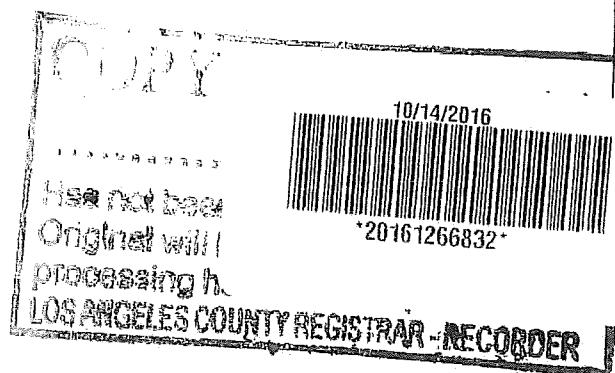


# **EXHIBIT "J"**

1 WHEN RECORDED RETURN TO:  
2  
3 DONALD KARPEL, ATTORNEY  
4 16633 VENTURA BLVD. SUITE 735  
5 ENCINO, CA 91346  
6 310-273-8444  
7 323-720-8852  
dkarpel@deklawfirm.com

8 Attorney for Defendant  
9 Khaled A. Tawansy, An Individual



10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11  
12 FOR THE COUNTY OF LOS ANGELES-SOUTH DISTRICT

13 JK PER ANGUSTA AD FELICITAS LLC, ) Case No. NC060799  
14 a California Limited Liability )  
Company )  
15 Plaintiff, ) NOTICE OF LIS PENDENS PENDENCY  
vs. ) OF ACTION (CCP 405.20)  
16 )  
17 MARGARET KUSKA, an Individual; ) REAL PROPERTY LOCATED AT 3200  
CAROLINE WARNER TUGEL, an ) N. LONG BEACH BOULEVARD IN  
Individual; RICHARD S. WARNER ) LONG BEACH, CALIFORNIA  
18 AND TARA J. WARNDER, Trustees of ) APN: 7207-001-030,  
the RICHARD S. WARNER AND TRA J. ) 7207-001-033,  
20 WARNER FAMILY TRUST 1993; KHALED ) 7207-001-034  
A. TAWANSY, an Individual AND )  
21 DOES 1-20 INCLUSIVE, ) Assigned to Honorable Judge  
22 Defendants. ) Ross M. Klein  
23 KHALED A. TAWANSY, an ) Dept. 27  
24 Individual, ) Case Filed September 09, 2016  
25 Cross Complainant )  
26 Vs. )  
27 )  
28 )

NOTICE OF LIS PENDENS  
KHALED A. TAWANSY, M.D. v. JENNIFER SCHOL-Case NC060799

1 JENNIFER SOHOL, an Individual; )  
2 JK PER ANGUSTA AD FELISCITAS )  
3 LLC, a California Limited )  
4 Liability Company; 2H )  
5 PROPERTY 3060 LLC, A California )  
6 Limited Liability Company; )  
7 2H Construction, Inc., A )  
8 California Corporation; Sean R. )  
Hitchcock; Ericka Burton; and )  
Rows 1 Through 20, )  
Cross Defendants. )

---

9  
10 NOTICE IS HEREBY GIVEN THAT THERE IS NOW A PENDING CASE IN  
11 THE LOS ANGELES SUPERIOR COURT IN THE SOUTH BRANCH, LONG BEACH  
12 SUPERIOR COURT, THAT AFFECTS TITLE TO THAT PARCEL OF REAL  
13 PROPERTY LOCATED AT 3200 N. LONG BEACH BOULEVARD IN LONG BEACH  
14 CALIFORNIA.  
15

16 This Lis Pendens is filed by Dr. Khaled A. Tawnasy relating  
17 the ownership of the following piece of real estate in Long  
18 Beach, California.  
19

20 1) This Action concerns the title to the following piece of  
21 real estate in the City of Long Beach, located at 3200 N. Long  
22 Beach Blvd and described as:  
23

24 THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE  
25 COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AND IS DESCRIBED AS  
26 FOLLOWS:  
27

28 PARCEL 1:

NOTICE OF LIS PENDENS  
KHADED A. TAWANSY, M.D. V. JENNIFER SOHOL-Case NC060799

1 LOTS 17, 18 AND 19 IN BLOCK "A" OF TRACT 2901, IN THE CITY  
2 OF LONG BEACH, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS  
3 PER MAP RECORDED IN BOOK 36 PAGE(S) 83 OF MAPS IN THE OFFICE OF  
4 THE COUNTY RECORDER OF SAID COUNTY, TOGETHER WITH THAT PORTION  
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13  
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15 EXCEPT THEREON ALL OIL MINERALS, AND OTHER HYDROCARBONS  
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17 FROM THE SURFACE, WITHOUT HOWEVER, THE RIGHT TO USE ANY PART OF  
18 THE SURFACE THEREOF, AS EXCEPTED AND RESERVED IN VARIOUS DEEDS  
19 RECORDED ON JUNE 17, 1964.  
20  
21

22 PARCEL 2:

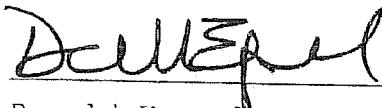
23 LOTS 36, 27 AND 38 IN BLOCK "A" OF TRACT 2901, AS PER MAP  
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NOTICE OF LIS PENDENS  
KHADED A. TAWANSY, M.D. v. JENNIFER SCHOL-Case No 060759

1 DEDICATED UPON THE MAP OF SAID TRACT 2901, WHICH ADJOINS SAID  
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3 COUNCIL OF SAID CITY, A COPY OF WHICH RECORDED AUGUST 1, 1977 AS  
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5 PROLOGATION OF THE NORTHERLY LINE OF SAID LOT 36, AND BOUNDED  
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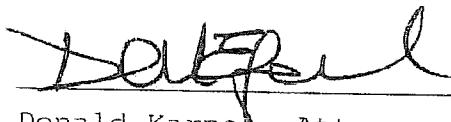
8  
9 Dated October 14, 2016

10 Law offices of Zelner & Karpel

11   
12

13 Donald Karpel, Attorney for  
14 Khaled A. Tawansy

15 I declare that the owners of the property have been served via  
16 registered mail with a copy of this lis pendens on October 14,  
17 2016

18   
19

20 Donald Karpel, Attorney

21  
22  
23  
24  
25  
26  
27  
28  
29 NOTICE OF LIS PENDENS  
KHADED A. TAWANSY, M.D. v. JENNIFER SOHOL-Case NC060799

▲ This page is part of your document - DO NOT DISCARD ▲



**20161266832**



Recorded/Filed in Official Records  
Recorder's Office, Los Angeles County,  
California

10/14/16 AT 03:03PM

Pages:  
**0005**

FEES :	27.00
TAXES :	0.00
OTHER :	0.00
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PAID :	27.00



LEADSHEET



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SEQ:  
**01**

DAR - Counter (Upfront Scan)



THIS FORM IS NOT TO BE DUPLICATED

10/14/2016

\*20161266832\*

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2  
3 DONALD KARPEL, ATTORNEY  
4 16633 VENTURA BLVD. SUITE 735  
5 ENCINO, CA 91346  
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8  
9 Attorney for Defendant  
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19 MARGARET KUSKA, an Individual; )  
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21 Individual; RICHARD S. WARNER ) N. LONG BEACH BOULEVARD IN  
22 AND TARA J. WARNDER, Trustees of ) LONG BEACH, CALIFORNIA  
23 the RICHARD S. WARNER AND TRA J. ) APN: 7207-001-030,  
24 WARNER FAMILY TRUST 1993; KHALED ) 7207-001-033,  
25 A. TAWANSY, an Individual AND ) 7207-001-034  
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NOTICE OF LIS PENDENS  
KHADED A. TAWANSY, M.D. V. JENNIFER SOHOL-Case NC060799

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4 Liability Company; 2H )  
5 PROPERTY 3060 LLC, A California )  
6 Limited Liability Company; )  
7 2H Construction, Inc., A )  
8 California Corporation; Sean R. )  
Hitchcock; Ericka Burton; and )  
Rows 1 Through 20, )  
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26

27 PARCEL 1:  
28

NOTICE OF LIS PENDENS  
KHADED A. TAWANSY, M.D. V. JENNIFER SOHOL-Case NC060799

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22 | PARCEL 2;

23 LOTS 36, 27 AND 38 IN BLOCK "A" OF TRACT 2901, AS PER MAP  
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NOTICE OF LIS PENDENS  
KHADED A. TAWANSY, M.D. v. JENNIFER SOHOL-Case NC060799

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8

9 Dated October 14, 2016

10 Law offices of Zelner & Karpel

11 

12 Donald Karpel, Attorney for  
13 Khaled A. Tawansy

14  
15 I declare that the owners of the property have been served via  
16 registered mail with a copy of this lis pendens on October 14,  
17 2016

18 

19 Donald Karpel, Attorney

20  
21  
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27  
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NOTICE OF LIS PENDENS  
KHADED A. TAWANSY, M.D. V. JENNIFER SOHOL-Case NC060799

## **EXHIBIT "K"**



October 6, 2016

2H Property 3060, LLC  
2H Property 4101, LLC  
Spring Property, LLC

Dr. Khaled Tawansy  
3200 Long Beach Blvd., Unit A  
Long Beach, CA 90708

7447 N. Figueroa, Suite #200  
Los Angeles, CA 90041

Re: New Property Ownership and Management  
3200 Long Beach Blvd., Long Beach, CA

Please allow me to introduce myself. My name is Ericka Burton and I am with 2H Properties. We are the new owners and managers of the property located at 3200 Long Beach Blvd. in Long Beach, CA.

Attached you will find a copy of a blank month to month lease that was sent to you last month. Please kindly sign and return two (2) original leases to my attention. I will forward you a fully executed copy upon receipt. Your rent payment was due October 1, 2016 and is late as of October 5, 2016. Please read the lease in regards to late payments on page 12.

Please issue an insurance certificate and name 2H Property 3060, LLC as additional insured.

All correspondence and your rent payments should be addressed to:

Please make checks payable to:

**2H Property 3060, LLC**  
**2653 Walnut Ave.**  
**Signal Hill, CA 90755**

Should you have any questions please feel free to contact me.

Thank you,

A handwritten signature in black ink, appearing to read "Ericka Burton".

Ericka Burton  
Property Manager

LAW OFFICES OF  
*Zelner & Karpel*  
16633 VENTURA BOULEVARD • SUITE 735  
ENCINO, CALIFORNIA 91436-1833

DONALD E. KARPEL  
BARRY S. ZELNER

TELEPHONE (310) 273-8444  
FACSIMILE (323) 720-8852  
EMAIL  
[DKARPEL@DEKLAWFIRM.COM](mailto:DKARPEL@DEKLAWFIRM.COM)

October 14, 2016

Sean Hitchcock  
Erika Burton  
2H Property3060, LLC  
2H Construction, Inc.  
2653 Walnut St.  
Signal Hill, CA 90755  
Tel No. 562-424-5576

Mr Hitchcock, Ms. Burton, 2H Properties 3060 LLC and 2H Construction, Inc.:

Our clients Dr. Khaled A. Tawansy and Children's Retina Institute just received a notice that you and your companies are planning to do construction work in the building in which Dr. Tawansy and Children's Retina Institute occupy located at 3200 N. Long Beach Blvd. in Long Beach, California.

Any such action would invade and disturb my clients' rights to quiet enjoyment of the space being occupied by Dr. Tawansy and by Children's Retina Institute. Dr. Tawansy has the right and interest to the entire building and he is current on his rent.

Dr. Tawansy has invested many tens of thousands of dollars or more in the 3200 building in the middle suite and in the surgery center. Any appearance by you to demolish anything would be a violation of the terms of Dr. Tawansy and Children's Retina Institute right to occupy the entire property.

Should you wish to come onto the property we will resist the attempt and seek immediate relief through the Los Angeles Superior Court.

If you wish to discuss this matter, please give me a call.

Yours truly,  
  
Donald E. Karpel, Esq.



Date: November 18, 2016

TO: Khaled A. Tawansy, M.D.  
3200 Long Beach Boulevard  
Long Beach, California 90807

Khaled A. Tawansy, M.D.  
dba Children's Retina Institute  
3200 Long Beach Boulevard  
Long Beach, California 90807

Renaissance Surgical Holdings, LLC  
3200 Long Beach Boulevard  
Long Beach, California

2H Property 3060, LLC  
2H Property 4101, LLC  
Spring Property, LLC

You are hereby notified that pursuant to Civ. Code, § 1946 that the tenancy from month-to-month under which you hold the possession of the premises described in this notice is terminated thirty (30) days after service on you of this notice.

By this notice you are required to quit and deliver up the possession of the described premises to the undersigned lessor, who is authorized to receive possession of the premises on or before the expiration of the thirty (30) days' period.

You are further notified that it is the purpose and intent of this notice to terminate the tenancy at the expiration of the thirty (30) days' period, and that if at the expiration of that period you fail to quit the premises and deliver up possession of the premises to 2H Property 3060, LLC will institute legal proceedings for unlawful detainer against you to recover possession of the premises.

The premises that are the subject of this notice are:

**PARCEL 1:**

LOTS 17, 18 AND 19 IN BLOCK "A" OF TRACT 2901, IN THE CITY OF LONG BEACH, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 36 PAGE(S) 63 OF MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, TOGETHER WITH THAT PORTION OF THE WESTERLY HALF OF THAT CERTAIN ALLEY, 20 FEET WIDE, AS SHOWN AND DEDICATED UPON THE MAP OF SAID TRACT NO. 2901, WHICH ADJOINS SAID LOTS ON THE EAST, VACATED BY RESOLUTION NO. C-22311 OF THE CITY COUNCIL OF SAID CITY, A COPY OF WHICH WAS RECORDED AUGUST 1, 1977 AS INSTRUMENT NO. 77-833919, BOUNDED NORTHERLY BY THE EASTERLY PROLONGATION OF THE NORTHERLY LINE OF SAID LOT 17, AND BOUNDED SOUTHERLY BY THE EASTERLY PROLONGATION OF THE SOUTHERLY LINE OF SAID LOT 19. EXCEPT THEREFROM ALL OIL, MINERALS, AND OTHER HYDROCARBON SUBSTANCES IN AND UNDER SAID LAND LYING BELOW A DEPTH OF 500

FEET FROM THE SURFACE, WITHOUT HOWEVER, THE RIGHT TO USE ANY PART OF THE SURFACE THEREOF, AS EXCEPTED AND RESERVED IN VARIOUS DEEDS RECORDED JULY 17, 1964.

PARCEL 2:

LOTS 36, 37 AND 38 IN BLOCK "A" OF TRACT 2901, AS PER MAP RECORDED IN BOOK 36, PAGE 63 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER O SAID COUNTY, TOGETHER WITH THAT PORTION OF THE EASTERLY HALF OF THAT CERTAIN ALLEY, 20 FEET WIDE, AS SHOWN AND DEDICATED UPON THE MAP OF SAID TRACT 2901, WHICH ADJOINS SAID LOTS ON THE WEST, VACATED BY RESOLUTION NO. C-2231 OF THE CITY COUNCIL OF SAID CITY, A COPY OF WHICH RECORDED AUGUST 1, 1977 AS INSTRUMENT NO. 77-833919, BOUNDED NORTHERLY BY THE WESTERLY PROLONGATION OF THE NORTHERLY LINE OF SAID LOT 36, AND BOUNDED SOUTHERLY BY THE WESTERLY PROLONGATION OF THE SOUTHERLY LINE OF SAID LOT 38.

Dated: November \_\_\_, 2016.

2H PROPERTY 3060, LLC

By:



Sean R. Hitchcock

## EXHIBIT "L"



## AIR COMMERCIAL REAL ESTATE ASSOCIATION STANDARD INDUSTRIAL/COMMERCIAL MULTI-TENANT LEASE - NET

### 1. Basic Provisions ("Basic Provisions").

1.1 Parties: This Lease ("Lease"), dated for reference purposes only September 26, 2016, is made by and between 2H Property 3060, LLC

and Khaled A. Tawansy, MD / Children's Retina Institute ("Lessor")

1.2(a) Premises: That certain portion of the Project (as defined below), including all improvements therein or to be provided by Lessor under the terms of this Lease, commonly known by the street address of 3200 Long Beach Blvd., Unit A, located in the City of Long Beach, County of Los Angeles, State of California, with zip code 90807, as outlined on Exhibit \_\_\_\_\_ attached hereto ("Premises") and generally described as (describe briefly the nature of the Premises): An approximate 5,689 Sq. Ft. medical office unit.

In addition to Lessee's rights to use and occupy the Premises as hereinafter specified, Lessee shall have non-exclusive rights to any utility raceways of the building containing the Premises ("Building") and to the common Areas (as defined in Paragraph 2.7 below), but shall not have any rights to the roof or exterior walls of the Building or to any other buildings in the Project. The Premises, the Building, the Common Areas, the land upon which they are located, along with all other buildings and improvements thereon, are herein collectively referred to as the "Project." (See also Paragraph 2)

1.2(b) Parking: 25 unreserved vehicle parking spaces. (See also Paragraph 2.6)

1.3 Term: Month to Month years and months ("Original Term") commencing October 1, 2016 ("Commencement Date") and ending with 30 day notice from either party. ("Expiration Date"). (See also Paragraph 3)

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

1.5 Base Rent: \$ 15,000.00 per month ("Base Rent"), payable on the 1st day of each month commencing October 1, 2016. (See also Paragraph 4)

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

1.6 Lessee's Share of Common Area Operating Expenses: thirty - eight percent (38%) ("Lessee's Share"). In the event that the size of the Premises and/or the Project are modified during the term of this Lease, Lessor shall recalculate Lessee's Share to reflect such modification.

### 1.7 Base Rent and Other Monies Paid Upon Execution:

- (a) Base Rent: \$15,000.00 for the period October 1 - 31, 2016
- (b) Common Area Operating Expenses: \$TBD for the period \_\_\_\_\_
- (c) Security Deposit: \$11,500.00 ("Security Deposit"). (See also Paragraph 5)
- (d) Other: \$n/a for n/a

1.8 Agreed Use: Medical office. (See also Paragraph 8)

1.9 Insuring Party. Lessor is the "Insuring Party". (See also Paragraph 8)

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

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

- \_\_\_\_\_ represents Lessor exclusively ("Lessor's Broker");
- \_\_\_\_\_ represents Lessee exclusively ("Lessee's Broker"); or
- \_\_\_\_\_ represents both Lessor and Lessee ("Dual-Agency");

(b) Payment to Brokers: Upon execution and delivery of this Lease by both Parties, Lessor shall pay to the Brokers the brokerage fee agreed to in a separate written agreement (or if there is no such agreement, the sum of \_\_\_\_\_ or \_\_\_\_\_ % of the total Base Rent) for the brokerage services rendered by the Brokers.

1.11 Guarantor. The obligations of the Lessee under this Lease are to be guaranteed by \_\_\_\_\_ ("Guarantor"). (See also Paragraph 37)

1.12 Attachments. Attached hereto are the following, all of which constitute a part of this Lease:

- an Addendum consisting of Paragraphs \_\_\_\_\_ through \_\_\_\_\_;
- a site plan depicting the Premises;
- a site plan depicting the Project;
- a current set of the Rules and Regulations for the Project;
- a current set of the Rules and Regulations adopted by the owners' association;

- a Work Letter;  
 other (specify): \_\_\_\_\_

2. Premises.

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

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

2.3 Compliance. Lessor warrants that to the best of its knowledge the improvements on the Premises comply with the building codes, applicable laws, covenants or restrictions of record, regulations, and ordinances ("Applicable Requirements") that were in effect at the time that each improvement, or portion thereof, was constructed. Said warranty does not apply to the use to which Lessee will put the Premises, modifications which may be required by the Americans with Disabilities Act or any similar laws as a result of Lessee's use (see Paragraph 49), or to any Alterations or Utility Installations (as defined in Paragraph 7.3(a)) made or to be made by Lessee. NOTE: Lessee is responsible for determining whether or not the Applicable Requirements and especially the zoning are appropriate for Lessee's intended use, and acknowledges that past uses of the Premises may no longer be allowed. If the Premises do not comply with said warranty, Lessor shall, except as otherwise provided, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, rectify the same at Lessor's expense. If non-compliance shall be the obligation of Lessee at Lessee's sole cost and expense. If the Applicable Requirements are hereafter changed so as to require during the term of this Lease the construction of an addition to or an alteration of the Unit, Premises and/or Building, the remediation of any Hazardous Substance, or the reinforcement or other physical modification of the Unit, Premises and/or Building ("Capital Expenditure"), Lessor and Lessee shall allocate the cost of such work as follows:

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

(b) If such Capital Expenditure is not the result of the specific and unique use of the Premises by Lessee (such as, governmentally mandated seismic modifications), then Lessor shall pay for such Capital Expenditure and Lessee shall only be obligated to pay, each month during the remainder of the term of this Lease or any extension thereof, on the date that on which the Base Rent is due, an amount equal to 1/144th of the portion of such costs reasonably attributable to the Premises. Lessee shall pay interest on the balance but may prepay its obligation at any time. If, however, such Capital Expenditure is required during the last 2 years of this Lease or if Lessor reasonably determines that it is not economically feasible to pay its share thereof, Lessor shall have the option to terminate this Lease upon 90 days prior written notice to Lessee unless Lessee notifies Lessor, in writing, within 10 days after receipt of Lessor's termination notice that Lessee will pay for such Capital Expenditure. If Lessor does not elect to terminate, and fails to tender its share of any such Capital Expenditure, Lessee may advance such funds and deduct same, with Interest, from Rent until Lessor's share of such costs have been fully paid. If Lessee is unable to finance Lessor's share, or if the balance of the Rent due and payable for the remainder of this Lease is not sufficient to fully reimburse Lessee on an offset basis, Lessee shall have the right to terminate this Lease upon 30 days written notice to Lessor.

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

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

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

work.

**2.6 Vehicle Parking.** Lessee shall be entitled to use the number of parking spaces specified in Paragraph 1.2(b) on those portions of the Common Areas designated from time to time by Lessor for parking. Lessee shall not use more parking spaces than said number. Said parking spaces shall be used for parking by vehicles no larger than full-size passenger automobiles or pick-up trucks, herein called "Permitted Size Vehicles." Lessor may regulate the loading and unloading of vehicles by adopting Rules and Regulations as provided in Paragraph 2.9. No vehicles other than Permitted Size Vehicles may be parked in the Common Area without the prior written permission of Lessor. In addition:

(a) Lessee shall not permit or allow any vehicles that belong to or are controlled by Lessee or Lessee's employees, suppliers, shippers, customers, contractors or invitees to be loaded, unloaded, or parked in areas other than those designated by Lessor for such activities.

(b) Lessee shall not service or store any vehicles in the Common Areas.

(c) If Lessee permits or allows any of the prohibited activities described in this Paragraph 2.6, then Lessor shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove or tow away the vehicle involved and charge the cost to Lessee, which cost shall be immediately payable upon demand by Lessor.

**2.7 Common Areas - Definition.** The term "Common Areas" is defined as all areas and facilities outside the Premises and within the exterior boundary line of the Project and interior utility raceways and installations within the Unit that are provided and designated by the Lessor from time to time for the general non-exclusive use of Lessor, Lessee and other tenants of the Project and their respective employees, suppliers, shippers, customers, contractors and invitees, including parking areas, loading and unloading areas, trash areas, roadways, walkways, driveways, landscaped areas.

**2.8 Common Areas - Lessee's Rights.** Lessor grants to Lessee, for the benefit of Lessee and its employees, suppliers, shippers, contractors, customers and invitees, during the term of this Lease, the non-exclusive right to use, in common with others entitled to such use, the Common Areas as they exist from time to time, subject to any rights, powers, and privileges reserved by Lessor under the terms hereof or under the terms of any rules and regulations or restrictions governing the use of the Project. Under no circumstances shall the right herein granted to use the Common Areas be deemed to include the right to store any property, temporarily or permanently, in the Common Areas. Any such storage shall be unauthorized storage shall occur then Lessor shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove the property and charge the cost to Lessee, which cost shall be immediately payable upon demand by Lessor.

**2.9 Common Areas - Rules and Regulations.** Lessor or such other person(s) as Lessor may appoint shall have the exclusive control and management of the Common Areas and shall have the right, from time to time, to establish, modify, amend and enforce reasonable rules and regulations ("Rules and Regulations") for the management, safety, care, and cleanliness of the grounds, the parking and unloading of vehicles and the preservation of good order, as well as for the convenience of other occupants or tenants of the Building and the Project and their invitees. Lessee agrees to abide by and conform to all such Rules and Regulations, and shall use its best efforts to cause its employees, suppliers, shippers, customers, contractors and invitees to so abide and conform. Lessor shall not be responsible to Lessee for the non-compliance with said Rules and Regulations by other tenants of the Project.

**2.10 Common Areas - Changes.** Lessor shall have the right, in Lessor's sole discretion, from time to time:

(a) To make changes to the Common Areas, including, without limitation, changes in the location, size, shape and number of driveways, entrances, parking spaces, parking areas, loading and unloading areas, ingress, egress, direction of traffic, landscaped areas, walkways and utility raceways;

(b) To close temporarily any of the Common Areas for maintenance purposes so long as reasonable access to the Premises remains available;

(c) To designate other land outside the boundaries of the Project to be a part of the Common Areas;

(d) To add additional buildings and improvements to the Common Areas;

(e) To use the Common Areas while engaged in making additional improvements, repairs or alterations to the Project, or any portion thereof; and

(f) To do and perform such other acts and make such other changes in, to or with respect to the Common Areas and Project as Lessor may, in the exercise of sound business judgment, deem to be appropriate.

### 3. Term.

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

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

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

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

### 4. Rent.

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

**4.2 Common Area Operating Expenses.** Lessee shall pay to Lessor during the term hereof, in addition to the Base Rent, Lessee's

Share (as specified in Paragraph 1.6) of all Common Area Operating Expenses, as hereinafter defined, during each calendar year of the term of this Lease, in accordance with the following provisions:

(a) "Common Area Operating Expenses" are defined, for purposes of this Lease, as all costs relating to the ownership and operation of the Project, including, but not limited to, the following:

(i) The operation, repair and maintenance, in neat, clean, good order and condition, and if necessary the replacement, of the following:

(aa) The Common Areas and Common Area improvements, including parking areas, loading and unloading areas, trash areas, roadways, parkways, walkways, driveways, landscaped areas, bumpers, irrigation systems, Common Area lighting facilities, fences and gates, elevators, roofs, exterior walls of the buildings, building systems and roof drainage systems.

(bb) Exterior signs and any tenant directories.

(cc) Any fire sprinkler systems.

(dd) All other areas and improvements that are within the exterior boundaries of the Project but outside of the Premises and/or any other space occupied by a tenant.

(ii) The cost of water, gas, electricity and telephone to service the Common Areas and any utilities not separately metered.

(iii) The cost of trash disposal, pest control services, property management, security services, owners' association dues and fees, the cost to repaint the exterior of any structures and the cost of any environmental inspections.

(iv) Reserves set aside for maintenance, repair and/or replacement of Common Area improvements and equipment.

(v) Real Property Taxes (as defined in Paragraph 10).

(vi) The cost of the premiums for the insurance maintained by Lessor pursuant to Paragraph 8.

(vii) Any deductible portion of an insured loss concerning the Building or the Common Areas.

(viii) Auditors', accountants' and attorneys' fees and costs related to the operation, maintenance, repair and replacement of the Project.

(ix) The cost of any capital improvement to the Building or the Project not covered under the provisions of Paragraph 2.3 provided; however, that Lessor shall allocate the cost of any such capital improvement over a 12 year period and Lessee shall not be required to pay more than Lessee's Share of 1/144th of the cost of such capital improvement in any given month.

(x) The cost of any other services to be provided by Lessor that are stated elsewhere in this Lease to be a Common Area Operating Expense.

(b) Any Common Area Operating Expenses and Real Property Taxes that are specifically attributable to the Unit, the Building or to any other building in the Project or to the operation, repair and maintenance thereof, shall be allocated entirely to such Unit, Building, or other building. However, any Common Area Operating Expenses and Real Property Taxes that are not specifically attributable to the Building or to any other building or to the operation, repair and maintenance thereof, shall be equitably allocated by Lessor to all buildings in the Project.

(c) The inclusion of the improvements, facilities and services set forth in Subparagraph 4.2(a) shall not be deemed to impose an obligation upon Lessor to either have said improvements or facilities or to provide those services unless the Project already has the same, Lessor already provides the services, or Lessor has agreed elsewhere in this Lease to provide the same or some of them.

(d) Lessee's Share of Common Area Operating Expenses is payable monthly on the same day as the Base Rent is due hereunder. The amount of such payments shall be based on Lessor's estimate of the annual Common Area Operating Expenses. Within 60 days after written request (but not more than once each year) Lessor shall deliver to Lessee a reasonably detailed statement showing Lessee's Share of the actual Common Area Operating Expenses for the preceding year. If Lessee's payments during such year exceed Lessee's Share, Lessor shall credit the amount of such over-payment against Lessee's future payments. If Lessee's payments during such year were less than Lessee's Share, Lessee shall pay to Lessor the amount of the deficiency within 10 days after delivery by Lessor to Lessee of the statement.

(e) Common Area Operating Expenses shall not include any expenses paid by any tenant directly to third parties, or as to which Lessor is otherwise reimbursed by any third party, other tenant, or insurance proceeds.

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

**5. Security Deposit.** Lessee shall deposit with Lessor upon execution hereof the Security Deposit as security for Lessee's faithful performance of its obligations under this Lease. If Lessee fails to pay Rent, or otherwise Defaults under this Lease, Lessor may use, apply or retain all or any portion of said Security Deposit for the payment of any amount already due Lessor, for Rents which will be due in the future, and/or to reimburse or compensate Lessor for any liability, expense, loss or damage which Lessor may suffer or incur by reason thereof. If Lessor uses or applies all or any portion of the Security Deposit, Lessee shall within 10 days after written request therefor deposit monies with Lessor sufficient to restore said Security Deposit to the full amount required by this Lease. If the Base Rent increases during the term of this Lease, Lessee shall, upon written request from Lessor, deposit additional monies with Lessor so that the total amount of the Security Deposit shall at all times bear the same proportion to the increased Base Rent as the initial Security Deposit bore to the initial Base Rent. Should the Agreed Use be amended to accommodate a material change in the business of Lessee or to accommodate a sublessee or assignee, Lessor shall have the right to increase the Security Deposit to the extent necessary, in Lessor's reasonable judgment, to account for any increased wear and tear that the Premises may suffer as a result thereof. If a change in control of Lessee occurs during this Lease and following such change the financial condition of Lessee is, in Lessor's reasonable judgment, significantly reduced, Lessee shall deposit such additional monies with Lessor as shall be sufficient to cause the Security Deposit to be at a commercially reasonable level based on such change in financial condition. Lessor shall not be required to keep the Security Deposit separate from its general accounts. Within 90 days after the expiration or termination of this Lease, Lessor shall return that portion of the Security Deposit not used or applied by Lessor. Lessor shall upon written request provide Lessee with an accounting showing how that portion of the Security Deposit that was not returned was applied. No part of the Security Deposit shall be considered to be held in trust, to bear interest or to be prepayment for any monies to be

paid by Lessee under this Lease. THE SECURITY DEPOSIT SHALL NOT BE USED BY LESSEE IN LIEU OF PAYMENT OF THE LAST MONTH'S RENT.

6. Use.

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

6.2 **Hazardous Substances.**

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

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

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

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

(e) **Lessor Indemnification.** Except as otherwise provided in paragraph 8.7, Lessor and its successors and assigns shall indemnify, defend, reimburse and hold Lessee, its employees and lenders, harmless from and against any and all environmental damages, including the cost of remediation, which are suffered as a direct result of Hazardous Substances on the Premises prior to Lessee taking possession or which are caused by the gross negligence or willful misconduct of Lessor, its agents or employees. Lessor's obligations, as and when required by the Applicable Requirements, shall include, but not be limited to, the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease.

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

(g) **Lessor Termination Option.** If a Hazardous Substance Condition (see Paragraph 9.1(e)) occurs during the term of this Lease, unless Lessee is legally responsible therefor (in which case Lessee shall make the investigation and remediation thereof required by the Applicable Requirements and this Lease shall continue in full force and effect, but subject to Lessor's rights under Paragraph 6.2(d) and Paragraph 13), Lessor may, at Lessor's option, either (i) investigate and remediate such Hazardous Substance Condition, if required, as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) if the estimated cost to remediate such condition exceeds 12 times the then monthly Base Rent or \$100,000, whichever is greater, give written notice to Lessee, within 30 days after receipt by Lessor of knowledge of the occurrence of such Hazardous Substance Condition, of Lessor's desire to terminate this Lease as of the date 60 days following the date of such notice. In the event Lessor elects to give a termination notice, Lessee may, within 10 days thereafter, give written notice to Lessor of Lessee's commitment to pay the amount by which the cost of the remediation of such Hazardous Substance Condition exceeds an amount equal to 12 times the then monthly Base Rent or \$100,000, whichever is greater. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within 30 days following such commitment. In such event, this Lease shall continue in full force and effect, and Lessor shall proceed to make such remediation as soon as reasonably possible after the required funds are available. If Lessee does not give such notice and provide the required funds or assurance

thereof within the time provided, this Lease shall terminate as of the date specified in Lessor's notice of termination.

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

**6.4 Inspection; Compliance.** Lessor and Lessor's "Lender" (as defined in Paragraph 30) and consultants authorized by Lessor shall have the right to enter into Premises at any time, in the case of an emergency, and otherwise at reasonable times after reasonable notice, for the purpose of inspecting and/or testing the condition of the Premises and/or for verifying compliance by Lessee with this Lease. The cost of any such inspections shall be paid by Lessor, unless a violation of Applicable Requirements, or a Hazardous Substance Condition (see paragraph 9.1) is found to exist or be imminent, or the inspection is requested or ordered by a governmental authority. In such case, Lessee shall upon request reimburse Lessor for the cost of such inspection, so long as such inspection is reasonably related to the violation or contamination. In addition, Lessee shall provide copies of all relevant material safety data sheets (MSDS) to Lessor within 10 days of the receipt of a written request therefore. Lessee acknowledges that any failure on its part to allow such inspections or testing will expose Lessor to risks and potentially cause Lessor to incur costs not contemplated by this Lease, the extent of which will be extremely difficult to ascertain. Accordingly, should the Lessee fail to allow such inspections and/or testing in a timely fashion the Base Rent shall be automatically increased, without any requirement for notice to Lessee, by an amount equal to 10% of the then existing Base Rent or \$100, whichever is greater for the remainder of the Lease. The Parties agree that such increase in Base Rent represents fair and reasonable compensation for the additional risk/cost that Lessor will incur by reason of Lessee's failure to allow such inspection and/or testing. Such increase in Base Rent shall in no event constitute a waiver of Lessee's Default or Breach with respect to such failure nor prevent the exercise of any of the other rights and remedies granted hereunder.

**7. Maintenance; Repairs, Utility Installations; Trade Fixtures and Alterations.**  
**7.1 Lessee's Obligations.**

(a) **In General.** Subject to the provisions of Paragraph 2.2 (Condition), 2.3 (Compliance), 6.3 (Lessee's Compliance with Applicable Requirements), 7.2 (Lessor's Obligations), 9 (Damage or Destruction), and 14 (Condemnation), Lessee shall, at Lessee's sole expense, keep the Premises, Utility Installations (intended for Lessee's exclusive use, no matter where located), and Alterations in good order, condition and repair (whether or not the portion of the Premises requiring repairs, or the means of repairing the same, are reasonably or readily accessible to Lessee, and whether or not the need for such repairs occurs as a result of Lessee's use, any prior use, the elements or the age of such portion of the Premises), including, but not limited to, all equipment or facilities, such as plumbing, HVAC equipment, electrical, lighting facilities, boilers, pressure vessels, fixtures, interior walls, interior surfaces of exterior walls, ceilings, floors, windows, doors, plate glass, and skylights but excluding any items which are the responsibility of Lessor pursuant to Paragraph 7.2. Lessee, in keeping the Premises in good order, condition and repair, shall exercise and perform good maintenance practices, specifically including the procurement and maintenance of the service contracts required by Paragraph 7.1(b) below. Lessee's obligations shall include restorations, replacements or renewals when necessary to keep the Premises and all improvements thereon or a part thereof in good order, condition and state of repair.

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

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

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

**7.2 Lessor's Obligations.** Subject to the provisions of Paragraphs 2.2 (Condition), 2.3 (Compliance), 4.2 (Common Area Operating Expenses), 6 (Use), 7.1 (Lessee's Obligations), 9 (Damage or Destruction) and 14 (Condemnation), Lessor, subject to reimbursement pursuant to Paragraph 4.2, shall keep in good order, condition and repair the foundations, exterior walls, structural condition of interior bearing walls, exterior roof, fire sprinkler system, Common Area fire alarm and/or smoke detection systems, fire hydrants, parking lots, walkways, parkways, driveways, landscaping, fences, signs and utility systems serving the Common Areas and all parts thereof, as well as providing the services for which there is a Common Area Operating Expense pursuant to Paragraph 4.2. Lessor shall not be obligated to paint the exterior or interior surfaces of exterior walls nor shall Lessor be obligated to maintain, repair or replace windows, doors or plate glass of the Premises. Lessee expressly waives the benefit of any statute now or hereafter in effect to the extent it is inconsistent with the terms of this Lease.

**7.3 Utility Installations; Trade Fixtures; Alterations.**

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

(b) **Consent.** Lessee shall not make any Alterations or Utility Installations to the Premises without Lessor's prior written consent. Lessee may, however, make non-structural Alterations or Utility Installations to the interior of the Premises (excluding the roof) without such consent but upon notice to Lessor, as long as they are not visible from the outside, do not involve puncturing, relocating or removing the roof or any existing walls, will not affect the electrical, plumbing, HVAC, and/or life safety systems, do not trigger the requirement for additional modifications and/or

improvements to the Premises resulting from Applicable Requirements, such as compliance with Title 24, and/or life safety systems, and the cumulative cost thereof during this Lease as extended does not exceed a sum equal to 3 month's Base Rent in the aggregate or a sum equal to one roof without the prior written approval of Lessor. Lessor may, as a precondition to granting such approval, require Lessee to utilize a contractor chosen presented to Lessor in written form with detailed plans. Consent shall be deemed conditioned upon Lessee's: (i) acquiring all applicable governmental permits, (ii) furnishing Lessor with copies of both the permits and the plans and specifications prior to commencement of the work, and (iii) compliance with all conditions of said permits and other Applicable Requirements in a prompt and expeditious manner. Any Alterations or Utility Installations shall be performed in a workmanlike manner with good and sufficient materials. Lessee shall promptly upon completion furnish Lessor with as-built plans and specifications. For work which costs an amount in excess of one month's Base Rent, Lessor may condition its consent upon Lessee providing a lien and completion bond in an amount equal to 150% of the estimated cost of such Alteration or Utility Installation and/or upon Lessee's posting an additional Security Deposit with Lessor.

(c) **Liens; Bonds.** Lessee shall pay, when due, all claims for labor or materials furnished or alleged to have been furnished to or for Lessee at or for use on the Premises, which claims are or may be secured by any mechanic's or materialman's lien against the Premises or Lessor shall have the right to post notices of non-responsibility. If Lessee shall contest the validity of any such lien, claim or demand, then Lessee may be rendered thereon before the enforcement thereof. If Lessor shall require, Lessee shall furnish a surety bond in an amount equal to 150% of the amount of such contested lien, claim or demand, indemnifying Lessor against liability for the same. If Lessor elects to participate in any such action, Lessee shall pay Lessor's attorneys' fees and costs.

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

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

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

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

**8. Insurance; Indemnity.**

8.1 **Payment of Premiums.** The cost of the premiums for the insurance policies required to be carried by Lessor, pursuant to Paragraphs 8.2(b), 8.3(a) and 8.3(b), shall be a Common Area Operating Expense. Premiums for policy periods commencing prior to, or extending beyond, the term of this Lease shall be prorated to coincide with the corresponding Start Date or Expiration Date.

**8.2 Liability Insurance.**

(a) **Carried by Lessee.** Lessee shall obtain and keep in force a Commercial General Liability policy of insurance protecting Lessee and Lessor as an additional insured against claims for bodily injury, personal injury and property damage based upon or arising out of the ownership, use, occupancy or maintenance of the Premises and all areas appurtenant thereto. Such insurance shall be on an occurrence basis providing single limit coverage in an amount not less than \$1,000,000 per occurrence with an annual aggregate of not less than \$2,000,000. Lessee shall add Lessor as an additional insured by means of an endorsement at least as broad as the Insurance Service Organization's "Additional Insured-Managers or Lessors of Premises" Endorsement. The policy shall not contain any intra-insured exclusions as between insured persons or organizations, but shall include coverage for liability assumed under this Lease as an "insured contract" for the performance of Lessee's indemnity obligations under this Lease. The limits of said insurance shall not, however, limit the liability of Lessee nor relieve Lessee of any obligation hereunder. Lessee shall provide an endorsement on its liability policy(ies) which provides that its insurance shall be primary to and not contributory with any similar insurance carried by Lessor, whose insurance shall be considered excess insurance only.

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

**8.3 Property Insurance - Building, Improvements and Rental Value.**

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

- (b) **Rental Value.** Lessor shall also obtain and keep in force a policy or policies in the name of Lessor with loss payable to Lessor and any Lender, insuring the loss of the full Rent for one year with an extended period of indemnity for an additional 180 days ("Rental Value insurance"). Said insurance shall contain an agreed valuation provision in lieu of any coinsurance clause, and the amount of coverage shall be adjusted annually to reflect the projected Rent otherwise payable by Lessee, for the next 12 month period.
- (c) **Adjacent Premises.** Lessee shall pay for any increase in the premiums for the property insurance of the Building and for the Common Areas or other buildings in the Project if said increase is caused by Lessee's acts, omissions, use or occupancy of the Premises.
- (d) **Lessee's Improvements.** Since Lessor is the Insuring Party, Lessor shall not be required to insure Lessee Owned Alterations and Utility Installations unless the item in question has become the property of Lessor under the terms of this Lease.

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

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

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

(c) **Worker's Compensation Insurance.** Lessee shall obtain and maintain Worker's Compensation Insurance in such amount as may be required by Applicable Requirements. Such policy shall include a 'Waiver of Subrogation' endorsement. Lessee shall provide Lessor with a copy of such endorsement along with the certificate of insurance or copy of the policy required by paragraph 8.5.

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

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

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

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

**8.8 Exemption of Lessor and its Agents from Liability.** Notwithstanding the negligence or breach of this Lease by Lessor or its agents, neither Lessor nor its agents shall be liable under any circumstances for: (i) injury or damage to the person or goods, wares, merchandise or injury is caused by or results from fire, steam, electricity, gas, water or rain, indoor air quality, the presence of mold or from the breakage, leakage, obstruction or other defects of pipes, fire sprinklers, wires, appliances, plumbing, HVAC or lighting fixtures, or from any other cause, whether the said injury or damage results from conditions arising upon the Premises or upon other portions of the Building, or from other sources or places, (ii) any damages arising from any act or neglect of any other tenant of Lessor or from the failure of Lessor or its agents to enforce the provisions of any other lease in the Project, or (iii) injury to Lessee's business or for any loss of income or profit therefrom. Instead, it is intended that Lessee's sole recourse in the event of such damages or injury be to file a claim on the insurance policy(ies) that Lessee is required to maintain pursuant to the provisions of paragraph 8.

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

#### **9. Damage or Destruction.**

##### **9.1 Definitions.**

(a) **"Premises Partial Damage"** shall mean damage or destruction to the improvements on the Premises, other than Lessee Owned Alterations and Utility Installations, which can reasonably be repaired in 3 months or less from the date of the damage or destruction, and the cost thereof does not exceed a sum equal to 6 month's Base Rent. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

(b) **"Premises Total Destruction"** shall mean damage or destruction to the improvements on the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which cannot reasonably be repaired in 3 months or less from the date of the damage or destruction and/or the cost thereof exceeds a sum equal to 6 month's Base Rent. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

(c) **"Insured Loss"** shall mean damage or destruction to improvements on the Premises, other than Lessee Owned

Alterations and Utility Installations and Trade Fixtures, which was caused by an event required to be covered by the insurance described in Paragraph 8.3(a), irrespective of any deductible amounts or coverage limits involved.

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

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

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

**9.3 Partial Damage - Uninsured Loss.** If a Premises Partial Damage that is not an Insured Loss occurs, unless caused by a negligent or willful act of Lessee (in which event Lessee shall make the repairs at Lessee's expense), Lessor may either: (i) repair such damage as soon as reasonably possible at Lessor's expense (subject to reimbursement pursuant to Paragraph 4.2), in which event this Lease shall continue in full force and effect, or (ii) terminate this Lease by giving written notice to Lessee within 30 days after receipt by Lessor of knowledge of the occurrence of such damage. Such termination shall be effective 60 days following the date of such notice. In the event Lessor elects to terminate this Lease, Lessee shall have the right within 10 days after receipt of the termination notice to give written notice to Lessor of Lessee's commitment to pay for the repair of such damage without reimbursement from Lessor. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within 30 days after making such commitment. In such event this Lease shall continue in full force and effect, and Lessor shall proceed to make such repairs as soon as reasonably possible after the required funds are available. If Lessee does not make the required commitment, this Lease shall terminate as of the date specified in the termination notice.

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

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

**9.6 Abatement of Rent; Lessee's Remedies.**

(a) **Abatement.** In the event of Premises Partial Damage or Premises Total Destruction or a Hazardous Substance restoration of such damage shall be abated in proportion to the degree to which Lessee's use of the Premises is impaired, but not to exceed the proceeds received from the Rental Value insurance. All other obligations of Lessee hereunder shall be performed by Lessee, and Lessor shall have no liability for any such damage, destruction, remediation, repair or restoration except as provided herein.

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

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

**10. Real Property Taxes.**

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

based upon the number of days which such calendar year and tax year have in common.

10.2 **Payment of Taxes.** Except as otherwise provided in Paragraph 10.3, Lessor shall pay the Real Property Taxes applicable to the Project, and said payments shall be included in the calculation of Common Area Operating Expenses in accordance with the provisions of Paragraph 4.2.

10.3 **Additional Improvements.** Common Area Operating Expenses shall not include Real Property Taxes specified in the tax assessor's records and work sheets as being caused by additional improvements placed upon the Project by other lessees or by Lessor for the exclusive enjoyment of such other lessees. Notwithstanding Paragraph 10.2 hereof, Lessee shall, however, pay to Lessor at the time Common Area Operating Expenses are payable under Paragraph 4.2, the entirety of any increase in Real Property Taxes if assessed solely by reason of Alterations, Trade Fixtures or Utility Installations placed upon the Premises by Lessee or at Lessee's request or by reason of any alterations or improvements to the Premises made by Lessor subsequent to the execution of this Lease by the Parties.

10.4 **Joint Assessment.** If the Building is not separately assessed, Real Property Taxes allocated to the Building shall be an equitable proportion of the Real Property Taxes for all of the land and improvements included within the tax parcel assessed, such proportion to be determined by Lessor from the respective valuations assigned in the assessor's work sheets or such other information as may be reasonably available. Lessor's reasonable determination thereof, in good faith, shall be conclusive.

