



CITY OF LEMON GROVE

CITY COUNCIL STAFF REPORT

Item No. 1.D

Meeting Date: October 20, 2020

Submitted to: Honorable Mayor and Members of the City Council

Department: City Manager's Office

Staff Contact: Mike James, Assistant City Manager / Public Works Director

mjames@lemongrove.ca.gov

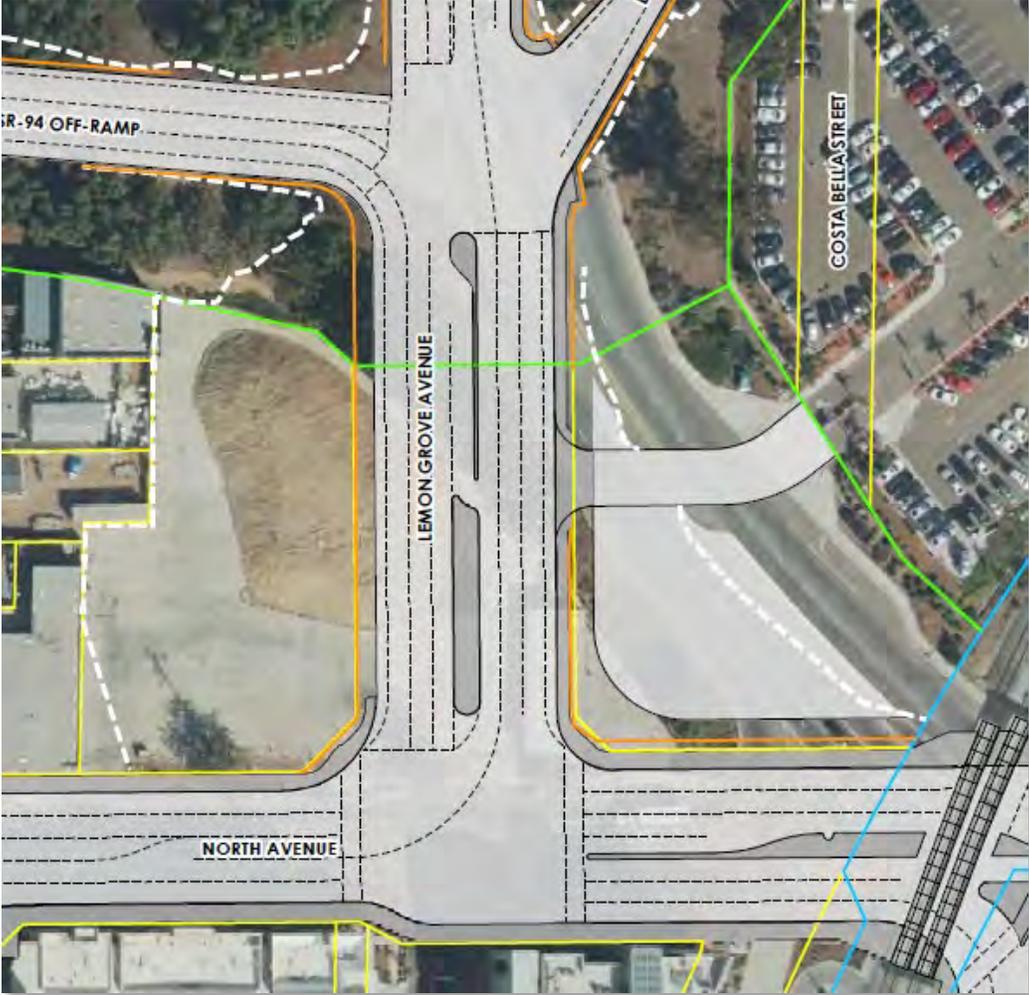
Item Title: Lease Agreement with Mossy Automotive Group

Recommended Action: Adopt a resolution approving the lease of surplus property within a portion of APN 475-402-24 and 475-402-25 to Mossy Automotive Group.

Summary: Mossy Automotive Group (MAG) desires to lease the portion of remnant property that it plans to purchase from the City. Rather than wait until the purchase transaction is completed, which could take an additional year. City and MAG staff created a lease agreement, which will allow MAG to assume control of the parcel, construct improvements on-site, and begin to expand its operations. Staff negotiated the lease agreement with the MAG to pay the City \$2,500 per month until the sale is complete.

Discussion: In November 2019, the City and Mossy Automotive Group (MAG) entered into a purchase agreement of the surplus property within a portion of APN 475-402-24 and 475-402-25 for a lump sum amount of \$771,026. Since that date, City and MAG staff have diligently worked on completing the transaction but additional time is needed to navigate the title research and transfer process. Rather than wait for the transaction to be complete both parties have agreed to a lease agreement (Attachment A – Exhibit 1) that will allow MAG to continue with its plan to construction site improvements and further expanded on its plan to use the surplus property as an extension of the existing new/used vehicle lot to increase the amount of inventory that can be stored on site.

Exhibit 1: Overview of LGA Realignment Project



Staff prepared a draft lease agreement that outlines the specific details for this transaction. This lease agreement does not affect the prior purchase agreement already approved by the City Council.

