITARY RESERVATION, RANCHO NOCHE BUENA, MONTEREY COUNTY, CALIFORNIA, DESCRIBED AS FOLLOWS:

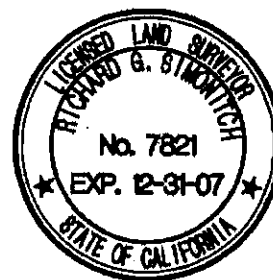
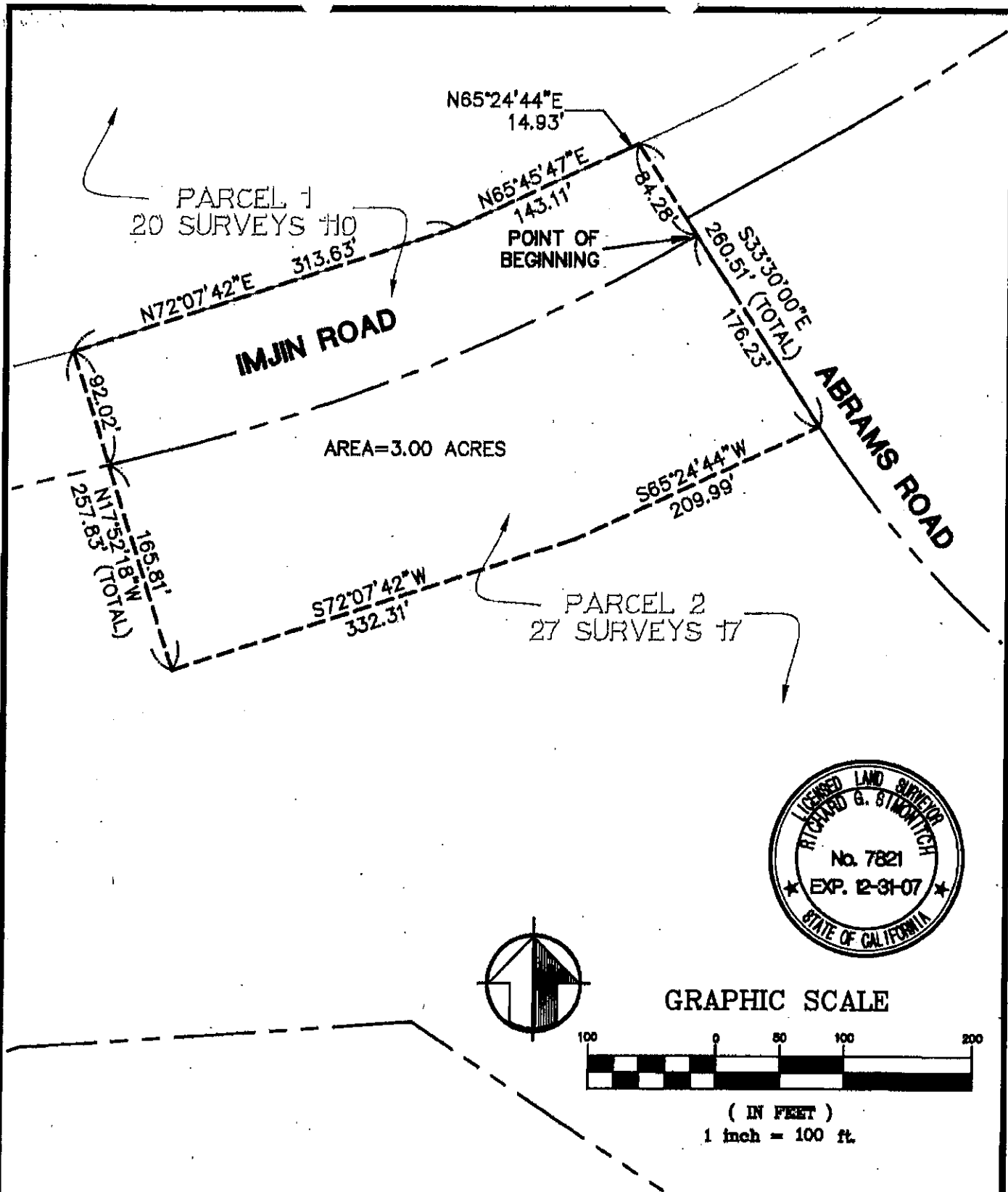
BEING A PORTION OF PARCEL 1 AS SHOWN ON VOLUME 20 OF SURVEYS AT PAGE 110 AND A PORTION OF PARCEL 2 AS SHOWN ON VOLUME 27 OF SURVEYS AT PAGE 17 IN THE OFFICE OF THE COUNTY RECORDER OF MONTEREY COUNTY, CALIFORNIA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID PARCEL 2; THENCE ALONG THE EXTERIOR BOUNDARY OF SAID PARCEL 2 SOUTH $33^{\circ}30'00''$ EAST, 176.23 FEET; THENCE LEAVING SAID EXTERIOR BOUNDARY AND CONTINUING SOUTH $65^{\circ}24'44''$ WEST, 209.99 FEET; THENCE SOUTH $72^{\circ}07'42''$ WEST, 332.31 FEET; THENCE NORTH $17^{\circ}52'18''$ WEST, 165.81 FEET TO THE SOUTHERLY LINE OF SAID PARCEL 1; THENCE CONTINUING NORTH $17^{\circ}52'18''$ WEST 92.02 FEET; THENCE NORTH $72^{\circ}07'42''$ EAST, 313.63 FEET; THENCE NORTH $65^{\circ}45'47''$ EAST, 143.11 FEET; THENCE SOUTH $33^{\circ}30'00''$ EAST, 84.28 FEET TO THE POINT OF BEGINNING.