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

11. **Utilities and Services.** Lessee shall pay for all water, gas, heat, light, power, telephone, trash disposal and other utilities and services supplied to the Premises, together with any taxes thereon. Notwithstanding the provisions of Paragraph 4.2, if at any time in Lessor's sole judgment, Lessor determines that Lessee is using a disproportionate amount of water, electricity or other commonly metered utilities, or that Lessee is generally using such a large volume of trash as to require an increase in the size of the trash receptacle and/or an increase in the number of times per month that it is emptied, then Lessor may increase Lessee's Base Rent by an amount equal to such increased costs. There shall be no abatement of Rent and Lessor shall not be liable in any respect whatsoever for the inadequacy, stoppage, interruption or discontinuance of any utility or service due to riot, strike, labor dispute, breakdown, accident, repair or other cause beyond Lessor's reasonable control or in cooperation with governmental request or directions.

12. **Assignment and Subletting.**

12.1 **Lessor's Consent Required.**

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

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

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

(d) An assignment or subletting without consent shall, at Lessor's option, be a Default curable after notice per Paragraph 13.1(d), or a noncurable Breach without the necessity of any notice and grace period. If Lessor elects to treat such unapproved assignment or subletting as a noncurable Breach, Lessor may either: (i) terminate this Lease, or (ii) upon 30 days written notice, increase the monthly Base Rent to 110% of the Base Rent then in effect. Further, in the event of such Breach and rental adjustment, (i) the purchase price of any option to purchase the Premises held by Lessee shall be subject to similar adjustment to 110% of the price previously in effect, and (ii) all fixed and non-fixed rental adjustments scheduled during the remainder of the Lease term shall be increased to 110% of the scheduled adjusted rent.

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

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

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

12.2 **Terms and Conditions Applicable to Assignment and Subletting.**

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

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

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

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

(e) Each request for consent to an assignment or subletting shall be in writing, accompanied by information relevant to Lessor's determination as to the financial and operational responsibility and appropriateness of the proposed assignee or sublessee, including but not limited to the intended use and/or required modification of the Premises, if any, together with a fee of \$500 as consideration for Lessor's considering and processing said request. Lessee agrees to provide Lessor with such other or additional information and/or documentation as may be reasonably requested. (See also Paragraph 38)

(f) Any assignee of, or sublessee under, this Lease shall, by reason of accepting such assignment, entering into such sublease, or entering into possession of the Premises or any portion thereof, be deemed to have assumed and agreed to conform and comply with

each and every term, covenant, condition and obligation herein to be observed or performed by Lessee during the term of said assignment or sublease, other than such obligations as are contrary to or inconsistent with provisions of an assignment or sublease to which Lessor has specifically consented to in writing.

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

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

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

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

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

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

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

### 13. Default; Breach; Remedies.

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

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

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

(c) The failure of Lessee to allow Lessor and/or its agents access to the Premises or the commission of waste, act or acts constituting public or private nuisance, and/or an illegal activity on the Premises by Lessee, where such actions continue for a period of 3 business days following written notice to Lessee. In the event that Lessee commits waste, a nuisance or an illegal activity a second time then, the Lessor may elect to treat such conduct as a non-curable Breach rather than a Default.

(d) The failure by Lessee to provide (i) reasonable written evidence of compliance with Applicable Requirements, (ii) the service contracts, (iii) the rescission of an unauthorized assignment or subletting, (iv) an Estoppel Certificate or financial statements, (v) a requested subordination, (vi) evidence concerning any guarantor and/or Guarantor, (vii) any document requested under Paragraph 41, (viii) material data safety sheets (MSDS), or (ix) any other documentation or information which Lessor may reasonably require of Lessee under the terms of this Lease, where any such failure continues for a period of 10 days following written notice to Lessee.

(e) A Default by Lessee as to the terms, covenants, conditions or provisions of this Lease, or of the rules adopted under Paragraph 2.9 hereof, other than those described in subparagraphs 13.1(a), (b), (c) or (d), above, where such Default continues for a period of 30 days after written notice; provided, however, that if the nature of Lessee's Default is such that more than 30 days are reasonably required for its cure, then it shall not be deemed to be a Breach if Lessee commences such cure within said 30 day period and thereafter diligently prosecutes such cure to completion.

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

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

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

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

(a) Terminate Lessee's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Lessee shall immediately surrender possession to Lessor. In such event Lessor shall be entitled to recover from Lessee: (i) the unpaid Rent which

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

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

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

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

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

**13.5 Interest.** Any monetary payment due Lessor hereunder, other than late charges, not received by Lessor, when due shall bear interest from the 31st day after it was due. The interest ("Interest") charged shall be computed at the rate of 10% per annum but shall not exceed the maximum rate allowed by law. Interest is payable in addition to the potential late charge provided for in Paragraph 13.4.

**13.6 Breach by Lessor.**

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

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

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

**15. Brokerage Fees.**

**15.1 Additional Commission.** In addition to the payments owed pursuant to Paragraph 1.10 above, Lessor agrees that: (a) if Lessee exercises any Option, (b) if Lessee or anyone affiliated with Lessee acquires from Lessor any rights to the Premises or other premises owned by Lessor and located within the Project, (c) if Lessee remains in possession of the Premises, with the consent of Lessor, after the expiration of this Lease, or (d) if Base Rent is increased, whether by agreement or operation of an escalation clause herein, then, Lessor shall pay Brokers a fee in accordance with the fee schedule of the Brokers in effect at the time the Lease was executed.

**15.2 Assumption of Obligations.** Any buyer or transferee of Lessor's interest in this Lease shall be deemed to have assumed Lessor's obligation hereunder. Brokers shall be third party beneficiaries of the provisions of Paragraphs 1.10, 15, 22 and 31. If Lessor fails to pay to Brokers any amounts due as and for brokerage fees pertaining to this Lease when due, then such amounts shall accrue Interest. In addition, if Lessor fails to pay any amounts to Lessee's Broker when due, Lessee's Broker may send written notice to Lessor and Lessee of such failure and if Lessor fails to pay such amounts within 10 days after said notice, Lessee shall pay said monies to its Broker and offset such amounts against Rent. In addition, Lessee's Broker shall be deemed to be a third party beneficiary of any commission agreement entered into by and/or between Lessor and Lessor's Broker for the limited purpose of collecting any brokerage fee owed.

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

**16. Estoppel Certificates.**

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

(b) If the Responding Party shall fail to execute or deliver the Estoppel Certificate within such 10 day period, the Requesting Party may execute an Estoppel Certificate stating that: (i) the Lease is in full force and effect without modification except as may be represented by the month's rent has been paid in advance. Prospective purchasers and encumbrancers may rely upon the Requesting Party's Estoppel Certificate, and the Responding Party shall be estopped from denying the truth of the facts contained in said Certificate. In addition, Lessee acknowledges that any failure on its part to provide such an Estoppel Certificate will expose Lessor to risks and potentially cause Lessor to incur costs not contemplated by this Lease, the extent of which will be extremely difficult to ascertain. Accordingly, should the Lessee fail to execute and/or deliver a requested Estoppel Certificate in a timely fashion the monthly Base Rent shall be automatically increased, without any requirement for notice to Lessee, by an amount equal to 10% of the then existing Base Rent or \$100, whichever is greater for remainder of the Lease. The Parties agree that such increase in Base Rent represents fair and reasonable compensation for the additional risk/costs that Lessor will incur by reason of Lessee's failure to provide the Estoppel Certificate. Such increase in Base Rent shall in no event constitute a waiver of Lessee's Default or Breach with respect to the failure to provide the Estoppel Certificate nor prevent the exercise of any of the other rights and remedies granted hereunder.

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

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

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

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

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

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

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

**23. Notices.**

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

**23.2 Date of Notice.** Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, the postmark thereon. If sent by regular mail the notice shall be deemed given 72 hours after the same is addressed as required herein and mailed with postage prepaid. Notices delivered by United States Express Mail or overnight courier that guarantees next day delivery shall be deemed given 24 hours after delivery of the same to the Postal Service or courier. Notices delivered by hand, or

transmitted by facsimile transmission or by email shall be deemed delivered upon actual receipt. If notice is received on a Saturday, Sunday or legal holiday, it shall be deemed received on the next business day.

24. **Waivers.**

(a) No waiver by Lessor of the Default or Breach of any term, covenant or condition hereof by Lessee, shall be deemed a waiver of any other term, covenant or condition hereof, or of any subsequent Default or Breach by Lessee of the same or of any other term, covenant or condition subsequent or similar act by Lessee, or be construed as the basis of an estoppel to enforce the provision or provisions of this Lease requiring such consent.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30.2 **Attornment.** In the event that Lessor transfers title to the Premises, or the Premises are acquired by another upon the foreclosure or termination of a Security Device to which this Lease is subordinated (i) Lessee shall, subject to the non-disturbance provisions of Paragraph 30.3, attorn to such new owner, and upon request, enter into a new lease, containing all of the terms and provisions of this Lease, with such new owner for

the remainder of the term hereof, or, at the election of the new owner, this Lease will automatically become a new lease between Lessee and such new owner, and (ii) Lessor shall thereafter be relieved of any further obligations hereunder and such new owner shall assume all of Lessor's obligations, ownership; (b) be subject to any offsets or defenses which Lessee might have against any prior lessor, (c) be bound by prepayment of more than one month's rent, or (d) be liable for the return of any security deposit paid to any prior lessor which was not paid or credited to such new owner.

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

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

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

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

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

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

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

36. **Consents.** All requests for consent shall be in writing. Except as otherwise provided herein, wherever in this Lease the consent of a Party is required to an act by or for the other Party, such consent shall not be unreasonably withheld or delayed. Lessor's actual reasonable costs and expenses (including but not limited to architects', attorneys', engineers' and other consultants' fees) incurred in the consideration of, or response to, a request by Lessee for any Lessor consent, including but not limited to consents to an assignment, a subletting or the presence or use of a Hazardous Substance, shall be paid by Lessee upon receipt of an invoice and supporting documentation therefor. Lessor's consent to any act, assignment or subletting shall not constitute an acknowledgment that no Default or Breach by Lessee of this Lease exists, nor shall such consent be deemed a waiver of any then existing Default or Breach, except as may be otherwise specifically stated in writing by Lessor at the time of such consent. The failure to specify herein any particular condition to Lessor's consent shall not preclude the imposition by Lessor at the time of consent of such further or other conditions as are then reasonable with reference to the particular matter for which consent is being given. In the event that either Party disagrees with any determination made by the other hereunder and reasonably requests the reasons for such determination, the determining party shall furnish its reasons in writing and in reasonable detail within 10 business days following such request.

37. **Guarantor.**

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

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

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

39. **Options.** If Lessee is granted any option, as defined below, then the following provisions shall apply.

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

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

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

39.4 **Effect of Default on Options.**

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

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

(c) An Option shall terminate and be of no further force or effect, notwithstanding Lessee's due and timely exercise of the Option, if, after such exercise and prior to the commencement of the extended term or completion of the purchase, (i) Lessee fails to pay Rent for a period of 30 days after such Rent becomes due (without any necessity of Lessor to give notice thereof), or (ii) if Lessee commits a Breach of this Lease, other security measures, and that Lessor shall have no obligation whatsoever to provide same. Lessee assumes all responsibility for the protection of the Premises, Lessee, its agents and invitees and their property from the acts of third parties.

41. **Reservations.** Lessor reserves the right: (i) to grant, without the consent or joinder of Lessee, such easements, rights and dedications that Lessor deems necessary, (ii) to cause the recording of parcel maps and restrictions, and (iii) to create and/or install new utility raceways, so long as such easements, rights, dedications, maps, restrictions, and utility raceways do not unreasonably interfere with the use of the Premises by Lessee. Lessee agrees to sign any documents reasonably requested by Lessor to effectuate such rights.

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

43. **Authority; Multiple Parties; Execution.**

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

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

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

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

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

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

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

48. **Arbitration of Disputes.** An Addendum requiring the Arbitration of all disputes between the Parties and/or Brokers arising out of this Lease

is  not attached to this Lease.

49. **Accessibility; Americans with Disabilities Act.**

(a) The Premises:  have not undergone an inspection by a Certified Access Specialist (CASp).  have undergone an inspection by a Certified Access Specialist (CASp) and it was determined that the Premises met all applicable construction-related accessibility standards pursuant to California Civil Code §55.51 et seq.  have undergone an inspection by a Certified Access Specialist (CASp) and it was determined that the Premises did not meet all applicable construction-related accessibility standards pursuant to California Civil Code §55.51 et seq.

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

50. This Standard Industrial/Commercial Multi-Tenant Lease-Net, has been prepared by Lee & Associates Commercial Real Estate Services, Inc. - South Bay dba Lee & Associates Los Angeles - Long Beach, Inc. at the request of Lessor and Lessee. This Lessor and Lessee agree to indemnify and hold harmless Lee & Associates Commercial Real Estate Services, Inc. - South Bay dba Lee & Associates Los Angeles - Long Beach, Inc., its respective Agents and Employees, for any liability of Lease-Net. Lessor and Lessee acknowledge being advised by Lee & Associates Commercial Real Estate Services, Inc. - South Bay dba Lee & Associates Los Angeles - Long Beach, Inc. to have this Standard Industrial/Commercial Multi-Tenant Lease-Net reviewed by their respective Attorneys, Accountants, or Insurance Agents for professional advice. The information contained herein has been obtained from sources believed reliable, but not guaranteed. While we do not doubt its accuracy, we have not verified it and make no guarantee, warranty or representation about it. Any projections, opinions, assumptions or estimates used are for example only and do not represent the current or future performance of the property. Lessee should conduct a careful, independent investigation of the property during their due diligence to determine to their satisfaction the accuracy and completeness of the information contained herein.

**LESSOR AND LESSEE HAVE CAREFULLY READ AND REVIEWED THIS LEASE AND EACH TERM AND PROVISION CONTAINED HEREIN, AND BY THE EXECUTION OF THIS LEASE SHOW THEIR INFORMED AND VOLUNTARY CONSENT THERETO. THE PARTIES HEREBY AGREE INTENT AND PURPOSE OF LESSOR AND LESSEE WITH RESPECT TO THE PREMISES.**

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

1. SEEK ADVICE OF COUNSEL AS TO THE LEGAL AND TAX CONSEQUENCES OF THIS LEASE.

2. RETAIN APPROPRIATE CONSULTANTS TO REVIEW AND INVESTIGATE THE CONDITION OF THE PREMISES. SAID INVESTIGATION SHOULD INCLUDE BUT NOT BE LIMITED TO: THE POSSIBLE PRESENCE OF HAZARDOUS SUBSTANCES, THE ZONING OF

THE PREMISES, THE STRUCTURAL INTEGRITY, THE CONDITION OF THE ROOF AND OPERATING SYSTEMS, COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT AND THE SUITABILITY OF THE PREMISES FOR LESSEE'S INTENDED USE.

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

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

Executed at: \_\_\_\_\_ Executed at: \_\_\_\_\_  
On: \_\_\_\_\_ On: \_\_\_\_\_

By LESSOR:

211 Property 3060, LLC

By LESSEE:

Khaled A. Tawansy, MD

Children's Retina Institute

By: \_\_\_\_\_

Name Printed: Sean Hitchcock

By: \_\_\_\_\_

Name Printed: Khaled A. Tawansy

Title: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Name Printed: \_\_\_\_\_

By: \_\_\_\_\_

Name Printed: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Address: 2653 Walnut Ave.

Address: 3200 Long Beach Blvd., Unit A

Signal Hill, CA 90755

Long Beach, CA 90807

Telephone: (562) 424-5567

Telephone: (323) 257-3937

Faximile: (\_\_\_\_\_) \_\_\_\_\_

Faximile: (\_\_\_\_\_) \_\_\_\_\_

Email: \_\_\_\_\_

Email: \_\_\_\_\_

Email: \_\_\_\_\_

Email: \_\_\_\_\_

Federal ID No. \_\_\_\_\_

Federal ID No. \_\_\_\_\_

BROKER:

BROKER:

Attn: \_\_\_\_\_

Attn: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: (\_\_\_\_\_) \_\_\_\_\_

Telephone: (\_\_\_\_\_) \_\_\_\_\_

Faximile: (\_\_\_\_\_) \_\_\_\_\_

Faximile: (\_\_\_\_\_) \_\_\_\_\_

Email: \_\_\_\_\_

Email: \_\_\_\_\_

Federal ID No. \_\_\_\_\_

Federal ID No. \_\_\_\_\_

Broker/Agent BRE License #: \_\_\_\_\_

Broker/Agent BRE License #: \_\_\_\_\_

NOTICE: These forms are often modified to meet changing requirements of law and industry needs. Always write or call to make sure you are utilizing the most current form: AIR Commercial Real Estate Association, 500 N Brand Blvd, Suite 900, Glendale, CA 91203. Telephone No. (213) 687-8777. Fax No.: (213) 687-8816.

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From: Ericka Burton ericka@2hconstruction.com  
Subject: Re: 3200 Long Beach Blvd - new ownership and building management notification  
Date: Oct 12, 2016, 3:07:50 PM  
To: jfong@childrensretina.com,  
ktawansy@childrensretina.com, gershonne@gmail.com  
Cc: Sean Hitchcock sean@2hconstruction.com

Good afternoon all,

2H Properties will be conducting demolition in the vacant portion of the building on Monday, October 17, 2016. I wanted to make you aware of the work if you see anyone enter the building.

Please feel free to contact me if you have any questions.

Thank you,  
Ericka Burton  
Property Manager

Sent from my iPhone

On Oct 6, 2016, at 3:37 PM, Ericka Burton <[ericka@2hconstruction.com](mailto:ericka@2hconstruction.com)> wrote:

Good afternoon all,

My name is Ericka Burton and I am the new Property Manager for 3200 Long Beach Blvd., Long Beach, CA. 2H Property 3060, LLC purchased the building and escrow closed on Friday, September 30, 2016.

Attached please find a month to month lease agreement that was

sent to you last month that needs to be signed and returned. I have also attached a letter introducing myself and providing information of new ownership and building management. These items are also being mailed to you via Certified Mail. Your rent was due October 1, 2016 and becomes late as of October 5, 2016.

Please review, return signed leases along with October's rent and feel free to contact me should you have any questions.

Thank you,

We've Moved! Our new address is:  
2653 Walnut Ave., Signal Hill, CA 90755

Ericka Burton  
Controller  
[2H LOGO NO BORDER copy]  
[cid:image004.jpg@01CD9008.75AF1900]  
2653 Walnut Ave.  
Signal Hill, CA 90755  
c: (310)528-1961  
o: (562)424-5567  
www.2hconstruction.com<<http://www.2hconstruction.com/>>

<Lease Agreement.pdf>  
<SKMBT\_42316100613540.pdf>  
<image003.jpg>  
<image004.jpg>



## AIR COMMERCIAL REAL ESTATE ASSOCIATION STANDARD INDUSTRIAL/COMMERCIAL MULTI-TENANT LEASE - NET

### 1. Basic Provisions ("Basic Provisions").

1.1 Parties: This Lease ("Lease"), dated for reference purposes only September 26, 2016, is made by and between 2H Property 3050, LLC

("Lessor")

and Khaled A. Tawansy, MD / Children's Retina Institute

("Lessee"), (collectively the "Parties", or individually a "Party").

1.2(a) Premises: That certain portion of the Project (as defined below), including all improvements therein or to be provided by Lessor under the terms of this Lease, commonly known by the street address of 3200 Long Beach Blvd., Unit A, located in the City of Long Beach, County of Los Angeles, State of California, with zip code 90807, as outlined on Exhibit \_\_\_\_\_ attached hereto ("Premises") and generally described as (describe briefly the nature of the Premises): An approximate 5,689 Sq. Ft. medical office unit.

In addition to Lessee's rights to use and occupy the Premises as hereinafter specified, Lessee shall have non-exclusive rights to any utility raceways of the building containing the Premises ("Building") and to the common Areas (as defined in Paragraph 2.7 below), but shall not have any rights to the roof or exterior walls of the Building or to any other buildings in the Project. The Premises, the Building, the Common Areas, the land upon which they are located, along with all other buildings and improvements thereon, are herein collectively referred to as the "Project." (See also Paragraph 2)

1.2(b) Parking: 25 unreserved vehicle parking spaces. (See also Paragraph 2.6)

1.3 Term: Month to Month years and months ("Original Term") commencing October 1, 2016 ("Commencement Date") and ending with 30 day notice from either party. ("Expiration Date"). (See also Paragraph 3)

1.4 Early Possession: If the Premises are available Lessee may have non-exclusive possession of the Premises commencing n/a ("Early Possession Date").

(See also Paragraphs 3.2 and 3.3)

1.5 Base Rent: \$ 15,000.00 per month ("Base Rent"), payable on the 1st day of each month commencing October 1, 2016. (See also Paragraph 4)

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

1.6 Lessee's Share of Common Area Operating Expenses: thirty - eight percent (38 %) ("Lessee's Share"). In the event that the size of the Premises and/or the Project are modified during the term of this Lease, Lessor shall recalculate Lessee's Share to reflect such modification.

1.7 Base Rent and Other Monies Paid Upon Execution:

(a) Base Rent: \$15,000.00 for the period October 1 - 31, 2016.

(b) Common Area Operating Expenses: \$TBD for the period \_\_\_\_\_.

(c) Security Deposit: \$11,500.00 ("Security Deposit"). (See also Paragraph 5)

(d) Other: \$n/a for n/a

(e) Total Due Upon Execution of this Lease:  
\$15,000.00 for base rent (security deposit transferred from sale)

1.8 Agreed Use: Medical office.

. (See also Paragraph 6)

1.9 Insuring Party. Lessor is the "Insuring Party". (See also Paragraph 8)

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

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

\_\_\_\_\_ represents Lessor exclusively ("Lessor's Broker");  
 \_\_\_\_\_ represents Lessee exclusively ("Lessee's Broker"); or  
 \_\_\_\_\_ represents both Lessor and Lessee ("Dual Agency").

(b) Payment to Brokers: Upon execution and delivery of this Lease by both Parties, Lessor shall pay to the Brokers the brokerage fee agreed to in a separate written agreement (or if there is no such agreement, the sum of \_\_\_\_\_ or \_\_\_\_\_ % of the total Base Rent) for the brokerage services rendered by the Brokers.

1.11 Guarantor. The obligations of the Lessee under this Lease are to be guaranteed by \_\_\_\_\_

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

1.12 Attachments. Attached hereto are the following, all of which constitute a part of this Lease:

- an Addendum consisting of Paragraphs \_\_\_\_\_ through \_\_\_\_\_;
- a site plan depicting the Premises;
- a site plan depicting the Project;
- a current set of the Rules and Regulations for the Project;
- a current set of the Rules and Regulations adopted by the owners' association;

- a Work Letter;  
 other (specify): \_\_\_\_\_

2. **Premises.**

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

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

2.3 **Compliance.** Lessor warrants that to the best of its knowledge the improvements on the Premises comply with the building codes, applicable laws, covenants or restrictions of record, regulations, and ordinances ("Applicable Requirements") that were in effect at the time that each improvement, or portion thereof, was constructed. Said warranty does not apply to the use to which Lessee will put the Premises, modifications which may be required by the Americans with Disabilities Act or any similar laws as a result of Lessee's use (see Paragraph 49), or to any Alterations or Utility installations (as defined in Paragraph 7.3(a)) made or to be made by Lessee. **NOTE: Lessee is responsible for determining whether or not the Applicable Requirements and especially the zoning are appropriate for Lessee's intended use, and acknowledges that past uses of the Premises may no longer be allowed.** If the Premises do not comply with said warranty, Lessor shall, except as otherwise provided, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, rectify the same at Lessor's expense. If Lessee does not give Lessor written notice of a non-compliance with this warranty within 6 months following the Start Date, correction of that non-compliance shall be the obligation of Lessee at Lessee's sole cost and expense. If the Applicable Requirements are hereafter changed so as to require during the term of this Lease the construction of an addition to or an alteration of the Unit, Premises and/or Building, the remediation of any Hazardous Substance, or the reinforcement or other physical modification of the Unit, Premises and/or Building ("Capital Expenditure"), Lessor and Lessee shall allocate the cost of such work as follows:

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

(b) If such Capital Expenditure is not the result of the specific and unique use of the Premises by Lessee (such as, governmentally mandated seismic modifications), then Lessor shall pay for such Capital Expenditure and Lessee shall only be obligated to pay, each month during the remainder of the term of this Lease or any extension thereof, on the date that on which the Base Rent is due, an amount equal to 1/144th of the portion of such costs reasonably attributable to the Premises. Lessee shall pay interest on the balance but may prepay its obligation at any time. If, however, such Capital Expenditure is required during the last 2 years of this Lease or if Lessor reasonably determines that it is not economically feasible to pay its share thereof, Lessor shall have the option to terminate this Lease upon 90 days prior written notice to Lessee unless Lessee notifies Lessor, in writing, within 10 days after receipt of Lessor's termination notice that Lessee will pay for such Capital Expenditure. If Lessor does not elect to terminate, and fails to tender its share of any such Capital Expenditure, Lessee may advance such funds and deduct same, with interest, from Rent until Lessor's share of such costs have been fully paid. If Lessee is unable to finance Lessor's share, or if the balance of the Rent due and payable for the remainder of this Lease is not sufficient to fully reimburse Lessee on an offset basis, Lessee shall have the right to terminate this Lease upon 30 days written notice to Lessor.

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

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

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

work.

2.6

**Vehicle Parking.** Lessee shall be entitled to use the number of parking spaces specified in Paragraph 1.2(b) on those portions of the Common Areas designated from time to time by Lessor for parking. Lessee shall not use more parking spaces than said number. Said parking spaces shall be used for parking by vehicles no larger than full-size passenger automobiles or pick-up trucks, herein called "Permitted Size Vehicles." Lessor may regulate the loading and unloading of vehicles by adopting Rules and Regulations as provided in Paragraph 2.9. No vehicles other than Permitted Size Vehicles may be parked in the Common Area without the prior written permission of Lessor. In addition:

(a) Lessee shall not permit or allow any vehicles that belong to or are controlled by Lessee or Lessee's employees, suppliers, shippers, customers, contractors or invitees to be loaded, unloaded, or parked in areas other than those designated by Lessor for such activities.

(b) Lessee shall not service or store any vehicles in the Common Areas.  
(c) If Lessee permits or allows any of the prohibited activities described in this Paragraph 2.6, then Lessor shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove or tow away the vehicle involved and charge the cost to Lessee, which cost shall be immediately payable upon demand by Lessor.

2.7

**Common Areas - Definition.** The term "Common Areas" is defined as all areas and facilities outside the Premises and within the exterior boundary line of the Project and interior utility raceways and installations within the Unit that are provided and designated by the Lessor from time to time for the general non-exclusive use of Lessor, Lessee and other tenants of the Project and their respective employees, suppliers, shippers, customers, contractors and invitees, including parking areas, loading and unloading areas, trash areas, roadways, walkways, driveways, landscaped areas.

2.8

**Common Areas - Lessee's Rights.** Lessor grants to Lessee, for the benefit of Lessee and its employees, suppliers, shippers, contractors, customers and invitees, during the term of this Lease, the non-exclusive right to use, in common with others entitled to such use, the Common Areas as they exist from time to time, subject to any rights, powers, and privileges reserved by Lessor under the terms hereof or under the terms of any rules and regulations or restrictions governing the use of the Project. Under no circumstances shall the right herein granted to use the Common Areas be deemed to include the right to store any property, temporarily or permanently, in the Common Areas. Any such storage shall be permitted only by the prior written consent of Lessor or Lessor's designated agent, which consent may be revoked at any time. In the event that any unauthorized storage shall occur then Lessor shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove the property and charge the cost to Lessee, which cost shall be immediately payable upon demand by Lessor.

2.9

**Common Areas - Rules and Regulations.** Lessor or such other person(s) as Lessor may appoint shall have the exclusive control and management of the Common Areas and shall have the right, from time to time, to establish, modify, amend and enforce reasonable rules and regulations ("Rules and Regulations") for the management, safety, care, and cleanliness of the grounds, the parking and unloading of vehicles and the preservation of good order, as well as for the convenience of other occupants or tenants of the Building and the Project and their invitees. Lessee agrees to abide by and conform to all such Rules and Regulations, and shall use its best efforts to cause its employees, suppliers, shippers, customers, contractors and invitees to so abide and conform. Lessor shall not be responsible to Lessee for the non-compliance with said Rules and Regulations by other tenants of the Project.

2.10

**Common Areas - Changes.** Lessor shall have the right, in Lessor's sole discretion, from time to time:

- (a) To make changes to the Common Areas, including, without limitation, changes in the location, size, shape and number of driveways, entrances, parking spaces, parking areas, loading and unloading areas, ingress, egress, direction of traffic, landscaped areas, walkways and utility raceways;
- (b) To close temporarily any of the Common Areas for maintenance purposes so long as reasonable access to the Premises remains available;
- (c) To designate other land outside the boundaries of the Project to be a part of the Common Areas;
- (d) To add additional buildings and improvements to the Common Areas;
- (e) To use the Common Areas while engaged in making additional improvements, repairs or alterations to the Project, or any portion thereof; and
- (f) To do and perform such other acts and make such other changes in, to or with respect to the Common Areas and Project as Lessor may, in the exercise of sound business judgment, deem to be appropriate.

3. Term.

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

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

3.3

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

3.4

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

4. Rent.

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

**4.2 Common Area Operating Expenses.** Lessee shall pay to Lessor during the term hereof, in addition to the Base Rent, Lessee's Share (as specified in Paragraph 1.6) of all Common Area Operating Expenses, as hereinafter defined, during each calendar year of the term of this Lease, in accordance with the following provisions:

(a) "Common Area Operating Expenses" are defined, for purposes of this Lease, as all costs relating to the ownership and operation of the Project, including, but not limited to, the following:

(i) The operation, repair and maintenance, in neat, clean, good order and condition, and if necessary the replacement, of the following:

(aa) The Common Areas and Common Area improvements, including parking areas, loading and unloading areas, trash areas, roadways, parkways, walkways, driveways, landscaped areas, bumpers, irrigation systems, Common Area lighting facilities, fences and gates, elevators, roofs, exterior walls of the buildings, building systems and roof drainage systems.

(bb) Exterior signs and any tenant directories.

(cc) Any fire sprinkler systems.

(dd) All other areas and improvements that are within the exterior boundaries of the Project but outside of the Premises and/or any other space occupied by a tenant.

(ii) The cost of water, gas, electricity and telephone to service the Common Areas and any utilities not separately metered.

(iii) The cost of trash disposal, pest control services, property management, security services, owners' association dues and fees, the cost to repaint the exterior of any structures and the cost of any environmental inspections.

(iv) Reserves set aside for maintenance, repair and/or replacement of Common Area improvements and equipment.

(v) Real Property Taxes (as defined in Paragraph 10).

(vi) The cost of the premiums for the insurance maintained by Lessor pursuant to Paragraph 8.

(vii) Any deductible portion of an insured loss concerning the Building or the Common Areas.

(viii) Auditors', accountants' and attorneys' fees and costs related to the operation, maintenance, repair and replacement of the Project.

(ix) The cost of any capital improvement to the Building or the Project not covered under the provisions of Paragraph 2.3 provided; however, that Lessor shall allocate the cost of any such capital improvement over a 12 year period and Lessee shall not be required to pay more than Lessee's Share of 1/144th of the cost of such capital improvement in any given month.

(x) The cost of any other services to be provided by Lessor that are stated elsewhere in this Lease to be a Common Area Operating Expense.

(b) Any Common Area Operating Expenses and Real Property Taxes that are specifically attributable to the Unit, the Building or to any other building in the Project or to the operation, repair and maintenance thereof, shall be allocated entirely to such Unit, Building, or other building. However, any Common Area Operating Expenses and Real Property Taxes that are not specifically attributable to the Building or to any other building or to the operation, repair and maintenance thereof, shall be equitably allocated by Lessor to all buildings in the Project.

(c) The inclusion of the improvements, facilities and services set forth in Subparagraph 4.2(a) shall not be deemed to impose an obligation upon Lessor to either have said improvements or facilities or to provide those services unless the Project already has the same, Lessor already provides the services, or Lessor has agreed elsewhere in this Lease to provide the same or some of them.

(d) Lessee's Share of Common Area Operating Expenses is payable monthly on the same day as the Base Rent is due hereunder. The amount of such payments shall be based on Lessor's estimate of the annual Common Area Operating Expenses. Within 60 days after written request (but not more than once each year) Lessor shall deliver to Lessee a reasonably detailed statement showing Lessee's Share of the actual Common Area Operating Expenses for the preceding year. If Lessee's payments during such year exceed Lessee's Share, Lessor shall credit the amount of such over-payment against Lessee's future payments. If Lessee's payments during such year were less than Lessee's Share, Lessee shall pay to Lessor the amount of the deficiency within 10 days after delivery by Lessor to Lessee of the statement.

(e) Common Area Operating Expenses shall not include any expenses paid by any tenant directly to third parties, or as to which Lessor is otherwise reimbursed by any third party, other tenant, or insurance proceeds.

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

**5 Security Deposit.** Lessee shall deposit with Lessor upon execution hereof the Security Deposit as security for Lessee's faithful performance of its obligations under this Lease. If Lessee fails to pay Rent, or otherwise Defaults under this Lease, Lessor may use, apply or retain all or any portion of said Security Deposit for the payment of any amount already due Lessor, for Rents which will be due in the future, and/or to reimburse or compensate Lessor for any liability, expense, loss or damage which Lessor may suffer or incur by reason thereof. If Lessor uses or applies all or any portion of the Security Deposit, Lessee shall within 10 days after written request therefor deposit monies with Lessor sufficient to restore said Security Deposit to the full amount required by this Lease. If the Base Rent increases during the term of this Lease, Lessee shall, upon written request from Lessor, deposit additional monies with Lessor so that the total amount of the Security Deposit shall at all times bear the same proportion to the increased Base Rent as the initial Security Deposit bore to the initial Base Rent. Should the Agreed Use be amended to accommodate a material change in the business of Lessee or to accommodate a sublessee or assignee, Lessor shall have the right to increase the Security Deposit to the extent necessary, in Lessor's reasonable judgment, to account for any increased wear and tear that the Premises may suffer as a result thereof. If a change in control of Lessee occurs during this Lease and following such change the financial condition of Lessee is, in Lessor's reasonable judgment, significantly reduced, Lessee shall deposit such additional monies with Lessor as shall be sufficient to cause the Security Deposit to be at a commercially reasonable level based on such change in financial condition. Lessor shall not be required to keep the Security Deposit separate from its general accounts. Within 90 days after the expiration or termination of this Lease, Lessor shall return that portion of the Security Deposit not used or applied by Lessor. Lessor shall upon written request provide Lessee with an accounting showing how that portion of the Security Deposit that was not returned was applied. No part of the Security Deposit shall be considered to be held in trust, to bear interest or to be prepayment for any monies to be

paid by Lessee under this Lease. THE SECURITY DEPOSIT SHALL NOT BE USED BY LESSEE IN LIEU OF PAYMENT OF THE LAST MONTH'S RENT.

6. Use.

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

6.2 Hazardous Substances.

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

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

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

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

(e) Lessor Indemnification. Except as otherwise provided in paragraph 8.7, Lessor and its successors and assigns shall indemnify, defend, reimburse and hold Lessee, its employees and lenders, harmless from and against any and all environmental damages, including the cost of remediation, which are suffered as a direct result of Hazardous Substances on the Premises prior to Lessee taking possession or which are caused by the gross negligence or willful misconduct of Lessor, its agents or employees. Lessor's obligations, as and when required by the Applicable Requirements, shall include, but not be limited to, the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease.

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

(g) Lessor Termination Option. If a Hazardous Substance Condition (see Paragraph 9.1(e)) occurs during the term of this Lease, unless Lessee is legally responsible therefor (in which case Lessee shall make the investigation and remediation thereof required by the Applicable Requirements and this Lease shall continue in full force and effect, but subject to Lessor's rights under Paragraph 6.2(d) and Paragraph 13), Lessor may, at Lessor's option, either (i) investigate and remediate such Hazardous Substance Condition, if required, as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) if the estimated cost to remediate such condition exceeds 12 times the then monthly Base Rent or \$100,000, whichever is greater, give written notice to Lessee, within 30 days after receipt by Lessor of knowledge of the occurrence of such Hazardous Substance Condition, of Lessor's desire to terminate this Lease as of the date 60 days following the date of such notice. In the event Lessor elects to give a termination notice, Lessee may, within 10 days thereafter, give written notice to Lessor of Lessee's commitment to pay the amount by which the cost of the remediation of such Hazardous Substance Condition exceeds an amount equal to 12 times the then monthly Base Rent or \$100,000, whichever is greater. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within 30 days following such commitment. In such event, this Lease shall continue in full force and effect, and Lessor shall proceed to make such remediation as soon as reasonably possible after the required funds are available. If Lessee does not give such notice and provide the required funds or assurance

thereof within the time provided, this Lease shall terminate as of the date specified in Lessor's notice of termination.

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

**6.4 Inspection; Compliance.** Lessor and Lessor's "Lender" (as defined in Paragraph 30) and consultants authorized by Lessor shall have the right to enter into Premises at any time, in the case of an emergency, and otherwise at reasonable times after reasonable notice, for the purpose of inspecting and/or testing the condition of the Premises and/or for verifying compliance by Lessee with this Lease. The cost of any such inspections shall be paid by Lessor, unless a violation of Applicable Requirements, or a Hazardous Substance Condition (see paragraph 9.1) is found to exist or be imminent, or the inspection is requested or ordered by a governmental authority. In such case, Lessee shall upon request reimburse Lessor for the cost of such inspection, so long as such inspection is reasonably related to the violation or contamination. In addition, Lessee shall provide copies of all relevant material safety data sheets (MSDS) to Lessor within 10 days of the receipt of a written request therefore. Lessee acknowledges that any failure on its part to allow such inspections or testing will expose Lessor to risks and potentially cause Lessor to incur costs not contemplated by this Lease, the extent of which will be extremely difficult to ascertain. Accordingly, should the Lessee fail to allow such inspections and/or testing in a timely fashion the Base Rent shall be automatically increased, without any requirement for notice to Lessee, by an amount equal to 10% of the then existing Base Rent or \$100, whichever is greater for the remainder to the Lease. The Parties agree that such increase in Base Rent represents fair and reasonable compensation for the additional risk/costs that Lessor will incur by reason of Lessee's failure to allow such inspection and/or testing. Such increase in Base Rent shall in no event constitute a waiver of Lessee's Default or Breach with respect to such failure nor prevent the exercise of any of the other rights and remedies granted hereunder.

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

### 7.1 Lessee's Obligations.

(a) **In General.** Subject to the provisions of Paragraph 2.2 (Condition), 2.3 (Compliance), 6.3 (Lessee's Compliance with Applicable Requirements), 7.2 (Lessor's Obligations), 9 (Damage or Destruction), and 14 (Condemnation), Lessee shall, at Lessee's sole expense, keep the Premises, Utility Installations (intended for Lessee's exclusive use, no matter where located), and Alterations in good order, condition and repair (whether or not the portion of the Premises requiring repairs, or the means of repairing the same, are reasonably or readily accessible to Lessee, and whether or not the need for such repairs occurs as a result of Lessee's use, any prior use, the elements or the age of such portion of the Premises), including, but not limited to, all equipment or facilities, such as plumbing, HVAC equipment, electrical, lighting facilities, boilers, pressure vessels, fixtures, interior walls, interior surfaces of exterior walls, ceilings, floors, windows, doors, plate glass, and skylights but excluding any items which are the responsibility of Lessor pursuant to Paragraph 7.2. Lessee, in keeping the Premises in good order, condition and repair, shall exercise and perform good maintenance practices, specifically including the procurement and maintenance of the service contracts required by Paragraph 7.1(b) below. Lessee's obligations shall include restorations, replacements or renewals when necessary to keep the Premises and all improvements thereon or a part thereof in good order, condition and state of repair.

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

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

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

**7.2 Lessor's Obligations.** Subject to the provisions of Paragraphs 2.2 (Condition), 2.3 (Compliance), 4.2 (Common Area Operating Expenses), 6 (Use), 7.1 (Lessee's Obligations), 9 (Damage or Destruction) and 14 (Condemnation), Lessor, subject to reimbursement pursuant to Paragraph 4.2, shall keep in good order, condition and repair the foundations, exterior walls, structural condition of interior bearing walls, exterior roof, fire sprinkler system, Common Area fire alarm and/or smoke detection systems, fire hydrants, parking lots, walkways, parkways, driveways, landscaping, fences, signs and utility systems serving the Common Areas and all parts thereof, as well as providing the services for which there is a Common Area Operating Expense pursuant to Paragraph 4.2. Lessor shall not be obligated to paint the exterior or interior surfaces of exterior walls nor shall Lessor be obligated to maintain, repair or replace windows, doors or plate glass of the Premises. Lessee expressly waives the benefit of any statute now or hereafter in effect to the extent it is inconsistent with the terms of this Lease.

### 7.3 Utility Installations; Trade Fixtures; Alterations.

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

(b) **Consent.** Lessee shall not make any Alterations or Utility Installations to the Premises without Lessor's prior written consent. Lessee may, however, make non-structural Alterations or Utility Installations to the interior of the Premises (excluding the roof) without such consent but upon notice to Lessor, as long as they are not visible from the outside, do not involve puncturing, relocating or removing the roof or any existing walls, will not affect the electrical, plumbing, HVAC, and/or life safety systems, do not trigger the requirement for additional modifications and/or

improvements to the Premises resulting from Applicable Requirements, such as compliance with Title 24, and/or life safety systems, and the cumulative cost thereof during this Lease as extended does not exceed a sum equal to 3 month's Base Rent in the aggregate or a sum equal to one month's Base Rent in any one year. Notwithstanding the foregoing, Lessee shall not make or permit any roof penetrations and/or install anything on the roof without the prior written approval of Lessor. Lessor may, as a precondition to granting such approval, require Lessee to utilize a contractor chosen and/or approved by Lessor. Any Alterations or Utility Installations that Lessee shall desire to make and which require the consent of the Lessor shall be presented to Lessor in written form with detailed plans. Consent shall be deemed conditioned upon Lessee's: (i) acquiring all applicable governmental permits, (ii) furnishing Lessor with copies of both the permits and the plans and specifications prior to commencement of the work, and (iii) compliance with all conditions of said permits and other Applicable Requirements in a prompt and expeditious manner. Any Alterations or Utility Installations shall be performed in a workmanlike manner with good and sufficient materials. Lessee shall promptly upon completion furnish Lessor with as-built plans and specifications. For work which costs an amount in excess of one month's Base Rent, Lessor may condition its consent upon Lessee providing a lien and completion bond in an amount equal to 150% of the estimated cost of such Alteration or Utility Installation and/or upon Lessee's posting an additional Security Deposit with Lessor.

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

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

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

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

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

8. **Insurance; Indemnity.**

8.1 **Payment of Premiums.** The cost of the premiums for the insurance policies required to be carried by Lessor, pursuant to Paragraphs 8.2(b), 8.3(a) and 8.3(b), shall be a Common Area Operating Expense. Premiums for policy periods commencing prior to, or extending beyond, the term of this Lease shall be prorated to coincide with the corresponding Start Date or Expiration Date.

8.2 **Liability Insurance.**

(a) **Carried by Lessee.** Lessee shall obtain and keep in force a Commercial General Liability policy of insurance protecting Lessee and Lessor as an additional insured against claims for bodily injury, personal injury and property damage based upon or arising out of the ownership, use, occupancy or maintenance of the Premises and all areas appurtenant thereto. Such insurance shall be on an occurrence basis providing single limit coverage in an amount not less than \$1,000,000 per occurrence with an annual aggregate of not less than \$2,000,000. Lessee shall add Lessor as an additional insured by means of an endorsement at least as broad as the Insurance Service Organization's "Additional Insured-Manager or Lessor of Premises" Endorsement. The policy shall not contain any intra-insured exclusions as between insured persons or organizations, but shall include coverage for liability assumed under this Lease as an "insured contract" for the performance of Lessee's indemnity obligations under this Lease. The limits of said insurance shall not, however, limit the liability of Lessee nor relieve Lessee of any obligation hereunder. Lessee shall provide an endorsement on its liability policy(ies) which provides that its insurance shall be primary to and not contributory with any similar insurance carried by Lessor, whose insurance shall be considered excess insurance only.

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

8.3 **Property Insurance - Building, Improvements and Rental Value.**

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

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

(c) **Adjacent Premises.** Lessee shall pay for any increase in the premiums for the property insurance of the Building and for the Common Areas or other buildings in the Project if said increase is caused by Lessee's acts, omissions, use or occupancy of the Premises.

(d) **Lessee's Improvements.** Since Lessor is the Insuring Party, Lessor shall not be required to insure Lessee Owned Alterations and Utility Installations unless the item in question has become the property of Lessor under the terms of this Lease.

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

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

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

(c) **Worker's Compensation Insurance.** Lessee shall obtain and maintain Worker's Compensation Insurance in such amount as may be required by Applicable Requirements. Such policy shall include a 'Waiver of Subrogation' endorsement. Lessee shall provide Lessor with a copy of such endorsement along with the certificate of insurance or copy of the policy required by paragraph 8.5.

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

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

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

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

**8.8 Exemption of Lessor and its Agents from Liability.** Notwithstanding the negligence or breach of this Lease by Lessor or its agents, neither Lessor nor its agents shall be liable under any circumstances for: (i) injury or damage to the person or goods, wares, merchandise or other property of Lessee, Lessee's employees, contractors, invitees, customers, or any other person in or about the Premises, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, indoor air quality, the presence of mold or from the breakage, leakage, obstruction or other defects of pipes, fire sprinklers, wires, appliances, plumbing, HVAC or lighting fixtures, or from any other cause, whether the said injury or damage results from conditions arising upon the Premises or upon other portions of the Building, or from other sources or places, (ii) any damages arising from any act or neglect of any other tenant of Lessor or from the failure of Lessor or its agents to enforce the provisions of any other lease in the Project, or (iii) injury to Lessee's business or for any loss of income or profit therefrom. Instead, it is intended that Lessee's sole recourse in the event of such damages or injury be to file a claim on the insurance policy(ies) that Lessee is required to maintain pursuant to the provisions of paragraph 8.

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

**9. Damage or Destruction.**

**9.1 Definitions.**

(a) **"Premises Partial Damage"** shall mean damage or destruction to the improvements on the Premises, other than Lessee Owned Alterations and Utility Installations, which can reasonably be repaired in 3 months or less from the date of the damage or destruction, and the cost thereof does not exceed a sum equal to 6 month's Base Rent. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

(b) **"Premises Total Destruction"** shall mean damage or destruction to the improvements on the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which cannot reasonably be repaired in 3 months or less from the date of the damage or destruction and/or the cost thereof exceeds a sum equal to 6 month's Base Rent. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

(c) **"Insured Loss"** shall mean damage or destruction to improvements on the Premises, other than Lessee Owned

Alterations and Utility Installations and Trade Fixtures, which was caused by an event required to be covered by the insurance described in Paragraph 8.3(a), irrespective of any deductible amounts or coverage limits involved.

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

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

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

9.3 **Partial Damage - Uninsured Loss.** If a Premises Partial Damage that is not an Insured Loss occurs, unless caused by a negligent or willful act of Lessee (in which event Lessee shall make the repairs at Lessee's expense), Lessor may either: (i) repair such damage as soon as reasonably possible at Lessor's expense (subject to reimbursement pursuant to Paragraph 4.2), in which event this Lease shall continue in full force and effect, or (ii) terminate this Lease by giving written notice to Lessee within 30 days after receipt by Lessor of knowledge of the occurrence of such damage. Such termination shall be effective 60 days following the date of such notice. In the event Lessor elects to terminate this Lease, Lessee shall have the right within 10 days after receipt of the termination notice to give written notice to Lessor of Lessee's commitment to pay for the repair of such damage without reimbursement from Lessor. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within 30 days after making such commitment. In such event this Lease shall continue in full force and effect, and Lessor shall proceed to make such repairs as soon as reasonably possible after the required funds are available. If Lessee does not make the required commitment, this Lease shall terminate as of the date specified in the termination notice.