Notable terms and conditions of the agreement include:

- MAG will pay a monthly lease to the City of \$2,500, which will increase 2 percent annually.
- All payments made by MAG will be deducted from the agreed upon purchase price at the time of sale.
- MAG is responsible for its own cost and expense and without any cost or expense to the City.
- MAG may use the property for the operation of a new and used automobile dealership and service facility.
- MAG shall not be able to assign, mortgage, pledge or encumbers this lease agreement.

- MAG will be considered in default if any payment of rent or other moneys due continue after a period of 10 days after written notice, other defaults continue for a period of 30 days after written notice thereof, or MAG admits in writing its inability to pay its debts generally, as they become due.

Staff concludes that the most benefit for the public good will be realized by approving the lease agreement until the sale is complete. By leasing the property, prior to its sale, it will increase the likelihood that MAG vehicle sales will increase and increase the chances that the amount of sales tax revenues to the City will increase.

Environmental Review:

- Not subject to review Negative Declaration
 Categorical Exemption, Section [] Mitigated Negative Declaration

Fiscal Impact: If approved, the City will receive an estimated \$30,000 of rental income for each fiscal year. Staff did not make a recommendation for any revenue received but defers any recommendation for the City Council’s consideration until the sale transaction is complete.

Public Notification: None.

Staff Recommendation: That the City Council approves the lease of surplus property within a portion of APN 475-402-24 and 475-402-25 to Mossy Automotive Group.

Attachments:

- Attachment A – Resolution
- Attachment B – Lease Agreement

RESOLUTION NO. 2020 -

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LEMON GROVE, CALIFORNIA, APPROVING THE LEASE OF SURPLUS PROPERTY WITHIN A PORTION OF ASSESSOR PARCEL NUMBER 475-402-24 AND 475-402-25 TO MOSSY AUTOMOTIVE GROUP

WHEREAS, the completion of the Lemon Grove Avenue Realignment project created a remnant piece of property that is approximately 32,247 square feet in size; and

WHEREAS, Mossy Automotive Group agreed to purchase the property and now desires to lease the property in order to expand its existing new/used vehicle lot to increase the amount of inventory that can be stored on site; and

WHEREAS, a lease agreement was created to offer a fair and equitable amount for the use of the property until the sale transaction is complete; and

WHEREAS, it is in the best interest of the City that the remnant property is leased to the Mossy Automotive Group.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Lemon Grove, California, hereby:

1. Approves the lease of the surplus property to Mossy Automotive Group for an amount of equal to two thousand five hundred dollars (\$2,500.00) with an annual escalation of two percent (2%); and
2. Directs the City Manager or her designee to deposit any lease payments into the General Reserve Fund; and
3. Authorizes the City Manager or her designee to manage all applicable correspondence.

PASSED AND ADOPTED on _____, 2020, the City Council of the City of Lemon Grove, California, adopted Resolution No. _____, passed by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Racquel Vasquez, Mayor

Attest:

Shelley Chapel, MMC, City Clerk

Approved as to Form:

Kristen Steinke, City Attorney

LEASE

This lease (“Lease”) is made this _____ day of _____, 2020, by and between the City of Lemon Grove (“Landlord”), and MAG LGB, LLC, a California limited liability company (“Tenant”) on the terms, covenants and conditions set forth below.

1. **TERMS AND DEFINITIONS; SCHEDULES.**

1.1 **Terms and Definitions**

1.1.1 “Premises” shall mean the Remainder Parcel, located at the Northeast corner of Lemon Grove Boulevard and North Avenue in Lemon Grove, CA 91945, as described and depicted in **Exhibit A**, and all rights, privileges and easements appurtenant to the Premises.

1.1.2 “Lease Commencement Date” shall be _____.

1.1.3 “Lease Expiration Date” shall mean that date which is one (1) year after the Lease Commencement Date, unless sooner terminated or extended as provided herein.

1.1.4 “Initial Term” shall mean the period commencing on the Lease Commencement Date and ending on the Lease Expiration Date.

1.1.5 “Base Rent” shall refer to the monthly basic rental payments payable by Tenant to Landlord, which initially shall mean Two Thousand Five Hundred Dollars (\$2,500.00) per month, and shall increase at 2% annually. The Base Rent for the Initial Term and Extended Terms is as follows:

<u>Lease Year</u>	<u>Base Rent per month</u>
1	\$ 2,500
2	\$ 2,550
3	\$ 2,601
4	\$ 2,653
5	\$ 2,706
6	\$ 2,760
7	\$ 2,815
8	\$ 2,871
9	\$ 2,929
10	\$ 2,987

1.1.4 “Permitted Purpose” means that Tenant may use the Premises for the operation of a new and used automobile dealership and service facility.

1.1.5 “Purchase Agreement” means that certain Agreement of Purchase and Sale and Joint Escrow Instructions effective as of January 30, 2020 between Landlord and Tenant.

1.1.6 Landlord's mailing address: City of Lemon Grove, Attn: Finance Dept.,
3232 Main Street, Lemon Grove, CA 91945

1.1.7 Tenant's mailing address: 4625 Brinell Street, San Diego, CA 92111

2. PREMISES.

2.1 Lease of Premises In consideration of the Rent (as such term is defined in Subparagraph 3.1 hereof) and the provisions of this Lease, Landlord leases to Tenant, and Tenant leases from Landlord, the Premises during the Initial Term and any Extended Term as applicable, subject to the terms, covenants and conditions set forth herein.