CONTAINING 3.00 ACRES, MORE OR LESS.

THIS LEGAL DESCRIPTION WAS PREPARED BY:

RICHARD G. SIMONITCH, LS 7821
EXPIRES 12-31-07



CREEGAN+D'ANGELO

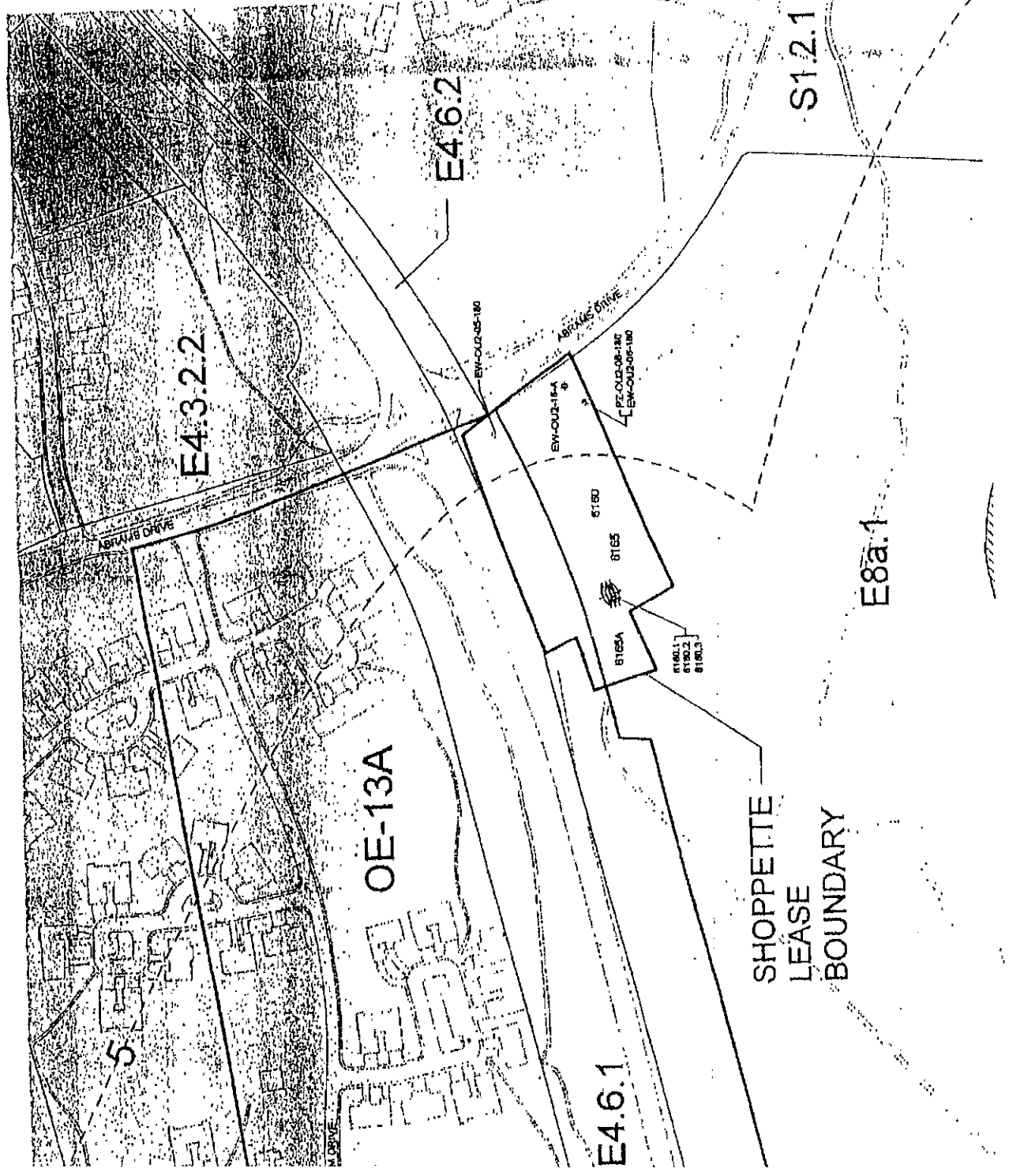
Consulting Civil and Structural Engineers