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

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

#### 9.6 **Abatement of Rent; Lessee's Remedies.**

(a) **Abatement.** In the event of Premises Partial Damage or Premises Total Destruction or a Hazardous Substance Condition for which Lessee is not responsible under this Lease, the Rent payable by Lessee for the period required for the repair, remediation or restoration of such damage shall be abated in proportion to the degree to which Lessee's use of the Premises is impaired, but not to exceed the proceeds received from the Rental Value insurance. All other obligations of Lessee hereunder shall be performed by Lessee, and Lessor shall have no liability for any such damage, destruction, remediation, repair or restoration except as provided herein.

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

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

#### 10. **Real Property Taxes.**

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

based upon the number of days which such calendar year and tax year have in common.

10.2 **Payment of Taxes** Except as otherwise provided in Paragraph 10.3, Lessor shall pay the Real Property Taxes applicable to the Project, and said payments shall be included in the calculation of Common Area Operating Expenses in accordance with the provisions of Paragraph 4.2.

10.3 **Additional Improvements.** Common Area Operating Expenses shall not include Real Property Taxes specified in the tax assessor's records and work sheets as being caused by additional improvements placed upon the Project by other lessees or by Lessor for the exclusive enjoyment of such other lessees. Notwithstanding Paragraph 10.2 hereof, Lessee shall, however, pay to Lessor at the time Common Area Operating Expenses are payable under Paragraph 4.2, the entirety of any increase in Real Property Taxes if assessed solely by reason of Alterations, Trade Fixtures or Utility Installations placed upon the Premises by Lessee or at Lessee's request or by reason of any alterations or improvements to the Premises made by Lessor subsequent to the execution of this Lease by the Parties.

10.4 **Joint Assessment.** If the Building is not separately assessed, Real Property Taxes allocated to the Building shall be an equitable proportion of the Real Property Taxes for all of the land and improvements included within the tax parcel assessed, such proportion to be determined by Lessor from the respective valuations assigned in the assessor's work sheets or such other information as may be reasonably available. Lessor's reasonable determination thereof, in good faith, shall be conclusive.

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

11. **Utilities and Services.** Lessee shall pay for all water, gas, heat, light, power, telephone, trash disposal and other utilities and services supplied to the Premises, together with any taxes thereon. Notwithstanding the provisions of Paragraph 4.2, if at any time in Lessor's sole judgment, Lessor determines that Lessee is using a disproportionate amount of water, electricity or other commonly metered utilities, or that Lessee is generating such a large volume of trash as to require an increase in the size of the trash receptacle and/or an increase in the number of times per month that it is emptied, then Lessor may increase Lessee's Base Rent by an amount equal to such increased costs. There shall be no abatement of Rent and Lessor shall not be liable in any respect whatsoever for the inadequacy, stoppage, interruption or discontinuance of any utility or service due to riot, strike, labor dispute, breakdown, accident, repair or other cause beyond Lessor's reasonable control or in cooperation with governmental request or directions.

12. **Assignment and Subletting.**

12.1 **Lessor's Consent Required.**

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

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

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

(d) An assignment or subletting without consent shall, at Lessor's option, be a Default curable after notice per Paragraph 13.1(d), or a noncurable Breach without the necessity of any notice and grace period. If Lessor elects to treat such unapproved assignment or subletting as a noncurable Breach, Lessor may either: (i) terminate this Lease, or (ii) upon 30 days written notice, increase the monthly Base Rent to 110% of the Base Rent then in effect. Further, in the event of such Breach and rental adjustment, (i) the purchase price of any option to purchase the Premises held by Lessee shall be subject to similar adjustment to 110% of the price previously in effect, and (ii) all fixed and non-fixed rental adjustments scheduled during the remainder of the Lease term shall be increased to 110% of the scheduled adjusted rent.

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

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

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

12.2 **Terms and Conditions Applicable to Assignment and Subletting.**

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

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

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

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

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

(f) Any assignee of, or sublessee under, this Lease shall, by reason of accepting such assignment, entering into such sublease, or entering into possession of the Premises or any portion thereof, be deemed to have assumed and agreed to conform and comply with

each and every term, covenant, condition and obligation herein to be observed or performed by Lessee during the term of said assignment or sublease, other than such obligations as are contrary to or inconsistent with provisions of an assignment or sublease to which Lessor has specifically consented to in writing.

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

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

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

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

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

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

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

### 13. Default; Breach; Remedies.

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

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

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

(c) The failure of Lessee to allow Lessor and/or its agents access to the Premises or the commission of waste, act or acts constituting public or private nuisance, and/or an illegal activity on the Premises by Lessee, where such actions continue for a period of 3 business days following written notice to Lessee. In the event that Lessee commits waste, a nuisance or an illegal activity a second time then, the Lessor may elect to treat such conduct as a non-curable Breach rather than a Default.

(d) The failure by Lessee to provide (i) reasonable written evidence of compliance with Applicable Requirements, (ii) the service contracts, (iii) the rescission of an unauthorized assignment or subletting, (iv) an Estoppel Certificate or financial statements, (v) a requested subordination, (vi) evidence concerning any guarantor and/or Guarantor, (vii) any document requested under Paragraph 41, (viii) material data safety sheets (MSDS), or (ix) any other documentation or information which Lessor may reasonably require of Lessee under the terms of this Lease, where any such failure continues for a period of 10 days following written notice to Lessee.

(e) A Default by Lessee as to the terms, covenants, conditions or provisions of this Lease, or of the rules adopted under Paragraph 2.9 hereof, other than those described in subparagraphs 13.1(a), (b), (c) or (d), above, where such Default continues for a period of 30 days after written notice; provided, however, that if the nature of Lessee's Default is such that more than 30 days are reasonably required for its cure, then it shall not be deemed to be a Breach if Lessee commences such cure within said 30 day period and thereafter diligently prosecutes such cure to completion.

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

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

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

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

(a) Terminate Lessee's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Lessee shall immediately surrender possession to Lessor. In such event Lessor shall be entitled to recover from Lessee: (i) the unpaid Rent which

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

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

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

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

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

13.5 **Interest.** Any monetary payment due Lessor hereunder, other than late charges, not received by Lessor, when due shall bear interest from the 31st day after it was due. The interest ("Interest") charged shall be computed at the rate of 10% per annum but shall not exceed the maximum rate allowed by law. Interest is payable in addition to the potential late charge provided for in Paragraph 13.4.

13.6 **Breach by Lessor.**

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

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

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

15. **Brokerage Fees.**

**15.1 Additional Commission.** In addition to the payments owed pursuant to Paragraph 1.10 above, Lessor agrees that: (a) if Lessee exercises any Option, (b) if Lessee or anyone affiliated with Lessee acquires from Lessor any rights to the Premises or other premises owned by Lessor and located within the Project, (c) if Lessee remains in possession of the Premises, with the consent of Lessor, after the expiration of this Lease, or (d) if Base Rent is increased, whether by agreement or operation of an escalation clause herein, then, Lessor shall pay Brokers a fee in accordance with the fee schedule of the Brokers in effect at the time the Lease was executed.

**15.2 Assumption of Obligations.** Any buyer or transferee of Lessor's interest in this Lease shall be deemed to have assumed Lessor's obligation hereunder. Brokers shall be third party beneficiaries of the provisions of Paragraphs 1.10, 15, 22 and 31. If Lessor fails to pay to Brokers any amounts due as and for brokerage fees pertaining to this Lease when due, then such amounts shall accrue interest. In addition, if Lessor fails to pay any amounts to Lessee's Broker when due, Lessee's Broker may send written notice to Lessor and Lessee of such failure and if Lessor fails to pay such amounts within 10 days after said notice, Lessee shall pay said monies to its Broker and offset such amounts against Rent. In addition, Lessee's Broker shall be deemed to be a third party beneficiary of any commission agreement entered into by and/or between Lessor and Lessor's Broker for the limited purpose of collecting any brokerage fee owed.

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

**16. Estoppel Certificates.**

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

(b) If the Responding Party shall fail to execute or deliver the Estoppel Certificate within such 10 day period, the Requesting Party may execute an Estoppel Certificate stating that: (i) the Lease is in full force and effect without modification except as may be represented by the Requesting Party, (ii) there are no uncured defaults in the Requesting Party's performance, and (iii) if Lessor is the Requesting Party, not more than one month's rent has been paid in advance. Prospective purchasers and encumbrancers may rely upon the Requesting Party's Estoppel Certificate, and the Responding Party shall be estopped from denying the truth of the facts contained in said Certificate. In addition, Lessee acknowledges that any failure on its part to provide such an Estoppel Certificate will expose Lessor to risks and potentially cause Lessor to incur costs not contemplated by this Lease, the extent of which will be extremely difficult to ascertain. Accordingly, should the Lessee fail to execute and/or deliver a requested Estoppel Certificate in a timely fashion the monthly Base Rent shall be automatically increased, without any requirement for notice to Lessee, by an amount equal to 10% of the then existing Base Rent or \$100, whichever is greater for remainder of the Lease. The Parties agree that such increase in Base Rent represents fair and reasonable compensation for the additional risk/costs that Lessor will incur by reason of Lessee's failure to provide the Estoppel Certificate. Such increase in Base Rent shall in no event constitute a waiver of Lessee's Default or Breach with respect to the failure to provide the Estoppel Certificate nor prevent the exercise of any of the other rights and remedies granted hereunder.

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

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

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

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

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

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

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

**23. Notices.**

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

**23.2 Date of Notice.** Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, the postmark thereon. If sent by regular mail the notice shall be deemed given 72 hours after the same is addressed as required herein and mailed with postage prepaid. Notices delivered by United States Express Mail or overnight courier that guarantees next day delivery shall be deemed given 24 hours after delivery of the same to the Postal Service or courier. Notices delivered by hand, or

transmitted by facsimile transmission or by email shall be deemed delivered upon actual receipt. If notice is received on a Saturday, Sunday or legal holiday, it shall be deemed received on the next business day.

24. **Waivers.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30.2 **Attornment.** In the event that Lessor transfers title to the Premises, or the Premises are acquired by another upon the foreclosure or termination of a Security Device to which this Lease is subordinated (i) Lessee shall, subject to the non-disturbance provisions of Paragraph 30.3, attorn to such new owner, and upon request, enter into a new lease, containing all of the terms and provisions of this Lease, with such new owner for

the remainder of the term hereof, or, at the election of the new owner, this Lease will automatically become a new lease between Lessee and such new owner, and (ii) Lessor shall thereafter be relieved of any further obligations hereunder and such new owner shall assume all of Lessor's obligations, except that such new owner shall not: (a) be liable for any act or omission of any prior lessor or with respect to events occurring prior to acquisition of ownership; (b) be subject to any offsets or defenses which Lessee might have against any prior lessor, (c) be bound by prepayment of more than one month's rent, or (d) be liable for the return of any security deposit paid to any prior lessor which was not paid or credited to such new owner.

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

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

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

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

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

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

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

36. **Consents.** All requests for consent shall be in writing. Except as otherwise provided herein, wherever in this Lease the consent of a Party is required to an act by or for the other Party, such consent shall not be unreasonably withheld or delayed. Lessor's actual reasonable costs and expenses (including but not limited to architects', attorneys', engineers' and other consultants' fees) incurred in the consideration of, or response to, a request by Lessee for any Lessor consent, including but not limited to consents to an assignment, a subletting or the presence or use of a Hazardous Substance, shall be paid by Lessee upon receipt of an invoice and supporting documentation therefor. Lessor's consent to any act, assignment or subletting shall not constitute an acknowledgment that no Default or Breach by Lessee of this Lease exists, nor shall such consent be deemed a waiver of any then existing Default or Breach, except as may be otherwise specifically stated in writing by Lessor at the time of such consent. The failure to specify herein any particular condition to Lessor's consent shall not preclude the imposition by Lessor at the time of consent of such further or other conditions as are then reasonable with reference to the particular matter for which consent is being given. In the event that either Party disagrees with any determination made by the other hereunder and reasonably requests the reasons for such determination, the determining party shall furnish its reasons in writing and in reasonable detail within 10 business days following such request.

37. **Guarantor.**

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

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

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

39. **Options.** If Lessee is granted any option, as defined below, then the following provisions shall apply.

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

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

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

39.4 **Effect of Default on Options.**

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

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

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

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

41. **Reservations.** Lessor reserves the right: (i) to grant, without the consent or joinder of Lessee, such easements, rights and dedications that Lessor deems necessary, (ii) to cause the recording of parcel maps and restrictions, and (iii) to create and/or install new utility raceways, so long as such easements, rights, dedications, maps, restrictions, and utility raceways do not unreasonably interfere with the use of the Premises by Lessee. Lessee agrees to sign any documents reasonably requested by Lessor to effectuate such rights.

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

43. **Authority; Multiple Parties; Execution.**

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

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

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

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

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

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

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

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

49. **Accessibility; Americans with Disabilities Act.**

(a) The Premises  have not undergone an inspection by a Certified Access Specialist (CASp).  have undergone an inspection by a Certified Access Specialist (CASp) and it was determined that the Premises met all applicable construction-related accessibility standards pursuant to California Civil Code §§55.51 et seq.  have undergone an inspection by a Certified Access Specialist (CASp) and it was determined that the Premises did not meet all applicable construction-related accessibility standards pursuant to California Civil Code §55.51 et seq.

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

50. This Standard Industrial/Commercial Multi-Tenant Lease-Net, has been prepared by Lee & Associates Commercial Real Estate Services, Inc. - South Bay dba Lee & Associates Los Angeles - Long Beach, Inc. at the request of Lessor and Lessee. This Lessor and Lessee agree to indemnify and hold harmless Lee & Associates Commercial Real Estate Services, Inc. - South Bay dba Lee & Associates Los Angeles - Long Beach, Inc., its respective Agents and Employees, for any liability of loss, including without limitation, attorney fees and costs that may be occasioned as a result of completing this Standard Industrial/Commercial Multi-Tenant Lease-Net. Lessor and Lessee acknowledge being advised by Lee & Associates Commercial Real Estate Services, Inc. - South Bay dba Lee & Associates Los Angeles - Long Beach, Inc. to have this Standard Industrial/Commercial Multi-Tenant Lease-Net reviewed by their respective Attorneys, Accountants, or Insurance Agents for professional advice. The information contained herein has been obtained from sources believed reliable, but not guaranteed. While we do not doubt its accuracy, we have not verified it and make no guarantee, warranty or representation about it. Any projections, opinions, assumptions or estimates used are for example only and do not represent the current or future performance of the property. Lessee should conduct a careful, independent investigation of the property during their due diligence to determine to their satisfaction the accuracy and completeness of the information contained herein.

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

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

1. SEEK ADVICE OF COUNSEL AS TO THE LEGAL AND TAX CONSEQUENCES OF THIS LEASE.
2. RETAIN APPROPRIATE CONSULTANTS TO REVIEW AND INVESTIGATE THE CONDITION OF THE PREMISES. SAID INVESTIGATION SHOULD INCLUDE BUT NOT BE LIMITED TO: THE POSSIBLE PRESENCE OF HAZARDOUS SUBSTANCES, THE ZONING OF

THE PREMISES, THE STRUCTURAL INTEGRITY, THE CONDITION OF THE ROOF AND OPERATING SYSTEMS, COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT AND THE SUITABILITY OF THE PREMISES FOR LESSEE'S INTENDED USE.

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

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

Executed at: \_\_\_\_\_ Executed at: \_\_\_\_\_  
On: \_\_\_\_\_ On: \_\_\_\_\_

By LESSOR:  
2H Property 3060, LLC By LESSEE:  
Khaled A. Tawansy, MD  
Children's Retina Institute

By: \_\_\_\_\_ By: \_\_\_\_\_  
Name Printed: Sean Hitchcock Name Printed: Khaled A. Tawansy  
Title: \_\_\_\_\_ Title: \_\_\_\_\_

By: \_\_\_\_\_ By: \_\_\_\_\_  
Name Printed: \_\_\_\_\_ Name Printed: \_\_\_\_\_  
Title: \_\_\_\_\_ Title: \_\_\_\_\_  
Address: 2653 Walnut Ave. Address: 3200 Long Beach Blvd., Unit A  
Signal Hill, CA 90755 Long Beach, CA 90807

Telephone: (562) 424-5567 Telephone: (323) 257-3937  
Facsimile: ( ) Facsimile: ( )  
Email: \_\_\_\_\_ Email: \_\_\_\_\_  
Email: \_\_\_\_\_ Email: \_\_\_\_\_  
Federal ID No. \_\_\_\_\_ Federal ID No. \_\_\_\_\_

BROKER: \_\_\_\_\_ BROKER: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_ Attn: \_\_\_\_\_  
Title: \_\_\_\_\_ Title: \_\_\_\_\_  
Address: \_\_\_\_\_ Address: \_\_\_\_\_  
\_\_\_\_\_  
Telephone: ( ) Telephone: ( )  
Facsimile: ( ) Facsimile: ( )  
Email: \_\_\_\_\_ Email: \_\_\_\_\_  
Federal ID No. \_\_\_\_\_ Federal ID No. \_\_\_\_\_  
Broker/Agent BRE License #: \_\_\_\_\_ Broker/Agent BRE License #: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

NOTICE: These forms are often modified to meet changing requirements of law and industry needs. Always write or call to make sure you are utilizing the most current form: AIR Commercial Real Estate Association, 500 N Brand Blvd, Suite 900, Glendale, CA 91203.  
Telephone No. (213) 687-8777. Fax No.: (213) 687-8616.

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# EXHIBIT “M”

**SUMMONS  
(CITACION JUDICIAL)**

**UNLAWFUL DETAINER—EVICTION  
(RETENCIÓN ILÍCITA DE UN INMUEBLE—DESALOJO)**

**NOTICE TO DEFENDANT:** Khaled A. Tawansy, M.D., Children's Retina  
**(AVISO AL DEMANDADO):** Institute, Renaissance Surgical Holdings, LLC

**YOU ARE BEING SUED BY PLAINTIFF:** 2H Property 3060, LLC  
**(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

CONFORMED COPY  
ORIGINAL FILED  
Superior Court of California  
County of Los Angeles

DEC 22 2016

Sherri R. Carter, Executive Officer/Clerk  
By [Signature], Deputy  
D. James

You have 5 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. (To calculate the five days, count Saturday and Sunday, but do not count other court holidays. If the last day falls on a Saturday, Sunday, or a court holiday then you have the next court day to file a written response.) A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

Tiene 5 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. (Para calcular los cinco días, cuente los sábados y los domingos pero no los otros días feriados de la corte. Si el último día cae en sábado o domingo, o en un día en que la corte esté cerrada, tiene hasta el próximo día de corte para presentar una respuesta por escrito). Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

- The name and address of the court is: Los Angeles County Superior Court -  
(El nombre y dirección de la corte es): Governor George Deukmejian Courthouse  
275 Magnolia Ave., Long Beach, CA 90802

CASE NUMBER:  
(Número del caso): N C 0 6 0 9 4 9

- The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is: LAWRENCE R. CAGNEY  
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):  
KRIEGER & KRIEGER, A Law Corporation  
249 E. Ocean Boulevard, Suite 750, LONG BEACH, CA 90802  
562-901-2500
- (Must be answered in all cases) An unlawful detainer assistant (Bus. & Prof. Code, §§ 6400-6415)  did not  did for compensation give advice or assistance with this form. (If plaintiff has received any help or advice for pay from an unlawful detainer assistant, complete item 6 on the next page.)

Date: **Sherri R. Carter DEC 22 2016**

Clerk, by  
(Secretario) \_\_\_\_\_

, Deputy  
(Adjunto) \_\_\_\_\_

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación usa el formulario Proof of Service of Summons, (POS-010)).

- NOTICE TO THE PERSON SERVED: You are served

- as an individual defendant.
- as the person sued under the fictitious name of (specify): \_\_\_\_\_
- as an occupant
- on behalf of (specify): K.A. Tawansy, M.D., Children's Retina Inst., Renaissance Surg. Holdings, LLC  
under:  CCP 416.10 (corporation)  CCP 416.60 (minor)  
 CCP 416.20 (defunct corporation)  CCP 416.70 (conservatee)  
 CCP 416.40 (association or partnership)  CCP 416.90 (authorized person)  
 CCP 415.46 (occupant)  other (specify): \_\_\_\_\_

- by personal delivery on (date): \_\_\_\_\_

PLAINTIFF (Name): 2H Property 3060, LLC	CASE NUMBER:
DEFENDANT (Name): Khaled A. Tawansy, M.D., Children's Retina Institute,	

6. **Unlawful detainer assistant (complete if plaintiff has received any help or advice for pay from an unlawful detainer assistant):**

- a. Assistant's name:
- b. Telephone no.:
- c. Street address, city, and zip:
  
- d. County of registration:
- e. Registration no.:
- f. Registration expires on (date):

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):

LAWRENCE R. CAGNEY  
**KRIEGER & KRIEGER, A Law Corporation**  
 249 E. Ocean Boulevard, Suite 750,  
 LONG BEACH, CA 90802

SBN: 141845

TELEPHONE NO.: 562-901-2500

FAX NO. (Optional): 562-901-2522

E-MAIL ADDRESS (Optional): lrc@kriegerlaw.com

ATTORNEY FOR (Name): Plaintiff 2H Construction, Inc.

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**

STREET ADDRESS: 275 Magnolia Ave., Long Beach, CA 90802

MAILING ADDRESS: 275 Magnolia Ave.

CITY AND ZIP CODE: Long Beach 90802

BRANCH NAME: Governor George Deukmejian Courthouse

PLAINTIFF: 2H Property 3060, LLC

DEFENDANT: Khaled A. Tawansy, M.D., Children's Retina Institute, Renaissance Surgical Holdings, LLC.

 DOES 1 TO 10**COMPLAINT — UNLAWFUL DETAINER\*** COMPLAINT  AMENDED COMPLAINT (Amendment Number): \_\_\_\_\_

FOR COURT USE ONLY

**CONFORMED COPY**  
**ORIGINAL FILED**  
 Superior Court of California  
 County of Los Angeles

DEC 22 2016

Sherri R. Carter, Executive Officer/Clerk

By ~~Deputy Clerk~~, Deputy**CASE MANAGEMENT REVIEW**

MAY 22 2017

IN DEPARTMENT 27

CASE NUMBER:

**N C 0 6 0 9 4 9****Jurisdiction (check all that apply):** ACTION IS A LIMITED CIVIL CASEAmount demanded  does not exceed \$10,000 exceeds \$10,000 but does not exceed \$25,000 ACTION IS AN UNLIMITED CIVIL CASE (amount demanded exceeds \$25,000) ACTION IS RECLASSIFIED by this amended complaint or cross-complaint (check all that apply): from unlawful detainer to general unlimited civil (possession not in issue)  from limited to unlimited from unlawful detainer to general limited civil (possession not in issue)  from unlimited to limited

1. PLAINTIFF (name each): 2H Property 3060, LLC

alleges causes of action against DEFENDANT (name each): Khaled A. Tawansy, M.D., Children's Retina Institute, and Renaissance Surgical Holdings, LLC

2. a. Plaintiff is (1)  an individual over the age of 18 years. (4)  a partnership.  
(2)  a public agency. (5)  a corporation.  
(3)  other (specify): California Limited Liability Companyb.  Plaintiff has complied with the fictitious business name laws and is doing business under the fictitious name of (specify):3. Defendant named above is in possession of the premises located at (street address, apt. no., city, zip code, and county):  
3200 Long Beach Boulevard, Long Beach, CA 908074. Plaintiff's interest in the premises is  as owner  other (specify):

5. The true names and capacities of defendants sued as Does are unknown to plaintiff.

6. a. On or about (date): 6/1/2015 defendant (name each): Khaled A. Tawansy, M.D./Children's Retina Institute

(1) agreed to rent the premises as a  month-to-month tenancy  other tenancy (specify): Fixed Term of One Year  
(2) agreed to pay rent of \$15,000 payable  monthly  other (specify frequency):  
(3) agreed to pay rent on the  first of the month  other day (specify):b. This  written  oral agreement was made with(1)  plaintiff. (3)  plaintiff's predecessor in interest.  
(2)  plaintiff's agent. (4)  other (specify):

\* NOTE: Do not use this form for evictions after sale (Code Civ. Proc., § 1161a).

Page 1 of 3

PLAINTIFF (Name): 2H Property 3060, LLC	CASE NUMBER:
DEFENDANT (Name): Khaled A. Tawansy, M.D., Children's Retina Institute, Renaissance	N C 0 6 0 9 4 9

6. c.  The defendants not named in item 6a are

- (1)  subtenants.
- (2)  assignees.
- (3)  other (specify):

d.  The agreement was later changed as follows (specify):

e.  A copy of the written agreement, including any addenda or attachments that form the basis of this complaint, is attached and labeled Exhibit 1. (Required for residential property, unless item 6f is checked. See Code Civ. Proc., § 1166.)

f.  (For residential property) A copy of the written agreement is not attached because (specify reason):

- (1)  the written agreement is not in the possession of the landlord or the landlord's employees or agents.
- (2)  this action is solely for nonpayment of rent (Code Civ. Proc., § 1161(2)).

7.  a. Defendant (name each): Khaled A. Tawansy, M.D., Children's Retina Institute, and Renaissance Surgical Holdings, LLC

was served the following notice on the same date and in the same manner:

- |   |                                  |                              |   |
|---|----------------------------------|------------------------------|---|
| (1) <input type="checkbox"/>            | 3-day notice to pay rent or quit | (4) <input type="checkbox"/> | 3-day notice to perform covenants or quit |
| (2) <input checked="" type="checkbox"/> | 30-day notice to quit            | (5) <input type="checkbox"/> | 3-day notice to quit                      |
| (3) <input type="checkbox"/>            | 60-day notice to quit            | (6) <input type="checkbox"/> | Other (specify):                          |

b. (1) On (date): December 18, 2016 the period stated in the notice expired at the end of the day.

(2) Defendants failed to comply with the requirements of the notice by that date.

c. All facts stated in the notice are true.

d.  The notice included an election of forfeiture.

e.  A copy of the notice is attached and labeled Exhibit 2. (Required for residential property. See Code Civ. Proc., § 1166.)

f.  One or more defendants were served (1) with a different notice, (2) on a different date, or (3) in a different manner, as stated in Attachment 8c. (Check item 8c and attach a statement providing the information required by items 7a-e and 8 for each defendant.)

8. a.  The notice in item 7a was served on the defendant named in item 7a as follows:

- (1)  by personally handing a copy to defendant on (date):
- (2)  by leaving a copy with (name or description):

a person of suitable age and discretion, on (date): at defendant's  
 residence  business AND mailing a copy to defendant at defendant's place of residence on (date): because defendant cannot be found at defendant's residence or usual place of business.

(3)  by posting a copy on the premises on (date): November 18, 2016  AND giving a copy to a person found residing at the premises AND mailing a copy to defendant at the premises on (date): November 18, 2016

(a)  because defendant's residence and usual place of business cannot be ascertained OR  
(b)  because no person of suitable age or discretion can be found there.

(4)  (Not for 3-day notice; see Civil Code, § 1946 before using) by sending a copy by certified or registered mail addressed to defendant on (date):

(5)  (Not for residential tenancies; see Civil Code, § 1953 before using) in the manner specified in a written commercial lease between the parties.

b.  (Name):

was served on behalf of all defendants who signed a joint written rental agreement.

c.  Information about service of notice on the defendants alleged in item 7f is stated in Attachment 8c.

d.  Proof of service of the notice in item 7a is attached and labeled Exhibit 3.

PLAINTIFF (Name): 2H Property 3060, LLC	CASE NUMBER: <b>N C O 6 0 9 4 9</b>
DEFENDANT (Name): Khaled A. Tawansy, M.D., Children's Retina Institute, Renaissance	

9.  Plaintiff demands possession from each defendant because of expiration of a fixed-term lease.
10.  At the time the 3-day notice to pay rent or quit was served, the amount of rent due was \$
11.  The fair rental value of the premises is \$ 500 per day.
12.  Defendant's continued possession is malicious, and plaintiff is entitled to statutory damages under Code of Civil Procedure section 1174(b). (*State specific facts supporting a claim up to \$600 in Attachment 12.*)
13.  A written agreement between the parties provides for attorney fees.
14.  Defendant's tenancy is subject to the local rent control or eviction control ordinance of (city or county, title of ordinance, and date of passage):

Plaintiff has met all applicable requirements of the ordinances.

15.  Other allegations are stated in Attachment 15.
16. Plaintiff accepts the jurisdictional limit, if any, of the court.

**17. PLAINTIFF REQUESTS**

- |   |  |
|---|--|
| a. possession of the premises.                                    | f. <input checked="" type="checkbox"/> damages at the rate stated in item 11 from<br>(date): 12/22/16 for each day that defendants remain in possession through entry of judgment. |
| b. costs incurred in this proceeding:                             | g. <input checked="" type="checkbox"/> statutory damages up to \$600 for the conduct alleged in item 12.   |
| c. <input checked="" type="checkbox"/> past-due rent of \$ 11,000 | h. <input type="checkbox"/> other (specify):   |
| d. <input checked="" type="checkbox"/> reasonable attorney fees.  |  |
| e. <input type="checkbox"/> forfeiture of the agreement.          |  |

18.  Number of pages attached (specify): \_\_\_\_\_

**UNLAWFUL DETAINER ASSISTANT (Bus. & Prof. Code, §§ 6400–6415)**

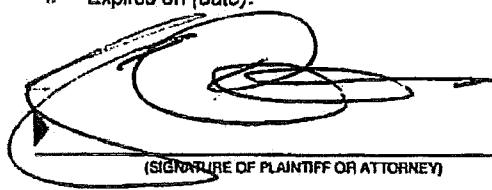
19. (*Complete in all cases.*) An unlawful detainer assistant  did not  did for compensation give advice or assistance with this form. (*If plaintiff has received any help or advice for pay from an unlawful detainer assistant, state:*)

- |  |                            |
|--|----------------------------|
| a. Assistant's name:                   | c. Telephone No.:          |
| b. Street address, city, and zip code: | d. County of registration: |

Date:

12/22/16

LAWRENCE R. CAGNEY  
(TYPE OR PRINT NAME)

  
(SIGNATURE OF PLAINTIFF OR ATTORNEY)

**VERIFICATION**

*(Use a different verification form if the verification is by an attorney or for a corporation or partnership.)*

I am the plaintiff in this proceeding and have read this complaint. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

---

 (TYPE OR PRINT NAME)

---

 (SIGNATURE OF PLAINTIFF)

**VERIFICATION**

**STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

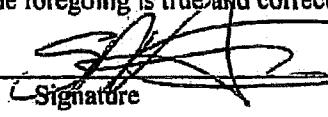
I am a manager of 2H Property 3060, LLC, a California Limited Liability Company and have read the foregoing COMPLAINT - UNLAWFUL DETAINER. The information supplied therein is based on my own personal knowledge and/or has been supplied by my attorneys or other agents and/or compiled from available documents and is therefore provided as required by law.

The information contained in the foregoing document is true, except as to the matters which were provided by my attorneys or other agents or compiled from available documents, including all contentions and opinions, and, as to those matters, I am informed and believe that they are true.

Executed on December 21, 2016, at Signal Hill, California. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

SEAN R. HITCHCOCK

Type or Print Name

  
Signature

**Exhibit "1"**

## STANDARD SUBLICENSE AGREEMENT

1. Parties. This Sublease, dated, for reference purposes only, 6/1 2015 is made by and between Terry & K. R. Schal, Inc. (herein called "Sublessor") and Khaled Tawancy and Children & Retina Institute (herein called "Sublessee").
2. Premises. Sublessor hereby subleases to Sublessee and Sublessee hereby subleases from Sublessor for the term, at the rental, and upon all of the conditions set forth herein, that certain real property situated in the County of Long Beach, State of California, commonly known as 3201 Long Beach Blvd Long Beach 3201 Long Beach Blvd Long Beach CA and described as Sold real property, including the land and all improvements thereon, is hereinafter called the "Premises".
3. Term.
  - 3.1 Term. The term of this Sublease shall be for one year, commencing on 6/1/2015, unless sooner terminated pursuant to any provision hereof.
  - 3.2 Delay In Commencement. Notwithstanding said commencement date, if for any reason Sublessor cannot deliver possession of the Premises to Sublessee on said date, Sublessor shall not be subject to any liability therefore, nor shall such failure affect the validity of this Lease or the obligations of Sublessee hereunder or extend the term hereof, but in such case Sublessee shall not be obligated to pay rent until possession of the Premises is tendered to Sublessee; provided, however, that if Sublessor shall not have delivered possession of the Premises within sixty (60) days from said commencement date, Sublessee may, at Sublessee's option, by notice in writing to Sublessor within ten (10) days thereafter, cancel this Sublease, in which event the parties shall be discharged from all obligations thereunder. If Sublessee occupies the Premises prior to said commencement date, such occupancy shall be subject to all provisions hereof, such occupancy shall not advance the termination date and Sublessee shall pay rent for such period at the initial monthly rates set forth below.
4. Rent. Sublessee shall pay to Sublessor as rent for the Premises equal monthly payments of \$ 15,000 in advance, on the 1st day of each month of the term hereof, Sublessee shall pay Sublessor upon the execution hereof \$ 15,000 as rent for June 2015. Rent for any period during the term hereof which is for less than one month shall be a prorata portion of the monthly installment. Rent shall be payable in lawful money of the United States to Sublessor at the address stated herein or to such other persons or at such other places as Sublessor may designate in writing.
5. Security Deposit. Sublessee shall deposit with Sublessor upon execution hereof \$ 11,000 as security for Sublessee's faithful performance of Sublessee's obligations hereunder. If Sublessee fails to pay rent or other charges due hereunder, or otherwise defaults with respect to any provision of this Sublease, Sublessor, may use, apply or retain all or any portion of said deposit for the payment of any rent or other charge in default or for the payment of any other sum to which Sublessor may become obligated by reason of Sublessee's default, or to compensate Sublessor for any loss or damage which Sublessor may suffer thereby. If Sublessor so uses or applies all or any portion of said deposit, Sublessee shall within ten (10) days after written demand therefore deposit cash with Sublessor in an amount sufficient to restore said deposit to the full amount hereinabove stated and Sublessee's failure to do so shall be a material breach of this Sublease. Sublessor shall not be required to keep said deposit separate from its general accounts. If Sublessee performs all of Sublessee's obligations hereunder, said deposit, or so much thereof as has not theretofore been applied by Sublessor, shall be returned, without payment of interest or other increment for its use to Sublessee (or at Sublessor's option, to the last assignee. If any, of Sublessee's interest hereunder) at the expiration of the term hereof, and after Sublessee has vacated the Premises. No trust relationship is created herein between Sublessor and Sublessee with respect to said Security Deposit.
6. Use.
  - 6.1 Use. The Premises shall be used and occupied only for Medical Office and for no other purpose.

## **6.2 Compliance with Law.**

(a) Sublessor warrants to Sublessee that the Premises, in its existing state, but without regard to the use for which Sublessee will use the Premises, does not violate any applicable building code regulation or ordinance at the time that this Sublease is executed. In the event that it is determined that this warranty has been violated, then it shall be the obligation of the Sublessor, after written notice from Sublessee, to promptly, at Sublessor's sole cost and expense, rectify any such violation. In the event that Sublessee does not give to Sublessor written notice of the violation of this warranty within 1 year from the commencement of the term of this Sublease, it shall be conclusively deemed that such violation did not exist and the correction of the same shall be the obligation of the Sublessee.

(b) Except as provided in paragraph 6.2(a), Sublessee shall, at Sublessee's expense, comply promptly with all applicable statutes, ordinances, rules, regulations, Orders, restrictions of record, and requirements in effect during the term or any part of the term hereof regulating the use by Sublessee of the Premises. Sublessee shall not use or permit the use of the Premises in any manner that will tend to create waste or a nuisance or, if there shall be more than one tenant of the building containing the Premises, which shall tend to disturb such other tenants.

**6.3 Condition of Premises.** Except as provided in paragraph 6.2(a) Sublessee hereby accepts the Premises in their condition existing as of the date of the execution hereof, subject to all applicable zoning, municipal, county and state laws, ordinances, and regulations governing and regulating the use of the Premises, and accepts this Sublease subject thereto and to all matters disclosed thereby and by any exhibits attached hereto. Sublessee acknowledges that neither Sublessor nor Sublessor's agents have made any representation or warranty as to the suitability of the Premises for the conduct of Sublessee's business.

## **7. Master Lease**

7.1 Sublessor is the lessee of the premises by virtue of a lease, hereinafter referred to as the "Master Lease", a copy of which is attached hereto marked Exhibit 1. Dated 6/1/2011 wherein JK Properties is the lessor, hereinafter referred to as the "Master Lessor".

7.2 This Sublease is and shall be at all times subject and subordinate to the Master Lease.

7.3 The terms, conditions and respective obligations of Sublessor and Sublessee to each other under this Sublease shall be the terms and conditions of the Master Lease except for those provisions of the Master Lease which are directly contradicted by this Sublease in which event the terms of this Sublease document shall control over the Master Lease. Therefore, for the purposes of this Sublease, wherever in the Master Lease the word "Lessor" is used it shall be deemed to mean the Sublessor herein and wherever in the Master Lease the word "Lessee" is used it shall be deemed to mean the Sublessee herein.

7.4 During the term of this Sublease and for all periods subsequent for obligations which have arisen prior to the termination of this Sublease Sublessee does hereby expressly assume and agree to perform and comply with, for the benefit of Sublessor and Master Lessor, each and every obligation of Sublessor under the Master Lease except for the following paragraphs which are excluded therefrom:

7.5 The obligations that Sublessee has assumed under paragraph 7.4 hereof are hereinafter referred to as the "Sublessee's Assumed Obligations". The obligations that Sublessee has not assumed under paragraph 7.4 hereof are hereinafter referred to as the "Sublessor's Remaining Obligations".

7.6 Sublessee shall hold Sublessor free and harmless of and from all liability, judgments, costs, damages, claims or demands, including reasonable attorneys fees, arising out of Sublessee's failure to comply with or perform Sublessee's Assumed Obligations.

7.7 Sublessor agrees to maintain the Master Lease during the entire term of this Sublease, subject, however, to any earlier termination of the Master Lease without the fault of the Sublessor, and to comply with or perform Sublessor's Remaining Obligations and to hold Sublessee free and harmless of and from all liability, judgments, costs, damages, claims or demands arising out of Sublessor's failure to comply with or perform Sublessor's Remaining Obligations.

7.8 Sublessor represents to Sublessee that the Master Lease is in full force and effect and that no default exists on the part of any party to the Master Lease.

## **8. Assignment of Sublease and Default.**

8.1 Sublessor hereby assigns and transfers to Master Lessor the Sublessor's interest in this Sublease and all rentals and income arising therefrom, subject however to terms of Paragraph 8.2 hereof.

8.2 Master Lessor, by executing this document, agrees that until a default shall occur in the performance of Sublessor's Obligations under the Master Lease, that Sublessor may receive, collect and enjoy the rents accruing under this Sublease. However, if Sublessor shall default in the performance of its obligations to Master Lessor then Master Lessor may, at its option, receive and collect, directly from Sublessee, all rent owing and to be owed under this Sublease. Master Lessor shall not, by reason of this assignment of the Sublease nor by reason of the collection of the rents from the Sublessee, be deemed liable to Sublessee for any failure of the Sublessor to perform and comply with Sublessor's Remaining Obligations.

8.3 Sublessor hereby irrevocably authorizes and directs Sublessee, upon receipt of any written notice from the Master Lessor stating that a default exists in the performance of Sublessor's obligations under the Master Lease, to pay to Master Lessor the rents due and to become due under the Sublease. Sublessor agrees that Sublessee shall have the right to rely upon any such statement and request from Master Lessor, and that Sublessee shall pay such rents to Master Lessor without any obligation or right to inquire as to whether such default exists and notwithstanding any notice from or claim from Sublessor to the contrary and Sublessor shall have no right or claim against Sublessee for any such rents so paid by Sublessee.

8.4 No changes or modifications shall be made to this Sublease without the consent of Master Lessor.

#### 9. Consent of Master Lessor.

9.1 In the event that the Master Lease requires that Sublessor obtain the consent of Master Lessor to any subletting by Sublessor then, this Sublease shall not be effective unless, within 10 days of the date hereof, Master Lessor signs this Sublease thereby giving its consent to this Subletting.

9.2 In the event that the obligations of the Sublessor under the Master Lease have been guaranteed by third parties then this Sublease, nor the Master Lessor's consent, shall not be effective unless, within 10 days of the date hereof, said guarantors sign this Sublease thereby giving guarantors consent to this Sublease and the terms thereof.

9.3 In the event that Master Lessor does give such consent then:

(a) Such consent will not release Sublessor of its obligations or alter the primary liability of Sublessor to pay the rent and perform and comply with all of the obligations of Sublessor to be performed under the Master Lease.

(b) The acceptance of rent by Master Lessor from Sublessee or any one else liable under the Master Lease shall not be deemed a waiver by Master Lessor of any provisions of the Master Lease.

(c) The consent to this Sublease shall not constitute a consent to any subsequent subletting or assignment.

(d) In the event of any default of Sublessor under the Master Lease, Master Lessor may proceed directly against Sublessor, any guarantors or any one else liable under the Master Lease or this Sublease without first exhausting Master Lessor's remedies against any other person or entity liable thereon to Master Lessor.

(e) Master Lessor may consent to subsequent sublettings and assignments of the Master Lease or this Sublease or any amendments or modifications thereto without notifying Sublessor nor any one else liable under the Master Lease and without obtaining their consent and such action shall not relieve such persons from liability.

(f) In the event that Sublessor shall default in its obligations under the Master Lease, then Master Lessor, at its option and without being obligated to do so, may require Sublessee to attorn to Master Lessor in which event Master Lessor shall undertake the obligations of Sublessor under this Sublease from the time of the exercise of said option to termination of this Sublease but Master Lessor shall not be liable for any prepaid rents nor any security deposit paid by Sublessee, nor shall Master Lessor be liable for any other defaults of the Sublessor under the Sublease.

9.4 The signatures of the Master Lessor and any Guarantors of Sublessor at the end of this document shall constitute their consent to the terms of this Sublease.

9.5 Master Lessor acknowledges that, to the best of Master Lessor's knowledge, no default presently exists under the Master Lease of obligations to be performed by Sublessor and that the Master Lease is in full force and effect.

9.6 In the event that Sublessor defaults under its obligations to be performed under the Master Lease by Sublessor, Master Lessor agrees to deliver to Sublessee a copy of any such notice of default. Sublessee shall have the right to cure any default of Sublessor described in any notice of default within ten days after service of

such notice of default on Sublessee. If such default is cured by Sublessee then Sublessee shall have the right of reimbursement and offset from and against Sublessor.

**10. Insurance:** Sublessee must maintain insurance to cover any losses sustained to Sublessee's property, vehicle or expenses relating to the necessity to relocate or any other losses. Sublessor does not maintain this insurance to cover property damage or relocation expenses caused by fire, theft, rain, infestation, water overflow/leakage, acts of GOD, and/or any other causes. It is acknowledged that Sublessor is not liable for these occurrences. It is acknowledged that sublessee insurance policy shall solely indemnify sublessee for any losses sustained. Sublessee's failure to maintain said policy shall be a complete waiver of sublessee's right to seek damages against sublessor for the above stated losses. The parties acknowledge that the premises are not to be considered a security building which would hold sublessor to a higher degree of care.

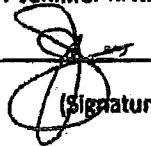
Executed at: Long Beach

On: 6/1/2015

By: Jennifer K. R. Sohal MD

Address: 3200 Long Beach Blvd.

Long Beach, CA 90807



(Signature)

Executed at: \_\_\_\_\_

On: \_\_\_\_\_

By: Dickel T. Wong MD

Address: \_\_\_\_\_

\_\_\_\_\_  
(Signature)

# **Exhibit "2"**



Date: November 18, 2016

TO: Khaled A. Tawansy, M.D.  
3200 Long Beach Boulevard  
Long Beach, California 90807

Khaled A. Tawansy, M.D.  
dba Children's Retina Institute  
3200 Long Beach Boulevard  
Long Beach, California 90807

Renaissance Surgical Holdings, LLC  
3200 Long Beach Boulevard  
Long Beach, California

2H Property 3060, LLC  
2H Property 4101, LLC  
Spring Property, LLC

You are hereby notified that pursuant to Civ. Code, § 1946 that the tenancy from month-to-month under which you hold the possession of the premises described in this notice is terminated thirty (30) days after service on you of this notice.

By this notice you are required to quit and deliver up the possession of the described premises to the undersigned lessor, who is authorized to receive possession of the premises on or before the expiration of the thirty (30) days' period.

You are further notified that it is the purpose and intent of this notice to terminate the tenancy at the expiration of the thirty (30) days' period, and that if at the expiration of that period you fail to quit the premises and deliver up possession of the premises to 2H Property 3060, LLC will institute legal proceedings for unlawful detainer against you to recover possession of the premises.

The premises that are the subject of this notice are:

PARCEL 1:

LOTS 17, 18 AND 19 IN BLOCK "A" OF TRACT 2901, IN THE CITY OF LONG BEACH, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 36 PAGE(S) 63 OF MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, TOGETHER WITH THAT PORTION OF THE WESTERLY HALF OF THAT CERTAIN ALLEY, 20 FEET WIDE, AS SHOWN AND DEDICATED UPON THE MAP OF SAID TRACT NO. 2901, WHICH ADJOINS SAID LOTS ON THE EAST, VACATED BY RESOLUTION NO. C-22311 OF THE CITY COUNCIL OF SAID CITY, A COPY OF WHICH WAS RECORDED AUGUST 1, 1977 AS INSTRUMENT NO. 77-833919, BOUNDED NORTHERLY BY THE EASTERLY PROLONGATION OF THE NORTHERLY LINE OF SAID LOT 17, AND BOUNDED SOUTHERLY BY THE EASTERLY PROLONGATION OF THE SOUTHERLY LINE OF SAID LOT 19. EXCEPT THEREFROM ALL OIL, MINERALS, AND OTHER HYDROCARBON SUBSTANCES IN AND UNDER SAID LAND LYING BELOW A DEPTH OF 500

Exhibit 2

FEET FROM THE SURFACE, WITHOUT HOWEVER, THE RIGHT TO USE ANY PART OF THE SURFACE THEREOF, AS EXCEPTED AND RESERVED IN VARIOUS DEEDS RECORDED JULY 17, 1964.

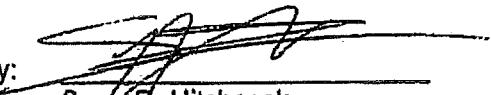
PARCEL 2:

LOTS 36, 37 AND 38 IN BLOCK "A" OF TRACT 2901, AS PER MAP RECORDED IN BOOK 36, PAGE 63 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, TOGETHER WITH THAT PORTION OF THE EASTERLY HALF OF THAT CERTAIN ALLEY, 20 FEET WIDE, AS SHOWN AND DEDICATED UPON THE MAP OF SAID TRACT 2901, WHICH ADJOINS SAID LOTS ON THE WEST, VACATED BY RESOLUTION NO. C-2231 OF THE CITY COUNCIL OF SAID CITY, A COPY OF WHICH RECORDED AUGUST 1, 1977 AS INSTRUMENT NO. 77-833919, BOUNDED NORTHERLY BY THE WESTERLY PROLONGATION OF THE NORTHERLY LINE OF SAID LOT 36, AND BOUNDED SOUTHERLY BY THE WESTERLY PROLONGATION OF THE SOUTHERLY LINE OF SAID LOT 38.

