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RECORDING REQUESTED BY  
AND WHEN RECORDED RETURN TO:

City of San Leandro  
835 East 14<sup>th</sup> Street  
San Leandro, California 94577-3767  
Attention: City Clerk

Exempt from Recording Fees per Government Code  
§§6103, 27383

(Space Above This Line For Recorder's Use Only)

**RECIPROCAL EASEMENT AGREEMENT AND DECLARATION OF  
COVENANTS, CONDITIONS, AND RESTRICTIONS**

(Estudillo Parking Garage)

This Reciprocal Easement Agreement and Agreement of Covenants, Conditions, and Restrictions (this “**Agreement**”) is executed as of \_\_\_\_\_, 2013 (“**Effective Date**”) by and between the City of San Leandro, a municipal corporation, and the City acting in its capacity as the Parking Authority of the City of San Leandro, a body corporate and politic, (together, the “**City**”) and the San Leandro Chamber of Commerce as the current owner of Parcel 2, a California nonprofit public benefit corporation (“**Chamber**”). City and Chamber are referred to collectively herein as the “**Parties.**”

**RECITALS:**

A. City is the owner of the real property located at 120-122 Estudillo Avenue in the City of San Leandro, Alameda County, State of California and more particularly described in Exhibit A attached hereto and incorporated herein (the “**Property**”). The Property is improved with a four-story public parking garage consisting of approximately 47,434 square feet (the “**Garage**”), which includes approximately 2,175 square feet of commercial office space (the “**Office**”).

B. City intends to subdivide the Property into two parcels as depicted on Parcel Map 10073 attached hereto as Exhibit A (the “**Map**”). Each parcel is herein referred to individually as a “Parcel” and collectively the parcels are referred to as the “Parcels.” As used herein, “**Parcel 2**” means Parcel 2 of the Parcel Map that will be conveyed to Chamber by separate instrument, and which consists solely of the Office. “**Parcel 1**” means Parcel 1 of the Parcel Map which will be retained by the City, and which includes the Garage and the land that underlies the Office and the Garage.

C. The Parties desire the Property to be managed and operated in a uniform manner, and to subject the Parcels to the easements and the covenants, conditions, and restrictions as hereinafter set forth.

D. This agreement is in accordance with Resolution No. 2008-023 RDA passed by the Members of the Redevelopment Agency for the City of San Leandro on 9/28/2008.

NOW, THEREFORE, the Parties intend to, and do hereby, establish certain reciprocal easements, covenants and conditions with respect to the Parcels and the Property as follows:

1. Definitions.

“Environmental Laws” means any and all present and future federal, state, and local laws (whether under common law, statute, rule, regulation or otherwise), regulations, rules, guidelines, and ordinances relating to human health, safety, pollution, and protection of the indoor or outdoor environment or otherwise relating to the presence, manufacture, processing, distribution, use, treatment, storage, release, transport, handling, record keeping, notification, disclosure, and reporting requirements of and relating to Hazardous Substances, including, without limitation, the Comprehensive Environmental Response Compensation and Liability Act, the Resource Conservation and Recovery Act, the Clean Water Act, the Clean Air Act, and the Occupational Safety and Health Act, each as may be amended from time to time.

“Garage” is defined in Recital A.

“Hazardous Substance” means hazardous wastes, hazardous chemicals, flammable or explosive materials, biological and medical waste, radioactive materials, toxic materials or related materials (whether potentially injurious to persons or property and whether potentially injurious by themselves or in combination with other materials), including, but not limited to, any waste, chemical, substance or material now or hereafter determined by any federal, state or local governmental agency or authority having jurisdiction to be hazardous to human health or the environment or which is or becomes regulated by such agency or authority (including, but not limited to, those materials listed in the United States Department of Transportation Hazardous Materials Table as amended from time to time and gasoline, other petroleum based products and any fractions thereof), which are released to the environment, including, without limitation, the soil, groundwater and/or air, at, under or above the Property or any part thereof or the structures located thereon.

“Laws” means all laws, statutes, ordinances, codes, rules, and regulations of local, state, and federal governmental authorities, including those relating to public health and safety, access for persons with disability, fire safety, and building codes, and further including Environmental Laws.