2.1.1 Expansion of Premises. The parties acknowledge that the Purchase Agreement remains in full force and effect, and Tenant is entering in to the Lease while Landlord perfects title to that parcel of land as depicted on **Exhibit B** attached hereto ("Additional Parcel"). Upon vesting of title of the Additional Parcel in Landlord, the Additional Parcel shall automatically become part of the Premises as referred to herein. Notwithstanding the forgoing, if Landlord has not obtained title to the Additional Parcel within two (2) years following the Lease Commencement Date, then Tenant may terminate this Lease at any time thereafter upon 30 days written notice to Landlord.

2.2 Extended Term.

2.2.1 Extension Terms. Subject to the provisions of this Section 2.2:

(a) Tenant shall have the right to extend the Initial Term (subject to all the terms, covenants, conditions and provisions contained in this Lease) for nine additional periods of one (1) year each, following the expiration of the Initial Term (each, an "Extended Term"). The Base Rent for each month of a Lease Year (as defined below) of such Extended Terms shall be as set forth in Section 2.2.3.

(c) A "Lease Year" shall be a period of twelve (12) consecutive months, the first such period commencing on the Lease Commencement Date, and each subsequent Lease Year beginning on the anniversary thereof.

2.2.2 Extension Notice. Tenant's right to extend the Term pursuant to Section 2.2.1 above is conditioned upon Tenant giving Landlord written notice of Tenant's unequivocal election to extend the Term (an "Extension Notice") at least ninety (90) days before the date the Term otherwise would expire ("Option Expiration Date"); provided however that if Tenant fails to timely deliver an Extension Notice, Landlord shall promptly notify Tenant in writing, and Tenant shall have five (5) business days after receipt to deliver the Extension Notice. If Tenant does not deliver the Extension Notice within such five (5) business day period, the extension right shall expire.

3. PAYMENT OF RENT AND PREMISES EXPENSES.

3.1 Lease Term Rent.

3.1.1 Base Rent. Each monthly installment of Base Rent shall be payable no later than the first (1st) calendar day of each month. Monthly installments for any fractional calendar month, at the beginning or end of the Initial Term or any Extended Term, shall be prorated based on the number of days in such month. Base Rent, together with all other amounts payable by Tenant to Landlord under this Lease, shall be sometimes referred to collectively as "Rent." Tenant shall pay all Rent, without deduction or set off (except as otherwise provided herein), to Landlord at Landlord's mailing address set forth in Section 1.1.6. All Rent paid by Tenant shall be applied to the Purchase Price at the close of escrow of the Purchase Agreement.

3.2 Net Lease. This shall be a "triple net lease," and, except as provided herein, Base Rent shall be paid to Landlord net of all costs and expenses. It is the intent of Landlord and Tenant that, from and after the Lease Commencement Date, Tenant, and not Landlord, shall be solely responsible for all costs and expenses incurred in connection with the management, maintenance and repair of the Premises and any improvements thereon.

3.3 Premises Expenses. From and after the Lease Commencement Date, Tenant agrees to pay, on or before the date due, all Premises Expenses. As used herein, "Premises Expenses" include, without limitation, all costs and expenses of any nature incurred or payable, or arising in connection with, the management, maintenance, repair or operation of the Premises, including, without limitation, any amounts paid for: (i) the cost of supplying any utilities, the cost of operating, maintaining, repairing and managing any utility systems, mechanical systems, sanitary and storm drainage systems, and the cost of supplies and equipment and maintenance and service contracts in connection therewith; and (ii) the cost of licenses, certificates, permits and inspections, and the cost of contesting the validity or applicability of any governmental enactments which may affect the Premises.

3.4 Proration. All Premises Expenses for any fraction of a year at the commencement or end of the Term hereof shall be appropriately prorated between the parties on the basis of a three hundred sixty-five day year.

3.5 Taxes and Assessments.

3.5.1 Payable By Tenant. Tenant covenants and agrees to pay and discharge, during the entire Term, before delinquency, all taxes, assessments, water charges, sewer charges, utility rates and fees, levies or other charges, general, special, ordinary, extraordinary and otherwise, of every kind and character which are or may during the Term be levied, charged, assessed or imposed upon or against the Premises or against any of Tenant's personal property now or hereafter located thereon, or which may be levied, charged, assessed or imposed upon or against the leasehold estate created hereby. On the Lease Commencement Date and at the end of the Term, such taxes, assessments and other charges to be paid by Tenant shall be prorated on the basis of the fiscal year of the taxing authority in question so that, on the Lease Commencement Date and at the end of the Term, as to any such taxes, assessments and other charges levied or assessed for a fiscal year preceding the Lease Commencement Date or extending beyond the end of the Term, Tenant will pay only such proportion of such taxes, assessments and other charges as the portion of such fiscal

year following the Lease Commencement Date and preceding the end of the Term bears to the entire fiscal year.