Dated: November 18, 2016.

2H PROPERTY 3060, LLC

By:

  
Sean R. Hitchcock

**Exhibit "3"**

<b>ATTORNEY OR PARTY WITHOUT ATTORNEY:</b> STATE BAR NO. 141845 NAME: LAWRENCE R. CAGNEY FIRM NAME: KRIEGER & KRIEGER, A Law Corporation STREET ADDRESS: 249 E. Ocean Boulevard, Suite 750 CITY: LONG BEACH TELEPHONE NO.: 562-901-2500 E-MAIL ADDRESS: lrc@kriegerlaw.com ATTORNEY FOR (name): 2H Construction, Inc.		<b>FOR COURT USE ONLY</b>
STATE: CA ZIP CODE: 90802 FAX NO.: 562-901-2522		
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF:</b> STREET ADDRESS: 275 Magnolia Ave. MAILING ADDRESS: 275 Magnolia Ave. CITY AND ZIP CODE: Long Beach 90802 BRANCH NAME: Governor George Deukmejian Courthouse		<b>CASE NUMBER</b>
Plaintiff/Petitioner: 2H Property 3060, LLC Defendant/Respondent: Khaled A. Tawansy, M.D., et al.		<b>JUDICIAL OFFICER:</b>
<b>PROOF OF SERVICE—CIVIL</b> Check method of service (only one):		<b>DEPARTMENT</b>
<input checked="" type="checkbox"/> By Personal Service <input checked="" type="checkbox"/> By Mail <input type="checkbox"/> By Overnight Delivery <input type="checkbox"/> By Messenger Service <input type="checkbox"/> By Fax		

*Do not use this form to show service of a summons and complaint or for electronic service.*  
*See USE OF THIS FORM on page 3.*

1. At the time of service I was over 18 years of age and not a party to this action.
2. My residence or business address is: 2653 Walnut Ave., Signal Hill 90755
3.  The fax number from which I served the documents is (complete if service was by fax):
4. On (date): November 18, 2016      I served the following documents (specify): 30-DAY NOTICE OF TERMINATION OF MONTH-TO-MONTH TENANCY AND NOTICE TO QUIT
 

The documents are listed in the *Attachment to Proof of Service—Civil (Documents Served)* (form POS-040(D)).
5. I served the documents on the person or persons below, as follows:
  - a. Name of person served: Khaled A. Tawansy, M.D.; Children's Retina Institute; and Renaissance Surgical Holdings, LLC.
  - b.  (Complete if service was by personal service, mail, overnight delivery, or messenger service.)  
 Business or residential address where person was served: 3200 Long Beach Boulevard, Long Beach, CA 90807, 1) by mail to each of the persons and entities listed in 5a at the premises, and 2) by posting a copy conspicuously on the premises between 9:00 a.m. and 5:00 p.m.
  - c.  (Complete if service was by fax.)
    - (1) Fax number where person was served:
    - (2) Time of service:

The names, addresses, and other applicable information about persons served is on the *Attachment to Proof of Service—Civil (Persons Served)* (form POS-040(P)).
6. The documents were served by the following means (specify):
  - a.  By personal service. I personally delivered the documents to the persons at the addresses listed in item 5. (1) For a party represented by an attorney, delivery was made (a) to the attorney personally; or (b) by leaving the documents at the attorney's office, in an envelope or package clearly labeled to identify the attorney being served, with a receptionist or an individual in charge of the office; or (c) if there was no person in the office with whom the notice or papers could be left, by leaving them in a conspicuous place in the office between the hours of nine in the morning and five in the evening. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not younger than 18 years of age between the hours of eight in the morning and six in the evening.

CASE NAME	CASE NUMBER
-----------	-------------

6. b.  By United States mail, I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses in item 5 and (specify one):
- (1)  deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.
  - (2)  placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.
- I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at (city and state): Signal Hill, California
- c.  By overnight delivery. I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses in item 5. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.
- d.  By messenger service. I served the documents by placing them in an envelope or package addressed to the persons at the addresses listed in item 5 and providing them to a professional messenger service for service. (A declaration by the messenger must accompany this Proof of Service or be contained in the Declaration of Messenger below.)
- e.  By fax transmission. Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed in item 5. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: December 21, 2016

Ericka Burton

(TYPE OR PRINT NAME OF DECLARANT)



(SIGNATURE OF DECLARANT)

(If item 6d above is checked, the declaration below must be completed or a separate declaration from a messenger must be attached.)

<b>SUPERIOR COURT OF CALIFORNIA COUNTY OF LOS ANGELES</b>		<b>CONFIRMED COPY</b> <b>ORIGINAL FILED</b> Superior Court Of California County Of Los Angeles
COURTHOUSE ADDRESS:	Governor George Deukmejian Courthouse 275 Magnolia	
PLAINTIFF:	Long Beach, CA 90802	
DEFENDANT:		
<b>NOTICE OF CASE MANAGEMENT CONFERENCE</b>		CASE NUMBER: <b>N C 0 6 0 9 4 9</b>

TO THE PLAINTIFF(S)/ATTORNEY(S) FOR PLAINTIFF(S) OF RECORD:

You are ordered to serve this notice of hearing on all parties/attorneys of record forthwith, and meet and confer with all parties/attorneys of record about the matters to be discussed no later than 30 days before the Case Management Conference.

Your Case Management Conference has been scheduled at the courthouse address shown above on:

Date: <u>5/22/17</u>	Time: 8:30	Dept: 27
----------------------	------------	----------

NOTICE TO DEFENDANT: THE SETTING OF THE CASE MANAGEMENT CONFERENCE DOES NOT EXEMPT THE DEFENDANT FROM FILING A RESPONSIVE PLEADING AS REQUIRED BY LAW.

Pursuant to California Rules of Court, rules 3.720-3.730, a completed Case Management Statement (Judicial Council form # CM-110) must be filed at least 15 calendar days prior to the Case Management Conference. The Case Management Statement may be filed jointly by all parties/attorneys of record or individually by each party/attorney of record. You must be familiar with the case and be fully prepared to participate effectively in the Case Management Conference.

At the Case Management Conference, the Court may make pretrial orders including the following, but not limited to, an order establishing a discovery schedule; an order referring the case to Alternative Dispute Resolution (ADR); an order reclassifying the case; an order setting subsequent conference and the trial date; or other orders to achieve the goals of the Trial Court Delay Reduction Act (Gov. Code, § 68600 et seq.)

Notice is hereby given that if you do not file the Case Management Statement or appear and effectively participate at the Case Management Conference, the Court may impose sanctions, pursuant to LASC Local Rule 3.37, Code of Civil Procedure sections 177.5, 575.2, 583.150, 583.360 and 583.410, Government Code section 68608, subdivision (b), and California Rules of Court, rule 2.2 et seq.

Dated: 12/22/16

Judge Ross M. Klein

Judicial Officer

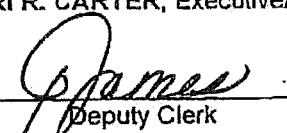
#### CERTIFICATE OF SERVICE

I, the below named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the Notice of Case Management Conference upon each party or counsel named below:

- by depositing in the United States mail at the courthouse in Long Beach, California, one copy of the original filed herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid.
- by personally giving the party notice upon filing of the complaint.

SHERRI R. CARTER, Executive/Officer Clerk

By

  
Sherri R. Carter  
Deputy Clerk

Dated: 12/22/16

LACIV 132 (Rev. 07/13)

LASC Approved 10-03

For Optional Use

#### NOTICE OF CASE MANAGEMENT CONFERENCE

Cal. Rules of Court, rules 3.720-3.730

LASC Local Rules, Chapter Three

## EXHIBIT "N"

1 LAWRENCE R. CAGNEY, BAR NO. 141845  
2 LRC@Kriegerlaw.com  
3 PATRICK A. GANGITANO, BAR NO. 281867  
4 PAG@Kriegerlaw.com  
5 **KRIEGER & KRIEGER**, A Law Corporation  
6 249 E. Ocean Boulevard, Suite 750  
7 Long Beach, California 90802  
8 Tel: (562) 901-2500 Fax: (562) 901-2522

9  
10 Attorneys for Plaintiff  
11 2H PROPERTY 3060, LLC

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 FOR THE COUNTY OF LOS ANGELES-SOUTH DISTRICT

14  
15 2H PROPERTY 3060, LLC, a California ) Case No. NC060962  
16 Limited Liability Company, ) Assigned to the Hon. Michael P. Vicencia –  
17 Plaintiff, ) Dept. 26  
18 vs. ) [UNLAWFUL DETAINER ACTION]  
19 KHALED A. TAWANSY, M.D., an individual, )  
20 CHILDREN'S RETINA INSTITUTE, a )  
21 business entity, type unknown, and )  
22 RENAISSANCE SURGICAL HOLDINGS, )  
23 LLC, a California Limited Liability Company, )  
24 Defendants. )  
25 )  
26 )  
27 )  
28 )

---

- 1) VACATING TRIAL DATE;  
2) TRANSFERRING CASE NO.  
NC060799 TO DEPT. S-26;  
3) CONSOLIDATING ACTIONS FOR  
TRIAL; AND  
4) REQUIRING DEFENDANTS'  
DEPOSITS TO ESCROW IN  
COURT

29  
30 It is hereby stipulated by and between Plaintiff 2H PROPERTY 3060, LLC ("2H") on the  
31 one hand, and KHALED A. TAWANSY, M.D., CHILDREN'S RETINA INSTITUTE, and  
32 RENAISSANCE SURGICAL HOLDINGS, LLC (collectively "Defendants") on the other hand as  
33 follows:  
34  
35  
36

1           4. Defendants shall be entitled to continue in possession of the office suite comprising  
2 the southernmost approximately one-third of the Property, which they currently occupy ("the  
3 Medical Office") pending the disposition of this action and 2H shall not unreasonably interfere  
4 with Defendants' use of the Medical Office in the furtherance of their medical practice.

5           5. Plaintiff shall be entitled to exclusive control of the currently unoccupied suites  
6 comprising the remainder of the Property and shall be entitled to construct improvements of high  
7 quality, as determined in 2H's sole discretion, therein, so long as such activities do not  
8 unreasonably interfere with Defendants' customary use of the Medical Office. Such improvements  
9 shall be relinquished to Defendants free of liens for labor or materials if, and only if, Defendants  
10 obtain a final judgment against 2H in their favor in the above-entitled action stating that  
11 Defendants are the lawful owners of the Property.

12          6. Plaintiff shall further be entitled to improve the facades and other exteriors of the  
13 buildings on the Property and make general site improvements so long as such activities do not  
14 unreasonably interfere with Defendants' use of the Medical Office in the furtherance of  
15 Defendants' medical practice.

16          7. If Defendants are determined to be the lawful owners of the Property in the above-  
17 entitled action, they shall be entitled to an order releasing the funds deposited pursuant to  
18 Paragraph 1 above upon the entry of a final judgment in their favor.

19          8. Nothing contained herein shall constitute an admission by either party of any  
20 contested issues in the above-entitled case.

21          9. The February 16, 2017 trial date of the above-entitled action shall be vacated.

22          10. The related matter of JK Per Angusta ad Felicitas, LLC v. Kuska, LASC Case No.  
23 NC 060799 shall be transferred from Department S-27 to Department S-26 for trial concurrently  
24 with the above-entitled action.

25          11. A case management conference shall be held herein on February 23, 2017 at which  
26 the Court will set a date for the trial of both JK Per Angusta ad Felicitas, LLC v. Kuska, LASC  
27 Case No. NC 060799, and the above-captioned action.

28

# **EXHIBIT “0”**

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1 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
2 FOR THE COUNTY OF LOS ANGELES, LONG BEACH COURTHOUSE  
3  
4 2H PROPERTIES 3060, LLC, )  
5 Plaintiff, )  
6 vs. ) No. NC060962  
7 KHALED A. TAWANSY, M.D.; )  
8 CHILDREN'S RETINA INSTITUTE; )  
9 RENAISSANCE SURGICAL HOLDINGS, )  
LLC; AND DOES 1 through 10,  
Inclusive,  
Defendants.  
10 )  
11 \_\_\_\_\_ )  
12  
13 DEPOSITION OF  
14 SEAN HITCHCOCK  
15 ENCINO, CALIFORNIA  
16 JANUARY 30, 2017  
17  
18 ATKINSON-BAKER, INC.  
COURT REPORTERS  
(800) 288-3376  
www.depo.com  
20  
21  
22  
23 REPORTED BY: MARIANA HAKVERDIAN, CSR 13438  
24 FILE No.:AB01142  
25

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<p>1 SUPERIOR COURT OF THE STATE OF CALIFORNIA 2 FOR THE COUNTY OF LOS ANGELES, LONG BEACH COURTHOUSE 3 4 2H PROPERTIES 3060, LLC, ) 5 ) Plaintiff, ) 6 ) vs. ) No. NC060962 7 ) 8 KHALED A. TAWANSY, M.D.; ) 9 CHILDREN'S RETINA INSTITUTE; ) 10 RENAISSANCE SURGICAL HOLDINGS, ) 11 LLC; AND DOES 1 through 10, ) 12 Inclusive, ) 13 ) 14 Defendants. ) 15 16 17 18 19 20 21 22 23 24 25</p> <p>15 DEPOSITION OF SEAN HITCHCOCK, a witness herein, 16 taken on behalf of the defendant at 16633 Ventura 17 Boulevard, Suite 735, Encino, California, at 3:10 18 p.m., on Monday, January 30, 2017, before Mariana 19 Hakverdian, CSR 13438</p>	<table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th colspan="3" style="text-align: center;">I N D E X</th> </tr> <tr> <th style="text-align: left;">WITNESS</th> <th></th> <th style="text-align: right;">PAGE</th> </tr> </thead> <tbody> <tr> <td style="text-align: left;">SEAN HITCHCOCK</td> <td></td> <td style="text-align: right;">5</td> </tr> <tr> <td style="text-align: left;">MR. KARPEL</td> <td></td> <td style="text-align: right;">5</td> </tr> <tr> <td colspan="3" style="text-align: center;">E X H I B I T S</td> </tr> <tr> <th style="text-align: left;">NUMBER</th> <th style="text-align: left;">DESCRIPTION</th> <th style="text-align: right;">PAGE</th> </tr> <tr> <td style="text-align: left;">1</td> <td style="text-align: left;">Deposition Subpoena</td> <td style="text-align: right;">21</td> </tr> <tr> <td colspan="3" style="text-align: center;">QUESTIONS INSTRUCTED NOT TO ANSWER</td> </tr> <tr> <th style="text-align: left;">Page</th> <th style="text-align: left;">Line</th> <td></td> </tr> <tr> <td style="text-align: left;">10</td> <td style="text-align: left;">4</td> <td></td> </tr> <tr> <td style="text-align: left;">74</td> <td style="text-align: left;">20</td> <td></td> </tr> <tr> <td style="text-align: left;">75</td> <td style="text-align: left;">2</td> <td></td> </tr> <tr> <td style="text-align: left;">75</td> <td style="text-align: left;">6</td> <td></td> </tr> </tbody> </table>	I N D E X			WITNESS		PAGE	SEAN HITCHCOCK		5	MR. KARPEL		5	E X H I B I T S			NUMBER	DESCRIPTION	PAGE	1	Deposition Subpoena	21	QUESTIONS INSTRUCTED NOT TO ANSWER			Page	Line		10	4		74	20		75	2		75	6	
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<p>1 APPEARANCES OF COUNSEL: 2 3 For PLAINTIFF: 4 5 KRIEGER &amp; KRIEGER 6 BY LAWRENCE R. CAGNEY, ESQ. 7 249 E. Ocean Boulevard, Suite 750 8 Long Beach, CA 90802 9 562.901.2500 10 11 For DEFENDANTS KHALED A. TAWANSY, M.D.; CHILDREN'S 12 RETINA INSTITUTE; and RENAISSANCE 13 SURGICAL HOLDINGS, LLC.: 14 ZELNER &amp; KARPEL 15 BY DONALD E. KARPEL, ESQ. 16 16633 Ventura Boulevard, Suite 735 17 Encino, CA 91436 18 310.273.8444</p>	<p>1 ENCINO, CALIFORNIA; MONDAY, JANUARY 30, 2017 2 1:00 PM 3 * * * 4 5 SEAN HITCHCOCK, 6 a witness herein, having been first duly sworn, 7 testified as follows: 8 -EXAMINATION- 9 BY MR. KARPEL: 10 Q Mr. Hitchcock, would you please state and 11 spell your name for the record? 12 A Sean Hitchcock, S-E-A-N, H-I-T-C-H-C-O-C-K. 13 Q Mr. Hitchcock, have you ever given a 14 deposition before? 15 A Yes, I have. 16 Q On how many occasions would you say? 17 A Approximately three. 18 Q Okay. When was the last time you have given a 19 deposition? 20 A Last year. 21 Q What was the subject matter of case in which 22 you gave that deposition? 23 A A dog bite case. 24 Q I was going to be the -- I guess I can ask 25 were you the dog or the bitee, or were you a witness? A I was one of the dog owners.</p>	<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>																																						
Page 3		Page 5																																						

2 (Pages 2 to 5)

Sean Hitchcock  
January 30, 2017

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<p>1       Q   Okay. I'm going to take a few minutes to just 2   go through the general background of the deposition. 3   It may be repetitive of something you have already 4   discussed with your attorney, but then I've said it on 5   the record. We can go through it -- I'll go through it 6   fairly quickly.</p> <p>7       A deposition is a discovery proceeding whereby 8   I'll be asking you a series of questions. My 9   questions, your answers, comments, questions objections 10   from your attorney are all being taken down by a 11   certified court reporter to your right.</p> <p>12      With all due respect to your attorney, she is 13   the only really important person in this room right 14   now, so she must be able to hear your responses. The 15   responses must be oral. Avoid shakes of your head, 16   hand gestures, say it was this big and holding your 17   hands out in a gesture. She cannot interpret any 18   gestures, nor can she interpret, "uh-huh" or "huh-huh." 19   So it's important that you answer orally and completely 20   and avoid any gestures. If she can't hear you she's 21   got to be -- she'll speak up and say I need you to 22   speak up or whatever.</p> <p>23      Same thing is important that only one person 24   at a time can speak. This is not a conversation. 25   Hopefully, we will go fairly quickly -- question,</p>	<p>1       A   I understand. 2       Q   Okay. At the end of the deposition, you will 3   have an opportunity to review the deposition, make any 4   changes that you want to the deposition, and go ahead 5   and sign the deposition. I must caution you that any 6   changes of a substantive matter can be commented on at 7   the time of any trial in this matter. 8       What does that mean? I know it has nothing do 9   with today's deposition, but if this was an accident, 10   auto accident, and the question is was that light red 11   or was it green, and today you testified and that was 12   the whole theme of who was responsible for the 13   accident, you said the light was red. And then you go 14   home, think about it, take a pen, take it to your 15   deposition transcript, cross out the word "red" and 16   write the word "green." That is a substantive change, 17   and that's the type of thing that I strongly recommend 18   discussing with your counsel. 19      Any questions on any of the general ground 20   rules for today? 21      A   No. 22      Q   Okay. We're going to get going. And if 23   anything else come up, and I've forgotten them, I will 24   tell you as we go. 25      Are you currently employed?</p>
<p>1       A   answer, question, answer. I will endeavor and do my 2   best to allow you to complete your answer before I 3   begin my next question. It's important that you allow 4   me to complete my question before you begin your 5   next -- before you begin your answer. 6       Sometimes my voice trails off at the end, and 7   I can change the entire meaning of the question. So 8   just let me complete my question, then you can begin 9   your answer. 10      If, in any my questions, I use a word you do 11   not understand or I get completely marble mouthed -- 12   and believe me, I can do that because they teach us in 13   law school to modify phrases that modify phrases that 14   modify phrases, and someplace in there, there may be a 15   question. If I pull one of those, let me know. I will 16   try to clear it up. 17      If you do not understand a question -- if you 18   do not understand the question -- hold on. Let's go 19   off the record for a second. Never mind. 20      If you do not understand the question, please 21   let me know. If you don't understand a word that I 22   use, please let me know. It's important that you, in 23   your answers, that you truthfully and completely 24   understand my question. 25      Do you understand that?</p>	<p>1       A   Yes. 2       Q   And who are you employed by? 3      A   2H Construction. 4       Q   And what kind of company is 2H Construction? 5      A   General contractor. 6       Q   Do you know if that is a corporation or an LLC 7   or -- 8      A   Corporation. 9       Q   Okay. Are you a shareholder of that 10   corporation? 11      A   I'm the sole owner. 12       Q   You would then be -- are you an officer? 13      A   Yes. 14       Q   What office do you hold? 15      A   President. 16       Q   Are you also a -- on the board of directors? 17      A   Yes. 18       Q   Are there any other members of the board of 19   directors that you are aware of? 20      A   If a vice president is part of board of 21   directors, then the vice president is on it as well. 22       Q   When was 2H Construction organized, if you 23   remember? 24      A   1997. 25       Q   And have you always been the sole shareholder</p>

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<p>1      <b>of it?</b></p> <p>2      A    Yes. Well, no. I'm sorry. I was previously 3      married, so my wife was a...</p> <p>4      Q    <b>And what is your wife's name?</b></p> <p>5      A    Ex-wife.</p> <p>6      MR. CAGNEY: Objection. This is -- this is 7      way beyond relevance, and I'm going to instruct him not 8      to answer. I allowed you some background.</p> <p>9      BY MR. KARPEL:</p> <p>10     Q    <b>Sure. Who is Linda Hitchcock?</b></p> <p>11     A    My ex-wife.</p> <p>12     Q    <b>Did she -- was she a treasurer of the company 13      at one time?</b></p> <p>14     A    I don't recall what her title was.</p> <p>15     Q    <b>Was she in any way involved in the purchase of 16      the property at 3200 Long Beach Boulevard?</b></p> <p>17     A    No.</p> <p>18     Q    <b>Okay. That's all.</b></p> <p>19     All right. At some point, did 2H Construction 20     purchase 3200 Long Beach Boulevard?</p> <p>21     A    No. I don't believe so.</p> <p>22     Q    <b>Do you know who purchased three 3200 Long 23      Beach Boulevard in the last year?</b></p> <p>24     A    A limited liability corporation that I own.</p> <p>25     Q    <b>What is the name of that company? Let me</b></p>	<p>1      BY MR. KARPEL:</p> <p>2      Q    <b>All right. Question is are you aware of any 3      other -- okay. Was the -- did the 2H properties 3060, 4      to your knowledge, are they the 100 percent owner of 5      the property at 3200 Long Beach Boulevard?</b></p> <p>6      A    I don't think so.</p> <p>7      Q    <b>Are -- what other entity has an ownership 8      interest to your knowledge at 3200 Long Beach 9      Boulevard?</b></p> <p>10     A    I believe, in this particular purchase, that I 11     purchased it coming off of two other 1031 exchanges. 12     One of them, which was -- well, each one owned by a 13     different LLC, so when the purchase was made, I think 14     there was a joint ownership in it.</p> <p>15     Q    <b>And what are the names of those other LLCs?</b></p> <p>16     A    I -- I believe it was 2H Building LLC or 17     something like that and 2H Property 3060, but both 18     properties are 100 percent -- or both LLCs are 100 19     percent owned by me.</p> <p>20     Q    <b>All right. So prior to purchasing, through 21      your entities, 2H Property -- 3200 Long Beach 22      Boulevard, had you or any entity under your control 23      purchased any other properties in Southern California?</b></p> <p>24     A    I think you need to rephrase your question. 25     Because I think in the beginning, you said 2H Property</p>
Page 10	Page 12
<p>1      <b>help. Was it 2H Property 3060? Was that it?</b></p> <p>2      A    Probably. I have a few, so...</p> <p>3      Q    <b>Okay.</b></p> <p>4      A    But I believe that's the correct one.</p> <p>5      Q    <b>Do you know when the limited -- is it a 6      limited liability company, corporation?</b></p> <p>7      A    Corporation.</p> <p>8      Q    <b>We will call it an LLC; okay?</b></p> <p>9      A    Correct.</p> <p>10     Q    <b>Do you know when that LLC or any LLC that you 11      might -- strike that.</b></p> <p>12     <b>Do you have any ownership in the LLC known as 13      2H Property 3060?</b></p> <p>14     A    Yes.</p> <p>15     Q    <b>Okay. What is your ownership in that?</b></p> <p>16     A    100 percent.</p> <p>17     Q    <b>Okay. As you sit here today, do you believe 18      that is the company that purchased the property at 3200 19      Long Beach Boulevard?</b></p> <p>20     A    Yes.</p> <p>21     Q    <b>Okay. Do you know if any other LLCs or 22      corporations in addition to 2H Properties 3060 had 23      purchased any interest in the Long Beach property at 24      the time 2H Property purchased it?</b></p> <p>25     MR. CAGNEY: Objection. Vague.</p>	<p>1      3200.</p> <p>2      Q    <b>I'll start again.</b></p> <p>3      <b>Prior to purchasing the 3200 Long Beach 4      Boulevard property, have you or any entities under your 5      control purchased any other properties in Southern 6      California.</b></p> <p>7      A    Yes.</p> <p>8      Q    <b>Approximately how many?</b></p> <p>9      A    I don't know the exact number, but somewhere 10     in the range of 20.</p> <p>11     Q    <b>Okay. Of those 20 properties, how many were 12      commercial properties?</b></p> <p>13     A    I'm only counting the commercial properties in 14     that count.</p> <p>15     Q    <b>Of any of these prior 20 properties, had any 16      of them had a tenant in possession at the time yourself 17      or any entity of which you were in control of purchased 18      the property?</b></p> <p>19     A    I don't understand what you mean in 20     possession.</p> <p>21     Q    <b>It was a tenant who was in the property -- was 22      in possession of the property at the time you purchased 23      it.</b></p> <p>24     MR. CAGNEY: Objection. Vague.</p> <p>25     ///</p>
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<p>1 BY MR. KARPEL:</p> <p>2 Q You can answer.</p> <p>3 A I still don't understand. You mean by, "in possession" as just being a tenant in the building?</p> <p>4 Q Yes.</p> <p>5 A So have I purchased a property where an existing tenant remained in the building?</p> <p>6 Q Yes.</p> <p>7 A Yes.</p> <p>8 Q Are you familiar with what estoppel statement is?</p> <p>9 A Fairly familiar.</p> <p>10 Q Fairly?</p> <p>11 A Yes.</p> <p>12 Q What is your understanding of estoppel statement?</p> <p>13 MR. CAGNEY: Objection. Calls for a legal conclusion.</p> <p>14 BY MR. KARPEL:</p> <p>15 Q To your personal -- without a legal conclusion.</p> <p>16 A It has to do -- I believe it has to do with the current lease the tenant has on the building.</p> <p>17 Q Let me get a little background on you. What is the highest grade of education you completed?</p>	<p>1 estoppel certificate?</p> <p>2 A I don't recall.</p> <p>3 Q Did you receive an estoppel certificate in the purchase of 3200 Long Beach Boulevard?</p> <p>4 A I don't believe so.</p> <p>5 Q Did you request one?</p> <p>6 A I don't believe so.</p> <p>7 Q Did you direct anybody under your control to request one?</p> <p>8 A I don't believe so.</p> <p>9 Q Is there a reason why you did not request an estoppel certificate in the purchase of 3200 Long Beach Boulevard?</p> <p>10 A It was my understanding there was no current tenant leases on the building when we purchased the building.</p> <p>11 Q And who -- how did you learn that information?</p> <p>12 A Well, in a few ways. One, through my brokers. And another because I was actually given a notice of termination of the only standing month-to-month lease that was in the building.</p> <p>13 Q Who were the brokers who gave you the information?</p> <p>14 A Lee and Associates.</p> <p>15 Q I'm sorry?</p>
<p>Page 14</p>	<p>Page 16</p>
<p>1 A I have a Master's in Business Administration.</p> <p>2 Q From Pepperdine?</p> <p>3 A Correct.</p> <p>4 Q And your undergraduate?</p> <p>5 A It's construction engineering.</p> <p>6 Q At what school?</p> <p>7 A Cal State Long Beach.</p> <p>8 Q Have you ever been a real estate broker?</p> <p>9 A No.</p> <p>10 Q Does 2H Properties 3060 have an in-house real estate broker?</p> <p>11 A No.</p> <p>12 Q As you sit here today, do you recall on any of the prior purchases where there was a tenant in the building any time where you -- you requested and obtained a estoppel certificate in that particular sale?</p> <p>13 MR. CAGNEY: Objection. Vague.</p> <p>14 BY MR. KARPEL:</p> <p>15 Q You may answer.</p> <p>16 A I recall receiving estoppel certificates on previous purchases.</p> <p>17 Q The converse of that. Do you recall ever purchasing a building where there was a tenant present in the building when you did not receive an estoppel --</p>	<p>1 A Lee and Associates.</p> <p>2 Q And who at Lee and Associates provided that information to you?</p> <p>3 A The specific brokers I work with are Jeff Coburn and Shaun McCullough.</p> <p>4 Q Can you spell the last name, Coburn?</p> <p>5 A Coburn is C-O-B-U-R-N. And McCullough, I would be guessing at, but M-C-C-U-L-L-O-U-G-H maybe.</p> <p>6 Q Had you used Lee and Associates in any other purchases of any buildings which you purchased in Southern California prior to purchasing 3200 Long Beach Boulevard?</p> <p>7 A Yes.</p> <p>8 Q On how many occasions?</p> <p>9 A Most all occasions. Or at least Jeff and Shaun. They were formerly with a different -- or I think Lee and Associates purchased the company that they were previously.</p> <p>10 Q Okay. And you also had information that the notice of the tenant was on a month-to-month lease; is that correct?</p> <p>11 A We had -- if I recall correctly, we had notice that there was an existing tenant in place whose lease was going to expire in June of 2016 and that they were currently on a month-to-month basis.</p>
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<p>1           <b>Q When did you complete the purchase of the 3200</b> 2           <b>Long Beach Boulevard?</b> 3           A I believe it was at the end of September. 4           <b>Q 2013?</b> 5           A 2016. 6           <b>Q 2016. I'm sorry.</b> 7           A 2016. 8           <b>Q When did you first see the building?</b> 9           A I don't recall. 10          <b>Q Did you -- did you ever do -- did you ever go</b> 11          <b>physically to the building at 3200 --</b> 12          A Yes. 13          <b>Q -- 3200 Long Beach Boulevard prior to entering</b> 14          <b>into any agreement to purchase it?</b> 15          A Yes. 16          <b>Q On how many occasions?</b> 17          A I don't recall. 18          <b>Q More than once?</b> 19          A Probably. 20          <b>Q More than ten times?</b> 21          A No. 22          <b>Q Between one and five times?</b> 23          A It would have -- it would have been less than 24          five times. 25          <b>Q When you visited the building at 3200 Long</b></p> <p style="text-align: right;">Page 18</p>	<p>1           <b>Q Going back to the third -- the back unit, the</b> 2           <b>first one you described, you said it was in shambles.</b> 3           <b>In what way was it in shambles?</b> 4           A It was partially demolished. There was 5           exposed walls and electric wiring and parts and pieces 6           laying all over the floor. 7           <b>Q Did it look like it was being used for storage</b> 8           <b>in any way?</b> 9           A There were items stored in there; although, it 10          I don't know that it was any -- it did not appear to be 11          any usable type of storage. 12          <b>Q Could you tell what type of items were stored</b> 13          <b>in it?</b> 14          A Yeah. We have pictures of it. I don't recall 15          off the top of my head. 16          <b>Q I had asked, as part of today's case, I had</b> 17          <b>served with a subpoena, and your counsel was kind</b> 18          <b>enough to give me an electronic. It says production,</b> 19          <b>001 through 298. Did that contain the pictures that</b> 20          <b>you were just referring to?</b> 21          MR. CAGNEY: I prepared that, Mr. Karpel. 22          And, no, it does not -- 23          MR. KARPEL: Okay. 24          MR. CAGNEY: -- include the pictures, which I 25          don't believe are responsive to the request.</p> <p style="text-align: right;">Page 20</p>
<p>1           <b>Beach Boulevard prior to making an offer to purchase,</b> 2           <b>did you see anyone occupying the building?</b> 3           A No. I never saw a tenant inside the building. 4           <b>Q Did you see any improvements that were done to</b> 5           <b>the building?</b> 6           A Yes. 7           <b>Q Now, describe the building for me. I</b> 8           <b>understand there may be three units; is that correct?</b> 9           A Correct. 10          <b>Q Okay. Can you describe those units for me?</b> 11          A Okay. In general, I would say the -- the back 12          third unit, which would be the furthest north of the 13          building, was in complete shambles. The middle unit 14          was an old and low-class vacant space. 15          <b>Q Any idea its use? Did you determine what its</b> 16          <b>use -- whether it's office, medical, retail?</b> 17          A It was probably medical office. 18          <b>Q You indicated it was old. What gave you the</b> 19          <b>impression it was old?</b> 20          A It was just, kind of, outdated and not of 21          high-class construction. 22          <b>Q Did it seem as -- could you tell purely</b> 23          <b>through your observation whether it was being used?</b> 24          A You could tell that it was absolutely not 25          being used.</p> <p style="text-align: right;">Page 19</p>	<p>1           <b>MR. KARPEL: Just wanted to know what was on</b> 2           <b>it. That's all.</b> 3           <b>MR. CAGNEY: Sure.</b> 4           <b>BY MR. KARPEL:</b> 5           <b>Q Was there -- did you have a chance to look at</b> 6           <b>the subpoena that was prepared for you?</b> 7           A I believe so. 8           <b>MR. KARPEL: All right. I'm going to attach</b> 9           <b>that as Exhibit 1, I guess.</b> 10          (Defendants' Exhibit 1 marked for 11          identification.) 12          <b>MR. KARPEL: And looking at Page -- Page 3 of</b> 13          <b>the exhibit, which is Attachment 1 of the subpoena.</b> 14          Just take a moment and look at that for me, please. 15          Counsel, I have an unsigned copy she just 16          printed off the computer, but I think it -- it should 17          be identical. 18          <b>MR. CAGNEY: It is. It appears that way.</b> 19          <b>BY MR. KARPEL:</b> 20          <b>Q Did you make an effort to collect those</b> 21          <b>documents?</b> 22          A I think I just gave direction to provide all 23          these -- whatever we had in response to this. 24          <b>Q Okay. Without telling me whether you directed</b> 25          <b>your attorney to do that, did you direct somebody to</b></p> <p style="text-align: right;">Page 21</p>