“Lessee” means any lessee, sublessee or occupant of any building space within the Property, or any ground lessee, sublessee or occupant of any land within the Property.

“Losses” means, collectively, claims, demands, actions, suits, proceedings, losses, liabilities, damages, judgments, costs, and expenses, including reasonable attorneys’ fees and costs.

“Map” is defined in Recital B.

“Owner” means the party that from time to time is the fee simple owner of a Parcel.

“Parcel” is defined in Recital B.

“Parcel Users” means any Owner and its Lessee’s and their respective principals, employees, agents, representatives, contractors and invitees and the Owner’s successors and assigns.

“Property” is defined in Recital A.

“Release” means a release of any Hazardous Substance in, on, under or about the Property in violation of any Environmental Law.

“Utility Facilities” is defined in Section 3.3.

“Violation” means any violation of Environmental Laws.

## 2. Development, Use, and Operations.

2.1 Development. City, at its sole cost and expense, shall have responsibility for completing construction of the Garage, Office, and improvements as delineated on the Plans and Specifications entitled “Estudillo Callan 2008 Parking Garage, Project Number 08-962-86-067”, dated June 2010 (the “**City Plans**”) as depicted on the Record Drawings, when they are available. There shall be no modification to the City Plans which modify, affect or impact Parcel 2, the Office and/or the improvements constructed thereon without the written approval of the Owner of Parcel 2. The Parties acknowledge that the Map creates Parcel 2 as an “air space” parcel which consists of approximately 2,175 square feet on the ground floor of the Garage fronting on Estudillo Avenue, bounded by the interior unfinished surfaces of perimeter walls, foundations, floors and ceilings bounding Parcel 2, as more particularly described in Exhibit A.

2.2 Use. The Property shall be used as permitted by the City of San Leandro Zoning Ordinance as amended from time to time, and no use shall be established that would cause a default or breach of this Agreement.

2.3 Restricted Uses. No Parcel User shall create or continue any nuisance, disturbance or other condition which could reasonably be expected to adversely affect another Parcel User’s enjoyment of its premises.

2.4 Property Not Subject to Davis-Stirling Act. The Parties acknowledge that the Property is not subject to the provisions of the Davis-Stirling Common Interest Development Act (California Civil Code Section 1350 *et seq.*) by virtue of the fact that, among other reasons, there

are no common areas as defined in Civil Code Section 1351(b), and there will be no Owner's association (as defined in Civil Code Section 1351(a)).

### 3. Grant of Easements; Encroachments.

3.1 Waste Room. City grants to the Parcel 2 Parcel Users, an exclusive easement of access, ingress and egress over the Waste Room for Parcel 2, located on Parcel 1 as shown on Exhibit B (the "**Waste Room**"). The Waste Room is approximately 111.57 square feet, and is strictly for the storage of waste until collected by the applicable waste removal service as provided below. Flammable or Hazardous Substances in violation of Environmental Laws shall not be disposed of in the Waste Room. Waste and recycling containers must be stored in the Waste Room at all times except for the purpose of servicing them on collection days where they may be placed at the curb for a period no longer than 24-hours. Owner of Parcel 2 or Parcel 2 Parcel Users shall store waste in accordance with Chapter 3-6 of the San Leandro Municipal Code, and shall without limitation, do all of the following: 1) subscribe to regular solid waste and recycling services from the City's franchisee; 2) deposit waste materials in one or more leak-proof containers of sufficient size and quantity to adequately service the property, as provided by the City's franchisee; 3) contain waste materials in a manner so as to discourage disturbance by, or harboring of, animals or pests; to prevent fire or other safety hazards, and to prevent odors or unsightliness amounting to a nuisance; 4) refrain from storing or accumulating any putrescible waste on site for a period longer than seven (7) days; 5) refrain from storing Hazardous Substances, medical and infectious waste, or special waste, in the Waste Room; and 6) refrain from using City litter cans for disposing of waste materials originating from Parcel 2. The Waste Room also houses the Electrical Disconnect Panel for Parcel 2. Panel clearance shall be maintained at all times per City and Fire Codes.