3.5.2 Payable By Landlord. Notwithstanding anything herein to the contrary, Tenant shall not be required to pay any transfer tax of Landlord, or any net income tax measured by the income of Landlord from all sources, or any tax which may, at any time during the Term, be required to be paid on any gift, or demise, deed, mortgage, descent or other alienation of any part or all of the estate of Landlord in and to the Premises, except as hereinafter provided. If Tenant shall be required by law to pay, and pursuant thereto does pay, any tax, assessment or charge specified in this Section 3.5.2, Landlord shall, immediately upon request, reimburse Tenant for any such payments. If such immediate reimbursements are not forthcoming Tenant shall receive a credit against the rental payment next due hereunder for the full amount of such delinquent reimbursements. Any documentary transfer tax assessed upon the creation of a leasehold interest in the Premises under this Lease shall be paid by Tenant.

4. QUIET ENJOYMENT AND USE. Landlord covenants that upon payment by Tenant of the Rent and other payments required herein, and upon performance and observance by Tenant of all of the agreements, covenants and conditions herein contained on the part of Tenant to be performed and observed, Tenant shall peaceably hold and quietly enjoy the Premises during the entire Term without interference by Landlord or by anyone lawfully or equitably claiming by, through or under Landlord. Tenant acknowledges the ongoing Title concern, and City's efforts to resolve said concern, regarding a portion of the Property with remnant ownership rights. Tenant shall have the right to use the Premises for the Permitted Purpose; provided, however, in no event shall the Premises be used for any purpose or use (nor shall any activity be carried on upon the Premises) which in any manner causes, creates or results in a public or private nuisance.

5. ALTERATIONS.

5.1 Alterations and Improvements. Tenant may make alterations or improvements to the Premises ("Improvements") with the prior written approval of Landlord. Any such alterations or improvements by Tenant shall be done in a good and workmanlike manner, at Tenant's expense, by a licensed insured contractor reasonably approved by Landlord in conformity with plans and specifications reviewed and reasonably approved by Landlord. Tenant shall obtain all necessary governmental approvals and Permits.

5.2 Liens. Tenant agrees to keep the Premises free from liens arising out of any work performed, materials furnished or obligations incurred by or for Tenant. If requested by Landlord, Tenant shall post a bond or other security reasonably satisfactory to Landlord to protect Landlord against such liens. If, at any time, a lien or encumbrance is filed against the Premises as a result of Tenant's work, materials or obligations, Tenant shall promptly discharge such lien or encumbrance. If such lien or encumbrance has not been removed within thirty (30) days from the date it is filed, Tenant agrees to post a bond in at least the amount prescribed by applicable California statutes then in effect as security for the lien being discharged.

5.3 Permits, Licenses, Etc. Landlord shall, at the request of Tenant, during the Term, execute and deliver all applications for permits, licenses or other authorizations relating to the Premises required by any municipal, county, state, or federal authorities, or required in connection

with the construction, reconstruction, repair or alteration of the Improvements now or hereafter constituting a part of the Premises, which are required to be executed by Landlord (the "Permits"). Landlord shall, at the request of Tenant, during the Term, execute, acknowledge and deliver any and all instruments required to grant rights-of-way and easements in favor of municipal and other governmental authorities or public utility companies incident to the installation of water lines, fire hydrants, sewers, electricity, telephone, gas, steam, and other facilities and utilities reasonably required for the use and occupancy of the Premises, which are required to be executed by Landlord; provided, however, Landlord shall approve the location of such utility lines and improvements which such approval shall not be unreasonably withheld. Tenant shall reimburse Landlord for any sum paid by Landlord in respect of the matters specified in this Section 5.4, including reasonable attorney fees.

6. REPAIRS, WASTE, AND HAZARDOUS MATERIALS.

6.1 Repairs and Governmental Regulations. Tenant shall, during the Term, at its own cost and expense and without any cost or expense to Landlord:

(a) Keep and maintain the Premises in good and neat order and repair and shall allow no nuisances to exist or be maintained therein. Tenant shall likewise keep and maintain the grounds, sidewalks, roads and parking and landscaped areas in good order and repair.

(b) Comply with and abide by all federal, state, county, municipal and other governmental statutes, ordinances, laws and regulations affecting the Premises or any activity or condition on or in the Premises.

6.2 Hazardous Materials. Except for Landlord's obligations under Section 6.3, Tenant shall at all times and in all respects comply with all federal, state and local laws, ordinances and regulations, including, but not limited to, the Federal Water Pollution Control Act (33 U.S.C., Section 1251, *et seq.*), the Safe Drinking Water Act (15 U.S.C. Section 2601, *et seq.*), the Toxic Substances Control Act (15 U.S.C. Section 2601, *et seq.*), the Clean Air Act (42 U.S.C. Section 7401, *et seq.*), the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9601, *et seq.*), the California Hazardous Waste Control Act (California Health and Safety Code Section 25100, *et seq.*), the California Safe Drinking Water & Toxic Enforcement Act of 1986 (California Health and Safety Code Section 25249.5, *et seq.*), the Porter-Cologne Water Quality Control Act (California Water Code Section 13000, *et seq.*), and other comparable state and federal laws ("Hazardous Materials Laws"), relating to industrial hygiene, environmental protection or the use, analysis, generation, manufacture, storage, disposal or transportation of all oil, flammable explosives, asbestos, urea formaldehyde, radioactive materials or waste, or other hazardous, toxic contaminated or polluting materials, substances or wastes, including, without limitation, any "hazardous substances," "hazardous wastes," or "toxic substances" under any such laws, ordinances or regulations (collectively, "Hazardous Materials"). Tenant hereby agrees to indemnify Landlord and hold Landlord harmless from and against any and all losses, liabilities, damages, expenses, including reasonable attorney's fees, and claims incurred or suffered by, or asserted against, Landlord by any person, entity or governmental agency for, with respect to, or as a direct or indirect result of, the presence in, or the escape, leakage, spillage, discharge, emission or release from, the Premises of any Hazardous Materials caused by Tenant.