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<p>1      <b>collect those documents for you?</b></p> <p>2      A    I don't recall.</p> <p>3      Q    <b>Would those documents be stored some place in</b></p> <p>4      <b>your office or someone else's office?</b></p> <p>5      A    Well, what you do you mean by, "those</p> <p>6      documents"? Quotes like any and all documents?</p> <p>7      Q    <b>The documents that are the subject matter that</b></p> <p>8      <b>is contained in the subpoena, such as the escrow</b></p> <p>9      <b>instructions, purchase agreements, things like that.</b></p> <p>10     A    Again, if you're — If you're specifically</p> <p>11     asking about escrow instructions and purchase</p> <p>12     agreements, then I directed my property manager to find</p> <p>13     those. But the statement of any and all documents is</p> <p>14     very vague and broad ranging, so I couldn't tell you</p> <p>15     that those were all stored in one particular location.</p> <p>16     Q    <b>All right. Who was your office manager that</b></p> <p>17     <b>you directed to search for those documents?</b></p> <p>18     MR. CAGNEY: I think Mr. Hitchcock testified</p> <p>19     property manager.</p> <p>20     THE WITNESS: Yeah.</p> <p>21     BY MR. KARPEL:</p> <p>22     Q    <b>Who is the property manager?</b></p> <p>23     A    Ericka Burton.</p> <p>24     Q    <b>Okay. Counsel has delivered a document -- an</b></p> <p>25     <b>electronic document labeled 001 through 298, have you</b></p>	<p>1      <b>Q    And what is -- was there any other units?</b></p> <p>2      A    The front unit, which would the most southerly</p> <p>3      unit, appeared to be the newest unit where I was told</p> <p>4      the most current past tenant was located. Although,</p> <p>5      from walking through the unit, there was no signs of</p> <p>6      any current use.</p> <p>7      Q    <b>And can you describe what -- what existed in</b></p> <p>8      <b>that unit?</b></p> <p>9      A    Vacant medical office space.</p> <p>10     Q    <b>Were there any signs on the outside of that</b></p> <p>11     <b>unit indicating, other than an address, a location of</b></p> <p>12     <b>an office?</b></p> <p>13     A    You know, I don't think there is.</p> <p>14     Q    <b>How did you first learn that the building was</b></p> <p>15     <b>available to purchase?</b></p> <p>16     A    That's a vague question because, over the last</p> <p>17     decade or so, that building has been available for</p> <p>18     purchase several times.</p> <p>19     Q    <b>Had you ever seen a for sale sign on the</b></p> <p>20     <b>building in the last 12 months?</b></p> <p>21     A    I don't recall.</p> <p>22     Q    <b>Is that a building that you drive by on a</b></p> <p>23     <b>regular basis?</b></p> <p>24     A    I live and work in the same area.</p> <p>25     Q    <b>Had you ever inquired as to the availability</b></p>
<p>Page 22</p>	<p>Page 24</p>
<p>1      <b>had a chance to look at this, what the contents of the</b></p> <p>2      <b>electronic disk?</b></p> <p>3      A    No.</p> <p>4      Q    <b>Other than the being told by your attorney,</b></p> <p>5      <b>have you been told that this electronic disk is --</b></p> <p>6      <b>contains the documents in response to request that is</b></p> <p>7      <b>attached to the subpoena?</b></p> <p>8      MR. CAGNEY: Sorry. May I have that question</p> <p>9      back, please?</p> <p>10     MR. KARPEL: Sure.</p> <p>11     (Record read.)</p> <p>12     BY MR. KARPEL:</p> <p>13     Q    <b>I'm carving out communications between</b></p> <p>14     <b>yourself and your attorney.</b></p> <p>15     Has someone told you that this disk contains</p> <p>16     the response to the document request that is attached</p> <p>17     to the subpoena?</p> <p>18     A    Other than my attorney?</p> <p>19     Q    Yes.</p> <p>20     A    No.</p> <p>21     Q    Okay. I think we got through -- did you</p> <p>22     finish your description of the middle section of</p> <p>23     building on any of the -- on the visit that you had</p> <p>24     taken to 3200 Long Beach Boulevard?</p> <p>25     A    Yes.</p>	<p>1      <b>purchasing that building prior to the transaction which</b></p> <p>2      <b>ultimately closed in June -- of September of 2016?</b></p> <p>3      A    Well, again, I think that question is a little</p> <p>4      difficult because it's been for sale several times in</p> <p>5      the past decade. But I think what you're wanting to</p> <p>6      know is, for this current purchase, how I found out</p> <p>7      about it. I found out by my brokers advising me of --</p> <p>8      of the purchase availability of the building.</p> <p>9      Q    <b>That actually wasn't my question.</b></p> <p>10     A    Okay.</p> <p>11     Q    <b>I was excluding out the transaction that</b></p> <p>12     <b>concluded in September of 2016.</b></p> <p>13     Had you ever made any inquiries prior to that</p> <p>14     time as to the possibility of purchasing that -- that</p> <p>15     building?</p> <p>16     A    I think so.</p> <p>17     Q    <b>On how many occasions?</b></p> <p>18     A    I don't recall.</p> <p>19     Q    <b>Do you remember who you spoke to?</b></p> <p>20     A    My brokers.</p> <p>21     Q    <b>Did you ever speak to any of the owners of the</b></p> <p>22     <b>building prior to the purchase from Jennifer Sohol?</b></p> <p>23     A    No. I don't believe I've ever spoken to an</p> <p>24     owner of that building.</p> <p>25     Q    <b>Were you aware there was a doctor who owned</b></p>
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<p>1       <b>the property since about 2012?</b></p> <p>2       MR. CAGNEY: Objection. Vague.</p> <p>3       MR. KARPEL: If he knows.</p> <p>4       <b>Q You can answer.</b></p> <p>5       A I don't know if you are referring to Sohol or</p> <p>6       Tawansy. I'm not sure.</p> <p>7       <b>Q Okay. I was referring to Tawansy for a</b></p> <p>8       <b>moment.</b></p> <p>9       <b>Were you aware, prior to your entering the</b></p> <p>10      <b>purchase agreement with Dr. Sohol, that Dr. Tawansy was</b></p> <p>11      <b>a titled owner to the property at some point?</b></p> <p>12      A No. I don't believe so.</p> <p>13      <b>Q Did you speak to Dr. Tawansy prior to entering</b></p> <p>14      <b>into the agreement with Dr. Sohol?</b></p> <p>15      A I don't believe I've ever spoken to</p> <p>16      Dr. Tawansy.</p> <p>17      <b>Q Prior to entering into the agreement with</b></p> <p>18      <b>Dr. Sohol, did you ever speak to Dr. Sohol?</b></p> <p>19      A I have never spoken to Dr. Sohol.</p> <p>20      <b>Q Have you ever been informed by any of your</b></p> <p>21      <b>agents that they spoke to Dr. Tawansy prior to you</b></p> <p>22      <b>getting involved in purchasing the property from</b></p> <p>23      <b>Dr. Sohol?</b></p> <p>24      A No.</p> <p>25      <b>Q Have you -- have you ever been informed by --</b></p>	<p>1       <b>agent, anybody ever told you that they had spoken to</b></p> <p>2       <b>Dr. Sohol about that building prior to you entering</b></p> <p>3       <b>into the agreement with Dr. Sohol?</b></p> <p>4       A Okay. It doesn't readily come to my mind.</p> <p>5       The only person I would have had that contact through</p> <p>6       would be my broker, and I don't recall my broker ever</p> <p>7       saying they had direct conversation with Sohol.</p> <p>8       <b>Q You indicated had you been -- you had been to</b></p> <p>9       <b>the building at 3200 Long Beach Boulevard several times</b></p> <p>10      <b>prior to entering into the purchase agreement; is that</b></p> <p>11      <b>correct? I just want to make sure I understood.</b></p> <p>12      A Well, I indicated that I -- I definitely did</p> <p>13      once and possibly more than once.</p> <p>14      <b>Q Okay. On any of the other occasions -- well,</b></p> <p>15      <b>when was the first time you may have looked at the</b></p> <p>16      <b>property? Let's do it that way.</b></p> <p>17      A I don't recall.</p> <p>18      <b>Q In relationship to you entering into a</b></p> <p>19      <b>purchase agreement with Dr. Sohol, can you give the</b></p> <p>20      <b>timeframe of when you first saw the property?</b></p> <p>21      A I don't recall the date. But when my brokers</p> <p>22      told me it was available, they set up a access to the</p> <p>23      building with the seller's broker, my broker, and</p> <p>24      myself.</p> <p>25      <b>Q Okay. Who was the seller's broker, if you</b></p>
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<p>1       <b>let's put it this way. Have you ever been informed by</b></p> <p>2       <b>anyone other than your lawyer that they had spoken to</b></p> <p>3       <b>Dr. Tawansy prior to you entering into the property</b></p> <p>4       <b>transaction with Dr. Sohol?</b></p> <p>5       A No.</p> <p>6       <b>Q Have you ever been informed by anyone that the</b></p> <p>7       <b>spoke to Dr. Sohol prior to entering into the</b></p> <p>8       <b>transaction with Dr. Sohol?</b></p> <p>9       A Well, I have no idea.</p> <p>10      <b>Q Somebody telling you, you know, I had spoken</b></p> <p>11      <b>to Dr. Sohol, and she is a tenant there, she is</b></p> <p>12      <b>building something, just any general information prior</b></p> <p>13      <b>to entering into the transaction?</b></p> <p>14      MR. CAGNEY: So the question is whether</p> <p>15      Mr. Hitchcock was ever told by anyone that that person</p> <p>16      had spoken to Sohol?</p> <p>17      MR. KARPEL: Exactly. That's what I'm -- at a</p> <p>18      time prior to entering into the agreement.</p> <p>19      THE WITNESS: I'm not sure I understand that</p> <p>20      question.</p> <p>21      BY MR. KARPEL:</p> <p>22      <b>Q Okay. We'll give it one more chance. Okay.</b></p> <p>23      <b>Otherwise, I will just end it. The importance is not</b></p> <p>24      <b>that great.</b></p> <p>25      Okay. Other than your lawyer, has any broker,</p>	<p>1       <b>recall?</b></p> <p>2       A I recall it being Marcus and Millichap.</p> <p>3       COURT REPORTER: I'm sorry?</p> <p>4       THE WITNESS: Marcus and Millichap.</p> <p>5       BY MR. KARPEL:</p> <p>6       <b>Q And estimate of a timeframe, a month, two</b></p> <p>7       <b>months, a year before?</b></p> <p>8       A I don't recall because this escrow was -- was</p> <p>9       a long escrow because it kept getting delayed because I</p> <p>10      was selling another property that I was using that</p> <p>11      money from for the 1031 exchange. And the other</p> <p>12      property I was selling kept getting delayed in escrow,</p> <p>13      which, in turn, kept delaying this escrow.</p> <p>14      <b>Q Any idea how long the escrow might have been?</b></p> <p>15      A No. I don't recall.</p> <p>16      <b>Q A year? Six months?</b></p> <p>17      MR. CAGNEY: Don't guess. If you are able to</p> <p>18      estimate --</p> <p>19      THE WITNESS: I don't recall. I mean, I've</p> <p>20      been involved in quite a few purchases in the last two</p> <p>21      years, so I don't recall.</p> <p>22      BY MR. KARPEL:</p> <p>23      <b>Q Okay. Which broker told you that the property</b></p> <p>24      <b>was available?</b></p> <p>25      A Lee and Associates.</p>
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<p>1      Q    Do you know who at Lee and Associates?</p> <p>2      A    Either Jeff or Shaun or both.</p> <p>3      Q    Okay. Did they know you -- you had a had --</p> <p>4      well, let me ask this.</p> <p>5      Prior to learning about the availability of</p> <p>6      the property, had you ever expressed to Lee and</p> <p>7      Associates a desire to purchase this particular</p> <p>8      building?</p> <p>9      A    Yes.</p> <p>10     Q    And do you recall when you first expressed</p> <p>11    that to them?</p> <p>12    A    Several years before.</p> <p>13    Q    Is there a reason why you had an interest in</p> <p>14    this particular building several years before?</p> <p>15    A    I have interest in all potential medical</p> <p>16    buildings around the area.</p> <p>17    Q    That's close to a hospital, isn't it?</p> <p>18    A    Correct.</p> <p>19    Q    Long Beach Memorial?</p> <p>20    A    Correct.</p> <p>21    Q    How far from Long Beach Memorial is this</p> <p>22    particular building?</p> <p>23    A    A couple of blocks.</p> <p>24    Q    Other than it being an available medical</p> <p>25    building close to the Long Beach Memorial that fed your</p>	<p>1      Q    Okay.</p> <p>2      A    -- to medical.</p> <p>3      Q    Do you have any kind of medical consultant</p> <p>4      that you worked with in regard to this building as to</p> <p>5      the feasibility of converting this into a medical</p> <p>6      building?</p> <p>7      A    No.</p> <p>8      Q    Do you ever work with a medical consultant to</p> <p>9      assist you in conversion of a commercial building into</p> <p>10     a medical building?</p> <p>11     MR. CAGNEY: Objection, Vague.</p> <p>12     BY MR. KARPEL:</p> <p>13     Q    You can answer.</p> <p>14     A    For properties that I own?</p> <p>15     Q    Yes.</p> <p>16     A    No.</p> <p>17     Q    Did Lee and Associates tell you what the</p> <p>18     purchase price would be for the building?</p> <p>19     A    Yes.</p> <p>20     Q    How much was it?</p> <p>21     A    I don't recall.</p> <p>22     Q    Was it between 2.5 and \$3 million?</p> <p>23     A    I don't recall.</p> <p>24     Q    Did Lee -- anyone at Lee and Associates tell</p> <p>25     you who the current tenant might have been in the</p>
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<p>1      interest in purchasing this particular building?</p> <p>2      A    Yes. In general, my interest is in all local</p> <p>3      properties so that they're easy for me to access</p> <p>4      because I run a full-time job being a general</p> <p>5      contractor. And in addition, I specifically seek out</p> <p>6      properties that have value add opportunities, meaning</p> <p>7      that they need a lot of work to them so that I can add</p> <p>8      my construction services to add value to the property.</p> <p>9      This particular building met all those requirements.</p> <p>10     Q    Had you made any inquiry other than from your</p> <p>11    broker as to the use of the -- strike that.</p> <p>12     Did you talk to any -- any doctors or other</p> <p>13    medical professionals about this building prior to</p> <p>14    entering into -- into the agreement?</p> <p>15    A    I don't believe so.</p> <p>16    Q    What was the -- what was your long term</p> <p>17    purpose in purchasing this building?</p> <p>18    A    To improve and upgrade the building and</p> <p>19    property for lease.</p> <p>20    Q    Was there a specific use, such as a medical</p> <p>21    building, retail, residential that you had in mind?</p> <p>22    A    Definitely not residential.</p> <p>23    Q    Okay. Have to ask all possibilities.</p> <p>24    A    And I'm always interested in medical, but I</p> <p>25    wasn't limited to --</p>	<p>1      building?</p> <p>2      A    I'm trying to think. I believe, originally,</p> <p>3      they just told me that there was a current tenant in</p> <p>4      the building. And then we learned that the current</p> <p>5      tenant's lease was expired in June. And then I was</p> <p>6      told there could be interest for the current tenant to</p> <p>7      continue a new lease. And at some point, I was given</p> <p>8      copies of the lease that had expired, so I assume that</p> <p>9      that tenant information would be on that lease.</p> <p>10     Q    And I think you testified you never spoke to</p> <p>11    Dr. Tawansy directly; correct?</p> <p>12    A    Never.</p> <p>13    Q    Did you speak to an agent or representative of</p> <p>14    Dr. Tawansy at any time prior to the closing of the</p> <p>15    purchase of this building?</p> <p>16    A    No.</p> <p>17    Q    Did you ever receive any current</p> <p>18    correspondence from Dr. Tawansy concerning any claimed</p> <p>19    interest he might have in the building?</p> <p>20    A    At what point?</p> <p>21    Q    Prior to the close.</p> <p>22    A    No.</p> <p>23    Q    Did you ever receive any correspondence from</p> <p>24    any agent or representative of Dr. Tawansy prior to the</p> <p>25    close of the building that Dr. Tawansy had an interest</p>
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<p>1       in the building?</p> <p>2       A   No.</p> <p>3       Q   After the close of the building, did you ever</p> <p>4       receive any information from any source that</p> <p>5       Dr. Tawansy claimed that he had ownership interest in</p> <p>6       the building? I have to eliminate your attorney for a</p> <p>7       moment.</p> <p>8       A   Yes.</p> <p>9       MR. CAGNEY: Besides your letter?</p> <p>10      MR. KARPEL: Yes. The answer is, "yes."</p> <p>11      Q   How did you learn about that claim?</p> <p>12      A   We were served with a -- with a summons or</p> <p>13       lawsuit or something.</p> <p>14      Q   Who initiated that lawsuit, if you know.</p> <p>15      MR. CAGNEY: Objection. Vague.</p> <p>16      BY MR. KARPEL:</p> <p>17      Q   Who is the plaintiff in that matter?</p> <p>18      A   I don't recall the exact specifics, if this</p> <p>19       was a -- this was a original suit and plaintiff or this</p> <p>20       was a countersuit. I just know somehow we got named in</p> <p>21       a -- in a summons, and I read -- I just read the</p> <p>22       complaint. And that was the first time I ever heard</p> <p>23       anything about the claim of Dr. Tawansy claiming</p> <p>24       ownership in the building.</p> <p>25      Q   When you decided to purchase the building, did</p>	<p>1       property fully out of two separate 1031 exchanges.</p> <p>2       Q   In the discussions that you had with your</p> <p>3       bank, did you present the lease that was presented to</p> <p>4       you from the owner of the property?</p> <p>5       A   I don't think so.</p> <p>6       Q   When were you given that lease?</p> <p>7       A   Some point during escrow.</p> <p>8       Q   As you said, you don't recall how long -- it</p> <p>9       was a long escrow, but you don't recall how long?</p> <p>10      A   Correct.</p> <p>11      Q   Once escrow opened, did you -- you or anybody</p> <p>12       in -- on your behalf perform any due diligence in</p> <p>13       regard to the purchase of this building?</p> <p>14      MR. CAGNEY: Objection. Vague.</p> <p>15      BY MR. KARPEL:</p> <p>16      Q   The answer is "yes" or "no." I will get into</p> <p>17       what due diligence is.</p> <p>18      A   Yes.</p> <p>19      Q   Yes.</p> <p>20      What form of due diligence -- what forms of</p> <p>21       due diligence did you -- did you perform or you or</p> <p>22       someone on your behalf perform in regards to the</p> <p>23       purchase of this building?</p> <p>24      A   I walked and reviewed the building from</p> <p>25       inside, outside, on top of roof, the parking lot. And</p>
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<p>1       you do it by an offer to purchase, or what type of</p> <p>2       document did you prepare or someone on your behalf</p> <p>3       prepare?</p> <p>4       A   My broker prepared.</p> <p>5       Q   What did he prepare?</p> <p>6       A   I don't recall. Some kind of purchase</p> <p>7       agreement.</p> <p>8       Q   You -- you don't recall the purchase price?</p> <p>9       A   You haven't asked me that.</p> <p>10      Q   Oh. That's right. I asked you the price of</p> <p>11       the -- what was the purchase price?</p> <p>12      A   To my recollection, I believe I remember the</p> <p>13       purchase price being \$2,650,000, but, again, that's</p> <p>14       just me recalling right now.</p> <p>15      Q   Did you make any kind of application from a</p> <p>16       finance or -- finance -- financial institution for a</p> <p>17       loan for the purchase price?</p> <p>18      A   I believe I had a discussion with my bank</p> <p>19       about it.</p> <p>20      Q   Did you end up using your bank?</p> <p>21      MR. CAGNEY: Objection. Vague.</p> <p>22      BY MR. KARPEL:</p> <p>23      Q   To purchase the property -- to fund the loan</p> <p>24       to purchase the property?</p> <p>25      A   No. I believe I ended up purchasing the</p>	<p>1       I brought, I believe, a mechanical contractor and</p> <p>2       electrical contractor with me to give me their input as</p> <p>3       well.</p> <p>4       Q   Do you know if -- did you review any title</p> <p>5       reports on the building?</p> <p>6       A   I'm sure I saw some, but I leave -- I -- I</p> <p>7       trust my brokers and escrow to handle most of that.</p> <p>8       Q   Do you know who -- your broker then would have</p> <p>9       been responsible for reviewing any title reports?</p> <p>10      A   My broker does review the title reports, and</p> <p>11       so does escrow.</p> <p>12      Q   So we're clear, do you have a specific</p> <p>13       recollection of reviewing the title report in regards</p> <p>14       to the purchase of 3200 Long Beach Boulevard?</p> <p>15      A   I don't recall.</p> <p>16      Q   Did your broker or anybody else who, to your</p> <p>17       knowledge, might have reviewed the title report ever</p> <p>18       tell you that the tenant that was in the property</p> <p>19       showed up as a prior owner the building?</p> <p>20      A   I don't recall that, no.</p> <p>21      Q   When did you learn of the name Dr. Tawansy</p> <p>22       having any involvement in this property?</p> <p>23      A   I would imagine when I saw the name on the</p> <p>24       lease that was, at some point, given to me.</p> <p>25      Q   Do you know if that lease was ever shown to</p>
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<p>1       <b>your broker or anyone else who might have reviewed the</b>  2       <b>title report?</b></p> <p>3       MR. CAGNEY: Objection. Vague. Calls for  4       speculation.</p> <p>5       BY MR. KARPEL:</p> <p>6       <b>Q   Can you answer?</b></p> <p>7       A   I got the lease from my broker. So, yes,  8       broker would have seen it.</p> <p>9       <b>Q   And the broker, to your knowledge, never told</b>  10      <b>you that the current tenant showed up as a title owner</b>  11      <b>at one point of the building; is that correct?</b></p> <p>12      A   Correct.</p> <p>13      <b>Q   Do you have the address for Lee and</b>  14      <b>Associates?</b></p> <p>15      A   No.</p> <p>16      <b>Q   Do you know where they're -- where they're</b>  17      <b>generally located?</b></p> <p>18      A   Long Beach.</p> <p>19      <b>Q   Do you know if it was either Shaun or Jeff</b>  20      <b>that specifically worked on 3200 Long Beach, or both of</b>  21      <b>them did?</b></p> <p>22      A   Both of them.</p> <p>23      <b>Q   Did they ever tell you that they -- either one</b>  24      <b>of them reviewed the title report of the property?</b></p> <p>25      A   The only thing I remember going on with the</p>	<p>1       THE WITNESS: I think as soon as it was  2       brought up, I addressed to you, so...  3       BY MR. KARPEL:</p> <p>4       <b>Q   Okay. So let's get back to what was brought</b>  5       <b>up. That, I'm entitled to.</b></p> <p>6       A   Technically, I'm trying -- I -- I don't  7       remember what it was. It was something about a --</p> <p>8       MR. CAGNEY: You -- you're only required to  9       disclose what you remember. So if you don't remember  10      it, that's the answer, and we move on.</p> <p>11      THE WITNESS: Yeah, I mean, it's -- it's  12      documented. It's not -- it's not a secret. I mean,  13      anyone can -- I'm sure there's documents provided to  14      you that you have.</p> <p>15      BY MR. KARPEL:</p> <p>16      <b>Q   I understand there's some --</b></p> <p>17      A   We had to ask for additional title insurance  18      for a certain item.</p> <p>19      <b>Q   Do you remember what that was?</b></p> <p>20      A   No.</p> <p>21      <b>Q   Was -- who's the -- the title insurance</b>  22      <b>company?</b></p> <p>23      A   I don't recall.</p> <p>24      <b>Q   Okay. Was it -- was this first brought to</b>  25      <b>your attention by your broker?</b></p>
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<p>1       title report was there -- and that's when I engaged my  2       attorney on it -- was that there was an issue --</p> <p>3       MR. CAGNEY: And I'll warn you not to --</p> <p>4       MR. KARPEL: Careful.</p> <p>5       MR. CAGNEY: -- disclose any aspect of any  6       communication between you and anyone at my office.</p> <p>7       MR. KARPEL: Please. I don't want you to --</p> <p>8       you understand there is attorney-client privilege --</p> <p>9       THE WITNESS: Correct.</p> <p>10      MR. KARPEL: -- and I'm not entitled to  11      inquire into that. So you have to, kind of, dance  12      around if you can.</p> <p>13      <b>Q   Without disclosing any communication from your</b>  14      <b>attorney, did you learn from any other source that</b>  15      <b>there was some -- some issue with the title?</b></p> <p>16      A   The same circumstance that we're talking  17      about, the broker was -- my broker was aware of it,  18      yes.</p> <p>19      <b>Q   And what was your broker aware of?</b></p> <p>20      A   I don't know how much I'm allowed to say.</p> <p>21      MR. CAGNEY: It's -- anything that didn't come  22      from me or involve communications with my office is  23      fair game. So once you started talking to me, you  24      don't disclose anything about -- about those  25      communications.</p>	<p>1       A   I believe so.</p> <p>2       <b>Q   And as you sit here today, you don't remember</b>  3       <b>what the problem was, but it had to do something with</b>  4       <b>title?</b></p> <p>5       A   Correct.</p> <p>6       <b>Q   Do you know whether that, as you sit here</b>  7       <b>today, if that was an issue that involved any claims by</b>  8       <b>Dr. Tawansy to the title?</b></p> <p>9       A   I don't remember.</p> <p>10      <b>Q   Were you provided additional insurance by the</b>  11      <b>title company?</b></p> <p>12      A   Yes.</p> <p>13      <b>Q   Do you recall the amount or the type of</b>  14      <b>insurance that was provided by the title company?</b></p> <p>15      A   No.</p> <p>16      <b>Q   As you sit here today, and excluding anything</b>  17      <b>that you might have heard from your counsel, did it</b>  18      <b>have anything to do with any claims of title between</b>  19      <b>Dr. Tawansy and Dr. Sohol as the reason why you needed</b>  20      <b>to have the additional title insurance?</b></p> <p>21      A   Not that I'm aware of, no. I don't recall it  22      being that.</p> <p>23      <b>Q   Did it have to do with any easements or claims</b>  24      <b>of easements on the property?</b></p> <p>25      A   I don't think so.</p>
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<p>1        <b>Q</b> Did it have to -- well... 2        Prior to your purchase of the property, had 3        you ever learned from any -- from your broker or 4        anybody else that there were -- that there were claims 5        to title by a third party? 6        A    No. 7        <b>Q</b> Prior to you purchasing the property, did you 8        ever learn that there may have been an alleged 9        extension of the lease for the tenant that was in 10      possession at the time you purchased the property? 11      A    No. I don't believe so. 12      <b>Q</b> You ultimately learned that there was a claim 13      by Dr. Tawansy in regard to the seller of the property 14      to you; is that correct? 15      A    Correct. 16      <b>Q</b> Do you remember when you were served? 17      A    No. 18      <b>Q</b> Were you served after you had closed the 19      escrow on the purchase of the property? 20      A    Yes. 21      <b>Q</b> The second time you might have visited the</p>	<p>1        it could be possible to continue the lease for that 2        front unit with the current tenant. 3        <b>Q</b> Did he ever describe who the current tenant 4        was? 5        A    Probably. 6        <b>Q</b> Do you recall what he said to you? 7        A    No. I -- I don't think the name ever was of 8        any importance to me. It was just a discussion that it 9        seemed crazy that the tenant might be interested in 10      continuing the lease. But if they were, and we weren't 11      ready to develop that portion, we might as well lease 12      it. 13      <b>Q</b> Did he tell you, without disclosing the name, 14      the type of business that was being conducted in the 15      first unit? The first unit being the southernmost 16      unit. 17      A    I think so. 18      <b>Q</b> And what was that? 19      A    An eye doctor. 20      <b>Q</b> Did the broker tell you how often the eye 21      doctor would see patients, if he did, at that location? 22      A    No. 23      <b>Q</b> Did you make any inquiry of -- from any other 24      medical professional if they knew who the person was 25      that was in the -- in the first unit, occupying it?</p>
<p style="text-align: center;">Page 42</p> <p>1        property, did you see any changes to the property from 2        the first time you had seen the property? 3        A    I don't think so. 4        <b>Q</b> How about the unit -- the most northern unit, 5        was there any changes to that? That's the one in 6        shambles. 7        A    Not that I recall. 8        <b>Q</b> Okay. And the middle unit? 9        A    Not that I recall. 10      <b>Q</b> How about the first unit? 11      A    Not that I recall. 12      <b>Q</b> Did you see any evidence when you visited the 13      first unit that it was being used? 14      A    It really looked like it was not being used. 15      It seemed to have just some, you know, old mail front 16      of the reception desk. 17      <b>Q</b> Did you ever learn from any -- any source 18      other than your lawyer that the first unit was being 19      used? 20      MR. CAGNEY: Objection. Vague as to time. 21      THE WITNESS: Did I ever? 22      BY MR. KARPEL: 23      <b>Q</b> Yeah. Let's say prior to your -- your closing 24      of the escrow. 25      A    Well, only in that my broker let me know that</p>	<p style="text-align: center;">Page 44</p> <p>1        A    I don't think so. 2        <b>Q</b> Did anyone tell you, your broker or anybody 3        else, tell you that they made an inquiry as to who the 4        person was that was occupying the first unit? 5        A    I don't think so. 6        <b>Q</b> You indicated that you were given a copy of a 7        lease that allegedly was between the then owner and the 8        tenant that was in there. When did you get that lease 9        in relation to the closing of the escrow? 10      A    Prior to closing. 11      <b>Q</b> Were you ever told whether or not your agent 12      spoke to Dr. Sohol about that tenant? 13      A    Repeat that question. 14      <b>Q</b> I'm sorry. 15      Were you ever told whether your agent or 16      agents ever spoke to Dr. Sohol about that tenant? 17      A    Not that I'm aware of. 18      <b>Q</b> Do you know who provided the lease to -- was 19      it provided to you -- by your broker to you? 20      A    Yes. 21      <b>Q</b> Who provided it to your broker? 22      A    I don't know. 23      <b>Q</b> Did you have any conversation with your broker 24      or anybody else about presenting a lease to the tenant 25      at any time? This would include after you closed</p>

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<p>1 escrow.</p> <p>2 A Repeat the beginning again.</p> <p>3 Q Sure.</p> <p>4 Did you have any discussions with anybody,</p> <p>5 other than your lawyer, about presenting a new lease to</p> <p>6 the tenant at any time, including after you took</p> <p>7 tenant -- you took title?</p> <p>8 A Yes.</p> <p>9 Q And who was that that you spoke to?</p> <p>10 A My broker and to Ericka Burton.</p> <p>11 Q Okay. And what were those discussions?</p> <p>12 A That we would present the current tenant with</p> <p>13 a month-to-month lease offer.</p> <p>14 Q Was the amount of the rent discussed?</p> <p>15 A Yes.</p> <p>16 Q And how was that determined?</p> <p>17 A We kept it the same amount that they were</p> <p>18 already leasing the building from on their expired</p> <p>19 lease.</p> <p>20 Q Okay. And how much was that?</p> <p>21 A If I recall correctly, it was \$15,000 a month.</p> <p>22 Q Given that unit -- did -- did that include the</p> <p>23 entire building or just the unit that the tenant was</p> <p>24 occupying?</p> <p>25 A Just the front unit.</p>	<p>1 that particular unit?</p> <p>2 MR. CAGNEY: Objection. Vague.</p> <p>3 BY MR. KARPEL:</p> <p>4 Q You may answer.</p> <p>5 A It's on the high side, but not -- it's not</p> <p>6 ridiculous.</p> <p>7 Q Given your description of the improvements in</p> <p>8 Unit 1, that affects what the per square footage rental</p> <p>9 raise rate is; am I correct?</p> <p>10 A I didn't give a description of Unit 1's</p> <p>11 improvements.</p> <p>12 Q Okay. Well, why don't you give me a</p> <p>13 description of Unit 1's improvements. I thought we,</p> <p>14 kind of, glossed over it, but go ahead.</p> <p>15 A I think we talked about Unit 2.</p> <p>16 Q All right. How about Unit 1?</p> <p>17 A Unit 1 was more current than the middle unit,</p> <p>18 but what -- what exactly are you asking me about it?</p> <p>19 Q Maybe I was wrong. I thought you had</p> <p>20 described it as still an older, not up-to-date tenant</p> <p>21 improvements?</p> <p>22 MR. CAGNEY: I think that was Mr. Hitchcock's</p> <p>23 testimony regarding Unit 2.</p> <p>24 THE WITNESS: Yes.</p> <p>25 ///</p>
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<p>1 Q Okay. How many square feet was there in the</p> <p>2 front unit?</p> <p>3 A Approximately 5,000.</p> <p>4 Q You're familiar with rentals. Let me ask</p> <p>5 this. Do you own any other medical buildings in a</p> <p>6 proximity to Long Beach Memorial Hospital?</p> <p>7 A Yes.</p> <p>8 Q Any of those medical buildings rented out to</p> <p>9 doctors?</p> <p>10 A Currently, my most recent and best comparison</p> <p>11 would be a rental to Kaiser, who, you know, has</p> <p>12 doctors, but it's not actually to a doctor.</p> <p>13 Q Do you know what the square footage is of</p> <p>14 that, what you are renting out to the Kaiser?</p> <p>15 A Approximately 20,000 square feet.</p> <p>16 Q And how much per square foot?</p> <p>17 A Approximately \$2.50 cents triple net.</p> <p>18 Q Do you know if the lease that you presented to</p> <p>19 the tenant at 3200 Long Beach Boulevard was going to be</p> <p>20 a triple net?</p> <p>21 A I believe so.</p> <p>22 Q And that works out to \$3 a square foot; is that</p> <p>23 correct?</p> <p>24 A Correct.</p> <p>25 Q Did that seem to be a fair amount of rent for</p>	<p>1 BY MR. KARPEL:</p> <p>2 Q All right. Would you describe the nature of</p> <p>3 the improvements in -- let's do the nature first in</p> <p>4 Unit 1?</p> <p>5 A The nature of it, so meaning that it was a</p> <p>6 medical office space?</p> <p>7 Q Yeah. What -- what amenities did it have?</p> <p>8 A It had all the basic amenities of a medical</p> <p>9 office space.</p> <p>10 Q Did it have an operating room?</p> <p>11 A No. I don't think so.</p> <p>12 Q Was it a -- did it have lab facilities --</p> <p>13 laboratory facilities?</p> <p>14 A I'm not sure how you would laboratory</p> <p>15 facilities. I recall seeing, like, a medical chair in</p> <p>16 a room and cabinets with sinks.</p> <p>17 Q All right. Did it have an office for the</p> <p>18 doctor or a doctor?</p> <p>19 A Probably.</p> <p>20 Q How many examining rooms did it have?</p> <p>21 A I don't recall, but it's still existing, so it</p> <p>22 could be counted.</p> <p>23 Q Did it have any storage for files?</p> <p>24 A Probably. I don't recall.</p> <p>25 Q Were there files in the storage?</p>
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<p>1 A I never saw any files.      2 Q Did it have any signs in interior of the Unit      3 as to who was occupying it?      4 A I don't think so.      5 Q Would you describe the amenities and tenant      6 improvements of Unit 1 -- well, let me ask you how      7 would you describe it in terms of being up to date,      8 modern, dated by a few years, dated by a lot of years?      9 I know it's vague, but give me your best opinion.      10 A Yeah. That's very subjective. I personally      11 didn't --      12 Q Did it suck?      13 A -- didn't care for the design. I thought the      14 hallways were too big and that the, you know, the      15 material of the doors was inadequate. You know, those      16 kinds of things, but it's very subjective.      17 Q Was it functional?      18 A It appeared to be.      19 Q Was it worth \$3 a square foot given the area      20 and your experience renting medical space in that area?      21 MR. CAGNEY: Objection. Calls for an expert      22 opinion. Vague. Incomplete hypothetical. And it      23 calls for speculation.      24 BY MR. KARPEL:      25 Q You are the owner of buildings in that area,</p>	<p>1 A No. No.      2 Q At any time either before or after the escrow,      3 have you ever had any personal conversation with      4 Dr. Sohol?      5 A Never.      6 Q At any time since the close of escrow, have      7 you ever spoken to Dr. Tawansy?      8 A No.      9 Q Were you ever made aware that Dr. Tawansy and      10 Dr. Sohol were in a relationship?      11 A Yes.      12 Q And other than from your attorney, who told      13 you that?      14 A I think I learned it from the summons that was      15 served to me.      16 Q The summons that you learned that Dr. Tawansy      17 felt he had an ownership interest in that property;      18 right?      19 A Correct.      20 Q And did you understand that ownership interest      21 to be an equitable ownership interest in the property,      22 if you understand? I'm not -- I'm not asking for,      23 like, legal opinion.      24 MR. CAGNEY: Objection. Calls for legal      25 conclusion. Assumes facts not in evidence. Incomplete</p>
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<p>1 so without being an expert, I'm still entitled to you      2 experience and knowledge.      3 A Yeah. Worth is, again, a subjective      4 statement, you know. It's worth it if it's worth it to      5 that specific doctor.      6 Q In its present condition, would you, to a new      7 tenant, would have rented it out for \$3 a square foot?      8 A I would like to, but if asking me --      9 Q Market -- market conditions.      10 MR. CAGNEY: Same objections.      11 BY MR. KARPEL:      12 Q I get it. Give me the answer.      13 A I mean, if I'm being honest, it would get      14 rented -- rented at a -- at a less per square foot      15 rate, but -- but it's still within reason. It's not --      16 it's not a crazy number.      17 Q Were you ever told that the -- let me ask you      18 this.      19 The lease that you were given Dr. Sohol -- not      20 you, but given to the agent or broker that you saw, was      21 that just for you Unit 1, or was that for the entire      22 building?      23 A It was my understanding it's for Unit 1.      24 Q Did you ever learn that that was for the      25 entire building at any time?</p>	<p>1 hypothetical.      2 BY MR. KARPEL:      3 Q From your reading of the summons or any other      4 information. I'm not asking for a legal opinion, just      5 your opinion.      6 MR. CAGNEY: The question is?      7 THE WITNESS: Ask the question.      8 BY MR. KARPEL:      9 Q The question is did you learn or did you      10 believe that Dr. Tawansy felt that he had an equitable      11 right to owning that property?      12 A To be honest, I didn't scrutinize it that      13 closely because the whole thing read like a soap opera      14 to me.      15 (Off-the-record discussion.)      16 BY MR. KARPEL:      17 Q Who handled the negotiations for the seller on      18 your behalf?      19 A My broker.      20 Q Do you know which one or both?      21 A Both as far as I know.      22 Q Did they ever report back to you at any time      23 prior to you purchasing the property that there was any      24 claims to the title other than the -- strike that.      25 At any time prior to you closing the escrow,</p>
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<p>1       <b>did your broker ever tell you that there may be a</b>  2       <b>conflicting claim to the ownership of the property from</b>  3       <b>any source?</b></p> <p>4       A   No.</p> <p>5       Q   Are you aware whether or not -- well, the  6       seller was Dr. Sohol; correct?</p> <p>7       A   I think it was a -- I don't know that it was  8       her personally. Wasn't it, like, a name, like, a J.K.  9       Augusta or something?</p> <p>10      Q   J.K. Augusta something. Some Latin words;  11      right?</p> <p>12      A   I -- I really don't know. I didn't pay much  13      attention.</p> <p>14      Q   Did you learn that behind J.K. Augusta that  15      Dr. Jennifer Sohol was one of the -- the principle of  16      J.K. Augusta?</p> <p>17      A   I don't think I ever specifically inquired or  18      cared.</p> <p>19      Q   Okay. Was it your intention in purchasing the  20      property at 3200 Long Beach Boulevard to keep the units  21      as three separate units?</p> <p>22      A   Not necessarily.</p> <p>23      Q   My understanding that Ms. Burton had sent  24      Dr. Tawansy a proposed month-to-month lease; am I  25      correct?</p>	<p>1       <b>Q   Did you learn from your broker?</b></p> <p>2       A   I don't remember.</p> <p>3       <b>Q   Did you learn it from Dr. Tawansy?</b></p> <p>4       A   I've never spoken to Dr. Tawansy.</p> <p>5       <b>Q   Did you ever speak to a representative of</b>  6       <b>Dr. Tawansy's?</b></p> <p>7       A   Well, I guess that's the question right now.  8       Because I was told that it was a representative of  9       Dr. Tawansy, but -- because the only person I talked to  10      was what's his name again? Am I allowed to ask you for  11      his name?</p> <p>12      <b>Q   Let me ask you a different question. Have you</b>  13      ever talked to a Gary Lefkowitz [ph]?</p> <p>14      A   Yes. That's the name.</p> <p>15      <b>Q   All right. When did you speak to Gary?</b></p> <p>16      A   So that's the only representative of  17      Dr. Tawansy that I've ever spoke to, and I was told  18      that he was his representative and CEO.</p> <p>19      <b>Q   When did you speak to Mr. Lefkowitz?</b></p> <p>20      A   He came to my office for a meeting.</p> <p>21      <b>Q   And when was that?</b></p> <p>22      A   I don't recall.</p> <p>23      <b>Q   Is that after you had closed escrow?</b></p> <p>24      A   Correct.</p> <p>25      <b>Q   From prior to the time that Dr. -- sorry. Not</b></p>
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<p>1       A   Correct.</p> <p>2       <b>Q   Did he ever sign that lease?</b></p> <p>3       A   I don't believe so.</p> <p>4       <b>Q   Did Dr. Tawansy make any rental payments to</b>  5       <b>you --</b></p> <p>6       A   Yes.</p> <p>7       <b>Q   -- or your company?</b></p> <p>8       A   Yes.</p> <p>9       <b>Q   And what -- how much was that?</b></p> <p>10      A   15,000.</p> <p>11      <b>Q   Do you know what that was for?</b></p> <p>12      MR. CAGNEY: Objection. Vague.</p> <p>13      BY MR. KARPEL:</p> <p>14      <b>Q   You may answer.</b></p> <p>15      A   To rent the front unit.</p> <p>16      <b>Q   Did you ever learn that Dr. Tawansy believed</b>  17      <b>that he had a right to possession to the entire</b>  18      <b>building?</b></p> <p>19      A   I heard that at some point after the fact.</p> <p>20      <b>Q   After what fact?</b></p> <p>21      A   After presenting a month-to-month lease to  22      him, after collecting rent from him.</p> <p>23      <b>Q   How did you learn? And again, exclude your</b>  24      <b>attorney.</b></p> <p>25      A   I don't recall.</p>	<p>1       <b>a doctor.</b></p> <p>2       <b>Prior to the time that you met with Gary</b>  3       <b>Lefkowitz, did you or anyone on your behalf take</b>  4       <b>possession of Units 2 and 3?</b></p> <p>5       A   Well, I believe I took possession of the whole  6       building when I purchased it.</p> <p>7       <b>Q   Did you take any -- did you begin any</b>  8       <b>construction on any of the units?</b></p> <p>9       A   At what point?</p> <p>10      <b>Q   Prior to meeting with Mr. Lefkowitz.</b></p> <p>11      A   I don't think we had. I think we -- I think  12      that we were about to. And this is prior to any  13      knowledge of any of this, any of these assertions. But  14      as just common practice, we were starting to do  15      demolition in the back two units. And because there  16      was a front unit that was paying rent, out of common  17      courtesy, we gave them a notice to let them know that  18      we'd be doing demolition so that if, you know, they  19      bothered by noise or something, they would let us know.</p> <p>20      And then that's when, immediately after, we  21      all of the sudden got a summons of this suit and so  22      forth and so on. So I -- and when that first happened,  23      I was completely shocked and had no idea what was going  24      on, so I decided to halt. And we did not commence with  25      the demolition. And I believe we still had not</p>
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<p>1 commenced with demolition by the time I met with 2 Lefkowitz.</p> <p>3     <b>Q All right. Prior to meeting Lefkowitz, did 4 anyone your behalf, other than your attorney, attempt 5 to contact the seller -- the prior seller of the 6 building to try and find out what the heck was going 7 on?</b></p> <p>8     A We didn't attempt to make direct contact with 9 the seller, no.</p> <p>10    <b>Q Had you had any indirect contact with the 11 seller prior to the meeting with Mr. Lefkowitz?</b></p> <p>12    A I'm sure we -- we told our broker about the 13 summons.</p> <p>14    <b>Q Okay. Do you know -- were you ever told that 15 your broker had any contact with the representative of 16 the seller?</b></p> <p>17    A At what point?</p> <p>18    <b>Q Prior to seeing Mr. Lefkowitz.</b></p> <p>19    A Ask the question again.</p> <p>20    <b>Q Sure. Prior to meeting with Mr. Lefkowitz, 21 were you ever told by your broker or anybody else that 22 they had contact with the seller?</b></p> <p>23    A I don't recall.</p> <p>24    <b>Q Were you ever told by your broker that they 25 had brought in this alleged title claim by Dr. Tawansy</b></p>	<p>1 ownership. We were -- we were all shocked.</p> <p>2     <b>Q Well, did your brokers tell you that the 3 brokers representing the seller were likewise shocked?</b></p> <p>4     A I don't think they told me anything.</p> <p>5     <b>Q Did they -- did the -- your brokers tell you 6 what, if anything, the brokers for the seller were 7 going to do to remedy situation, if anything?</b></p> <p>8     A I'm not aware of anything. I don't know that 9 there was anything to remedy.</p> <p>10    <b>Q Okay. Did your brokers ever -- prior to you 11 receiving a summons, did your brokers ever tell you 12 that there that they were told by the brokers of the 13 seller that there was this possible -- this claim by 14 this Dr. Tawansy?</b></p> <p>15    A I'm sorry. May I have that question back?</p> <p>16    <b>Q Prior to you actually getting the summons -- 17 let me do it this way.</b></p> <p>18    <b>Was the summons the first information that you 19 received from any source that there was a claim to 20 title by Dr. Tawansy at this property?</b></p> <p>21    A Yes. I believe I've made that clear already.</p> <p>22    <b>Q Okay. All right. Do you know whether or not 23 your brokers had any direct communications with 24 Dr. Sohol at any time prior to closing?</b></p> <p>25    A I have no idea. Seems like a lot of these</p>
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<p>1     <b>to the seller prior to meeting with Mr. Lefkowitz?</b></p> <p>2     A I imagine my brokers did not have direct 3 contact with the seller, that my brokers only contacted 4 through the seller's brokers.</p> <p>5     MR. CAGNEY: And don't speculate or guess.</p> <p>6     MR. KARPEL: I was going to --</p> <p>7     THE WITNESS: That's my assumption.</p> <p>8     BY MR. KARPEL:</p> <p>9     <b>Q Okay. Without having -- do you have any 10 information, i.e., told by your broker that your broker 11 spoke to the brokers of the sellers prior to meeting 12 with Lefkowitz?</b></p> <p>13    A I don't recall.</p> <p>14    <b>Q At any time after you took title to the 15 property, have you been told by your brokers that they 16 have had contact with any representative of the seller?</b></p> <p>17    A Yes.</p> <p>18    <b>Q Who told you that?</b></p> <p>19    A My broker.</p> <p>20    <b>Q Okay. Figured that one out.</b></p> <p>21    <b>When -- when did they tell you that?</b></p> <p>22    A I don't remember.</p> <p>23    <b>Q What did they tell you?</b></p> <p>24    A It was just in general that -- discussing 25 this -- this wild claim about Tawansy claiming</p>	<p>1     questions, you should be deposing the brokers and 2 you'll get better information.</p> <p>3     <b>Q Looks like we are going to. I need to start 4 with you. I wouldn't have known to get to the brokers 5 if I didn't get to you.</b></p> <p>6     <b>So you don't -- you didn't have any 7 information that they had direct communications with 8 Dr. Sohol?</b></p> <p>9     A No.</p> <p>10    <b>Q Have you ever been told that your brokers had 11 direct conversation with Dr. Sohol after you closed the 12 property?</b></p> <p>13    A No.</p> <p>14    <b>Q Have you brokers ever told you they had any 15 direct communications with Dr. Sohol at any time after 16 you received the summons?</b></p> <p>17    A No.</p> <p>18    <b>Q Getting back to meeting with Mr. Lefkowitz, 19 was this before or after you had received the summons?</b></p> <p>20    A After.</p> <p>21    <b>Q And you don't recall when that meeting 22 occurred?</b></p> <p>23    A No.</p> <p>24    <b>Q Where did it occur?</b></p> <p>25    A At my office.</p>
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<p>1           <b>Q Who set up that meeting?</b>  2         A I believe Ericka communicated directly with  3         Lefkowitz to set up the meeting.  4           <b>Q How long was the meeting?</b>  5         A I don't recall.  6           <b>Q What was discussed?</b>  7         A In general, Lefkowitz was -- was stating their  8         position of why they felt they were the owners of the  9         building, and why we were at risk.  10          <b>Q How was Mr. Lefkowitz introduced to you?</b>  11         A As Tawansy's CEO.  12          <b>Q Did he say of what company?</b>  13         A No.  14          <b>Q And what did he say to you, if you recall?</b>  15         A That's kind of a vague question.  16          <b>Q Well, do you remember any specifics that he  17         may have said to you?</b>  18         A Yeah. He -- if I recall correctly, he talked  19         about the tumultuous -- what's the word? -- a bad  20         relationship between him and Sohol.  21          <b>Q Tumultuous.</b>  22          <b>(Off-the-record discussion.)</b>  23         BY MR. KARPEL:  24          <b>Q Okay. So he -- did he describe then the  25         relationship between Sohol and Tawansy?</b></p>	<p>1         other buildings around that I would be willing to rent  2         to him.  3           <b>Q And what did you answer to that?</b>  4         A I said that I didn't currently have anything,  5         but I could easily get him information on spaces around  6         the area that was available.  7           <b>Q And what, if anything, did he respond?</b>  8         A That he was interested in that.  9           <b>Q Okay. Anything else that you recall discussed  10         in the meeting?</b>  11         A I remember he -- telling me that our big  12         problem had to do with the estoppels, and that that was  13         a huge risk for us.  14          <b>Q Okay. Did you speak to anybody else as a  15         representative of Dr. Tawansy at any time?</b>  16         A Did I seek anybody else?  17          <b>Q Did you speak to anybody else?</b>  18         MR. CAGNEY: Are you including yourself?  19         THE WITNESS: Are you including yourself?  20         BY MR. KARPEL:  21          <b>Q Sure. Did we ever speak?</b>  22         A We did speak.  23          <b>Q Yes, we did. I recall. I do recall.</b>  24          All right. Tell us about that.  25         A It was kind of a unofficial conversation,</p>
<p>Page 62</p>	<p>Page 64</p>
<p>1         A Correct.  2           <b>Q Was this the first time you learned of that  3         other than what you might have read in the summons?</b>  4         A Correct.  5           <b>Q And what else did he tell you?</b>  6         A He went on to tell me things like they were  7         only passing ownership of the building in paper only  8         and that they had oral agreements and things like that.  9           <b>Q And what, if anything, did you say to all of  10         that?</b>  11         A I remember making some kind of a statement  12         that it was awfully convenient that all the agreements  13         that they needed to support were oral, and none of the  14         written agreements were -- were real and just.  15           <b>Q Anything else that you remember the  16         conversation?</b>  17         A At the end of the conversation, he admitted  18         that it was probably in their best interest to remove  19         me and my company from the summons and focus solely on  20         Sohol as to not -- in order to mitigate the issue so  21         that I wasn't going to have to go after him for  22         development fees and costs and so forth and then  23         delaying my own process and that he would talk to  24         Tawansy about leaving our space and going to another  25         space. And then he even asked me if I had space in</p>	<p>1         where I was asking you is this all real and this just  2         seems crazy. I've never heard of anything like this  3         before, and why am I being named in this. I don't know  4         anything about any of this.  5         And you responded something like, yeah, it's  6         just -- it's just the tactics of the position. And I'm  7         sorry, but we have to do this way.  8           <b>Q Did Jennifer -- Jennifer Sohol -- Dr. Jennifer  9         Sohol or her company ever provide you with an estoppel  10         statement?</b>  11         A For Tawansy's lease?  12          <b>Q For her building.</b>  13         A I don't know.  14          <b>Q Prior to purchasing the building, did you get  15         an appraisal on -- on the building?</b>  16         A That's a good question. I'm not sure.  17          <b>Q Do you know if you went through a series of  18         offers and counteroffers prior to purchasing the  19         building?</b>  20         A Well, I -- I believe their asking price was  21         more than what the final sales price ended up being, so  22         there must have been something that went back and  23         forth.  24          <b>Q And during the escrow, you learned of the  25         tenancy of the Dr. Tawansy in the -- in the building;</b></p>
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<p>1      <b>correct?</b></p> <p>2      A    Correct.</p> <p>3      Q    <b>And you believe that was on a month-to-month</b></p> <p>4      <b>basis?</b></p> <p>5      A    My understanding is that the tenancy was on a</p> <p>6      lease that expired in June. And that was changed over</p> <p>7      to a month-to-month, which I believe we were even given</p> <p>8      a copy month-to-month lease and then what subsequently</p> <p>9      ended up being terminated. And then we got a copy of a</p> <p>10     month-to-month termination lease. Those all were prior</p> <p>11     to our closing of escrow.</p> <p>12     Q    <b>And these were all provided by your broker?</b></p> <p>13     A    Correct.</p> <p>14     Q    <b>Prior to the closing, did you learn of any --</b></p> <p>15     <b>any litigation, whether it involved Dr. Tawansy or</b></p> <p>16     <b>anybody else, dealing with second and third deeds of</b></p> <p>17     <b>trust on the property?</b></p> <p>18     A    I don't think so.</p> <p>19     Q    <b>Did the name Warner or Warner Trust --</b></p> <p>20     <b>(Interruption in the proceedings.)</b></p> <p>21     MR. KARPEL: I'm so sorry. So you know my</p> <p>22     choice of music.</p> <p>23     (Off-the-record discussion.)</p> <p>24     BY MR. KARPEL:</p> <p>25     Q    <b>I was asking about the name Warner or Warner</b></p>	<p>1      A    That's a residence.</p> <p>2      Q    <b>Okay. Were you given any kind of a brochure</b></p> <p>3      <b>on the property prior to purchasing it?</b></p> <p>4      A    Probably.</p> <p>5      Q    <b>Do you know whether or not it indicated there</b></p> <p>6      <b>was a tenant in -- in occupancy?</b></p> <p>7      A    I don't think it did.</p> <p>8      Q    <b>Just generally, did the issue of the estoppel</b></p> <p>9      <b>statement come up at any time prior to the closing?</b></p> <p>10     MR. CAGNEY: Objection. Vague.</p> <p>11     BY MR. KARPEL:</p> <p>12     Q    <b>Somebody mention it to you? Did you think of</b></p> <p>13     <b>it?</b></p> <p>14     A    I don't remember there being any issue about</p> <p>15     it at all.</p> <p>16     Q    <b>Do you know whether or not your broker asked</b></p> <p>17     <b>for an estoppel statement from the seller?</b></p> <p>18     A    I don't know.</p> <p>19     Q    <b>Did you direct that your broker request an</b></p> <p>20     <b>estoppel statement from the broker?</b></p> <p>21     A    Did I direct the broker? Is that you're</p> <p>22     asking me?</p> <p>23     Q    <b>Yes. Direct the broker to request --</b></p> <p>24     A    I don't think so.</p> <p>25     Q    <b>In the prior buildings you had purchased prior</b></p>
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<p>1      <b>Trust. Does that refresh your memory as to any claims</b></p> <p>2      <b>that might have been made as to any deeds of trust on</b></p> <p>3      <b>the property?</b></p> <p>4      A    I don't recall any of that. Doesn't make --</p> <p>5      doesn't come to my memory.</p> <p>6      Q    <b>Did Ericka Burton ever tell you that you did</b></p> <p>7      <b>not need an estoppel statement in regard to the</b></p> <p>8      <b>Dr. Tawansy's tenancy?</b></p> <p>9      A    I don't think so.</p> <p>10     Q    <b>Did your broker tell you you didn't need an</b></p> <p>11     <b>estoppel statement as a result of Dr. Tawansy's</b></p> <p>12     <b>tenancy?</b></p> <p>13     A    I don't recall. I think we were all just</p> <p>14     under the general understanding that there was no</p> <p>15     current lease in place, so there would be no estoppel.</p> <p>16     Q    <b>Did you ever learn whether or not Renaissance</b></p> <p>17     <b>Surgical Holdings occupied the building?</b></p> <p>18     A    That's not familiar to me.</p> <p>19     Q    <b>How about Children's Retina Institute?</b></p> <p>20     A    Not familiar to me.</p> <p>21     Q    <b>Do you know who a Ryan Shotneh, S-H-O-T-N-E-H</b></p> <p>22     <b>is? You're smiling. Do you know him?</b></p> <p>23     A    No.</p> <p>24     Q    <b>Okay. Are you familiar with a building at</b></p> <p>25     <b>2503 Nipomo Way?</b></p>	<p>1      <b>to your 3200 Long Beach Boulevard, when there was a</b></p> <p>2      <b>tenant in possession, it was your custom and practice</b></p> <p>3      <b>to get an estoppel statement from that --</b></p> <p>4      MR. CAGNEY: Objection. Vague.</p> <p>5      MR. KARPEL: Let me finish the question.</p> <p>6      MR. CAGNEY: Sure.</p> <p>7      BY MR. KARPEL:</p> <p>8      <b>-- from that tenant?</b></p> <p>9      MR. CAGNEY: Objection. Vague.</p> <p>10     BY MR. KARPEL:</p> <p>11     Q    <b>You may answer.</b></p> <p>12     A    I believe that tenants with current leases</p> <p>13     that would be ongoing from the time we purchased the</p> <p>14     building, it was a general practice through the brokers</p> <p>15     and escrow to provide us with estoppels.</p> <p>16     Q    <b>Did the escrow provide you with an estoppel</b></p> <p>17     <b>statement in this case?</b></p> <p>18     A    Not that I know of.</p> <p>19     Q    <b>Did anyone on your behalf ask escrow to obtain</b></p> <p>20     <b>an estoppel statement?</b></p> <p>21     A    Not that I remember.</p> <p>22     Q    <b>Anybody on your behalf tell the escrow company</b></p> <p>23     <b>they don't need an estoppel statement in this case?</b></p> <p>24     A    I don't think so.</p> <p>25     Q    <b>Did you ever tell your brokers that they did</b></p>
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<p>1      not -- you did not need an estoppel statement in this 2      case?</p> <p>3      A    No.</p> <p>4      Q    You know what Ed Gelfan [ph]? He's a lawyer.</p> <p>5      A    No.</p> <p>6      Q    Us terrible people.</p> <p>7      A    I try to know as few lawyers as possible.</p> <p>8      Q    So do I. So do I. After 40-plus years of 9      doing it, so do I.</p> <p>10     Did you ever learn from your -- your broker 11    whether or not Jennifer Sohol indicated that she was 12    doing any repairs and construction on the building?</p> <p>13     A    I don't recall that.</p> <p>14     Q    When you looked in Unit 3, the shambles one, 15    was there any building materials in there that you 16    recall?</p> <p>17     A    There were, but it seems like they just were 18    old materials that were just removed and just laying 19    there rather than being thrown away.</p> <p>20     Q    Did you ever learn that Dr. Tawansy paid over 21    \$96,000 to close a sale between herself and J.K. Per 22    Augusta?</p> <p>23     A    I don't recall that.</p> <p>24     Q    Did you meet a Debbie Shampay, S-H-A-M-P-A-Y?</p> <p>25     A    I don't think so.</p>	<p>1      ongoing construction that was happening at the 2      building?</p> <p>3      A    Prior to the purchasing of the building?</p> <p>4      Q    Yes.</p> <p>5      A    I never saw any ongoing construction, no.</p> <p>6      Q    Do you know who served the 30-day notice to 7      terminate the tenancy in this lawsuit?</p> <p>8      A    I think that Ericka did.</p> <p>9      Q    Okay. And what did she tell you about that?</p> <p>10     A    In general?</p> <p>11     Q    How did she serve it?</p> <p>12     MR. CAGNEY: And exclude anything that would 13    reveal a communication between me and your office, me 14    and Ms. Burton, and me and anyone at 2H. And that may 15    mean there is nothing else to tell, but if you have 16    information separate and apart from those discussions, 17    you're free to answer.</p> <p>18     THE WITNESS: There is nothing else other than 19    that.</p> <p>20     BY MR. KARPEL:</p> <p>21     Q    Did you ever talk to a Keith Graves?</p> <p>22     A    I don't recall that name.</p> <p>23     Q    And Rod Compton? He's a vice president.</p> <p>24     A    Who?</p> <p>25     Q    Rod Compton at 2H.</p>
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<p>1      Q    You stated you kind of live close to the 2      building; is that correct?</p> <p>3      A    Yes.</p> <p>4      Q    About how far?</p> <p>5      A    Probably five miles.</p> <p>6      Q    Was the building on any one of your normal 7      routes that you would pass by on a weekly basis, let's 8      say?</p> <p>9      A    No.</p> <p>10     Q    When you visited the building, did it look 11    like there was construction going on in the building?</p> <p>12     A    No.</p> <p>13     Q    Did you ever learn from any source that there 14    was construction going on in the building at the time 15    you had purchased the building, other than from your 16    lawyer?</p> <p>17     A    I don't understand the question. After I 18    purchased the building, did I learn there was 19    construction going on?</p> <p>20     Q    Yes.</p> <p>21     A    Other than by myself?</p> <p>22     Q    Correct.</p> <p>23     A    No.</p> <p>24     Q    Was there any -- did you see any evidence 25    prior to purchasing the building that there was any</p>	<p>1      A    Ron Compton is.</p> <p>2      Q    Ron. Thank you. I had Rod. Ron Compton is president -- vice president?</p> <p>3      A    Yes.</p> <p>4      Q    Did he ever tell you anything about any of the 5      background prior to purchasing this building from 6      Dr. Sohol's company about Dr. Sohol and Dr. Tawansy?</p> <p>7      MR. CAGNEY: Objection. Vague.</p> <p>8      BY MR. KARPEL:</p> <p>9      Q    You may answer.</p> <p>10     A    Well, yeah, then no.</p> <p>11     Q    Was he involved in any way in the purchase of 12    the property?</p> <p>13     A    No.</p> <p>14     Q    Were you only one at 2H Construction that was 15    involved in with your brokers in the purchase of this 16    property?</p> <p>17     A    No.</p> <p>18     Q    Okay. Who else was involved?</p> <p>19     A    Ericka.</p> <p>20     Q    Do you know whether or not the 30-day notice 21    was posted on the building?</p> <p>22     A    Do I know whether it was just --</p> <p>23     Q    Yeah. It was posted on the building.</p> <p>24     A    I believe it was posted on the building, yes.</p>
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<p>1     <b>Q</b> Do you know whether or not anyone else sent 2     a -- any kind of a certified copy of it to any -- 3     anyone on behalf of Dr. Tawansy? 4     A If anyone sent it to him on behalf of him? 5     <b>Q</b> No. To Dr. Tawansy or anyone on behalf of 6     him. 7     A I believe it was also mailed to him, yes. 8     <b>Q</b> By registered mail? 9     A I don't know. 10    <b>Q</b> Okay. Do you know where Dr. Tawansy maintains 11    his -- maintained his offices at the time the unlawful 12    detainer was filed? 13    A I have no idea. 14    <b>Q</b> Who would know, other than your attorney? 15    A I don't know. 16    <b>Q</b> Did you ever send a copy to -- to Gary 17    Lefkowitz? 18    A I don't think so. I don't think we would know 19    where to contact him. 20    <b>Q</b> Were you involved in some property at the Los 21    Cerritos Wetlands in Long Beach? 22    MR. CAGNEY: Objection. Relevance. I'm going 23    to instruct the witness not to answer the question. 24    It's very far afield. 25    ///</p>	<p>1     have to say the answer to that would be no, but I do 2     own a piece of property in Douglas Park. 3     MR. CAGNEY: Congratulations. 4     BY MR. KARPEL: 5     <b>Q</b> How about B.E. Aerospace? Is that familiar to 6     you? 7     A B.E. Aerospace? 8     <b>Q</b> Yeah. 9     A No. I don't think -- I don't know what is. 10    <b>Q</b> Phillips Gear? 11    A Phillips Gear? 12    <b>Q</b> Phillips G-E -- G-E-A-R. 13    A That might be a client of ours. 14    <b>Q</b> MTA Division Ten Bridge Hop? 15    A That's a project that we completed. 16    <b>Q</b> Couple more. 17    Foster Printing? Project? 18    A Probably. 19    <b>Q</b> This is good. It's going to refresh your 20    memory. 21    Manville? 22    A Probably. But again, I mean, we've done over 23    a thousand projects. 24    <b>Q</b> Cable Co Rigging? Is that familiar to you? 25    A I don't recall that name.</p>
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<p>1     BY MR. KARPEL: 2     <b>Q</b> Okay. How about the air quality -- air 3     quality board in regard to equal of 2009? 4     A MR. CAGNEY: Same instruction. 5     BY MR. KARPEL: 6     <b>Q</b> Okay. Were you involved in a issue of rating 7     which was done illegally without permits at the Los 8     Cerritos Wetlands Trust? 9     A MR. CAGNEY: Same Instruction. 10    I see somebody has been Googling. 11    THE WITNESS: It's the only thing that comes 12    up if you Google my name. 13    A MR. KARPEL: Have to ask you about the pet -- 14    I mean, because we're here. 15    <b>Q</b> The petition for writ of mandate seeking to 16    overturn the special conditions in November of 2010 in 17    regard to a coastal commission at Studebaker Road? 18    A MR. CAGNEY: In response to that question, 19    feel free to answer if you can provide any information 20    other than what your attorneys have shared with you. 21    And what is the question? 22    A MR. KARPEL: We can move on. 23    <b>Q</b> Your company built out Douglas Park Long 24    Beach? 25    A That's a pretty general statement. I would</p>	<p>1     <b>Q</b> Building on President Avenue? 2     A A building on President Avenue? 3     <b>Q</b> Yeah. 4     A Yes. 5     <b>Q</b> Torrance Memorial Specialty Center? 6     A Yes. 7     <b>Q</b> A building in -- that doesn't make sense. 8     A Oh. The LAUSD 32nd Street Magnet School, were 9     you involved in? 10    A Yes. 11    <b>Q</b> A building at 2653 Walnut? 12    A MR. CAGNEY: When you say "you" -- 13    A MR. KARPEL: You or your company or a company 14    which you have an ownership in. 15    A MR. CAGNEY: Fair enough. 16    A THE WITNESS: Okay. Yes. 17    BY MR. KARPEL: 18    <b>Q</b> Did you or your company in which you may have 19    had an ownership in do a building at Puente Hills Mall? 20    A Yes. 21    <b>Q</b> Same question for the LAUSD Life E.S. School? 22    A Yes. 23    <b>Q</b> Willow Medical Office Building? 24    A Yes. 25    A MR. KARPEL: I don't have any more questions.</p>
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<p>1 Stipulate the court reporter be relieved of his 2 obligations under the Code of Civil Procedure. 3 The written deposition will be delivered to 4 counsel for the deponent. That the counsel for the 5 deponent will arrange for the reading, signing, and 6 correcting of the deposition under the penalty of 7 perjury. That we will so inform within five days? 8 Ten days? 9 MR. CAGNEY: Well -- 10 MR. KARPEL: I don't know how best to -- 11 MR. CAGNEY: We can get it to you five days 12 after we receive it. 13 MR. KARPEL: Okay. 14 MR. CAGNEY: So you may need to expedite, but 15 I'm not going to get in a situation where he's going 24 16 or 48 hours. 17 MR. KARPEL: Okay. Did you get that? Five 18 days their receipt of it. That will be fine. 19 Then if we are not so informed of the reading, 20 signing, correcting deposition within the stated period 21 of time, an unsigned certified copy may be used for any 22 purposes in this proceeding. Counsel will lodge the 23 same with the court if necessary. If the original lost 24 or unavailable for lodging, an unsigned certified copy 25 of the deposition may be used for any purposes.</p>	<p>1 STATE OF CALIFORNIA ) 2 ) SS. 3 COUNTY OF LOS ANGELES ) 4 5 6 I, the undersigned, say that I have read the 7 foregoing deposition, and I declare, under penalty of 8 perjury, that the foregoing is a true and correct 9 transcript of my testimony contained therein. 10 EXECUTED this _____ day of _____, 11 20____ at _____, California. 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>
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<p>58:21,24 59:10,15,18 60:4,12 61:10,14 <b>top</b> 20:15 36:25 <b>Torrance</b> 77:5 <b>trails</b> 7:6 <b>transaction</b> 25:1,11 27:4     27:8,13 <b>transcribed</b> 81:11 <b>transcript</b> 8:15 80:9     81:14,15 <b>treasurer</b> 10:12 <b>trial</b> 8:7 <b>triple</b> 47:17,20 <b>true</b> 80:8 81:13 <b>trust</b> 37:7 66:17,19 67:1     67:2 75:8 <b>truthfully</b> 7:23 <b>try</b> 7:16 58:6 70:7 <b>trying</b> 33:2 40:6 <b>tumultuous</b> 62:19,21 <b>turn</b> 29:13 <b>two</b> 12:11 29:6,20 36:1     57:15 <b>type</b> 8:17 20:11,12 35:1     41:13 44:14</p> <p style="text-align: center;"><b>U</b></p> <p><b>uh-huh</b> 6:18 <b>ultimately</b> 25:2 42:12 <b>unavailable</b> 78:24 <b>undergraduate</b> 15:4 <b>undersigned</b> 80:6 <b>understand</b> 7:11,17,18     7:20,21,24,25 8:1     13:19 14:3 19:8 27:19     39:8 40:16 52:20,22     71:17 <b>understanding</b> 14:15     16:14 51:23 54:23 66:5     67:14 <b>understood</b> 28:11 <b>unit</b> 19:12,13 20:1 24:2,3     24:3,5,8,11 43:4,4,8,10     43:13,18 44:2,15,15,16     44:25 45:4 46:22,23,25     47:2 48:1,8,10,13,15     48:16,17,17,23 49:4     50:2,6 51:21,23 55:15     57:16 70:14 <b>units</b> 19:8,10 24:1 54:20     54:21 57:4,8,15 <b>unlawful</b> 74:11 <b>unofficial</b> 64:25 <b>unsigned</b> 21:15 78:21,24 <b>up-to-date</b> 48:20 <b>upgrade</b> 31:18 <b>usable</b> 20:11 <b>use</b> 7:10,22 19:15,16     24:6 31:11,20</p> <p style="text-align: center;"><b>V</b></p> <p><b>vacant</b> 19:14 24:9 <b>vague</b> 11:25 13:24 15:18     22:14 24:16 26:2 32:11     34:15 35:21 36:14 38:3     43:20 48:2 50:9,22     55:12 62:15 68:10 69:4     69:9 73:8</p>	<p><b>value</b> 31:6,8 <b>Ventura</b> 2:16 3:10 <b>vice</b> 9:20,21 72:23 73:3 <b>visit</b> 23:23 <b>visited</b> 18:25 42:25     43:12 71:10 <b>voice</b> 7:6 <b>void</b> 81:15 <b>vs</b> 1:6 2:6</p> <p style="text-align: center;"><b>W</b></p> <p><b>walked</b> 36:24 <b>walking</b> 24:5 <b>walls</b> 20:5 <b>Walnut</b> 77:11 <b>want</b> 8:4 28:11 39:7 <b>wanted</b> 21:1 <b>wanting</b> 25:5 <b>warn</b> 39:3 <b>Warner</b> 66:19,19,25,25 <b>wasn't</b> 25:9 31:25 54:8     63:21 <b>way</b> 10:7,15 20:3,8 21:18     27:1 28:16 60:17 65:7     67:25 73:12 <b>ways</b> 16:18 <b>We'll</b> 27:22 <b>we're</b> 8:22 37:12 39:16     75:14 <b>we've</b> 76:22 <b>weekly</b> 7:17 <b>went</b> 63:6 65:17,22 <b>weren't</b> 44:10 <b>Wetlands</b> 74:21 75:8 <b>WHEREOF</b> 81:20 <b>wife</b> 10:3 <b>wife's</b> 10:4 <b>wild</b> 59:25 <b>willing</b> 64:1 <b>Willow</b> 77:23 <b>wiring</b> 20:5 <b>witness</b> 2:15 4:2 5:5,24     22:20 27:19 29:4,19     39:9 40:1,11 43:21     48:24 53:7 59:7 64:19     72:18 74:23 75:11     77:16 81:9,20 <b>word</b> 7:10,21 8:15,16     62:19 <b>words</b> 54:10 <b>work</b> 17:4 24:24 31:7     32:8 <b>worked</b> 32:4 38:20 <b>works</b> 47:22 <b>worth</b> 50:19 51:3,4,4 <b>wouldn't</b> 61:4 <b>writ</b> 75:15 <b>write</b> 8:16 <b>written</b> 63:14 78:3 <b>wrong</b> 48:19 <b>www.depo.com</b> 1:19</p> <p style="text-align: center;"><b>X</b></p> <p>X 4:1,6</p> <p style="text-align: center;"><b>Y</b></p> <p><b>yeah</b> 20:14 22:20 40:11     43:23 49:7 50:10 51:3</p>	<p>62:18 65:5 73:11,24 76:8 77:3 <b>year</b> 5:19 10:23 29:7,16 <b>years</b> 29:21 30:12,14     50:8,8 70:8</p> <p style="text-align: center;"><b>Z</b></p> <p><b>ZELNER</b> 3:9</p> <p style="text-align: center;"><b>0</b></p> <p><b>001</b> 20:19 22:25</p> <p style="text-align: center;"><b>1</b></p> <p>1 1:9 2:8 4:8 21:9,10,13 48:8,16,17 49:4 50:3,6 51:21,23</p> <p style="text-align: center;"><b>1's</b></p> <p>1's 48:10,13 1:00 5:2</p> <p style="text-align: center;"><b>10</b></p> <p>10 1:9 2:8 4:14 100 11:16 12:4,18,18 1031 12:11 29:11 36:1</p> <p style="text-align: center;"><b>12</b></p> <p>12 24:20</p> <p style="text-align: center;"><b>13</b></p> <p>13 438 1:23 2:19 81:6,24</p> <p style="text-align: center;"><b>15</b></p> <p>15,000 46:21 55:10</p> <p style="text-align: center;"><b>16</b></p> <p>16633 2:16 3:10</p> <p style="text-align: center;"><b>1997</b></p> <p>1997 9:24</p> <p style="text-align: center;"><b>2</b></p> <p>2 4:15 48:15,23 57:4</p> <p style="text-align: center;"><b>2,680,000</b></p> <p>2,680,000 35:13</p> <p style="text-align: center;"><b>2.5</b></p> <p>2.5 32:22</p> <p style="text-align: center;"><b>2.50</b></p> <p>2.50 47:17</p> <p style="text-align: center;"><b>2:40</b></p> <p>2:40 79:3</p> <p style="text-align: center;"><b>20</b></p> <p>20 4:14 13:10,11,15</p> <p style="text-align: center;"><b>80:11</b></p> <p>80:11</p> <p style="text-align: center;"><b>20,000</b></p> <p>20,000 47:15</p> <p style="text-align: center;"><b>2009</b></p> <p>2009 75:3</p> <p style="text-align: center;"><b>2010</b></p> <p>2010 75:16</p> <p style="text-align: center;"><b>2012</b></p> <p>2012 26:1</p> <p style="text-align: center;"><b>2013</b></p> <p>2013 18:4</p> <p style="text-align: center;"><b>2016</b></p> <p>2016 17:24 18:5,6,7 25:2</p> <p style="text-align: center;"><b>25:12</b></p> <p>25:12</p> <p style="text-align: center;"><b>2017</b></p> <p>2017 1:16 2:18 5:1 81:21</p> <p style="text-align: center;"><b>21</b></p> <p>21 4:8</p> <p style="text-align: center;"><b>24</b></p> <p>24 78:15</p> <p style="text-align: center;"><b>249</b></p> <p>249 3:4</p> <p style="text-align: center;"><b>2503</b></p> <p>2503 67:25</p> <p style="text-align: center;"><b>2653</b></p> <p>2653 77:11</p> <p style="text-align: center;"><b>288-3376</b></p> <p>288-3376 1:19</p> <p style="text-align: center;"><b>298</b></p> <p>298 20:19 22:25</p> <p style="text-align: center;"><b>2H</b></p> <p>2H 1:4 2:4 9:3,4,22 10:19     11:1,13,22,24 12:3,16     12:17,21,25 15:10     72:14,25 73:15</p> <p style="text-align: center;"><b>2nd</b></p> <p>2nd 81:21</p> <p style="text-align: center;"><b>3</b></p> <p>3 21:12 32:22 47:22     50:19 51:7 57:4 70:14</p> <p style="text-align: center;"><b>3:10</b></p> <p>3:10 2:17</p> <p style="text-align: center;"><b>30</b></p> <p>30 1:16 2:18 5:1</p> <p style="text-align: center;"><b>30-day</b></p> <p>30-day 72:6 73:21</p> <p style="text-align: center;"><b>3060</b></p> <p>3060 1:4 2:4 11:1,13,22     12:3,17 15:10</p> <p style="text-align: center;"><b>310.273.8444</b></p> <p>310.273.8444 3:11</p> <p style="text-align: center;"><b>3200</b></p> <p>3200 10:16,20,22 11:18     12:5,8,21 13:1,3 16:4</p>
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**Sean Hitchcock**  
**January 30, 2017**