MONTEREY, FAIRFIELD, PLEASANTON, SAN FRANCISCO, SAN JOSE

EXHIBIT
ORD MARKET LEASE PARCEL
FORD ORD
COUNTY OF MONTEREY
SHEET 1 OF 1

EXPLANATION

- SBa.1
- PARCEL DESIGNATION
- LEASE AREA
- NOT PART OF THIS LEASE
- OU-2 LANDFILL LIMITS
- OE SITE BOUNDARY AND
OE SITE NUMBER
- EXTRACTION WELL
- PIEZOMETER
- UNDERGROUND STORAGE
TANKS (REMOVED)
- OU-2 GROUNDWATER PLUME
APPROXIMATE LOCATION OF
THE 5 ug/l TCE CONCENTRATION
CONTOUR OF COMBINED A-AQUIFER
AND UPPER 180-FOOT AQUIFER
ANALYTICAL RESULTS BASED ON
MARCH 2000 SAMPLING



200 0 200 Feet



Handling Lawson Associates
Engineering and
Environmental Services

Location Map
Shoppette FOSL
Former Fort Ord
Monterey, California

DATE
1/01

EXHIBIT B

SUMMARY OF SERVICES AND UTILITIES

The following is a summary of services and utilities responsibilities of Agency and Lessee for the proposed use of the Premises:

	N/A	AGENC Y	LESSEE
Provide adequate paper supplies, dispensers, and waste and recycling containers for the Premises and rest rooms			X
Provide adequate custodial service for interior of the Premises (dust, waste removal, recycling removal, vacuum, mop and general cleaning)			X
Provide adequate custodial service for exterior of the Premises and common areas			X
Professionally clean carpets, rugs, tile and linoleum flooring as deemed necessary			X
Professionally clean existing drapes, blinds, and window shades as deemed necessary			X
Professionally clean interior windows as deemed necessary			X
Professionally clean exterior windows as deemed necessary			X
Provide adequate pest control for the interior of the Premises			X
Provide adequate pest control for exterior of Premises			X
Provide adequate landscape maintenance and gardening (including landscape irrigation system and associated water supply and service)			X
Provide adequate parking lot area sweeping			X
Provide adequate refuse, rubbish, garbage, and recyclable (paper, plastic, and aluminum) disposal and pick up service			X
Provide adequate fire sprinkler systems testing			X
Provide adequate fire alarm systems monitoring			X
Provide adequate intrusion/security alarm systems monitoring			X
Provide adequate patrolled security guard service			X
Provide adequate heating, ventilation & air conditioning (HVAC) systems filter replacements, unit inspections and unit lubrications (surgical units and/or operating rooms shall be the responsibility of the LESSEE)			X
Provide adequate servicing of uninterrupted power source (UPS)			X
Provide adequate servicing of power back up generator (excludes any power back up generator provided by LESSEE)			X

			X
Provide adequate gas utility service (prorated cost to be determined during design of Premise Improvements)			X
Provide adequate electric utility service			X
Provide adequate water utility service			X
Provide adequate telephone and data service (including connection charges)			X
OTHER:			

EXHIBIT C

(1) SUMMARY OF REPAIR AND MAINTENANCE RESPONSIBILITIES

The following is a summary of maintenance and repair responsibilities of Agency and Lessee for the proposed use of the Premises:

	N/A	AGEN CY	LESSEE
Common Areas			X
Foundations			X
Floor Slabs			X
Elevators and/or Dumb Waiters			X
Exterior and Bearing Walls			X
Exterior Doors and Hardware (excludes re-keying if deemed necessary)			X
Exterior Windows and Window Frames			X
Roofs			X
Gutters, Drains and Downspouts			X
Parking Lots			X
Ceilings			X
Fire Sprinkler Systems			X
Fire Alarm Systems			X
Intrusion/Security Alarm Systems			X
Uninterrupted Power Source (UPS)			X
Power Back Up Generator (excludes any generator provided by LESSEE)			X
Heating, Ventilation and Air Conditioning (HVAC) Systems (including replacement if deemed necessary) (surgical units and/or operating rooms shall be the responsibility of the LESSEE)			X
Heating, Ventilation and Air Conditioning (HVAC) control switches, sensors and thermostats (surgical units and/or operating rooms shall be the responsibility of the LESSEE)			X
Electrical Systems (including electrical outlets, panels, circuit breakers and wiring) (surgical units and/or operating rooms shall be the responsibility of the LESSEE)			X
Plumbing Systems and Fixtures (including sewer and drain stoppages) (surgical units and/or operating rooms shall be the responsibility of the LESSEE)			X
Lighting Systems (including starters, ballasts, transformers and light switches) (surgical units and/or operating rooms shall be the responsibility of the LESSEE)			X
Light Bulbs and Fluorescent Light Tubes (adequate replacement)			X

Interior Walls			X
Interior Wall Surfaces (including repainting if deemed necessary)			X
Interior Doors and Hardware			X
Interior Windows and Window Frames			X
Carpet, Tile, and Linoleum Flooring (including replacement if deemed necessary)			X
Base and/or Moldings			X
Appliances			X
Communication Systems (data/telephone cabling, connections and equipment)			X

***Notwithstanding the forgoing, Lessee will pay to Agency the reasonable cost of any repairs or maintenance required as a direct result of negligent acts or omissions of Lessee, its agents, employees, or invitees.**

EXHIBIT D

[Attach depreciation schedule for Premises Improvements]