6.3 Landlord's Representations and Warranties. Landlord agrees to defend, indemnify and hold harmless Tenant against any and all claims, demands, liabilities, costs and expenses (including without limitation reasonable attorneys' fees and expenses, expert witness fees and post-judgment collection costs) which Tenant may sustain at any time as a result of any Hazardous Materials that are on, in, or under the Premises prior to the Lease Commencement Date.

7. ASSIGNMENT; MORTGAGE OF LEASEHOLD; SUBORDINATION.

7.1 Assignment and Subletting. Except as provided herein, Tenant shall not assign, mortgage, pledge or encumber this Lease, or permit all or any part of the Premises to be subleased to another, without the prior written consent of Landlord, which consent shall not be unreasonably withheld or delayed. The foregoing notwithstanding, Tenant shall have the right to assign or otherwise transfer this Lease or sublet all or any portion of the Premises to an Affiliate (as herein defined) without Landlord's consent (collectively, an "Affiliate Transfer"). For purposes hereof, the term "Affiliate" shall mean any entity which controls or is controlled by or is under common control with Tenant, or any corporation in which Tenant (or any entity which controls, is controlled by or is under common control with Tenant) is a majority shareholder, or any partnership in which Tenant (or any entity which controls, is controlled by or is under common control with Tenant) is a general partner, or any limited liability company in which Tenant (or any entity which controls, is controlled by or is under common control with Tenant) is a managing member, or any successor corporation related to Tenant by merger, consolidation, non-bankruptcy reorganization or governmental action (including any corporation or other entity resulting from merger or consolidation with Tenant), or any corporation or other entity which acquires all or substantially all of Tenant's assets located at the Premises. Additionally, Landlord's consent shall not be required for any public offering of Tenant's stock through a nationally recognized exchange, which such public offering shall not be considered an assignment or transfer of this Lease.

7.2 Mortgage of Leasehold. Tenant shall have the right to encumber the leasehold estate created by this Lease by a mortgage, deed of trust or other security instrument, including, without limitation, an assignment of the rents, issues and profits from the Premises, (the "Leasehold Mortgage") to secure repayment of any loan to Tenant, and associated obligations, from any lender of Tenant ("Tenant's Lender").

7.3 Protection of Lender. During the continuance of any Leasehold Mortgage and until such time as the lien of any Leasehold Mortgage has been extinguished:

(a) Landlord shall not accept any surrender of this Lease, nor shall Landlord consent to any amendment or modification of this Lease, without the prior written consent of Tenant's Lender, if any.

(b) Notwithstanding any default by Tenant in the performance or observance of any agreement, covenant or condition of this Lease on the part of Tenant to be performed or observed, Landlord shall have no right to terminate this Lease or interfere with the occupancy, use, and enjoyment of the Premises unless (i) an event of default shall have occurred and is continuing, (ii) Landlord shall have given Tenant's Lender written notice of such event of default, and (iii) Tenant's Lender shall have failed to remedy such default, acquire Tenant's leasehold estate created hereby, or commence foreclosure or other appropriate proceedings, all as set forth in, and within the time specified by, this Section 7.3.

(c) Tenant's Lender shall have the right, but not the obligation, at any time prior to termination of this Lease and without payment of any penalty, to pay all of the rents due hereunder, to effect any insurance, to pay any taxes and assessments, to make any repairs and improvements, to do any other act or thing required of Tenant hereunder, and to do any act or thing which may be necessary and proper to be done in the performance and observance of the agreements, covenants and conditions hereof to prevent termination of this Lease. All payments so made and all things so done and performed by Tenant's Lender shall be as effective to prevent a termination of this Lease as the same would have been if made, done and performed by Tenant instead of by Tenant's Lender.

7.4 Estoppel Certificates. Within ten (10) business days after receipt of a written request by either party, the other party shall execute and deliver to the requesting party an estoppel certificate in a form reasonably requested by the other party. Such estoppel certificate shall be addressed to (a) any mortgagee or prospective mortgagee of Landlord's, (b) any purchaser or prospective purchaser of all or any portion of, or interest in, the Premises, or (c) any Tenant's Lender, transferee of Tenant, or prospective transferee of Tenant and provided that such other party shall have the right to alter any such estoppel certificate to reflect the true state of events and such other party's degree of knowledge concerning such events. The certificate shall also contain any other information reasonably requested by the requesting party or existing or prospective lender, mortgagee, or purchaser. Delivery by such other party executing an estoppel certificate shall not be deemed to waive or modify any rights or remedies of such other party under the Lease. In the event of any inconsistency or conflict between the provisions of the estoppel certificate and this Lease, the Lease shall control.

7.5 Brokerage Commissions. Each party agrees to defend and indemnify the other party against any loss, expense or liability incurred by the other party as a result of a claim by any broker or finder claiming representation of the indemnifying party in connection with this Lease or its negotiation.