## **EXHIBIT “P”**

**SUMMONS**  
**Cross-Complaint**  
**(CITACION JUDICIAL-CONTRADEMANDA)**

**NOTICE TO CROSS-DEFENDANT:****(AVISO AL CONTRA-DEMANDADO):**

JENNIFER SOHOL, an Individual; JK PER ANGUSTA AD FELISCITAS LLC, a California Limited Liability Company;

**YOU ARE BEING SUED BY CROSS-COMPLAINANT:**

**(LO ESTÁ DEMANDANDO EL CONTRADEMANDANTE):**

KHALED A. TAWANSY, M.D., an Individual,

FOR COURT USE ONLY  
 (SOLO PARA USO DE LA CORTE)  
 ORIGINAL DATED  
 Superior Court of California  
 County of Los Angeles

OCT 14 2016

Sherri R. Carter, Executive Deputy Clerk  
 By *[Signature]*, Deputy  
 E. James

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the cross-complainant. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al contrademandante. Una carta o una llamada telefónica no lo protegerán. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)), o manteniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es):

LOS ANGELES SUPERIOR COURT-LONG BEACH  
 275 Magnolia  
 Long Beach, CA 90802

SHORT NAME OF CASE (from Complaint): (Nombre de Caso):

Tawansy, M.D. v. Sohol

CASE NUMBER: (Número del Caso):

The name, address, and telephone number of cross-complainant's attorney, or cross-complainant without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del contrademandante, o del contrademandante que no tiene abogado, es): Law Firm of Donald E. Karpel 16633 Ventura Boulevard, Suite 735  
 Donald E. Karpel, Esq. (SBN: 61678) Encino, California 91436  
 Tel: (310) 273-8444/Fax: (323) 720-8852

DATE:  
 (Fecha)

**Sherri R. Carter OCT 14 2016** Clerk, by  
 (Secretario)

Deputy  
 (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)  
 (Para prueba de entrega de esta citación use el formulario Proof of Service of Summons (POS-010).)

**NOTICE TO THE PERSON SERVED:** You are served

1.  as an individual cross-defendant.
2.  as the person sued under the fictitious name of (specify):

3.  on behalf of (specify):

under:  CCP 416.10 (corporation)  
 CCP 416.20 (defunct corporation)  
 CCP 416.40 (association or partnership)

CCP 416.60 (minor)  
 CCP 416.70 (conservatee)  
 CCP 416.90 (authorized person)

4.  other (specify):

4.  by personal delivery on (date):

SHORT TITLE:

Tawansy v. Sohol

CASE NUMBER  
NC060799

## INSTRUCTIONS FOR USE

- This form may be used as an attachment to any summons if space does not permit the listing of all parties on the summons.
- If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

List additional parties (Check only one box. Use a separate page for each type of party.):

Plaintiff     Defendant     Cross-Complainant     Cross-Defendant

2H PROPERTY 3060, LLC, A California Limited Liability Company;  
 2H Construction, Inc., A California Corporation;  
 Sean R. Hitchcock;  
 Erica Burton;  
 ROWS 1 through 20,

Page 2 of 2

Page 1 of 1

Form Adopted for Mandatory Use  
 Judicial Council of California  
 SUM-200(A) [Rev January 1, 2007]



Maria Deans  
 ESSENTIAL FORMS™

## ADDITIONAL PARTIES ATTACHMENT

Attachment to Summons

Tawansy v. Sohol, et. al.,

CROSS-COMPLAINT

1 DONALD KARPEL (SBN 61678)  
2 ZELNER AND KARPEL  
3 16633 Ventura Blvd. Suite 735  
4 Encino, CA 91436  
5 310-273-8444 (Tel)  
6 323-720-8852 (Fax)  
dkarpel@deklawfirm.com

CONFIDENTIALITY  
ORIGINAL VERSION  
Superior Court of California  
County of Los Angeles

OCT 14 2016

Sheri R. Carter, Executive Secretary with  
By Bethany D. James, Deputy

5 Attorney for Defendant/Cross-Complainant,  
6 Khaled A. Tawansy, M.D., an Individual

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 FOR THE COUNTY OF LOS ANGELES-SOUTH DISTRICT

11 JK PER ANGUSTA AD FELICITAS, LLC, a ) Case No. NC060799  
12 California Limited Liability )  
13 Company )  
, Plaintiff, ) CROSS COMPLAINT  
14 vs. ) Assigned to Honorable Judge  
15 ) Ross M. Klein  
16 MARGARET KUSKA, an Individual; )  
17 CAROLINE WARNER TUGEL, an ) Dept.27  
18 Individual; RICHARD S. WARNER AND ) Case Filed September 09, 2016  
19 TARA J. WARNDER, Trustees of the )  
20 RICHARD S. WARNER AND TRA J. WARNER )  
FAMILY TRUST 1993; KHALED A. ) CROSS COMPLAINT FOR:  
21 TAWANSY, an Individual AND DOES 1- )  
22 20 INCLUSIVE, )  
23 Defendants. ) 1) SPECIFIC PERFORMANCE AND TO  
24 ) QUIET TITLE  
25 KHALED A. TAWANSY, M.D., an ) 2) RECISION AND CANCELLATION OF  
26 Individual, ) DEED  
27 Cross Complainant, ) 3) FRAUD  
28 Vs. ) 4) BREACH OF CONTRACT  
29 ) 5) UNFAIR COMPETITION  
30 ) 6) BREACH OF FIDUCIARY DUTY  
31 )  
32 JENNIFER SOHOL, an Individual; JK )  
33 PER ANGUSTA AD FELICITAS )  
34 LLC, a California Limited )  
35 Liability Company; 2H )  
36 PROPERTY 3060 LLC, A California )

CROSS COMPLAINT  
KHADED A. TAWANSY, M.D. v. JENNIFER SOHOL-Case NC060799

1 Limited Liability Company; )  
2 2H Construction, Inc., A )  
3 California Corporation; Sean R. )  
Hitchcock; Ericka Burton; and )  
Rows 1 Through 20, )  
Cross Defendants. )  
)

6 CROSS-COMPLINANT, KHALED A. TAWANSY, M.D., an Individual, alleges  
7 as follows:

9 1) This Action concerns the title to the following piece of real  
10 estate in the City of Long Beach, located at 3200 N. Long Beach Blvd  
11 and described as:

12 THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF  
13 LOS ANGELES, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

15 PARCEL 1:

16 LOTS 17, 18 AND 19 IN BLOCK "A" OF TRACT 2901, IN THE CITY OF  
17 LONG BEACH, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP  
18 RECORDED IN BOOK 36 PAGE(S) 83 OF MAPS IN THE OFFICE OF THE COUNTY  
19 RECORDER OF SAID COUNTY, TOGETHER WITH THAT PORTION OF THE WESTERLY  
20 HALD OF THAT CERTAIN ALLEY, 20 FEET SIDE, AS SHOWN AND DEDICATED UPON  
21 THE MAP OF SAID TRACT NO. 2901, WHICH ADJOINS SAID LOTS ON THE EAST,  
22 VACATED BY RESOLUTION NO. C-22311 OF THE CITY COUNCIL OF SAID CITY, A  
23 COPY OF WHICH WAS RECORDED AUGUST 1, 1977 AS INSTRUMENT NO. 77-833919,  
24 BOUNDED NORTHELY BY THE EASTERNLY PROLOGNATION OF THE NORTHERLY LINE  
25 OF SAID LOT 17, AND BOUNDED SOUTHERLY BY THE EASTERLY PROLONGATION OF  
26 THE SOUTHERNLY LINE OF SAID LOT 19.

28  
CROSS COMPLAINT  
KHALED A. TAWANSY, M.D. v. JENNIFER SOHOL-Case No 60799

1 EXCEPT THEREON ALL OIL MINERALS, AND OTHER HYDROCARBONS SUSTANCES  
2 IN AND UNDER SAID LAND LYING BELOW A DEPTH OF 500 FEET FROM THE  
3 SURFACE, WITHOUT HOWEVER, THE RIGHT TO USE ANY PART OF THE SURFACE  
4 THEREOF, AS EXCEPTED AND RESERVED IN VARIOUS DEEDS RECORDED ON JUNE  
5 17, 1964.

6 PARCEL 2:

7 LOTS 36, 27 AND 38 IN BLOCK "A" OF TRACT 2901, AS PER MAP  
8 RECORDED IN BLOOK 36, PAGE 63 OF MAPS, IN THE OFFICE OF THE COUNTY  
9 RECORDER OF SAID o SAID COUNTY WITH THAT PORTION OF THE EASTERLY HALF  
10 OF THAT CERTAIN ALLYE, 20 FEET WIDE, AS SHOWN AND DEDICATED UPON THE  
11 MAP OF SAID TRACT 2901, WHICH ADJOINS SAID LOTS ON THE WEST, VACATED  
12 BY RESOLUTION NO. C-2231 OF THE CITY COUNCIL OF SAID CITY, A COPY OF  
13 WHICH RECORDED AUGUST 1, 1977 AS INSTRUMENT NO. 77-833919, BOUNDED  
14 NORTHERY BY THE WESTERLY PROLOGATION OF THE NORTHERLY LINE OF SAID LOT  
15 36, AND BOUNDED SOUTHERLY BY THE WETERLY PROLOGATION OF THE SOUTHERLY  
16 LINE OF SAID LOT 39.

17 2) Khaled A. Tawansy, referred to herein as Dr. Tawansy is a  
18 doctor licensed doctor in the State of California with a practice  
19 devoted to the Retina, adult and pediatric Vitreo-Retinal Surgery,  
20 Diabetic and Retinal Vascular Surgery Diseases, Retinopathy of  
21 Prematurity and Congenital Anomalies, Retinal Detachment and  
22 Degenerations, Trauma and Surgical Complications, and Inflammatory and  
23 Infectious Diseases.

24 27 3) That Dr. Tawansy is a resident of Los Angeles County.  
28

CROSS COMPLAINT

KHADED A. TAWANSY, M.D. v. JENNIFER SCHOL-Case No 66799

4) That Dr. Jennifer Kaur Rodriguez Sohol is a licensed doctor in the State of California.

5) That Dr. Sohol is a resident of Los Angeles County.

6) That JK PER ANGUSTA AD FELICITAS, LLC is a Limited Liability company organized and existing in the State of California. That JK PER ANGUSTA AD FELICITAS, LLC was formed on February 11, 2014 as entity number 20140431053,

7) That Cross Defendant 2H Property 3060 is a California Limited Liability Company, doing business in the City of Long Beach California.

8) That Cross Defendant 2H Construction Inc. is a California corporation doing business in the City of Long Beach California.

9) That Sean R. Hitchcock is a resident of the county of Los Angeles and does business in Long Beach California.

10) That Erika Burton is a resident of the County of Los Angeles and does business the City of Long Beach, California.

11) That each of the Roe 1-20 Cross-Defendants were somehow involved in this transaction and acted as co-conspirators or aiders and abettors of the acts complained of herein, or as agents of the other cross-cross defendants. The names of these entities are not now known. When ascertained this complaint will be amended to include the names of said Roe 1-20 cross defendants.

**CROSS COMPLAINT**  
KHADER A. TAWANIYI, M.D. v. JENNIFER SCHOL-Case No. 63799

1           12) That the parcel of real property at issue herein is unique  
2 in that it is located less than two blocks from Long Beach Memorial  
3 Hospital and the Millers Children's Institute at Long Beach Memorial.  
4 The parcel is unique in that it is the intention of Dr. Tawansy to  
5 occupy the property for his medical practice. There is no other parcel  
6 of real estate that can accomplish what is needed by Dr. Tawansy. As a  
7 result, the parcel of real estate must be reconveyed to him as it is  
8 unique.  
9

10          13) That Dr. Tawansy and Dr. Sohol lived together in Dr.  
11 Tawansy's home in Pasadena for many years.

12          14) That Dr. Tawansy and Dr. Sohol stopped living together  
13 approximately one year ago in 2015, and at the time were engaged to be  
14 married.  
15

16          15) That Dr. Sohol created **JK PER ANGUSTA AD FELICITAS, LLC** at  
17 the direction of Dr. Tawansy to take title to a property owned by him  
18 located at 3200 North Long Beach Boulevard, Long Beach, California  
19 that had been owned personally by Doctor Tawansy from approximately  
20 June 1, 2012.  
21

22          16) That Dr. Tawansy purchased the 3200 N. Long Beach Property by  
23 paying approximately \$250,000 down at closing and made payments of  
24 about \$260,000 since then for payments on the mortgage, and other  
25 costs associated with the property.

26          17) That the building has been totally rehabbed inside at 2/3  
27 of the structure into medical offices for Dr. Tawansy. That Dr.  
28

CROSS COMPLAINT  
KHADEE A. TAWANSY, M.D. v. JENNIFER SOHOL-Case No 60739

1 Tawansy has paid for all of the improvements that began in 2015 and  
2 are continuing today of approximately \$300,000. That these  
3 improvements were paid for by Dr. Tawansy after June of 201t and are  
4 continuing.

5  
6 18) That in approximately June of 2015 that a \$1,200,000 loan  
7 payoff was due to be paid by Dr. Tawansy. Along with some additional  
8 fees the amount for the loan payoff was \$1,305,521.71.

9  
10 19) That due to the relationship with Dr. Tawansy and Dr. Sohol,  
11 and the then building out of a surgery center for Dr. Tawansy at 125  
12 N. Raymond St. Pasadena California, it was agreed that Dr. Tawansy  
13 would deed the property to **JK PER ANGUSTA AD FELICITAS, LLC**, with the  
14 understanding that Dr. Tawansy would be the beneficial owner of the  
15 3200 N. Long Beach property and given Dr. Sohol's ability to get a  
16 loan to pay off the mortgage balance. That Dr. Sohol explained that  
17 the word Felicitas means a bull eye, that although the property was  
18 held in the **JK PER ANGUSTA AD FELICITAS, LLC** name, that in fact Dr.  
19 Tawansy still owned the property now as the beneficial and equitable  
20 owner of the real estate.

21  
22 20) That Jennifer Sohol told many other people that **JK PER**  
23 **ANGUSTA AD FELICITAS, LLC** was to allow Dr. Tawansy to continue to own  
24 the real estate at 3200 N. Long Beach Blvd. including representations  
25 to Dr. Tawansy, to Sandy Tumen, to Bill Maher, Debbie Shampay, Keith  
26 Graves, Adraino Flores, Mario Abina, Robert Sepasia, Marty Marcus, and  
27 to Gary Lefkowitz, among many others.

28  
CROSS COMPLAINT  
KHADED A. TAWANSY, M.D. v. JENNIFER SOHOL-Case NC060799

1       21) That at the close of the new mortgage that Dr. Sohol got for  
2       **JK PER ANGUSTA AD FELICITAS, LLC**, that Dr. Tawansy paid the closing  
3       costs of \$99,412,28. Nothing was paid by Dr. Sohol.

4       22) That on June 17<sup>th</sup>, 2014 that Dr. Tawansy signed a grant Deed  
5       to **JK PER ANGUSTA AD FELICITAS, LLC** for no consideration, but paid a  
6       documentary transfer tax of \$1,595.00 to record the deed.

8       23) That in setting up JK Per Angusta Ad Feliciatas, LLC, that  
9       Dr. Sohol represented that the J stood for her name, Jennifer and that  
10      the K stood for Dr. Tawansy's name, Khalid.

11       24) That in or about June of 2015, Dr. Sohol came to Dr. Tawansy  
12      and asked him to sign a one year lease on the property as Dr. Sohol  
13      told Dr. Tawansy that the bank that had lend the money on the loan  
14      needed to see that it was leased. As Dr. Tawansy was the 100%  
15      beneficial owner of the property with Dr. Sohol merely acting as the  
16      legal owner on the paperwork, Dr. Tawansy signed the lease as this was  
17      the approximate amount of the payments on the building and taxes. Each  
18      month, given the close relationship with Dr. Tawansy and Dr. Sohol,  
19      Dr. Tawansy would make the payments directly into Dr. Sohol's account  
20      at Chase Manhattan bank without having to pay Dr. Sohol.  
21

23       25) That notwithstanding the agreement that Dr. Sohol would run  
24      JK Per Angusta Ad Felistcias, LLC with Dr. Tawansy as the entire 100%  
25      owner of the property, she has now claimed that Dr. Tawansy owns no  
26      right in the property and has defrauded Dr. Tawansy out of his  
27      ownership interest, in his interest as the beneficial owner of the  
28

1 entire JK Per Angusta AD Felicitas, LLC and of the property to which  
2 Dr. Tawansy has invested nearly \$1,000,000.

3       26) That notwithstanding the agreement and the lack of any equity  
4       in purchasing or rehabilitating the property and any lack of any  
5       payments made for the purchase, Dr. Sohol has now asked Dr. Tawansy to  
6       purchase the 3200 N. Long Beach Blvd. property for \$2,695,000 when in  
7       fact the property is owned beneficially by Dr. Tawansy.

9       27) That notwithstanding the agreement for the placement of only  
10      the amounts of money required to pay off the mortgage, Dr. Sohol is  
11      now understood took out more loans. She executed a Deed of trust for  
12      \$580,000 to Pacific Enterprise Bank dated June 17<sup>th</sup> 2014. Then Dr.  
13      Sohol executed a deed of trust in the amount of \$725,000 to Pacific  
14      Enterprise Bank dated June 17<sup>th</sup>, 2014. Then Dr. Sohol executed a deed  
15      of trust dated May 28, 2014 in the amount of \$598,000 in favor of  
16      Pacific Enterprise Bank. Then Dr. Sohol executed a Subordination Non  
17      Disturbance and Attornment Agreement and Estoppel Certificate for a  
18      lease dated May 2, 2015 between JK PER ANGUSTA AD FELICITAS, LLC and  
19      Jennifer Kaur Rodriguez Sohol and Pacific Enterprise Bank of an  
20      "unrecorded lease" on the property for 20 years ending on May 2, 2024.

22       28) That the current title report for the property shows that the  
23      property is subject to a lien in the name of Dr. Tawansy to the United  
24      States of America for \$179,999.22.

29) That the current title report of the property shows that the property is subject to a lien in the name of Dr. Tawansy to the United States of America for \$296,444,72.

30) That the current title report of the property shows that the property is subject to a lien in favor of the tax collector of the County of Los Angeles in the amount of \$181.24

31) That at all times in 2015 and in 2016 Dr. Tawansy represented to Ed Gelfand, an attorney representing Dr. Sohol and JK Per Angusta Ad Felicitas that Dr. Tawansy was the total owner of the 3200 Long Beach property, which was held in the beneficial name of JK Per Angusta Ad Felicitas but which was legally owned by Dr. Tawansy. Dr. Tawansy expressed this to Mr. Gelfand person and in a personal meeting with Mr. Gelfand.

32) That in or about 2015, Gary Lefkowitz, the CEO of Dr. Tawansy's businesses told Mr. Gelfand that Dr. Tawansy owns the 3200 Long Beach property and that the LLC created by Dr. Sohol was a mere fiction created so that the loan could be repaid and that Dr. Tawansy owns the entire building legally, with JK Per Angusta Ad Felicitas merely owning a beneficial interest and not a legal interest in the property.

33) That in or about 2015, Dr. Tawansy expressed to the real estate broker chosen by JK per Angusta Ad Felicitas Marcus and Millichap that Dr. Tawansy actually owns the building and the title in

**CROSS COMPLAINT**  
KHADED A. TAWAMSY, M.D. v. JENNIFER SOHOL-Case No. 60799

1 the name of JK Per Angusta Ad Feliditas was merely to protect Dr.  
2 Tawansy's investment in the building.

3 34) That at the time of doing its due diligence on the 3200 Long  
4 Beach Property, that 2H Properties 3060 LLC and 2H Construction, Inc.  
5 and Sean R. Hanson and Ericka Burton knew of Dr. Tawansy's ownership  
6 in JK Per Angusta Felicitas.

7 35) That 2H Properties, LLC, 2H Construction, Inc. and Sean R.  
8 Hanson and Ericka Burton did not ask for a customary estoppel  
9 certificate from Dr. Tawansy, who they knew, was the tenant of the  
10 property, and in which any willing purchaser would have requested. The  
11 lack of asking for the estoppel certificate is evidence that 2H  
12 Properties, LLC, 2H Construction, Inc. and Sean R. Hanson and Ericka  
13 Burton knew of Dr. Tawansy's claims to the real estate as the actual  
14 legal owner of the property.

15 36) That the brokers in the transaction Marcus and Millichap  
16 represented to 2H Properties, LLC, 2H Construction Inc., and to Sean  
17 R. Hitchcock and Erica Burton that Dr. Tawansy was the actual owner of  
18 the real property.

19 37) That Ed Gelfand as the attorney for Jennifer Sohol and for JK  
20 Per Angusta Ad Felicitas, and acting in concert with Jennifer Sohol  
21 did not inform the purchasers that Dr. Tawansy claimed to be the real  
22 owner of the property and that the property was deeded into JK Per  
23 Angusta Ad Felicitas only for the purposes of legal ownership, whereas  
24 the beneficial ownership remained in Dr. Tawansy's name.

25  
26  
27  
28

CROSS COMPLAINT  
KHADED A. TAWANSY, M.D. v. JENNIFER SOHOL-Case No. 06-7799

1       38) That a review of the matters affecting title would reveal to  
2 2H Property 3060 LLC, to 2H Construction Inc. and to Sean R. Hitchcock  
3 and Erica Burton would reveal that there were numerous tax liens in  
4 the name of Dr. Tawansy and a new trust deed relating to the reduction  
5 of the mortgage on the property.

7           39) That an actual conspiracy arose to cheat Dr. Tawansy out of  
8 his property, by Jennifer Sohol, JK Ad Angusta Felicitas acting with  
9 2H Properties 3060 LLC, 2H Construction Inc., and with Sean R.  
10 Hitchcock and Erica Burton to avoid having any communication with Dr.  
11 Tawansy which could have revealed his actual ownership interest in and  
12 to the 3200 Long Beach property.

14       40) That this conduct in forming the conspiracy was done create  
15       an artificial form of a purchase by 2H Property 3060 LLC which was  
16       done to avoid any claims made by Dr. Tawansy as to his actual  
17       ownership interest in the legal title to the property through the JK  
18       PER ANGUSTA AD FELICITAS, LLC entity,

19       41) That Dr. Tawansy believes Jennifer Sohol or her entity of JK  
20 Per Angusta Ad Felicitas or some entity controlled by Jennifer Sohol  
21 or Ed Gelfand is the actual owner or a partial owner in the new entity  
22 now claiming to own the property at 3200 Long Beach Blvd.

24       42) That in conducting this fraud, the Defendants and each of  
25      them have used the United States Mails, the United State wires, bank  
26      accounts and the internet to achieve their nefarious goals of cheating  
27      Dr. Tawansy out of his interest in the 3060 Long Beach property.

CROSS COMPLAINT  
KHACED A. TAWANSY, M.D. v. JENNIFER SCHOL-Case No. 60799

1           43) That 2H Properties 3060, 2H Construction Inc., Sean R.  
2 Hitchcock, and Erika Burton, knew prior to the close of escrow that  
3 there were problems with the close of a sale as tax liens in the  
4 amount of \$296,446.81 and a lien of \$179, 9992.22 had been liened by  
5 the Internal Revenue Service as and for tax liens for Khaled A.  
6 Tawansy. This was detailed in a letter dated June 29, 2016 from  
7 Commonwealth Land Title Insurance Company.  
8

9           44) That 2H Property 3060 LLC, 2H Construction Inc., Sean R.  
10 Hitchcock and Ericka Burton knew that a loan in the amount of  
11 \$1,475,000 sat on the property notwithstanding that it was supposed to  
12 have been removed, and the time that JK Per Advantages took legal  
13 title to the property with Khaled A. Tawansy remaining the beneficial  
14 owner of the property. This was detailed in a letter dated June 29,  
15 2016 from Commonwealth Land Title Insurance Company.  
16

17           45) Had 2H Property 3060 LLC, 2H Construction Inc., Sean R.  
18 Hitchcock done normal diligence in the purchase of commercial real  
19 estate, as that is their business they would have learned that the  
20 Master Lease was beneficially owned by Dr. Tawansy, and that the  
21 sublease needed for the banks was only for one tear until the surgery  
22 center could be build out the then having Dr. Tawansy take Jennifer  
23 Sohol off of the loan and paying the loan off.  
24

25           46) That when JK PER ANGUSTA AD FELICITAS LLC was formed it had  
26 as its location, the offices of Dr. Tawansy at 7447 N. Figueroa St.  
27 Suite 200, Los Angeles, CA 90041, indicating his interest in the JK,  
28

CROSS COMPLAINT  
KHALED A. TAWANSY, M.D. v. JENNIFER SOHOL-Case No 60793

1 without Dr. Tawansy's consent Jennifer Schol changed the address to  
2 her own address, without the consent of the beneficial owner of  
3 property, Dr. Khaled A. Tawansy.

47) That after the close of the deed from Tawansy to JK PER  
5  
ANGUSTA AD FELICITAS LLC, it was agreed that both Dr. Tawansy and  
6  
Jennifer Sohol would share the building with both having offices here.  
7  
However, Jennifer Sohol agreed that she did not want a practice in  
8  
Long Beach and both Dr. Tawansy and Jennifer Sohol agreed that only  
9  
Dr. Tawansy would own the building and that Dr. Tawansy would be  
10  
responsible for to build out the property and that it was agreed  
11  
between Dr. Tawansy and JK PER ANGUSTA AD FELICITAS LLC he build out  
12  
of the building, which although in the name of JK PER ANGUSTA AD  
13  
FELICITAS LLC, it was beneficially owned by Dr. Tawansy, In fact, Dr.  
14  
Tawansy was responsible for all benefits and burdens of the 3200 Long  
15  
Beach property, and Jennifer Sohol would not be responsible for the  
16  
benefits and burdens of the Real Estate other than the mortgage and  
17  
taxes for which she was repaid by Dr. Tawansy. Jennifer Sohol was  
18  
totally told about the reduction of the mortgage, but did nothing to  
19  
assure it was taken off prior the close of escrow. There is no title  
20  
document requiring Dr. Tawansy to do anything after the close

24           48) Nevertheless, Dr. Tawansy as the equity and beneficial owner  
25 of 3200 Long Beach Boulevard, continued to support the property after  
the Transfer to JK for the real reason was that he owned the property.

CROSS COMPLAINT  
KHADEEJA TAWANSY, M.D. v. JENNIFER SCHOL-Case No. 60799

1       49) The Standard sublease agreement had no integration clause.  
2       The parties Dr. Tawansy and Jennifer Sohol both agreed that the  
3       property could not be occupied by anyone until substantial  
4       rehabilitation work had been done. As a result, the property was not  
5       able to be occupied until June of 2016. As a result of the Agreements  
6       between Dr. Tawansy and Dr. Sohol it was agreed that the lease would  
7       commence on the date the building was available for use, and that the  
8       lease would run from July of 2016 for one year. Dr. Tawansy spent over  
9       \$500,000 developing the property which would all be lost if he was  
10      forced to turn over the building to its new owners

12       50) After the Deed by Dr. Tawansy to the **JK PER ANGUSTA AD**  
13      **FELICITAS LLC**, Doctor Tawansy spent over \$500,000 in rehabilitating  
14      the building which includes the following amounts in total detrimental  
15      reliance and based upon the promises made by Jennifer Sohol and of **JK**  
16      **PER ANGUSTA AD FELICITAS LLC.**

18       51) A check made payable from Children's Retina Institute to  
19      Redesign Group, Inc. in the amount of \$15,996.01

21       52) A check in the amount of \$8,888.97 from Children's Retina  
22      Institute to Jennifer Sohol dated 1/07/2014.

23       53) A check in the amount of \$10,000. to Jennifer Sohol from  
24      Children's Retina dated 7/10/14-this is approximately the date upon  
25      which both Dr. Sohol and Dr. Tawansy agreed that Dr. Sohol would not  
26      occupy the offices at 3200 Long Beach Blvd and that Dr. Tawansy would  
27      continue to own the property as the sole owner of the property,

CROSS COMPLAINT  
KHADED A. TAWANSY, M.D. v. JENNIFER SOHOL-Case NC060799

1 although legal title was in the name of the JK PER ANGUSTA AD  
2 FELICITAS LLC.

3  
4 54) A check from Children's Retina Institute to Jennifer Sohol in  
5 the amount of \$10,000 dated 8/15/14-well after the close of the  
6 escrow. If the sale was a total sale to the JK PER ANGUSTA AD  
7 FELICITAS LLC, then Doctor Tawansy would not be paying Jennifer any  
8 money and would walked from the deal. As each payment gets maid it is  
9 clear that Dr. Tawansy continued to own the property as his own.  
10

11 55) A check made from Khaled A Tawansy, M.D., to So Cal Gas  
12 Edison in the amount of \$117.26 dated 8-12-14.

13  
14 56) A check in the amount of \$3,274 to Cenovo Cuevas for work on  
15 the project at 3200 Long Beach Blvd. dated 8/16/14, drawn on the  
16 account of Children's Retina Institute.

17  
18 57) A check in the amount of \$2,100 to Unique Hardware drawn on  
19 Children's Retina Institute dated 9/06/14.  
20

21 58) A check in the amount of \$10,000 to Jennifer Sohol drawn on  
22 Children's Retina Institute dated 10/28/2014.  
23

24 59) A check in the amount of \$5,000 to Jennifer Sohol drawn on  
25 Children's Retina Institute and dated 12/13/14.  
26

27 60) A check in the amount of \$5,000 to Jennifer Sohol drawn on  
28 Children's Retina Institute dated 12/13/14.  
29

CROSS COMPLAINT  
KHABED A. TAWANSY, M.D. v. JENNIFER SOHOL-Case NC060799

1       61) A check in the amount of \$20,000 made payable to Jennifer  
2 Sohol from Children's Retina Institute dated 1/23/15. Of significant  
3 note is the memo on the check stating "Long Beach Property Loan  
4 Repayment." If the deed to the **JK PER ANGUSTA AD FELICITAS LLC**, meant  
5 Dr. Tawansy had no interest in the property, then why would he have  
6 been making loan payments from the date that the loan was taken out  
7 each month until today! It is clear evidence that Dr. Tawansy  
8 continued to own the 3200 Long Beach Property as the equitable and  
9 beneficial owner of the property.

11       62) A check make payable to Keith Graves in the amount of  
12           \$2,034.12 for roof work, and other work at the property paid for by  
13           Khaled A. Tawansy, M.D., dated 1/26/15. It is important that Dr. Sohol  
14           was there when this work was done but that Dr. Tawansy did pay for  
15           this entire issue.

23           64) A check made payable to Jennifer Sohol in the amount of  
24           \$5,000 made payable from Children's Retina Institute dated 2/06/15.  
25  
Note on the check says Long Beach.

**CROSS COMPLAINT**  
KHADED A. TAWANSY, M.D. v. JENNIFER SCHOL-Case No. G60799

1       65) A check made payable to Cash for objects dealing with the  
2 buildout of Long Beach in the amount of \$1650 dated 2/20/15 and  
3 stating 3200 Long Beach Blvd. The check is drawn on Children's Retina  
4 Institute.

6        66) A check made payable to Jennifer Sohol in the amount of  
7 \$10,000 from Children's Retina Institute dated 2/14/15. The note on  
8 the check states "Paid \$40k towards TI (Tenant Improvements).

10        67) A check made payable to cash in the amount of \$3,200, dated  
11      2/14/15 for work done on the buildout of the Long Beach project from  
12      Children's Retina Institute.

14       68) A check made payable to Cash in the amount of \$1100 for work  
15      done on the build out of the 3200 Long Beach property dated 2/15/14,  
16      from the Children's Retina Institute.

17           69) A check in the amount of \$2,742.44 in favor of Jay Sanford,  
18 Inc. for work done at 3200 Long Beach Blvd drawn on Children's Retina  
19 Institute and dated 2/18/15.

21       70) A check in the amount of \$7,500 to Jennifer Sohol and to from  
22 Children's Retina Institute JK PER ANGUSTA AD FELICITAS LLC, dated  
23 2/22/15 stating 3200 Long Beach Blvd.

71) A check in the amount of \$10,000 to JK Per Angusta Ad  
Felicitas from Children's Retina Institute dated 2/14/15 with a note  
on it "Paid 40K toward TI" (Tenant Improvements)

**CROSS COMPLAINT**  
KHADEED A. TAWANSY, M.D. v. JENNIFER SCHOL-Case #NC060793

1       72) A check in the amount of \$225 to Iris Exudugg for work at  
2       3200 Long Beach Blvd. drawn on Children's Retina Institute on 2/24/15.  
3

4       73) A check in the amount of \$1650 to cash to pay for work done  
5       at 3200 Long Beach Blvd. and listing the date at 2/20/15. The check  
6       was drawn from Children's Retina Institute.

7       74) A check made payable to Jay Sanford, Inc. In the amount of  
8       \$5981.28 for Final check Long Beach TI (Tenant Improvement) made  
9       payable from Children's Retina Institute and dated 2/24/2015.  
10

11       75) A check for \$5,000 to Jennifer Schol/ **JK PER ANGUSTA AD**  
12       **FELICITAS LLC**, from Children's Retina Institute dated 2/18/15 and  
13       noting 3200 Long Beach Blvd.  
14

15       76) A check made payable to Carlos Lopez in the amount of \$804  
16       for work done at 3200 Long Beach Blvd and noting 3200 Long Beach Blvd.  
17

18       77) A check in the amount of \$1052 for cash for work one at 3200  
19       Long Beach Blvd for work being done at the property. The check is  
20       dated 3/3/15 and is on the account of Children's Retina Institute.  
21

22       78) A check made payable to Edwin Menia for \$2,025 for work done  
23       at 3200 Long Beach Blvd. and paid on 3/3/15 from Children's Retina  
24       Institute,  
25

26       79) That on March 3, 2015, a check in the amount of \$389 was paid  
27       to Lozal Cabaxes for work done at 3200 Long Beach Blvd. by Children's  
28       Retina Institute.

CROSS COMPLAINT  
KHADED A. TAWANSY, M.D. v. JENNIFER SCHOL-Case No. 60793

80) Than on March 3, 2015 a check for cash in the amount of \$389 was made to pay for work at 3200 Long Beach Blvd. from Children's Retina Institute.

81) That on March 15<sup>th</sup>, 2015 a check was made payable to JK PER  
**ANGUSTA AD FELICITAS LLC**, in the amount of \$15,000 for the 3200 Long  
Beach Blvd. Property from Children's Retina.

82) That on March 17<sup>th</sup>, 2015 that a check in the amount of \$1350 was paid to Carolos Lopez for work done on 3200 Long Beach Blvd. paid for by Children's Retina Institute.

83) That on March 17<sup>th</sup> 2015 a check in the amount of \$270 was paid to Carlos Lopez for work done at 3200 Long Beach Blvd. and paid for by Children's Retina Institute.

84) That on March 18<sup>th</sup>, 2015 there was a check in the amount of \$15,000 made payable to JK PER ANGUSTA AD FELICITAS LLC, for the 3200 Long Beach Blvd and paid for by Children's Retina Institute.

85) That on March 24, 2015 a check in the amount of \$1,716 was made payable to Edward Mejla for work done at 3200 Long Beach Blvd. and paid for by Children's Retina Institute

86) That on March 25, 2015 that a check was paid to Jose Arrann in the amount of \$6,029 for work done at 3600 Long Beach Blvd and paid for by Children's Retina Institute.

**CROSS COMPLAINT**  
KHALED A. TAWANSY, M.D. v. JENNIFER SCHOL-Case No. 0060799

1       87) That on March 31, 2015 a check in the amount of \$20,000 was  
2 made payable to **JK PER ANGUSTA AD FELICITAS LLC** and paid for by  
3 Children's Retina Institute, noting it was for 3200 Long Beach Blvd.  
4

5       88) That on April 4<sup>th</sup> 2015 a check was paid to Jennifer Sohol and  
6 to **JK PER ANGUSTA AD FELICITAS LLC**, in the amount of \$10,000 for the  
7 3200 Long Beach Blvd property.

8       89) That on March 14<sup>th</sup> 2015 a check in the amount of \$10,000 was  
9 paid to **JK PER ANGUSTA AD FELICITAS LLC**, for 3200 N. Long Beach Blvd  
10 by Children's Retina Institute.

12       90) That on March 21, 2015 a check in the amount of \$16,000 was  
13 paid to **JK PER ANGUSTA AD FELICITAS LLC** for the 3200 Long Beach  
14 property by Children's Retina.  
15

16       91) That on June 29, 2015 a check in the amount of \$15,000 was  
17 paid to Jennifer Sohol MD Inc. by Khaled A. Tawansy, M.D., for the  
18 3200 Long Beach property.  
19

20       92) From July of 2015 until September of 2016, Children's Retina  
21 Institute and Dr. Tawansy have paid Jennifer Sohol or **JK PER ANGUSTA**  
22 **AD FELICITAS LLC** their rent each month.  
23

24       93) That the property was not able to be occupied when the lease  
25 was entered into and that Dr. Tawansy or Children's Retina spent in  
26 excess of over \$100,000 to prepare the first and second units in the  
27 building, both to be used as doctor(s) offices.  
28

1       94) That the third unit at 3200 Long Beach Blvd contains  
2 thousands of dollars of equipment and tools and machinery necessary  
3 for the build out of the units that all belong to Dr. Tawansy and are  
4 not the property of any of the Cross Defendants.

5  
6       95) That each time an issue arose with the City of Long Beach  
7 relating to the property from the time the deed was recorded to JK  
8 that the City would contact Dr. Tawansy and he did the work and  
9 Jennifer Sohol allowed this work to be done as if Dr. Tawansy still  
10 owned the building as the beneficial and equitable owner of the  
11 building.

12  
13                                  As and for a First Cause of Action

14                                  SPECIFIC PERFORMANCE AND TO QUIET TITLE

15       95) That Dr. Tawansy realest the provisions of paragraphs 1-94 as  
16 though fully set forth herein.

17  
18       96) That the deed given to **JK PER ANGUSTA AD FELICITAS LLC** was  
19 given in error and due to the fraud of Jennifer Sohol, and based upon  
20 her promises that she would run the **JK PER ANGUSTA AD FELICITAS LLC**  
21 for the benefit of Dr. Tawansy.

22  
23       97) That as a result of the conduct of Dr. Sohol and of **JK PER**  
24 **ANGUSTA AD FELICITAS LLC**, that the deed was given as a result of fraud  
25 and error due to Jennifer Sohol and of **JK PER ANGUSTA AD FELICITAS LLC**  
26 and that the Deed should be declared to be null and void and title  
27 should be replaced with the deed in the name of Dr. Khaled A. Tawansy.

28  
29                                  CROSS COMPLAINT  
30                                  KHALED A. TAWANSY, M.D. v. JENNIFER SOHOL-Case No. 60799

1       98) That the cross defendants knew of Dr. Tawansy's actual  
2 ownership of the real estate but avoided asking for an estoppel  
3 certificate from him and did not question the issue as to taxes  
4 alleged to be owing and a trust deed that was supposed to be reduced.  
5 The cross defendants knew that Dr. Tawansy paid for the entire build  
6 out of the property and that he has tools and Property throughout 3200  
7 N. Long Beach Boulevard. Acting as such, these co-defendants knew that  
8 Dr. Tawansy had an ownership interest in the property, yet closed the  
9 transaction knowing these issues in order to conspire with Jennifer  
10 Sohol and **JK PER ANGUSTA AD FELICITAS LLC** to harm Dr. Tawansy and to  
11 steal the property from him.

13       99) That 2H Property 3060 LLC and 2H Construction Inc. now claim  
14 to own the property located at 3200 N. Long Beach Boulevard which was  
15 transferred to them via a deed signed by Jennifer Sohol on behalf of  
16 **JK PER ANGUSTA AD FELICITAS LLC**, but Jennifer Sohol did not own the  
17 property and nor did JK Per Angusta Ad Felicitas as they held the  
18 property for Dr. Tawansy. Had 2H Property 3060 LLC AND 2H Construction  
19 Inc. done any due diligence they would have discovered and in fact  
20 knew that Dr. Tawansy owned the property and it was being held in the  
21 name of JK Per Angusta Ad Felidictas for Dr. Tawansy. In fact, 2H  
22 Property 3060 LLC and 2H Construction Inc. knew at all times that Dr.  
23 Tawansy owned the property and they entered into a conspiracy to  
24 deprive Dr. Tawansy of the title to the 3200 N. Long Beach Blvd.  
25 property.  
26  
27

CROSS COMPLAINT  
KHADED A. TAWANSY, M.D. v. JENNIFER SOHOL-Case NC060799

1       100) That in a pleading dated September 9, 2016, Dr. Sohol and JK  
2       **PER ANGUSTA AD FELICITAS LLC** claimed to own the property,  
3       notwithstanding their agreement to own the property as legal owners  
4       for the benefit of Dr. Tawansy.

5  
6                                  As and for a Second Cause of Action

7                                  Rescission of the Deed to the Property

8       101) That Dr. Tawansy realest the provisions of paragraphs 1-100  
9       as though fully set forth herein.

10  
11       102) That the title to the property should be deemed in the name  
12       of Dr. Tawansy as against anyone who owned the property such as **JK PER**  
13       **ANGUSTA AD FELICITAS LLC** or in the name of 2H Property 3060 LLC or in  
14       the name of 2H Construction Inc. in that they each took title knowing  
15       that Dr. Tawansy was the actual owner of the property being held for  
16       him by JK Per Angusta Ad Felicitas. As all co-defendants knew that Dr.  
17       Tawansy was the beneficial owner of the property located at 3200 N.  
18       Long Beach Blvd., in Long Beach.

19  
20                                  As and For a Third Cause of Action

21                                  Fraud

22       103) That Dr. Tawansy realest the provisions of paragraphs 1-102  
23       as though fully set forth herein.

24  
25       104) That Dr. Tawansy first learned of the fraud of Dr. Sohol and  
26       of **JK PER ANGUSTA AD FELICITAS LLC** within the past several months.

1       105) That Jennifer Sohol and **JK PER ANGUSTA AD FELICITAS LLC** made  
2 the representations as to holding the title for Dr. Tawansy in the **JK**  
3 **PER ANGUSTA AD FELICITAS LLC** without the intention of performing them.  
4

5       106) That the conduct of Dr. Sohol and of **JK PER ANGUSTA AD**  
6 **FELICITAS LLC** was done in a fraudulent manner to obtain the deed to  
7 the property making statements that were untrue. As a result, Dr.  
8 Sohol and **JK PER ANGUSTA AD FELICITAS LLC** should be held liable to Dr.  
9 Tawansy for his losses and those acting in concert with Dr. Sohol and  
10 JK Per Angusta Ad Felicitas, 2H property 3060 LLC, 2H Construction  
11 Inc. Sean R. Peterson and Erica Burton should be held liable for the  
12 Fraud of Dr. Sohol and of JK Per Angusta Ad Felicitas for all damages  
13 to Dr. Tawansy.  
14

15       107) That the cross defendants knew of Dr. Tawansy's actual  
16 beneficial and equitable ownership interests in and to the 3200 N.  
17 Long Beach Property but all acted to defeat Dr. Tawansy's interest all  
18 for the benefit of themselves and all the detriment of Dr. Tawansy.  
19

20                                  As and for a Fourth Cause of Action

21                                  Breach of Contract

22       108) That Dr. Tawansy realest the provisions of paragraphs 1-107  
23 as though fully set forth herein.  
24

25       109) That the conduct alleged herein violates the contract  
26 entered into between Jennifer Sohol and **JK PER ANGUSTA AD FELICITAS**  
27 **LLC** to Dr. Tawansy. That the other co-defendants assisted Jennifer  
28

1 Sohol and JK PER ANGUSTA AD FELICITAS LLC in breaching the contract  
2 and in causing damages to Dr. Tawansy.

As and For a Fifth Cause of Action

### Unfair Competition

6           110) That Dr. Tawansy realest the provisions of paragraphs 1-109  
7 as though fully set forth herein.

9           111) That the acts by the cross defendants as alleged herein are  
10          in violation of the provisions of California Business and Professions  
11          Code section 17200.

12       112) That the actions of each Cross Defendant was of unfair  
13 competition, practices that are unlawful and were unfair and  
14 fraudulent.

As and for a Sixth Cause of Action

### Breach of Fiduciary Duty

21        114) That a declaration of rescission be granted cancelling the  
22 deed from Dr. Tawansy to JK PER ANGUSTA AD FELICITAS LLC for fraud and  
23 misrepresentation in gaining the deed.

25           115) That the JK PER ANGUSTA AD FELICITAS LLC was set up to act  
26 as the sole agent of Dr. Tawansy and to hold the title to the real  
27 property in its name for the benefit of Dr. Tawansy.

**CROSS COMPLAINT**  
KHADED A. TAWANEY, M.D. v. JENNIFER SOHOL-Case No. 06-0799

1        116) That as a result thereof, there was a fiduciary duty between  
2 Dr. Sohol, the managing member of the LLC and **JK PER ANGUSTA AD**  
3 **FELICITAS LLC** and Dr. Tawansy.

5 117) That Dr. Sohol and JK PER ANGUSTA AD FELICITAS LLC with the  
6 assistance of the other cross defendants breached that duty.

### Demand for Relief.

9       1) That the deed be cancelled from Dr. Tawansy to JK PER ANGUSTA AD  
10      FELICITAS LLC.

12 2) That title the property be quieted and it be declared that Dr.  
13 Tawansy is the owner of the property.

3) That Dr. Tawansy is entitled to damages in excess of \$4,000,000.

16 4) That Dr. Tawansy be awarded punitive damages according to proof at  
17 trial.

19 5) That Dr. Tawansy be awarded costs of suit.

6) That Dr. Tawansy be awarded his cost for attorneys.

22 7) For such other relief as it proper.

Dated October 14, 2016

Zelner and Karpel

Dell'Epel

Donald Karpel, Attorney for

Khaled A. Tawansy

CROSS COMPLAINT  
EX-107-A. TANANSY, M.D. v. JENNIFER SCHOL-Case No. 60799

**PROOF OF SERVICE**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in Los Angeles County, California. I am over the age of 18 years and not a party to the within action; my business address is 16633 Ventura Boulevard, Suite 735, Encino, California 91436.

On October 14, 2016, I served the foregoing document described as **SUMMONS (CROSS-COMPLAINT); CROSS-COMPLAINT**, on interested parties in this action by placing a true copy thereof via facsimile, as follows:

Alia S. Haddad, Esq.  
FIDELITY NATIONAL LAW GROUP  
915 Wilshire Boulevard  
Suite 2100  
Los Angeles, CA 90017-3450  
Tel: (213)438-7218  
Fax: (213)438-4417  
Email: alia.haddad@fnf.com

Attorneys for Plaintiff, JK PER ANGUSTA AD FELICITAS LLC

**(XX BY MAIL.** In accordance with the regular mail collection and processing practices of this business office with which am familiar, by means of which mail is deposited with the United States Postal Service at Encino, California that same date in the ordinary course of business, I placed such sealed envelopes addressed as stated above, with postage thereon fully prepaid, for collection and mailing on this same date following ordinary business practices.

(State) I declare under penalty of perjury under the laws of the State of California  
that the above is true and correct.

Executed on October 14, 2016, at Encino, California.

Ann Park

## **EXHIBIT “Q”**

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1           SUPERIOR COURT OF THE STATE OF CALIFORNIA  
2       FOR THE COUNTY OF LOS ANGELES, LONG BEACH COURTHOUSE

3  
4  
5       2H PROPERTIES 3060, LLC,                              )  
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16    )  
17    )  
18       KHALED A. TAWANSY, M.D.;                              )  
19       CHILDREN'S RETINA INSTITUTE;                          )  
20       RENAISSANCE SURGICAL HOLDINGS,                        )  
21       LLC; AND DOES 1 through 10,                          )  
22       Inclusive,    )  
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DEPOSITION OF  
ERICKA BURTON  
ENCINO, CALIFORNIA  
JANUARY 30, 2017

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REPORTED BY: MARIANA HAKVERDIAN, CSR 13438  
FILE No.:AB01142

Ericka Burton  
January 30, 2017

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<p>1 SUPERIOR COURT OF THE STATE OF CALIFORNIA  2 FOR THE COUNTY OF LOS ANGELES, LONG BEACH COURTHOUSE  3  4 2H PROPERTIES 3060, LLC, )  5 Plaintiff, )  6 )  7 VS. ) No. NC060962  8 )  9 KHALED A. TAWANSY, M.D.; )  10 CHILDREN'S RETINA INSTITUTE; )  11 RENAISSANCE SURGICAL HOLDINGS, )  12 LLC; AND DOES 1 through 10, )  13 Inclusive, )  14 )  15 Defendants. )  16  17  18  19  20  21  22  23  24  25</p> <p>16 DEPOSITION OF ERICKA BURTON, a witness herein,  17 taken on behalf of the defendant at 16633 Ventura  18 Boulevard, Suite 735, Encino, California, at 3:10  19 p.m., on Monday, January 30, 2017, before Mariana  20 Hakverdian, CSR 13438</p>	<p><b>I N D E X</b></p> <table border="0"> <thead> <tr> <th style="width: 60%;">WITNESS</th> <th style="width: 20%;">PAGE</th> </tr> </thead> <tbody> <tr> <td>ERICKA BURTON</td> <td></td> </tr> <tr> <td>MR. KARPEL</td> <td style="text-align: center;">5</td> </tr> <tr> <td>MR. CAGNEY</td> <td style="text-align: center;">67</td> </tr> </tbody> </table> <p><b>E X H I B I T S</b></p> <table border="0"> <thead> <tr> <th style="width: 20%;">NUMBER</th> <th style="width: 60%;">DESCRIPTION</th> <th style="width: 20%;">PAGE</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">1</td> <td>Deposition Subpoena</td> <td style="text-align: center;">25</td> </tr> </tbody> </table> <p><b>QUESTIONS INSTRUCTED NOT TO ANSWER</b></p> <table border="0"> <thead> <tr> <th style="width: 20%;">Page</th> <th style="width: 20%;">Line</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">30</td> <td style="text-align: center;">7</td> </tr> <tr> <td style="text-align: center;">30</td> <td style="text-align: center;">21</td> </tr> <tr> <td style="text-align: center;">43</td> <td style="text-align: center;">13</td> </tr> <tr> <td style="text-align: center;">53</td> <td style="text-align: center;">6</td> </tr> </tbody> </table>	WITNESS	PAGE	ERICKA BURTON		MR. KARPEL	5	MR. CAGNEY	67	NUMBER	DESCRIPTION	PAGE	1	Deposition Subpoena	25	Page	Line	30	7	30	21	43	13	53	6
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30	21																								
43	13																								
53	6																								
Page 2	Page 4																								
<p>1 APPEARANCES OF COUNSEL:  2  3 For PLAINTIFF:  4  5 KRIEGER &amp; KRIEGER  6 BY LAWRENCE R. CAGNEY, ESQ.  7 249 E. Ocean Boulevard, Suite 750  8 Long Beach, CA 90802  9 562.901.2500  10  11 For DEFENDANTS KHALED A. TAWANSY, M.D.; CHILDREN'S  12 RETINA INSTITUTE; and RENAISSANCE  13 SURGICAL HOLDINGS, LLC.;  14 ZELNER &amp; KARPEL  15 BY DONALD E. KARPEL, ESQ.  16 16633 Ventura Boulevard, Suite 735  17 Encino, CA 91436  18 310.273.8444</p>	<p>1 ENCINO, CALIFORNIA; MONDAY, JANUARY 30, 2017  2 3:10 PM  3 * * *  4  5 ERICKA BURTON,  6 the witness herein, having been first duly sworn,  7 testified as follows:  8 -EXAMINATION-  9 BY MR. KARPEL:  10 Q Would you please state and spell your name for  11 the record?  12 A Ericka Burton, E-R-I-C-K-A.  13 Q Are you currently employed?  14 A Yes.  15 Q Who are you employed by?  16 A 2H Construction.  17 Q How long have you been employed by 2H  18 Construction?  19 A Approximately 15, 16 years.  20 Q I'm sorry?  21 A 15, 16 years.  22 Q And what is the location for 2H Construction,  23 the address?  24 A The whole address? 2653 Walnut Avenue, Signal  25 Hill, California 90755.  Q And what is your job title with them?</p>																								
Page 3	Page 5																								

2 (Pages 2 to 5)

Ericka Burton  
January 30, 2017

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<p>1 A I'm the controller for 2H Construction. 2 Q Do you own any -- do you hold any kind of 3 licenses with the State of California? 4 A Driver's license. 5 Q Other than driver's license. Thank you. 6 You're right. Other than driver's license. 7 A No. 8 Q Do you have a broker's license or an agent's 9 license in real estate? 10 A No. 11 MR. CAGNEY: Keep going. 12 MR. KARPEL: No. No. No. I'm going back. 13 Q What are you -- what are your duties for 2H 14 Construction? 15 A I'm the controller for 2H Construction. 16 Q And what does that entail? 17 A Head of accounting and finance. 18 Q Have you ever had your deposition taken 19 before? 20 A No. 21 Q Congratulations. There's always a first. I'm 22 going to go -- take some time, give you a little bit of 23 ground rules. They may have been already discussed by 24 your attorney, but I'm going to go over them anyhow. 25 That way, we know for the record that I have told you</p>	<p>1 question. So it's question, answer, question, answer. 2 Nobody is going to come running in with a -- 3 like Della Street, who, by the way just died. That 4 woman who played Della Street on Perry Mason. I've got 5 you now. Here is the piece of evidence that's going to 6 destroy you. None of that is going to happen. This is 7 purely a fact finding mission to find out what you knew 8 about a certain series of transactions, what you 9 remember, who you may have spoken to, timeframes, 10 documents, things lining that. 11 It's important that all of your answers be 12 oral. Shakes of your head, gestures that you put your 13 arms up and say, "It was this far apart," or, "It hurt 14 me here," okay, you're pointing to a part of your body. 15 The court reporter cannot interpret any of your 16 gestures. 17 So even a shake of the head, yes or no, she 18 cannot do that. And I'll be saying is that a, "yes" or 19 "no." Same things with the words, "uh-huh" and 20 "uh-uh." Okay. Actually spelled out, they are the 21 same. It's different emphasis and accent. So please 22 use words like, "yes," "no". And everything that you 23 need to say has got to be oral. 24 At the end of the deposition, in a period of 25 time, you're going to get a transcript of the</p>
<p>Page 6</p> <p>1 what a deposition is. It's not like anything you 2 think. Okay. 3 A deposition is not -- well, a deposition is a 4 discovery proceeding, where I'll be asking a series of 5 questions. My questions, your answers, comments, 6 objections by counsel are all being taken 7 down by the certified court reporter to your immediate 8 right. I said it, and I've always said it in all my 9 years I've taken in, the only really important person 10 in this office, other than yourself, is the court 11 reporter. She has got to be able to hear your 12 responses. And she is constantly typing and taking 13 down everything that you say, so it's important that 14 you speak up, keep your voice up, and answer the 15 questions. 16 This is not a conversation. We don't -- can't 17 step on each other's lines; okay? Each of us have our 18 lines in acting and on the stage. Please don't step on 19 mine; I won't step on yours. What that allows the 20 court reporter to do is she can only take down one 21 person speaking at a time. She's good. But when we 22 both speak over each other, it gets really bad. So 23 please let me answer my -- let me present my question 24 fully, and then let me finish it. I will allow you to 25 complete your complete answer before I begin my next</p>	<p>Page 8</p> <p>1 deposition. It will hopefully have question, answer, 2 question, answer. You will have a right to read the 3 deposition, review it, and sign it and make any changes 4 that you may want to make to the deposition. I have to 5 caution you that any changes of a substantive matter 6 can be commented on at the time of the hearing or trial 7 in this matter. 8 Let me explain that to you for a moment, a 9 substantive material change. It has nothing to do with 10 this case, it's always the clearest way to explain, and 11 the question was that light red or green as the two 12 cars came up to the intersection, and today you said 13 that light was green. And you go home and get the 14 transcript and think about it and take a pen and cross 15 out the word "green" and write in the word "red." 16 Well, that would be a significant and material change 17 to the facts of how that accident occurred. 18 Likewise, today, any changes that you what to 19 make during -- direct yourself to attorney to review 20 it; okay? 21 If I use a word or I get marble mouth, and 22 boy, I do get marble mouth, as we know, you don't 23 understand my question, just say I don't understand 24 that question, and I'll repeat it or rephrase it so you 25 do.</p>

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3 (Pages 6 to 9)

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<p>1       <b>Do you have any questions before we begin?</b></p> <p>2       A   No.</p> <p>3       <b>Q   You're here under subpoena.</b></p> <p>4       <b>Do you understand that?</b></p> <p>5       A   Yes.</p> <p>6       <b>Q   And the oath that you are given is the same</b></p> <p>7       <b>oath as if you were testifying in a court of law.</b></p> <p>8       <b>Do you understand that too?</b></p> <p>9       A   Yes.</p> <p>10      <b>Q   Okay. So what is the highest degree of</b></p> <p>11      <b>education you completed?</b></p> <p>12      A   One year of college.</p> <p>13      <b>Q   Do you have any degree in accounting or</b></p> <p>14      <b>licensing in accounting or CPA?</b></p> <p>15      A   No.</p> <p>16      <b>Q   After college, did you take any bookkeeping</b></p> <p>17      <b>classes or any technical classes?</b></p> <p>18      A   Some, yes.</p> <p>19      <b>Q   In what?</b></p> <p>20      A   Just accounting courses, general business,</p> <p>21      management, time management courses.</p> <p>22      <b>Q   How many employees are there at 2H</b></p> <p>23      <b>Construction, if you know?</b></p> <p>24      MR. CAGNEY: Objection. Vague.</p> <p>25      ///</p>	<p>1       <b>and you're very good about that, is if -- I'm entitled</b></p> <p>2       <b>to your best estimate, but I don't want you to guess;</b></p> <p>3       <b>okay?</b></p> <p>4       A   Okay.</p> <p>5       <b>Q   Leave it at that; okay? And if it's going to</b></p> <p>6       <b>be a pure guess, and you're going to pull it out of the</b></p> <p>7       <b>air, it doesn't help us. If you give us a range, just</b></p> <p>8       <b>like you did -- late spring 2000, early summer 2016,</b></p> <p>9       <b>someplace around there.</b></p> <p>10      <b>What did he tell you about the property at</b></p> <p>11      <b>3200 Long Beach Boulevard?</b></p> <p>12      A   I don't -- can you rephrase the question?</p> <p>13      <b>Q   Sure. What did you tell you about -- I'm just</b></p> <p>14      <b>going to purchase 3200 Long Beach Boulevard?</b></p> <p>15      A   Yes. Pretty much.</p> <p>16      <b>Q   Okay. Did he describe to you the type of</b></p> <p>17      <b>property it was?</b></p> <p>18      A   No. I usually get an e-mail from the brokers</p> <p>19      that show what type of property it is.</p> <p>20      <b>Q   Did you get an e-mail in this case?</b></p> <p>21      A   I'm sure -- I'm sure I did.</p> <p>22      <b>Q   And who was that from?</b></p> <p>23      A   It would have been Lee and Associates.</p> <p>24      <b>Q   And who at Lee and Associates?</b></p> <p>25      A   Jeff Coburn and Shaun McCullough.</p>
Page 10	Page 12
<p>1       BY MR. KARPEL:</p> <p>2       <b>Q   You may answer. Your best estimate.</b></p> <p>3       MR. CAGNEY: Did you say employers?</p> <p>4       MR. KARPEL: Employees.</p> <p>5       THE WITNESS: Oh. Employees.</p> <p>6       BY MR. KARPEL:</p> <p>7       <b>Q   Yeah.</b></p> <p>8       A   Probably approximately 60, 65.</p> <p>9       <b>Q   And who do you report to?</b></p> <p>10      A   Sean Hitchcock.</p> <p>11      <b>Q   Are there people below you in your accounting</b></p> <p>12      <b>and finance department that you have supervised?</b></p> <p>13      A   Yes.</p> <p>14      <b>Q   About how many?</b></p> <p>15      A   Approximately five or six.</p> <p>16      <b>Q   Okay. Are you familiar with the property at</b></p> <p>17      <b>3200 Long Beach Boulevard?</b></p> <p>18      A   Yes.</p> <p>19      <b>Q   How did you become familiar with it?</b></p> <p>20      A   When Sean told me he was purchasing it.</p> <p>21      <b>Q   When did he tell you he was going to purchase</b></p> <p>22      <b>it?</b></p> <p>23      A   I don't recall the exact time, but I believe</p> <p>24      it was July, August.</p> <p>25      <b>Q   Okay. One of the things I didn't tell you,</b></p>	<p>1       <b>Q   And that's S-H-A-W-N?</b></p> <p>2       A   S-H-A-U-N.</p> <p>3       <b>Q   And what did e-mail say, if you recall?</b></p> <p>4       A   I don't recall exactly.</p> <p>5       <b>Q   How about in substance in?</b></p> <p>6       A   Usually, it's an e-mail that just shows Sean a</p> <p>7       property that's available and if he is interested.</p> <p>8       <b>Q   When you got the e-mail from Lee and</b></p> <p>9       <b>Associates, was that before Mr. Hitchcock told you he</b></p> <p>10      <b>was going to buy it or after?</b></p> <p>11      A   I don't recall exactly.</p> <p>12      <b>Q   How about best estimate?</b></p> <p>13      A   Can you ask the question again?</p> <p>14      <b>Q   Sure. When you got the e-mail from Lee and</b></p> <p>15      <b>Associates -- let's do it this way.</b></p> <p>16      <b>When you got the e-mail from Lee and</b></p> <p>17      <b>Associates, was that the first time you heard of 3200</b></p> <p>18      <b>Long Beach Boulevard?</b></p> <p>19      A   Yes.</p> <p>20      <b>Q   Did it tell you that Sean was going to buy the</b></p> <p>21      <b>property, or that the property was just being offered?</b></p> <p>22      <b>That being e-mail.</b></p> <p>23      A   No. It would have just been an e-mail that</p> <p>24      showed him a property that was available for sale.</p> <p>25      <b>Q   Okay. And what did you do with that e-mail?</b></p>
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4 (Pages 10 to 13)

Ericka Burton  
January 30, 2017

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<p>1 A I don't do anything with it. I wait to hear 2 from back from Sean. 3 Q Were you copied on that e-mail, or was it 4 directed to you? 5 A Copied. 6 Q Do you recall whether it had a purchase price 7 request in it? 8 A I do not recall. 9 Q Do you recall whether or not -- how large a 10 piece of property it was? 11 A I'm sure it did that have information. It 12 usually has that. At least that. 13 Q Did it have any information whether it was 14 tenant occupied or not? 15 A I don't recall. 16 Q All right. What was the next information you 17 had heard about in regard to 3200 Long Beach Boulevard? 18 A Probably that Sean wanted to purchase it. 19 Q Okay. And in regard to when you received a 20 copy of the e-mail, how long was that? 21 A Can you ask the question again? 22 Q Sure. You received the e-mail from the 23 brokers, how much time passed before you had learned 24 that Sean wants to buy it? 25 A I don't remember that.</p>	<p>1 contact was. I... 2 Q How about generally, what do you remember? 3 A It would have been something to do with 4 getting escrow open. 5 Q Okay. And how do you get information to open 6 escrow? 7 A Through the brokers. 8 Q At that point, had you had any conversations 9 with Sean about the purchase of 3200? 10 A No. 11 Q Were you aware that Sean was also in midst of 12 a 1031 exchange at the time that he expressed interest 13 in purchasing 3200 Long Beach Boulevard? 14 A Rephrase that question, please. 15 Q Sure. At the time that you learned that Sean 16 was interested in purchasing the 3200 Long Beach 17 Boulevard, were you also aware that Sean was in the 18 midst of making arrangements for two properties on a 19 1031 exchange? 20 A Not at that time. 21 Q Okay. Did you subsequently learn that? 22 A Yes. 23 Q Okay. When did you learn that? 24 A Shortly after we decide to purchase a 25 property, we discuss that.</p>
<p>Page 14</p>	<p>Page 16</p>
<p>1 Q Was it months, weeks, days? 2 A It could have been days. 3 Q And how did you learn that Sean wanted to buy 4 it? 5 A He more likely replied to the e-mail, "I'm 6 very interested." 7 Q At this point, did you have -- at this point 8 being the time that you received this reply from Sean, 9 had you had any discussions with Sean about purchasing 10 3200? 11 A Not that I recall. 12 Q Did you have discussions with anybody else in 13 regard to purchasing 3200? 14 A No. 15 Q When I'm referring to 3200, I'm referring to 16 3200 Long Beach Boulevard. Is that okay? 17 A Yes. 18 Q All right. And I'm using first name Sean, I'm 19 referring to Sean Hitchcock; correct? 20 A Yes. 21 Q Okay. Just to see if we can move this even 22 faster. 23 What was the next contact you had in regard to 24 the purchase of 3200? 25 A I could not tell you what the exact next</p>	<p>1 Q All right. So the broker -- am I correct to 2 say the brokers instructed you to open escrow, or you 3 had learned that escrow was being opened? 4 A I learned that the escrow was being opened. 5 Q Okay. Did you, at that point, see the escrow 6 instructions? 7 A I'm sure very shortly after that. 8 Q Okay. Mr. Hitchcock indicated that he has 9 purchased, sounds like, many properties of the 15 to 16 10 years that you were there; is that correct? 11 A Yes. 12 Q What would be the procedures in regard to once 13 Sean had -- had indicated a desire to purchase the 14 property? Would you be involved in the purchase of the 15 property, the financial end of it? 16 A To a degree, yes. 17 Q And what degree, generally, first of all? 18 A I act as liaison between the brokers and Sean 19 and escrow. 20 Q Okay. And what do you mean by "liaison"? 21 What would you do? 22 A I receive the e-mails from -- from the start 23 of -- open of escrow through the close of escrow that 24 need to be addressed, handled, and make sure that Sean 25 is on top of it because that's my job.</p>
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<p>1      Q    And he has other things to do?</p> <p>2      A    Yes.</p> <p>3      Q    All right. In regard to the 3200 Long Beach</p> <p>4      Boulevard, did you -- did you serve the same purposes</p> <p>5      generally in regard to acting as a liaison between the</p> <p>6      brokers and escrow?</p> <p>7      A    Yes.</p> <p>8      Q    Okay. Who actually opened escrow in 3200?</p> <p>9      A    That's --</p> <p>10     Q    Somebody calls into an escrow company and</p> <p>11    says -- or delivers a sale agreement, correct, to an</p> <p>12    escrow company?</p> <p>13    A    The brokers do.</p> <p>14    Q    Okay. Did you have any -- did you have any</p> <p>15    involvement in opening the escrow?</p> <p>16    A    Not the initial opening of escrow. The</p> <p>17    brokers do that, and then I also am copied on that</p> <p>18    e-mail.</p> <p>19    Q    Did you have any involvement in the</p> <p>20    negotiations of the purchase price?</p> <p>21    A    None.</p> <p>22    Q    Did you have any -- any involvement in doing</p> <p>23    any due diligence in regard to the purchase of the</p> <p>24    building on behalf of Sean?</p> <p>25    MR. CAGNEY: Objection. Vague.</p>	<p>1      particular property?</p> <p>2      A    No. I don't recall.</p> <p>3      Q    Did you -- do you recall having any</p> <p>4      discussions with the broker or brokers in regard to the</p> <p>5      title report on 3200?</p> <p>6      A    No.</p> <p>7      Q    And that's a report that you did not review;</p> <p>8      correct?</p> <p>9      A    No.</p> <p>10     Q    That's a double negative.</p> <p>11     MR. CAGNEY: Did you review the title report?</p> <p>12     THE WITNESS: I did not review the title --</p> <p>13    what was the first question?</p> <p>14    BY MR. KARPEL:</p> <p>15    Q    The way I phrased it and you saying, "no,"</p> <p>16    it --</p> <p>17    A    Sorry.</p> <p>18    Q    -- became a double negative, which meant that,</p> <p>19    in fact, you did review the title report.</p> <p>20    MR. CAGNEY: So let's clarify it.</p> <p>21    THE WITNESS: I did not --</p> <p>22    BY MR. KARPEL:</p> <p>23    Q    Did you review the title report?</p> <p>24    A    I did not review the title report.</p> <p>25    Q    Okay. Very good. Thank you. Our ears are</p>
Page 18	Page 20
<p>1      BY MR. KARPEL:</p> <p>2      Q    Before opening the escrow.</p> <p>3      A    Can you ask the question again?</p> <p>4      Q    Sure. Before opening escrow, did you -- were</p> <p>5      you involved in any -- doing any of the activities</p> <p>6      which are generally known as due diligence in regard to</p> <p>7      purchasing the property?</p> <p>8      A    No.</p> <p>9      Q    Okay. Did you have -- after opening escrow,</p> <p>10     did you have an opportunity to review the title report?</p> <p>11     A    That's not something I do.</p> <p>12     Q    Okay. Who would review the title report?</p> <p>13     A    The brokers.</p> <p>14     Q    Did you receive any e-mails or information</p> <p>15    from the brokers in regard to any problems with title</p> <p>16    report in regard to 3200?</p> <p>17    A    I don't recall problems with the title report.</p> <p>18    I -- but I don't -- I remember that we needed to get</p> <p>19    another one.</p> <p>20     Q    You had to get two title reports?</p> <p>21    A    No. I just meant, like, we -- I just remember</p> <p>22    them telling us we needed to get title report. I don't</p> <p>23    remember the exact content of the e-mail.</p> <p>24     Q    Do you recall learning at any time that you</p> <p>25    needed to get additional title insurance on this</p>	<p>1      trained for these things.</p> <p>2      Q    Okay. All right. Did you review the escrow</p> <p>3      instructions?</p> <p>4      A    To a degree.</p> <p>5      Q    To what degree did you review the escrow</p> <p>6      instructions?</p> <p>7      A    Just to make sure I know how much the property</p> <p>8      is being purchased for; when escrow supposed to open,</p> <p>9      close, just things I need to be aware of.</p> <p>10     Q    Do you recall how much the property was</p> <p>11    purchased?</p> <p>12    A    2.65 million.</p> <p>13     Q    Did you learn at any time during escrow</p> <p>14    whether or not there was a tenant that was in -- on the</p> <p>15    property?</p> <p>16    A    At some point, I did.</p> <p>17     Q    Okay. When was that?</p> <p>18    A    I don't know exactly. I just remember them</p> <p>19    saying there was a tenant in place.</p> <p>20     Q    Was that before the close of escrow?</p> <p>21    A    Yes.</p> <p>22     Q    Do you know what an estoppel statement is?</p> <p>23    A    Yes.</p> <p>24     Q    Had you, in any of the properties prior to</p> <p>25    3200 Long Beach Boulevard, ever seen an estoppel</p>
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<p>1       <b>statement?</b>  2       A   Yes.  3       <b>Q   What is your -- not legal -- what is your</b>  4       <b>understanding what an estoppel statement is?</b>  5       A   Something that the tenant signs and provides  6       to us if they are remaining in the space and want to  7       continue their lease.  8       <b>Q   Do you know whether or not an estoppel</b>  9       <b>statement was requested for the property at 3200?</b>  10      A   I don't know that.  11      <b>Q   No, it wasn't, or, no, you have no information</b>  12      <b>whether it was requested?</b>  13      A   I have no information as to whether it was  14      requested.  15      <b>Q   Did you have any discussions with the brokers</b>  16      <b>concerning the tenant on the property prior to closing?</b>  17      A   Yes.  18      <b>Q   And what were those discussions?</b>  19      A   I was told the tenant was not renewing their  20      lease. I had a cancellation, termination of that  21      lease, but that they were still there.  22      <b>Q   Did you ever inquire as to why they were still</b>  23      <b>there as -- well, do you know what the date of the</b>  24      <b>termination of the -- strike that.</b>  25      <b>Do you remember the date of the termination</b></p>	<p>1       <b>discussions with the brokers representing the sellers</b>  2       <b>of the property?</b>  3       A   No.  4       <b>Q   Now, the -- you learned about the tenant from</b>  5       <b>your brokers; correct?</b>  6       A   Correct.  7       <b>Q   Which would have been Shaun and Jeff?</b>  8       A   Yes.  9       <b>Q   What did they tell you about the tenant,</b>  10      <b>anything more?</b>  11      MR. CAGNEY: I think perhaps you should  12      indicate when you're speaking about Shaun McCullough  13      versus Sean Hitchcock.  14      MR. KARPEL: You're right. I think that's  15      very good.  16      <b>Q   I'm talking about the brokers for a moment;</b>  17      <b>okay?</b>  18      <b>You learned about the tenant from the brokers;</b>  19      <b>correct?</b>  20      A   Yes.  21      <b>Q   Which were Lee and Associates?</b>  22      A   Yes.  23      <b>Q   And that was before the close of escrow?</b>  24      A   Yes.  25      <b>Q   Let's do this. Did you tell Sean Hitchcock</b></p>
Page 22	Page 24
<p>1       <b>notice that was given to the tenant?</b>  2       A   I don't remember that exact date.  3       <b>Q   Was that date for the termination, was it</b>  4       <b>before or after close of escrow?</b>  5       A   Before.  6       <b>Q   Okay. Who provided that termination notice to</b>  7       <b>you?</b>  8       A   The escrow or brokers. I don't remember who  9       exactly sent it to me.  10      <b>Q   Where was the escrow in this property? Where?</b>  11      <b>What was the name of the company?</b>  12      A   Should I guess? I think it was Chartwell.  13      <b>Q   I don't want you to guess.</b>  14      A   It was one I never used before.  15      <b>Q   I don't want a guess.</b>  16      A   I believe it was Chartwell, but I don't -- I  17      don't -- It was someone I never used before.  18      <b>Q   Do you know who choosed -- who chose</b>  19      <b>Chartwell?</b>  20      A   I believe it was the seller.  21      <b>Q   Okay. Prior to the close of escrow, did you</b>  22      <b>have any personal discussions with the seller of this</b>  23      <b>property?</b>  24      A   No.  25      <b>Q   Prior to the close of escrow, did you have any</b></p>	<p>1       <b>about the existence of the broker -- of the tenant</b>  2       <b>before the close of escrow?</b>  3       A   No. He would have been involved in that  4       e-mail.  5       MR. KARPEL: Okay. We had a -- we served a  6       subpoena on you, and I'm going to have this attached as  7       Exhibit 1.  8       (Defendants' Exhibit 1 marked for  9       identification.)  10      BY MR. KARPEL:  11      <b>Q   And the subpoena asks for series of documents</b>  12      <b>on Page 2 of 3.</b>  13      <b>Do you recall seeing that?</b>  14      A   I believe so.  15      <b>Q   Were any of the e-mails between yourself and</b>  16      <b>the broker included in -- strike that.</b>  17      <b>Did you produce any of those records?</b>  18      MR. CAGNEY: Well, Mr. Karpel, I'll represent  19      that those records responsive to the subpoena were  20      produced through me, and I have included them on the  21      disk that I provided you before the Hitchcock  22      deposition commenced labeled 2H production, January  23      30th, 2017 00012298.  24      MR. KARPEL: Okay.  25      <b>Q   In those documents, were any of the series of</b></p>
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<p>1 e-mails which we have been discussing concerning      2 opening of escrow, existence of a tenant that you got      3 from the brokerage, were those in the documents that      4 you turned over in response to that subpoena?</p> <p>5 A In the documents that our attorney turned      6 over?</p> <p>7 Q Yes. Yes.</p> <p>8 A I believe so.</p> <p>9 Q Okay. All right. Let's get back.</p> <p>10 In regard to -- you -- you received an e-mail,      11 or was it a series of e-mails concerning the tenant      12 prior to the close of escrow from the brokers, do you      13 recall?</p> <p>14 A I don't recall if there was a series. I don't      15 recall it being much at all.</p> <p>16 Q Do you remember -- I know you started to tell      17 us what the -- what that substance of those e-mails was      18 regarding the tenant. One was that he was not      19 intending to stay; is that correct?</p> <p>20 A I did not say that.</p> <p>21 Q Okay. What -- what was the subject matter of      22 the e-mails that were provided to you from the broker      23 concerning the tenant?</p> <p>24 A That their -- their lease was terminated, but      25 that they were still there.</p>	<p>1 A Yes.</p> <p>2 Q Okay. And when did you see that?</p> <p>3 A Prior to the close of escrow.</p> <p>4 Q And what was -- what were the terms of that      5 lease?</p> <p>6 A It was a month-to-month lease.</p> <p>7 Q And for how much?</p> <p>8 A 15,000 a month, I believe.</p> <p>9 Q And did you ever learn that -- the name of the      10 tenant that was in possession prior to the close of      11 escrow?</p> <p>12 A At that point, I think so, yes.</p> <p>13 Q And what was his name, if you recall?</p> <p>14 A Dr. Tawansy is all I know.</p> <p>15 Q Okay. At the time of the close -- prior the      16 close of escrow, did you ever learn whether or not to      17 Dr. Tawansy had any claim that he actually owned the      18 property?</p> <p>19 A Ask the question again.</p> <p>20 Q Prior to the close of escrow, did you ever      21 learn from any source whether or not Dr. Tawansy had      22 made a claim that he owned the property?</p> <p>23 A No.</p> <p>24 Q Did you have any information that Dr. Tawansy      25 believed that he had -- he had a written lease on the</p>
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<p>1 Q Okay. Anything else?</p> <p>2 A No.</p> <p>3 Q Did you have any discussions with Sean      4 Hitchcock concerning the fact that the information you      5 received from the brokers that the tenant was still in      6 occupancy of the property?</p> <p>7 A The only conversation we would have had was me      8 asking him if he wanted me to provide them with a      9 month-to-month lease or a new lease.</p> <p>10 Q And you -- did you have that discussion prior      11 to the close of escrow or after close of escrow?</p> <p>12 A I don't recall exactly, but I would imagine it      13 was before the close.</p> <p>14 Q Okay. And what was discussed between you and      15 Mr. Hitchcock regarding providing this lease to the      16 tenant?</p> <p>17 A That the brokers would give us a      18 month-to-month they were giving them before close, and      19 we would see if they signed it or not.</p> <p>20 Q I'm not sure I understand your response.</p> <p>21 A The brokers were going to provide them with a      22 month-to-month lease if they wanted to continue to stay      23 at the close of escrow.</p> <p>24 Q Okay. And to your knowledge, did you see that      25 lease provided by the brokers to the tenant?</p>	<p>1 property?</p> <p>2 A When?</p> <p>3 Q Prior to the close of escrow.</p> <p>4 A No.</p> <p>5 Q Did you learn at any time that Dr. Tawansy      6 believed he a written lease?</p> <p>7 A That was in conversations after I found out      8 about this.</p> <p>9 Q Conversations -- now, you've got to eliminate      10 conversations you might have had with your attorney.</p> <p>11 What were the sources of those conversations      12 other than your attorney?</p> <p>13 A I don't recall conversations. I think -- I      14 remember talking to Sean about it, Sean Hitchcock, and      15 finding out about it.</p> <p>16 Q Okay. And what did he say to you?</p> <p>17 A I believe that was when I couldn't get ahold      18 of anyone from the tenant to respond to me. I don't      19 remember how this -- how it all took place. I just      20 remembering hearing that, once escrow closed,      21 supposedly they thought they owned the building.</p> <p>22 Q And is that the first time you learned about      23 the claim that Dr. Tawansy felt that he owned the      24 building?</p> <p>25 A Yes.</p>
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<p>1     <b>Q</b> And you -- did you learn that from the brokers 2 or from Mr. Hitchcock? 3     A I don't remember where I learned it from, 4 which person. 5     <b>Q</b> And what was Mr. Hitchcock's response to that? 6     A That's ridiculous. 7     <b>Q</b> Did you take any action once you had heard 8 that the tenant believed that he owned an interest in 9 the property? 10    MR. CAGNEY: If you can answer the question 11 without revealing the contents of any communications -- 12    MR. KARPEL: Correct. 13    MR. CAGNEY: -- with me or anyone at my 14 office, you're free to do so; otherwise, I will 15 instruct you not to answer the question. 16    MR. KARPEL: Yeah. 17    THE WITNESS: I can't. 18    BY MR. KARPEL: 19    <b>Q</b> You can't? 20    A I can't. 21    <b>Q</b> Did you have any discussions with Sean about 22 what to do about the tenant? 23    MR. CAGNEY: Again, to the extent that those 24 discussions involved me, the same rule would apply. 25    THE WITNESS: Then I can't answer that.</p>	<p>1     A When I called the phone number that is 2 attached to the lease for the doctor, I spoke to a 3 woman who answered the phone. 4     <b>Q</b> And who was that? 5     A I believe her name was Brenda. 6     <b>Q</b> Okay. Was the phone number, did it answer as 7 a business, if you recall, a name? 8     A I don't remember. 9     <b>Q</b> Okay. And did Brenda -- did Brenda identify 10 herself, who she was, other than Brenda? 11    A No. 12    <b>Q</b> And what was the substance and sum of the 13 conversation you had with Brenda? 14    A I asked her who I could contact to let them 15 know I was the new property manager the company -- 16 sorry -- of the property and where and who -- who I 17 could contact to let them know on who you send rent to 18 if you are going to stay in the building. 19    <b>Q</b> What did Brenda? 20    A She gave me Gary Lefkowitz's [ph] phone number 21 and said that I needed to speak with him. 22    <b>Q</b> Did you have a conversation with Gary 23 Lefkowitz at that time? 24    A Not at that time. I called him several times, 25 and he did not return my call right away.</p>
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<p>1    BY MR. KARPEL: 2    <b>Q</b> All right. So what I'm looking for is any 3 conversations you may have had without the attorney 4 present or anything that was discussed between Sean and 5 yourself and the attorney, but I would like to know any 6 conversations you may have had with Sean Hitchcock 7 dealing specifically with what to do about the tenant? 8    A I did not. 9    <b>Q</b> To your knowledge, was a month-to-month lease 10 presented to the tenant? 11    A Yes. 12    <b>Q</b> And who presented it to the tenant? 13    A The brokers did initially. 14    <b>Q</b> And that was before the close of escrow? 15    A Correct. 16    <b>Q</b> When you say, "initially," was there a 17 subsequent time a month-to-month lease was presented to 18 the tenant? 19    A I forwarded them a copy. 20    <b>Q</b> At the time you forwarded them a copy of -- of 21 the proposed month-to-month lease, did you have any 22 discussions with any -- with the tenant or any 23 representative representing the tenant about the lease? 24    A Not about the lease. 25    <b>Q</b> About anything else?</p>	<p>1     <b>Q</b> And you indicate that you were -- that you 2 identified yourself as the property manager; is that 3 correct? 4     A Yes. 5     <b>Q</b> Okay. Were you, in fact, the property manager 6 for 3200 Long Beach? 7     A I was once escrow closed. 8     <b>Q</b> Okay. And had you acted as a property manager 9 for any other of the other Sean Hitchcock properties 10 once escrow closed? 11    MR. CAGNEY: Objection. Vague. 12    BY MR. KARPEL: 13    <b>Q</b> You may answer. 14    A Yes. 15    <b>Q</b> Okay. On how many properties? 16    A I can't give an exact count but several. 17    <b>Q</b> Okay. Are you aware whether or not the State 18 of California requires any kind of a broker's license 19 to be a property manager today, if you know? 20    A No. 21    <b>Q</b> No, you don't know, or it doesn't? 22    A I don't know. I don't know. 23    <b>Q</b> Do you know whether or not state of California 24 requires any type of licensure to act as a property 25 manager today?</p>
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<p>1 A I do not know that. 2 Q All right. I want to get back to the 3 Mr. Lefkowitz, but I want to get back to during the -- 4 prior to the close of escrow -- strike that. 5 In Mr. Hitchcock's deposition, he indicated 6 that he believed that they needed to have some 7 additional title insurance. He wasn't quite sure, but 8 I thought he said something along those lines, or a new 9 title insurance company. 10 Do you remember anything about that in the 11 sale of 3200? 12 A I remember something about the title 13 insurance, but I don't know exact -- what the exact 14 content of the conversation was. 15 Q Do you know whether or not the issue, whatever 16 it might have -- well, the issue regarding the title 17 insurance had anything to do with he a second and third 18 deed of trust on the property that needed to be cleared 19 off? 20 A I don't recall because I don't have anything 21 to do with that portion of it. When there's issues 22 like that, the brokers and escrow deal with it. 23 Q Did the brokers tell you what the issue was 24 dealing with the property damage -- 25 A Not that I --</p>	<p>1 MR. KARPEL: You may answer it. 2 THE WITNESS: No. 3 BY MR. KARPEL: 4 Q Who, to your knowledge -- you know what due 5 diligence is? 6 A Yes. 7 Q Okay. Without asking for a legal opinion, 8 what is your understanding of completion of due 9 diligence in purchase of a -- a piece of property? 10 A That all inspections are complete, all items 11 and things are in order, a timeframe where you can 12 decide whether or not you want to purchase or not. 13 Q Typically, inspections; title report checks; 14 if it's a building with home Homeowner's Association, 15 looking at CCNRs. 16 Do you know what CCNRs are? 17 A Yes. 18 Q Okay. So we're on the same page? 19 A Yes. 20 Q But your testimony is that you were not 21 involved in any of the completion of the due diligence 22 for the completion of the property at 3200; is that 23 correct? 24 A That's correct. 25 Q Were you aware of any issues that were raised</p>
<p>Page 34</p> <p>1 Q -- the property -- the property title? 2 A Not that I recall. 3 Q Did you have any personal discussions with 4 Sean Hitchcock dealing with the title insurance issue? 5 A No. 6 Q Were you given any directions by Mr. Hitchcock 7 in regard to the titling -- title issue? 8 A No. 9 Q You do recall there was some issue, but you 10 don't recall what it is? 11 A Because I don't have anything to do with that 12 portion of it. 13 Q Okay. 14 A I'm, again, the liaison, so I don't have to 15 pay attention to those little details. 16 Q All right. I think I asked you a question 17 of -- and I'm not sure I got an answer -- about due 18 diligence. 19 Were you involved in doing -- in completing 20 any of the due diligence in regard to completing the 21 sale? 22 MR. CAGNEY: Objection. Vague. 23 MR. KARPEL: Okay. 24 Q On behalf of Mr. Hitchcock at 3200 Long Beach? 25 MR. CAGNEY: Objection. Vague.</p>	<p>1 in the completion of the due intelligence by any of the 2 brokers on behalf of Mr. Hitchcock for the property at 3 3200 Long Beach? 4 A No. 5 Q Were you made aware of any issues with -- in 6 regard to the inspection of the building? 7 A No. 8 Q Were you made aware of whether or not -- well, 9 do you know the name Dr. Jennifer Sohol. 10 A I do now. 11 Q Prior to the close of escrow, did you know 12 that name? 13 A I believe so, yes. 14 Q And in what context did you know that name 15 prior to the close of escrow? 16 A She was the seller. 17 Q And did you have any dealings with her 18 directly? 19 A None. 20 Q Did you have any dealings with her agents or 21 brokers? 22 A No. 23 Q Were you made aware of any -- by any of the 24 agents -- were you made aware by any of Mr. Hitchcock's 25 brokers that they had contact with Dr. Sohol prior to</p>