7.6 Subordination. Subject to the provisions of this Section 7.6, this Lease shall be, and shall remain at all times, subordinate to the lien of any mortgage, deed of trust or other encumbrance of Landlord affecting the Premises. Tenant agrees, on written request therefore, to execute an agreement subordinating the priority of its interest in this Lease to the lien of any mortgage or deed of trust hereafter placed upon the Premises by Landlord; provided the lender under said mortgage or deed of trust also executes a non-disturbance agreement in a form reasonably requested by Tenant, which provides that so long as an Event of Default (as defined herein) has not occurred, Tenant's possession of the Premises and Tenant's other rights and privileges under this Lease shall not be interfered with and shall be honored by the lender, its successors or assigns, and which otherwise provides that should the Premises be transferred by foreclosure or by deed in lieu of foreclosure, this Lease shall continue in full force and effect as a direct lease between the then owner of the Premises and Tenant and that Tenant shall attorn to such transferee or successor of Landlord. Additionally, Landlord shall use its best efforts to cause any current holder of a lien or deed of trust on the Premises to execute a non-disturbance agreement in a form reasonably requested by Tenant on the terms and conditions set forth in the preceding sentence. In the event Landlord amends the terms of any loan or debt instrument by creating new or additional debt with a current holder of a deed of trust, Landlord shall cause such current holder

to execute a non-disturbance agreement in a form requested by Tenant on the terms and conditions set forth above.

8. INDEMNIFICATION AND INSURANCE.

8.1 Tenant's Indemnity. Tenant shall indemnify, defend, protect, and hold harmless the Landlord Parties from any and all loss, cost, damage, expense and liability (including without limitation court costs and reasonable attorney's fees) incurred in connection with or arising from any cause in, on or about the Premises (including, without limitation, the renovation and Tenant's installation, placement and removal of alterations, improvements, fixtures and/or equipment in, on or about the Premises), and any acts, omissions or negligence of Tenant or of any person claiming by, through or under Tenant, or of the contractors, agents, servants, employees, licensees or invitees of Tenant or any such person, in, on or about the Premises; provided, however, that the terms of the foregoing indemnity shall not apply to the negligence or willful misconduct of Landlord, its agents or contractors. The provisions of this Section 8.1 shall survive the expiration or sooner termination of this Lease.

8.2 Landlord's Indemnity. Notwithstanding the foregoing, and except to the extent arising from the negligence, willful misconduct or breach of this Lease by Tenant or Tenant's agents, employees, contractors or invitees (collectively, "Tenant's Agents") and except as otherwise specifically provided to the contrary herein below, Landlord agrees to defend, indemnify and save harmless Tenant against and from any and all claims, demands, actions, damages, liability and expense, and all costs, attorneys' fees, expenses and liabilities incurred in or arising from any such claim or action or proceeding brought thereon in connection with or for loss of or damage to property or injury or death to any person resulting from the following (collectively, the "Landlord Indemnified Claims"): (a) any activity, work, or thing done, permitted or suffered by Landlord in or about the Premises, (b) any breach or default on Landlord's part in the performance of any covenant or agreement on Landlord's part to be performed, pursuant to the terms of this Lease, or (c) arising from any willful act or gross negligence of Landlord, or any of its agents, contractors, or employees.

8.3 General Liability Insurance. Tenant shall, at its sole expense, obtain and keep in force during the Term comprehensive general liability insurance acceptable to Landlord naming Landlord and Landlord's lender(s) as additional insured with combined single limits of not less than Two Million Dollars (\$2,000,000) for injury to or death of any number of persons in one occurrence, and not less than Two Million Dollars (\$2,000,000) for damage to property, with coverage for contractual liability, broad form property damage liability and personal injury liability, with respect to the Premises or arising out of the maintenance, use or occupancy thereof.

8.4 Workers' Compensation Insurance. Tenant shall, at its sole expense, obtain workers' compensation insurance as required by law.

8.5 Blanket Policy. Nothing herein shall prevent Tenant from obtaining insurance of the kind and in the amounts provided for under Sections 8.3 through 8.4 under a blanket insurance policy covering other properties as well as the Premises.

8.6 Evidence of Insurance. Tenant shall deliver to Landlord, upon request, a certificate or certificates evidencing such insurance.

8.7 Waiver of Subrogation. Tenant and Landlord release each other and waive any right of recovery against each other for any claims for loss or damage to any person or the Premises, which occurs on or about the Premises, whether due to the negligence of either party, their agents, employees, officers, contractors, licensees, invitees or otherwise, if such loss or damage is insured against under an insurance policy carried by the releasing party and in force at the time of such loss or damage, and to the extent of the proceeds received from such policy. Tenant and Landlord agree that all policies of insurance obtained by either of them in connection with the Premises shall contain appropriate waiver of subrogation clauses. The provisions of this Subparagraph 8.7 shall survive the expiration or termination of this Lease with respect to any claims or liability arising from events occurring prior to such expiration.