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<p>1     <b>the close of escrow?</b></p> <p>2     A   No.</p> <p>3     Q   <b>Were you made aware or were you told by any of</b>           4   <b>Mr. Hitchcock's agents that they had conversations with</b>           5   <b>the agents of Dr. Sohol in regard to the tenant?</b></p> <p>6     A   No.</p> <p>7     Q   <b>Did you ever see a lease that allegedly</b>           8   <b>existed between the seller and Dr. Tawansy?</b></p> <p>9     A   I don't think so.</p> <p>10    Q   <b>When you sent the lease, the month-to-month</b>          11   <b>lease, did you send it to Dr. Tawansy?</b></p> <p>12    A   Yes.</p> <p>13    Q   <b>Did you also send it to Mr. Lefkowitz?</b></p> <p>14    A   No. Oh. Strike that.</p> <p>15    He was copied on the e-mail.</p> <p>16    Q   <b>And did you have an address for Dr. Tawansy at</b>           17   <b>the time you sent him the lease?</b></p> <p>18    A   The 3200 Long Beach Boulevard.</p> <p>19    Q   <b>Was there any address that you were aware of?</b></p> <p>20    A   I think there was. There might have been one</p> <p>21    in L.A. I think they have an office in L.A.</p> <p>22    Q   <b>Were you aware of anything on South Figueroa?</b></p> <p>23    A   That might have been it.</p> <p>24    Q   <b>Eagle Rock rather than L.A.?</b></p> <p>25    A   I could not tell you that.</p>	<p>1     A   I asked her where I could send my letter           2   introducing myself and let someone know where to send           3   rent if the tenant was going to stay at 3200 Long           4   Beach Boulevard, and she gave me Lefkowitz's phone           5   number. And it could have actually been Lefkowitz that           6   gave me that address. I don't recall because I           7   handwrote it on the lease.</p> <p>8     Q   <b>Okay. But there was an address provided to</b>           9   <b>you?</b></p> <p>10    A   Another address, yes.</p> <p>11    Q   <b>Right. And that address was a way of sending</b>           12   <b>the lease -- proposed lease?</b></p> <p>13    A   It was, I think, just an option, an alternate,           14   to send as well as 3200.</p> <p>15    Q   <b>At any time, did you ever learn how often</b>           16   <b>Dr. Tawansy was at 3200?</b></p> <p>17    A   No.</p> <p>18    Q   <b>Did you see the building at 3200 prior to its</b>           19   <b>closing?</b></p> <p>20    A   No.</p> <p>21    Q   <b>Did you see the building at 3200 after its</b>           22   <b>close?</b></p> <p>23    A   Yes.</p> <p>24    Q   <b>Okay. When did you first see the building?</b></p> <p>25    A   When I posted the notice to vacate the</p>
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<p>1     Q   <b>Okay. Numbers 7 -- ah, doesn't matter. 7447?</b></p> <p>2     A   Vaguely. It was handwritten. I believe that           3   was given to me by Brenda.</p> <p>4     Q   <b>Okay. And what did Brenda tell you? To send</b>           5   <b>correspondence at that address, or do you know?</b></p> <p>6     A   No. She just said to contact Gary. And she           7   gave me that, maybe, because -- to have someplace else           8   to send.</p> <p>9     Q   <b>So you had address for Mr. Lefkowitz; correct?</b></p> <p>10    A   No. I had an e-mail address.</p> <p>11    Q   <b>You had an e-mail.</b></p> <p>12    <b>But you had an address for Mr. -- for Dr.</b>           13   <b>Tawansy?</b></p> <p>14    A   I don't know what the address was for. She           15   just gave me that address.</p> <p>16    Q   <b>And what did she say to you when she gave you</b>           17   <b>that address?</b></p> <p>18    A   You can try this one.</p> <p>19    Q   <b>Okay. And this is -- did she say in</b>           20   <b>contents -- context of you requesting somewhere to send</b>           21   <b>documents?</b></p> <p>22    MR. CAGNEY: Objection. Vague.</p> <p>23    BY MR. KARPEL:</p> <p>24    Q   <b>All right. What was the context in which she</b>           25   <b>gave you the address?</b></p>	<p>1     premises.</p> <p>2     Q   <b>Okay. And where did you post that notice?</b></p> <p>3     A   On the front door.</p> <p>4     Q   <b>There are three units at there, generally, at</b>           5   <b>the building; is that correct?</b></p> <p>6     A   Yes.</p> <p>7     Q   <b>And which door did you post it on?</b></p> <p>8     A   The door on the south end of the building           9   facing Long Beach Boulevard.</p> <p>10    Q   <b>And did you also send a certified copy or</b>           11   <b>registered copy of the notice?</b></p> <p>12    A   No. I mailed it.</p> <p>13    Q   <b>Where did you mail it to?</b></p> <p>14    A   To 3200 Long Beach Boulevard.</p> <p>15    Q   <b>Did you ever mail a copy of it to the South</b>           16   <b>Figueroa address?</b></p> <p>17    A   No.</p> <p>18    Q   <b>But you knew that was an alternate address;</b>           19   <b>correct?</b></p> <p>20    MR. CAGNEY: Objection.</p> <p>21    MR. KARPEL: You may answer.</p> <p>22    MR. CAGNEY: Argumentative.</p> <p>23    BY MR. KARPEL:</p> <p>24    Q   <b>You can still answer.</b></p> <p>25    A   I did not know that was an address that was</p>
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<p>1 good for him to collect mail.</p> <p>2     <b>Q That was the address you sent your letter of</b>  <b>3 introduction to; correct?</b></p> <p>4     A In combination with the one I sent to 3200. I      5 wanted to make sure somebody got it.</p> <p>6     <b>Q But your letter of introduction was sent to</b>      7 <b>the address on South Figueroa; correct?</b></p> <p>8     A You know, I couldn't tell you that I sent that      9 letter there. I think once I spoke with Gary, I just      10 stuck to e-mails because no one was responding to me.</p> <p>11     <b>Q Did you ever send the notice through an e-mail</b>      12 <b>to anybody?</b></p> <p>13     MR. CAGNEY: Objection. Vague. What notice      14 are we talking about?</p> <p>15 BY MR. KARPEL:</p> <p>16     <b>Q The 30-day notice to terminate.</b></p> <p>17     A Notice to terminate?</p> <p>18     <b>Q Yeah.</b></p> <p>19     A No.</p> <p>20     <b>Q Did you send any 30-day notice of any kind</b>      21 <b>to -- to an e-mail address on behalf of Dr. Tawansy?</b></p> <p>22     A No.</p> <p>23     <b>Q When did -- you said you -- you actually saw</b>      24 <b>the building when you posted. Did you actually go in</b>      25 <b>the building?</b></p>	<p>1     <b>Q Was it -- was it a 30-day notice to terminate</b>      2 <b>or 30-day notice to vacate, if you recall?</b></p> <p>3     A I don't recall.</p> <p>4     <b>Q Who prepared it?</b></p> <p>5     A My -- our attorney.</p> <p>6     <b>Q Prior to posting that notice, did you have any</b>      7 <b>conversation with Mr. Lefkowitz concerning your intent</b>      8 <b>to first post the notice?</b></p> <p>9     A No.</p> <p>10     <b>Q Did you have any conversation with</b>      11 <b>Mr. Lefkowitz concerning the sending of the 30-day</b>      12 <b>notice to vacate?</b></p> <p>13     A Yes.</p> <p>14     <b>Q Did you have any conversation with</b>      15 <b>Mr. Lefkowitz concerning the month-to-month lease,</b>      16 <b>which you had proposed -- or Mr. Hitchcock had</b>      17 <b>proposed?</b></p> <p>18     A When?</p> <p>19     <b>Q At any time.</b></p> <p>20     A Only in the conversation I had with him in the      21 one time he came to our office.</p> <p>22     <b>Q So let's back up. Let's go up.</b></p> <p>23     <b>You had -- when did Mr. Lefkowitz come to your</b>      24 <b>office?</b></p> <p>25     A I don't recall the exact date, but it was</p>
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<p>1     A The door was locked, and I looked inside, and      2 no one seemed to be -- no one appeared to be there.</p> <p>3     <b>Q Did the door -- did the building have any kind</b>      4 <b>of a sign on it indicating what kind of business it</b>      5 <b>was?</b></p> <p>6     A I believe the doctor's name was on the door,      7 but I don't recall exactly.</p> <p>8     <b>Q Have you ever been into Unit 1?</b></p> <p>9     A No.</p> <p>10     <b>Q Why did you send a -- that was a 30-day notice</b>      11 <b>to vacate; correct?</b></p> <p>12     A Yes.</p> <p>13     <b>Q Why did you send a 30-day notice to vacate?</b></p> <p>14     MR. CAGNEY: If you can answer that question      15 without revealing the contents of any of our      16 communications, you're welcome to do so. But if it      17 would require you to reveal that, then I will instruct      18 you not to answer.</p> <p>19     THE WITNESS: Cannot do that.</p> <p>20 BY MR. KARPEL:</p> <p>21     <b>Q Did Mr. Hitchcock ever tell you -- just lawyer</b>      22 <b>for a second. Hate to do this.</b></p> <p>23     <b>Did Mr. Hitchcock ever tell you to send the</b>      24 <b>30-day notice to terminate?</b></p> <p>25     A No.</p>	<p>1     In -- some time in October.</p> <p>2     <b>Q Was this after the close of the escrow?</b></p> <p>3     A Yes.</p> <p>4     <b>Q And how was that meeting set up? Did he call</b>      5 <b>you guys? Did you call him?</b></p> <p>6     A I called him.</p> <p>7     <b>Q So you knew of his existence prior to that</b>      8 <b>meeting; correct?</b></p> <p>9     A Yes.</p> <p>10     <b>Q And how did you first become aware? Was that</b>      11 <b>through Brenda?</b></p> <p>12     A Yes.</p> <p>13     <b>Q And now, after you learned of Mr. Lefkowitz's</b>      14 <b>existence, did you have any discussions with</b>      15 <b>Mr. Lefkowitz prior to him coming to the office?</b></p> <p>16     A One telephone call, and I don't even remember      17 the conversation. It was just to ask him where I      18 should send information and get e-mail addresses from      19 him.</p> <p>20     <b>Q Okay. And that's when he provided you the</b>      21 <b>Figueroa -- South Figueroa address?</b></p> <p>22     A I don't know that. I don't remember that.</p> <p>23     <b>Q Well, did he tell you to send notices to 3200</b>      24 <b>Long Beach?</b></p> <p>25     A He gave me e-mail addresses to send any</p>
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<p>1 information to.</p> <p>2     <b>Q Did you ask for a, for lack of another word,</b>  <b>brick-and-mortar address?</b></p> <p>3     A I believe he told me 3200 Long Beach Boulevard      was good.</p> <p>4     <b>Q Okay. The -- was that the only conversation</b>  <b>had you prior to -- strike that.</b></p> <p>5         Was that the only communication of any kind      that you might have had with Mr. Lefkowitz prior to him      coming to the office?</p> <p>6     A Yes.</p> <p>7     <b>Q Did you have any conversations or</b>  <b>communications with Dr. Tawansy prior to Mr. Lefkowitz</b>  <b>coming to the office?</b></p> <p>8     A No.</p> <p>9     <b>Q Let's get to the October meeting with</b>  <b>Mr. Lefkowitz.</b></p> <p>10         <b>Who attended that meeting?</b></p> <p>11     A Sean, myself, and Mr. Lefkowitz.</p> <p>12     <b>Q Okay.</b></p> <p>13     A Sean Hitchcock.</p> <p>14     <b>Q How long did that meeting last?</b></p> <p>15     A Approximately 20, 30 minutes I think.</p> <p>16     <b>Q What was discussed during that meeting?</b></p> <p>17     A Just did he plan on staying, and how -- how</p>	<p>1     A No. His -- the conversation I ever had with      Gary was vague and all over the place. He didn't seem      to have any facts.</p> <p>2     <b>Q Did Mr. Lefkowitz ever tell you that he --</b>  <b>that they, Dr. Tawansy Jennifer Sohol, were engaged to</b>  <b>be married?</b></p> <p>3     A He did mention that in the meeting.</p> <p>4     <b>Q Did he tell you that for tax purposes and</b>  <b>financial purposes, that the ownership -- well, strike</b>  <b>that.</b></p> <p>5         <b>Did mr. Lefkowitz tell you that Dr. Tawansy</b>  <b>owned the property prior to Jennifer Sohol?</b></p> <p>6     A He did mention that.</p> <p>7     <b>Q Did he -- did he tell you there was a</b>  <b>transaction that occurred in 2014, where Mr. --</b>  <p>8         <b>Dr. Tawansy had transferred title to Dr. Sohol to pay</b>  <b>off loans and other things but kept an equitable</b>  <b>ownership of the property? Did he say something along</b>  <b>those lines?</b></p> <p>9     A Something along those lines, but he didn't say      when. If he did, I don't remember that.</p> <p>10     <b>Q Okay. What was the result of the</b>  <b>conversation?</b></p> <p>11     MR. CAGNEY: Objection. Vague,      ///</p> </p>
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<p>1 can we -- that -- that was when we knew that      Dr. Tawansy seemed to think he owned the building, and      we were discussing how would you like to resolve this.</p> <p>2     <b>Q All right. How did you learn that Dr. Tawansy</b>  <b>owned the building?</b></p> <p>3     MR. CAGNEY: Objection. Calls for facts not      in evidence and legal conclusion.</p> <p>4     BY MR. KARPEL:</p> <p>5     <b>Q How did you learn that Dr. Tawansy had claimed</b>  <b>or alleged that he owned the building?</b></p> <p>6     A I believe it was Gary Lefkowitz that mentioned      that to me.</p> <p>7     <b>Q Okay. And what did he say in that regard?</b></p> <p>8     A I don't remember the exact conversation. I      was quite surprised.</p> <p>9     <b>Q Do you remember what was the basis of his</b>  <b>alleged claim?</b></p> <p>10     A He just said -- he asked me do you realize      Dr. Tawansy is still the owner of that building, and I      said I do not believe so.</p> <p>11     <b>Q Did Mr. Lefkowitz ever explain to you the</b>  <b>factual basis behind the claim that Dr. Tawansy</b>  <b>owned -- still owned building?</b></p> <p>12     A I don't believe there is any factual basis.</p> <p>13     <b>Q The alleged factual basis. Do you understand?</b></p>	<p>1     BY MR. KARPEL:</p> <p>2     <b>Q You can answer.</b></p> <p>3     A There was no real result.</p> <p>4     <b>Q Okay. When you asked him how -- how -- well,</b>      who was it that presented how you were going to deal      with this problem? Was it him, or was it yourself or      Mr. Hitchcock?</p> <p>5     A Ask the question again, please.</p> <p>6     <b>Q Sure. You said a few minutes ago that you</b>      were looking for a resolution to the issue. I was      wondering did that suggestion of a resolution      Mr. Lefkowitz, yourself, or Mr. Hitchcock?</p> <p>7     A Mr. Lefkowitz.</p> <p>8     <b>Q And what was -- did he make a suggestion of</b>      how to resolve the issue?</p> <p>9     A Not really.</p> <p>10     <b>Q Well, did he make any suggestion?</b></p> <p>11     A The only suggestion he seemed to really make      was, you know, that we can -- we can get this worked      out. I can prove that Tawansy is the owner.</p> <p>12     <b>Q Did he bring any proof with him?</b></p> <p>13     A He did not.</p> <p>14     <b>Q And did you have any discussions with</b>      Mr. Hitchcock after Mr. Lefkowitz left concerning the      meeting that he had had with him?</p>
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<p>1 A Not really. We have a lot more important 2 things to take care of.</p> <p>3 Q Did you ever have any discussions with 4 Mr. Hitchcock as to how to deal with Dr. Tawansy's 5 tenancy?</p> <p>6 MR. CAGNEY: Again, I will caution you not to 7 reveal the contents of any communications that occurred 8 involving me or my law firm.</p> <p>9 BY MR. KARPEL:</p> <p>10 Q So?</p> <p>11 A Ask the question again, please.</p> <p>12 Q Sure. Did you have any discussions with 13 Mr. Hitchcock concerning how -- what you were going to 14 do with this alleged tenancy and the alleged ownership?</p> <p>15 A No.</p> <p>16 Q What, if anything, did you learn Mr. Hitchcock 17 did with the information that he had from the meeting 18 with Mr. Lefkowitz?</p> <p>19 A I didn't -- ask the question again.</p> <p>20 Q What, if anything, did you learn from 21 Mr. Hitchcock about what he was going to do about the 22 information that he had gathered with Mr. -- from the 23 meeting with Mr. Lefkowitz?</p> <p>24 MR. CAGNEY: So if you learned from a 25 source --</p>	<p>1 Q Who told you that?</p> <p>2 A Probably Sean.</p> <p>3 Q Sean Hitchcock?</p> <p>4 A Yes.</p> <p>5 Q Following the close of escrow, were the agents 6 at Lee and Associates involved with any dealings with 7 the property at 3200, if you are aware?</p> <p>8 A Not that I'm aware of.</p> <p>9 Q Did you receive any e-mails back and forth 10 with them after the close of escrow?</p> <p>11 A No.</p> <p>12 Q Were they involved in any of the issues 13 dealing with the alleged ownership issue from 14 Dr. Tawansy?</p> <p>15 MR. CAGNEY: Objection. Vague.</p> <p>16 BY MR. KARPEL:</p> <p>17 Q You can answer.</p> <p>18 A Not that I know of.</p> <p>19 Q Other than from your lawyer, did you receive 20 direction -- I'll just ask directly -- from 21 Mr. Hitchcock to serve the 30-day notice to quit? I'm 22 just asking if you got it from Mr. Hitchcock.</p> <p>23 A Ask the question again.</p> <p>24 Q Sure. Did you receive a direction from 25 Mr. Hitchcock to go ahead and serve the 30-day notice</p>
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<p>1 MR. KARPEL: Other than --</p> <p>2 MR. CAGNEY: -- other than conversations that 3 involved me, you're free to disclose that. But if it 4 would require you to reveal those communications, then 5 I'll instruct you not to respond.</p> <p>6 MR. KARPEL: Or you could be told, alternative 7 to my lawyer, that is not covered as long as there is 8 no communications of the discussions.</p> <p>9 THE WITNESS: If he said anything, that was 10 probably all he said was that he would contact -- to 11 me, that he would contact our attorney.</p> <p>12 BY MR. KARPEL:</p> <p>13 Q Okay. What was your next involvement 14 following the Lefkowitz meeting concerning the property 15 of 3200 Long Beach Boulevard?</p> <p>16 A No involvement. Once a property is -- escrow 17 closes, if there is no construction being done on the 18 project, I contact them, I tell them where to send 19 their rent, and I take it from there.</p> <p>20 Q Was there any contract started -- contract -- 21 was there any construction started at the 3200 Long 22 Beach Boulevard property?</p> <p>23 A I didn't see it with my own eyes, but I was 24 told some demo had occurred at the other end of the 25 building, not where Dr. Tawansy was -- had his space.</p>	<p>1 to quit?</p> <p>2 MR. CAGNEY: Independent of --</p> <p>3 MR. KARPEL: Right.</p> <p>4 THE WITNESS: I did not.</p> <p>5 BY MR. KARPEL:</p> <p>6 Q Okay. So any information that you had 7 received in regard to the -- to the serving of the 8 30-day notice would have been from a communication from 9 a lawyer; correct?</p> <p>10 MR. CAGNEY: Objection. Attorney-client 11 privilege. I'll instruct the witness not to answer.</p> <p>12 BY MR. KARPEL:</p> <p>13 Q Okay. Prior to this incident, had you ever 14 served a 30-day notice on any tenant on behalf of 2H 15 Construction?</p> <p>16 A Never on behalf of 2H Construction.</p> <p>17 Q How about from any company?</p> <p>18 A On behalf of 2H Properties.</p> <p>19 Q Okay. And on how many occasions have you 20 served a 30-day notice on a tenant for 2H Properties?</p> <p>21 A Maybe once.</p> <p>22 Q Okay. And what was the circumstances of that?</p> <p>23 A A tenant wasn't paying rent.</p> <p>24 Q And a tenant that was in possession after the 25 close of escrow of a property that was purchased by 2H</p>
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<p>1      <b>Properties?</b></p> <p>2      A Yes.</p> <p>3      Q Did that tenant have a -- a lease agreement?</p> <p>4      A Yes.</p> <p>5      Q Was that lease agreement with the prior owner, 6      or was the lease agreement with 2H Properties?</p> <p>7      A I don't recall.</p> <p>8      Q Other than any information you received from 9      your attorney, were you ever given instructions on how 10     to serve a 30-day notice to quit?</p> <p>11     A Only from an attorney.</p> <p>12     Q Prior to posting the 30-day notice, did you 13     have any communications with Mr. Lefkowitz concerning 14     the 30-day notice?</p> <p>15     A No.</p> <p>16     Q Any information -- did you have any 17     communications with Dr. Tawansy concerning the 30-day 18     notice prior to posting?</p> <p>19     A No.</p> <p>20     Q After posting the 30-day notice, did you have 21     any communications with Dr. Tawansy?</p> <p>22     A No.</p> <p>23     Q After posting the 30-day notice, did you have 24     any communications with Mr. Lefkowitz?</p> <p>25     A No.</p>	<p>1      for today's deposition?</p> <p>2      A Just the summons -- the subpoena.</p> <p>3      Q Okay. Did you -- other than any conversations 4      you may have had with a lawyer, did you have any 5      discussion with anybody else about today's deposition?</p> <p>6      A Sean.</p> <p>7      Q And when did you discuss this with Sean?</p> <p>8      A On the drive here.</p> <p>9      Q So Sean is still here?</p> <p>10     A I don't know.</p> <p>11     Q Okay. I didn't know if you drove together or 12     separately. Did you drive together or separately?</p> <p>13     A We drove together.</p> <p>14     Q And what was the discussions that you had with 15     Sean about today's deposition?</p> <p>16     A I asked him what to expect in a deposition.</p> <p>17     Q And what did he tell you?</p> <p>18     A Just answer the questions.</p> <p>19     Q Okay. By the way, you have an exceptionally 20     mellow questioner. Larry will tell you that. It could 21     get a lot worse than this.</p> <p>22     Give me a moment.</p> <p>23     Were you involved at all in the negotiations 24     of the purchase of the property?</p> <p>25     A No.</p>
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<p>1      Q When the demolition began at the property at 2      3200 Long Beach Boulevard, did you have any 3      communication with Dr. Tawansy?</p> <p>4      A No.</p> <p>5      Q Did you have any communication with 6      Mr. Lefkowitz after that -- the demolition began?</p> <p>7      A No.</p> <p>8      Q Since posting the 30-day notice, have you had 9      any communications with -- any -- with Dr. Tawansy?</p> <p>10     A No.</p> <p>11     Q With Mr. Lefkowitz?</p> <p>12     A No.</p> <p>13     Q From any of their representatives?</p> <p>14     A No.</p> <p>15     Q Have you taken any action in regard to the 16     property at 3200 Long Beach Boulevard after you posted 17     the notice to quit regarding Dr. Tawansy?</p> <p>18     A No.</p> <p>19     Q Had you heard from Mr. Hitchcock -- and again, 20     you have to exclude any information that he may be 21     relaying to from the attorney -- regarding any actions 22     that he was going to take in regard to Dr. Tawansy 23     after the posting of the 30-day notice?</p> <p>24     A No.</p> <p>25     Q Did you review any documents in preparation</p>	<p>1      Q That was all handled by brokers, correct, to 2      your knowledge?</p> <p>3      A Yes.</p> <p>4      Q Did you ever ask -- strike that. 5      Did anyone from 2H Construction or 2H 6      Properties request you to ask for an estoppel statement 7      from Dr. Tawansy?</p> <p>8      A No.</p> <p>9      Q Did anyone from 2H properties or 2H 10     Construction -- 2H Property bought the property; 11     correct?</p> <p>12     A Correct.</p> <p>13     Q Did anyone from 2H Property ask you to get an 14     estoppel statement from any of the brokers representing 15     Dr. Sohol?</p> <p>16     A No.</p> <p>17     Q Did anyone at 2H Properties tell you that 18     there was no need to have an estoppel statement in this 19     kind of situation?</p> <p>20     A No.</p> <p>21     Q Did anyone at 2H properties or construction, 22     anyone that you work for, tell you don't worry about 23     getting an estoppel statement?</p> <p>24     A No.</p> <p>25     Q Is obtaining -- you have been involved in 2H</p>
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<p>1      <b>Properties in other purchases of commercial property; correct?</b></p> <p>2      A Yes.</p> <p>3      Q And if -- you have seen estoppel statements; correct?</p> <p>4      A Yes.</p> <p>5      Q And you've requested estoppel statements?</p> <p>6      A I have never personally requested an estoppel statement.</p> <p>7      Q Have you been requested to obtain one by your buyer from escrow?</p> <p>8      A No.</p> <p>9      Q Have you been requested by your -- did you request a broker to obtain an estoppel statement?</p> <p>10     A No.</p> <p>11     Q Were you ever CC'd on any correspondence from Mr. Hitchcock where he had asked his brokers to obtain an estoppel statement at any prior purchase?</p> <p>12     A No.</p> <p>13     Q Have you been aware that Mr. Hitchcock has ever asked for an estoppel statement on any property?</p> <p>14     A No.</p> <p>15     Q Have you ever seen an estoppel statement provided to Mr. Hitchcock or his agents by any property purchased by Mr. Hitchcock?</p>	<p>1      knowledge that Dr. Tawansy was still occupying the property; correct?</p> <p>2      A Yes.</p> <p>3      Q And at the time of the closing of the escrow, a month-to-month lease was prepared for Dr. Tawansy; correct?</p> <p>4      A Yes.</p> <p>5      Q And at the time of the closing of escrow, a month-to-month lease was prepared, and it was delivered either through escrow or through e-mails or sent to Dr. Tawansy; correct?</p> <p>6      A Yes.</p> <p>7      Q And at the time of the close of escrow, you endeavored to check the status of that month-to-month request for a lease through either Mr. Lefkowitz or Dr. Tawansy and sending him a second one; is that correct?</p> <p>8      A Yes.</p> <p>9      Q Do you know whether or not Mr. Hitchcock obtained a loan for the purchase of the property?</p> <p>10     A He did not obtain a loan.</p> <p>11     Q Did you ever tell Mr. Hitchcock that you did not need an estoppel statement for the closing of this property?</p> <p>12     A Did I ever tell him?</p>
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<p>1      A Yes.</p> <p>2      Q Do you know who requested that estoppel statement?</p> <p>3      A Escrow or brokers.</p> <p>4      Q Okay. Have you ever seen an e-mail that you were CC'd on from any property prior to purchase of 2300 Long Beach Boulevard that was an instruction to escrow to obtain a estoppel statement?</p> <p>5      A Ask the question again.</p> <p>6      Q Sure. Prior to the purchase of the property at 2300 Long Beach Boulevard, have you ever been -- have you ever seen an e-mail directed to the escrow company to obtain an escrow -- estoppel statement on behalf of Mr. -- I'm sorry -- 2H Properties?</p> <p>7      A I don't believe I've ever seen a request for an estoppel statement.</p> <p>8      Q All right. But you are aware that the broker or the escrow company normally gets an estoppel statement; is that correct?</p> <p>9      A In a situation where a tenant plans on staying and keeping the lease they currently have or wants a new lease.</p> <p>10     Q In the case of Mr. -- Dr. Tawansy, at the time of the closing, you knew that -- well, strike that. At the time of closing of the escrow, you had</p>	<p>1      Q Yes.</p> <p>2      A No.</p> <p>3      Q Did you ever overhear whether or not the brokers told Mr. Hitchcock that he did not need an estoppel statement in this particular situation?</p> <p>4      A I did not hear that.</p> <p>5      Q Did Mr. Hitchcock ever tell you that he did not need an estoppel statement in this particular statement?</p> <p>6      A He did not.</p> <p>7      Q Did you ever see an e-mail or other communication where somebody, on behalf Mr. Hitchcock or his companies, were telling escrow that he did not need an estoppel statement in this particular situation?</p> <p>8      A I don't recall ever seeing that.</p> <p>9      Q Did you ever see e-mail or other communications in which 2H Properties or another property -- 2H Properties or the companies owned by Mr. Hitchcock was telling brokers that they did not need an estoppel statement in this situation?</p> <p>10     A I did not see it.</p> <p>11     Q This being the purpose of 3200.</p> <p>12     A I did not see that.</p> <p>13     Q To your knowledge, did the issue of the</p>
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<p>1      estoppel statement ever come up during -- prior to the 2      close of escrow?</p> <p>3      A    No.</p> <p>4      MR. CAGNEY: Objection. Vague.</p> <p>5      BY MR. KARPEL:</p> <p>6      Q    Do you know an Ed Gelfand [ph]?</p> <p>7      A    I'm sorry?</p> <p>8      Q    Ed Gelfand?</p> <p>9      A    Never heard of him.</p> <p>10     Q    Ever had any conversations with him?</p> <p>11     A    Not that I know of.</p> <p>12     Q    Since the close of escrow, did you have any 13     conversations with a Dr. Jennifer Sohol?</p> <p>14     A    No.</p> <p>15     Q    And you had no conversation with Dr. Khalid 16     Tawansy?</p> <p>17     A    No.</p> <p>18     Q    You never --</p> <p>19     A    I'm sorry?</p> <p>20     Q    That's a double negative.</p> <p>21     Did you ever have any conversations with 22     Dr. Tawansy after the close of escrow?</p> <p>23     A    No.</p> <p>24     Q    The only time you were at the property was 25     when you posted the notice; correct?</p>	<p>1      Dr. Tawansy occupancy of Unit 1 only; correct?</p> <p>2      A    Correct.</p> <p>3      Q    How much was that lease for? Do you remember?</p> <p>4      A    15,000.</p> <p>5      Q    And how did that number -- how did you 6      arrive -- well, who -- who arrived at that number?</p> <p>7      A    That's the number I was given. That was given 8      on lease by the brokers because they said that's what 9      he was paying previously.</p> <p>10     Q    Did you ever have any discussions with -- with 11     Mr. Hitchcock concerning the amount of the lease?</p> <p>12     A    No.</p> <p>13     Q    So the information concerning the \$15,000 on 14     the proposed month-to-month lease came from the 15     brokers; correct?</p> <p>16     A    Yes.</p> <p>17     Q    And that was based upon what he was paying 18     previously; correct?</p> <p>19     A    What I was told, yes.</p> <p>20     Q    Did you ever receive any lease payments from 21     any representative or Dr. Tawansy after the close of 22     escrow?</p> <p>23     A    I did.</p> <p>24     Q    And did you have any discussion of what that 25     was for?</p>
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<p>1      A    Correct.</p> <p>2      Q    And the door was looked?</p> <p>3      A    Correct.</p> <p>4      Q    Did you look into the building?</p> <p>5      A    I tried to look in the glass to see if anyone 6      was there.</p> <p>7      Q    And what did you see?</p> <p>8      A    A very empty looking office space.</p> <p>9      Q    And this was the -- what we call Unit 1, the 10     one that faces Long Beach Boulevard?</p> <p>11     A    Yes.</p> <p>12     Q    Somewhat faces?</p> <p>13     A    Yes.</p> <p>14     Q    So it would be the first of the three units?</p> <p>15     A    Depending on which direction you're coming 16     from.</p> <p>17     Q    Okay. The northernmost unit would be Unit 3?</p> <p>18     A    I believe so, yes.</p> <p>19     Q    And there's a middle unit. And then the one 20     that, apparently, Dr. Tawansy was occupying would have 21     been unit one; is that correct --</p> <p>22     A    Yes.</p> <p>23     Q    -- to your knowledge?</p> <p>24     A    And the lease that was prepared on a 25     month-to-month basis, that was for the use by</p>	<p>1      A    I don't recall any exact discussions. I just 2      remember Gary telling me he was -- that it was a rent 3      check because I went downstairs to meet him. But he 4      was running out when I went down there, and he said -- 5      my receptionist said he left you a rent check.</p> <p>6      Q    Did Mr. Lefkowitz tell you it was a rent 7      check?</p> <p>8      A    I believe so, but I don't recall exactly.</p> <p>9      Q    Was that -- well, I thought said he -- did you 10     talk to him that day that he left if off?</p> <p>11     A    No. I think when he was in the meeting with 12     us, he said something about the rent check.</p> <p>13     Q    At the time you had the meeting with 14     Mr. Lefkowitz, had he made that \$15,000 rent check?</p> <p>15     A    One more time?</p> <p>16     Q    Okay. At the time you had the meeting with 17     Mr. Lefkowitz, yourself, and Sean Hitchcock, had 18     Dr. Tawansy paid \$15,000 to 2H Properties or 2H 19     Construction?</p> <p>20     A    I believe it was from Dr. Tawansy. It was -- 21     Gary gave it to me.</p> <p>22     Q    Was it at the time? Had he already made a 23     payment?</p> <p>24     A    Yes.</p> <p>25     Q    And was there any other times that he made a</p>
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<p>1      <b>payment?</b></p> <p>2      A    One more time.</p> <p>3      Q    <b>And did you have a conversation with</b></p> <p>4      <b>Mr. Lefkowitz that the time?</b></p> <p>5      A    No.</p> <p>6      Q    <b>And is there anything written on the check</b></p> <p>7      <b>that you know?</b></p> <p>8      A    Not that I recall. I would have to look at</p> <p>9      it.</p> <p>10     Q    <b>At the time that you received first check from</b></p> <p>11     <b>Dr. Tawansy for \$15,000, had he signed the</b></p> <p>12     <b>month-to-month agreement?</b></p> <p>13     A    No.</p> <p>14     Q    <b>At the time you received the second check from</b></p> <p>15     <b>Dr. Tawansy, had he signed month-to-month agreement?</b></p> <p>16     A    No.</p> <p>17     Q    <b>And when he delivered the second check, had he</b></p> <p>18     <b>told you whether that was for rent or some other</b></p> <p>19     <b>reason?</b></p> <p>20     A    He didn't. He kept just leaving them at the</p> <p>21     front desk.</p> <p>22     Q    <b>So it's for certain -- well, the second check,</b></p> <p>23     <b>we really don't know what that was for; am I correct?</b></p> <p>24     MR. CAGNEY: Objection. Argumentative.</p> <p>25     ///</p>	<p>1      <b>Institute?</b></p> <p>2      A    Yes.</p> <p>3      MR. CAGNEY: Nothing further.</p> <p>4      MR. KARPEL: Let the court reporter be</p> <p>5      relieved of her obligation under the Code of Civil</p> <p>6      Procedure. The original deposition may be delivered</p> <p>7      to -- same -- same stip.</p> <p>8      MR. CAGNEY: So stipulated.</p> <p>9      MR. KARPEL: Same timing too then.</p>
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<p>1      BY MR. KARPEL:</p> <p>2      Q    <b>You may answer.</b></p> <p>3      A    I believe it was for rent.</p> <p>4      Q    <b>No one told you that it was for rent; correct?</b></p> <p>5      A    That's not correct. I'm -- I'm pretty sure</p> <p>6      that Gary said that it was the rent check, but --</p> <p>7      whenever I did speak with him at the meeting. He never</p> <p>8      said it was for anything else.</p> <p>9      MR. KARPEL: I have no further questions.</p> <p>10     MR. CAGNEY: Just a quick question just to</p> <p>11     clarify something I think may have been ambiguous.</p> <p>12     -EXAMINATION-</p> <p>13     BY MR. CAGNEY:</p> <p>14     Q    <b>Ms. Burton, in response to one of Mr. Karpel's</b></p> <p>15     <b>questions, you indicated that you had no communications</b></p> <p>16     <b>with either Dr. Tawansy or Gary Lefkowitz, but you did</b></p> <p>17     <b>mail copies of the 30-day notice to three different</b></p> <p>18     <b>entities; correct?</b></p> <p>19     A    Correct.</p> <p>20     Q    <b>And was one of those entities Renaissance</b></p> <p>21     <b>Surgical Holdings?</b></p> <p>22     A    Yes.</p> <p>23     Q    <b>And was one of them Dr. Tawansy himself?</b></p> <p>24     A    Yes.</p> <p>25     Q    <b>And was one of them Children's Retina</b></p>	<p>1      MR. KARPEL: Okay.</p> <p>2      MR. CAGNEY: So you may need to expedite, but</p> <p>3      I'm not going to get in a situation where he's going 24</p> <p>4      or 48 hours.</p> <p>5      MR. KARPEL: Okay. Did you get that? Five</p> <p>6      days their receipt of it. That will be fine.</p> <p>7      Then if we are not so informed of the reading,</p> <p>8      signing, correcting deposition within the stated period</p> <p>9      of time, an unsigned certified copy may be used for any</p> <p>10     purposes in this proceeding. Counsel will lodge the</p> <p>11     same with the court if necessary. If the original lost</p> <p>12     or unavailable for lodging, an unsigned certified copy</p> <p>13     of the deposition may be used for any purposes.</p> <p>14     MR. CAGNEY: So stipulated.</p> <p>15     MR. KARPEL: We would like an expedite."</p> <p>16     (Proceedings concluded at 4:30 PM)</p>
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<p>1 STATE OF CALIFORNIA ) 2 ) SS. 3 COUNTY OF LOS ANGELES ) 4 5 6 I, the undersigned, say that I have read the 7 foregoing deposition, and I declare, under penalty of 8 perjury, that the foregoing is a true and correct 9 transcript of my testimony contained therein. 10 EXECUTED this _____ day of _____, 11 20____ at _____, California. 12 13 14 15 16 ERICKA BURTON 17 18 19 20 21 22 23 24 25</p>	
<p>Page 70</p> <p>1 STATE OF CALIFORNIA ) 2 ) SS. 3 COUNTY OF LOS ANGELES ) 4 5 I, MARIANA HAKVERDIAN, Certified Shorthand 6 Reporter No. 13438, hereby certify that the foregoing 7 deposition of ERICKA BURTON was taken by me at the time 8 and place herein set forth, at which time the witness 9 was put under oath by me; 10 That the said deposition was taken down by me 11 in shorthand and thereafter transcribed under my 12 direction and supervision, and I hereby certify the 13 foregoing deposition is a full, true, and correct 14 transcript of my shorthand notes so taken; 15 That dismantling this transcript will void the 16 certification by the Certified Shorthand Reporter. 17 I further certify that I am neither counsel 18 for nor related to any party to said action, nor am I 19 in anywise interested in the outcome thereof. 20 IN WITNESS WHEREOF, I have subscribed my name 21 this 2nd day of February, 2017. 22 23 24 25</p> <p>Mariana Hakverdian</p> <p>MARIANA HAKVERDIAN, CSR No. 13438</p>	

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**Ericka Burton**  
**January 30, 2017**