9. DAMAGE AND DESTRUCTION. Tenant shall promptly notify Landlord in writing of any damage to the Premises resulting from fire or any other casualty. If the Premises, or any portion thereof shall be damaged by fire or other casualty, Tenant shall promptly and diligently, subject to all other terms of this Article 9, restore the Premises to substantially the same condition of the Premises prior to the casualty, except for modifications required by zoning and improvements codes and other laws. Notwithstanding anything herein to the contrary, Tenant shall have the right to terminate this Lease if, during the last three (3) years of the Term of this Lease, including the Extended Term, the Improvements on the Premises are damaged or destroyed by a casualty for which Tenant is not required under this Lease to carry insurance and the cost to repair or restore the damaged or destroyed Improvements exceeds fifty percent (50%) of the fair market value of such Improvements immediately prior to the damage or destruction. In the event of such termination, Rent shall be prorated on a per diem basis and paid to the date of the casualty. Any and all fire or other insurance proceeds that become payable at any time during the Term of this Lease because of damage to or destruction of any Improvements on the Premises shall be paid to Tenant and applied by Tenant toward the cost of repairing and restoring the damaged or destroyed Improvements in the manner required by this Lease, or, if this Lease is terminated, applied by Tenant toward payments to Tenant's lender and any remaining balance to be retained by Tenant.

10. CONDEMNATION. If all or any portion of the Premises is taken under the power of eminent domain or sold under the threat of that power (collectively referred to as a "Condemnation"), this Lease shall terminate as to the part taken or sold on the date the condemning authority takes title or possession, whichever occurs first. If more than twenty percent (20%) of the area of the Premises is taken, Tenant may terminate this Lease as of the date the condemning authority takes title or possession, by delivering written notice to the other within ten (10) days after receipt of written notice of such taking (or in the absence of such notice, within ten (10) days after the condemning authority takes possession). If neither Landlord nor Tenant terminates this Lease, this Lease shall remain in effect as to the portion of the Premises not taken, except that the Base Rent shall be reduced in proportion to the reduction in the land area of the Premises. Any Condemnation award or payment shall be distributed in the following order: (i) first, to any mortgagee or beneficiary under a deed of trust encumbering the Premises up to the then existing outstanding balance due under any such mortgage or deed of trust; (ii) second, to Tenant, only the amount of any award specifically designated for loss of or damage to Tenant's trade fixtures or removable personal property, and the Tenant hereby assigns any other rights which the Tenant may have now or in the future to any other award to the Landlord; and (ii) third, to Landlord, the remainder of such award, whether as compensation for reduction in the value of the leasehold, the taking of the fee, or otherwise. If this Lease is not terminated, Landlord shall repair any damage

to the Premises caused by the Condemnation, except that Landlord shall not be obligated to repair any damage for which Tenant has been reimbursed by the condemning authority. If the severance damages received by Landlord are not sufficient to pay for such repair, Landlord shall have the right to either terminate this Lease or make such repair at Landlord's expense.

11. ENTRY BY LANDLORD. Provided Landlord does not interfere with Tenant's business, Landlord may, at any reasonable time, and upon reasonable notice to Tenant during the Term, enter upon the Premises for such purposes as may be necessary or proper for the reasonable protection of its interests.

12. TENANT'S DEFAULT AND LANDLORD'S REMEDIES.

12.1 Event of Default. It shall be an event of default hereunder (each an "Event of Default") if (i) default shall be made by Tenant in the payment of any Rent or other moneys due hereunder and shall continue for a period of ten (10) days after written notice thereof to Tenant; (ii) default shall be made by Tenant in the performance or observance of any of the other agreements, covenants or conditions of this Lease on the part of Tenant to be performed and observed and such default shall continue for a period of thirty (30) days after written notice thereof to Tenant, or, in the case of a default which cannot be cured by the payment of money and cannot be cured within thirty (30) days, shall continue for an unreasonable period after such written notice; (iii) Tenant shall admit in writing its inability to pay its debts generally as they become due, file a petition in bankruptcy, insolvency, reorganization, readjustment of debt, dissolution or liquidation under any law or statute of the federal government or any state government or any subdivision of either now or hereafter in effect, make an assignment for the benefit of its creditors, consent to, or acquiesce in the appointment of a receiver of itself or of the whole or any substantial part of the Premises;

12.2 Landlord's Remedies. Upon the occurrence of any Event of Default by Tenant hereunder, Landlord shall have the following rights and remedies:

(a) The right to terminate this Lease, in which event Tenant shall immediately surrender possession of the Premises, and pay to Landlord all rent and all other amounts payable by Tenant hereunder to the date of such termination;

(b) The right to cause a receiver to be appointed in any action against Tenant to take possession of the Premises or to collect the Rents. Neither appointment of such receiver nor any other action taken by Landlord shall constitute an election on the part of Landlord to terminate this Lease unless written notice of termination is given to Tenant.

(c) Maintain Tenant's right to possession, in which case this Lease shall continue in effect whether or not Tenant shall have abandoned the Premises. In such event, Landlord shall be entitled to enforce all of Landlord's rights and remedies under this Lease, including the right to recover rent as it becomes due.

13. SURRENDER AND HOLDING OVER.

13.1 Surrender by Tenant. Tenant, at the termination or expiration of its tenancy, shall

peaceably yield and surrender the Premises to Landlord in good order, condition and repair. Upon such expiration or termination, Tenant shall, without expense to Landlord, remove or cause to be removed from the Premises all debris and rubbish. Tenant may, at its election, remove any of the Improvements and repair any damage caused by such removal.

13.2 Holding Over. If Tenant holds over after the expiration of the Term hereof, with or without the express or implied consent of Landlord, such tenancy shall be from month-to-month only, and shall not constitute a renewal hereof or an extension for any further term, and in such case Base Rent shall be payable at a monthly rate equal to one hundred twenty-five percent (125%) of the Base Rent applicable during the last rental period of the Term under this Lease. Such month-to-month tenancy shall be subject to every other term, covenant and agreement contained herein.

14. MISCELLANEOUS PROVISIONS.

14.1 Terms, Captions. The necessary grammatical changes required to make the provisions hereof apply either to corporations or partnerships or individuals, men or women, as the case may require, shall in all cases be assumed as though in each case fully expressed. The captions of Articles and Sections are for convenience only and shall not be deemed to limit, construe, affect or alter the meaning of such Articles and Sections.

14.2 Binding Effect. Each of the provisions of this Lease shall extend to and shall, as the case may require, bind or inure to the benefit not only of Landlord and of Tenant, but also of their respective heirs, successors or assigns.

14.3 No Waiver. No waiver of any provision of this Lease shall be implied by any failure of a party to enforce any remedy on account of the violation of such provision, even if such violation shall continue or be repeated subsequently, any waiver by a party of any provision of this Lease may only be in writing, and no express waiver shall affect any provision other than the one specified in such waiver and that one only for the time and in the manner specifically stated. No receipt of monies by Landlord from Tenant after the termination of this Lease shall in any way alter the length of the Term or of Tenant's right of possession hereunder or after the giving of any notice shall reinstate, continue or extend the Term or affect any notice given Tenant prior to the receipt of such monies, it being agreed that after the service of notice or the commencement of a suit or after final judgment for possession of the Premises, Landlord may receive and collect any Rent due, and the payment of said Rent shall not waive or affect said notice, suit or judgment.

14.4 Relationship of Parties. Nothing contained in this Lease shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent, partnership, joint venturer or any association between Landlord and Tenant, it being expressly understood and agreed that neither the method of computation of Rent nor any act of the parties hereto shall be deemed to create any relationship between Landlord and Tenant other than the relationship of landlord and tenant.

14.5 Time of Essence. Time is of the essence of this Lease and each of its provisions.

14.6 Partial Invalidity. If any term, provision or condition contained in this Lease shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such

term, provision or condition to persons or circumstances other than those with respect to which it is invalid or unenforceable, shall not be affected thereby, and each and every other term, provision and condition of this Lease shall be valid and enforceable to the fullest extent possible permitted by law.

14.7 Entire Agreement. It is understood and acknowledged that there are no oral agreements between the parties hereto affecting this Lease, and this Lease supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties hereto with respect to the subject matter thereof. This Lease contains all of the terms, covenants, conditions, warranties and agreements of the parties relating in any manner to the rental, use and occupancy of the Premises, shall be considered to be the only agreement between the parties hereto and their representatives and agents, and none of the terms, covenants, conditions or provisions of this Lease can be modified, deleted or added to except in writing signed by the parties hereto. All negotiations and oral agreements acceptable to both parties have been merged into and are included herein. There are no other representations or warranties between the parties, and all reliance with respect to representations is based totally upon the representations and agreements contained in this Lease.

14.8 Notices. All notices, demands, statements or communications (collectively, "Notices") given or required to be given by either party to the other hereunder shall be in writing, shall be sent by United States certified or registered mail, postage prepaid, return receipt requested, or delivered personally (1) to Tenant at the address set forth in Section 1.1.9, or to such other place as Tenant may from time to time designate in a Notice to Landlord; or (ii) to Landlord at the address set forth in Section 1.1.6, or to such place as Landlord may from time to time designate in a Notice to Tenant. Any Notice will be deemed given the date personal delivery is made, or three (3) business days following the date on the date it is mailed as provided in this Section 15.8.

14.9 Attorneys' Fees. In the event of any commencement of litigation or other action arising out of this Lease, the prevailing party shall be entitled to recover from the other party such costs and reasonable attorneys' fees as may have been incurred, including any and all costs incurred in enforcing, perfecting and executing such judgment.

14.10 Governing Law. This Lease shall be construed and enforced in accordance with the laws of the state of California.

14.11 Modification for Lender. If, in connection with obtaining financing, a party's Lender shall request reasonable modifications to this Lease as a condition to such financing, the other party shall not unreasonably withhold or delay its consent thereto, provided that such modifications do not increase the obligations of such party hereunder.

14.12 Authority. The parties hereto warrant and represent that they have full authority to enter into this Lease and that the individuals signing on behalf of the parties are duly authorized to bind the parties hereto.

14.13 Memorandum. Either party may request that a Memorandum of Lease in recordable form be executed and recorded to evidence the existence of this Lease and the terms hereof. In such event, the parties shall execute such Memorandum, in a form reasonably approved by both parties, and cause it to be recorded in the Official Records of San Diego County, California.

IN WITNESS WHEREOF, Landlord and Tenant have caused this Lease to be executed the day and date first above written.

LANDLORD:

TENANT:

By: _____

By: _____