3.2 Mechanical Equipment Area. City grants to the Parcel 2 Parcel Users an exclusive easement of access, ingress, and egress over the fenced area on Parcel 1 shown on Exhibit "B" to install, operate, maintain, and replace Heating Venting Air Conditioning mechanical equipment (HVAC), and such other equipment (vacuums, redundant power, generators etc.) that may be installed with the prior written approval of the City for the benefit of Parcel 2, (the "**HVAC Equipment Area**"). The HVAC Equipment Area is approximately 412.85 square feet. The Owner of Parcel 2 shall be responsible to maintain the equipment, including the fencing that surrounds the HVAC Equipment Area, in good working order and free of debris or other materials not specifically required in the maintenance or operation of the HVAC equipment. Owner of Parcel 2 shall ensure that the HVAC Equipment Area remains locked at all times and shall not allow the area to be used for storage of any kind.

3.3 Parking Spaces. City grants to the Parcel 2 Parcel Users an exclusive easement to park vehicles, with no cost or other charges to the owner of Parcel 2, within the designated parking area located on Parcel 1 as shown on Exhibit B (the "**Parcel 2 Parking Area**"). The Parcel 2 Parking Area is approximately 486 square feet. Owner of Parcel 2 shall be responsible for striping, signage, surface maintenance, and cleanup of the Parcel 2 Parking Area, however the Owner of Parcel 2 shall not be responsible for the maintenance, repair or replacement of any structural portions of the Parcel 2 Parking Area. No storage of vehicles or any other item is permitted, nor is any overnight parking allowed other than by Parcel 2 Parcel Users working on

Parcel 2 during such hours. No vehicle maintenance is permitted. The Owner of Parcel 2 is responsible for the enforcement of its own parking restrictions for the Parcel 2 Parking Area, including striping and signage, provided such striping and signage complies with City standards. The City shall maintain all access drives, drive lanes and walkways providing access to the Parcel 2 Parking Area in an unobstructed and safe condition.

3.4 Ingress, Egress, Access. City grants to the Parcel 2 Parcel Users nonexclusive easements across all driveway, drive lane, walkway and other public access areas on Parcel 1 as reasonably necessary for pedestrian and vehicular access, ingress and egress to areas described in Sections 3.1, 3.2 and 3.3.

3.5 Utility and Service Easements. Each Party, as grantor with respect to its Parcel, hereby grants to the other Party, and its successors and assigns for the benefit of its Parcel, a nonexclusive easement over the grantor's Parcel to install, maintain, repair, and replace Utility Facilities serving the other Party's Parcel. "**Utility Facilities**" means utility facilities for drainage and sanitary sewer drainage, storm drainage, gas, water, electricity, and other forms of energy, communication, cable television, or electrical conduits, lines, pipes or systems, and other utilities necessary for the development and operation of the improvements located on the Property, including, but not limited to, sanitary and storm sewers, drainage, gas and water mains, fire hydrants or other fire protection installations, electric power, cable television, and communication conduits. The rights granted pursuant to such easements will at all times be exercised in such manner as to cause the least interference with the rights of the other Owner and with the normal operation of the Property. Each Owner making or causing the installation of any Utility Facilities shall, at its expense, completely restore to the previously existing or better condition all improvements and surfaces disrupted as a result of such installation. In the event it should be necessary to grant any of the foregoing easements and rights to local utility companies as a condition of their providing or continuing service, such rights will be granted at no cost so long as the Owner required to execute such instruments deem the terms and conditions of such grant to be reasonably acceptable.

3.6 Encroachments. Each Owner shall have rights of access over the Parcel of the other Owner for the purpose of accommodating minor encroachments of any improvements that are built in accordance with the City Plans, or which arise due to inadvertent error in engineering, design or construction settlement or shifting of the building, or similar causes; provided that the foregoing shall not apply to intentional misconduct of the City or any of its agents or employees. In the event any of the original improvements constructed by City on the Property are partially or totally destroyed, and then repaired or rebuilt in accordance with the City Plans, the Owner of Parcel 2 agrees that minor encroachments (meaning encroachments that do not reduce the interior square footage of the Office by more than 2%) over Parcel 2 shall be permitted and that there shall be valid rights of access for the maintenance of said encroachments so long as they shall exist. In the event that an error in engineering, design or construction (that was inadvertent on the part of the City) results in an encroachment of any of the original improvements constructed by City into Parcel 2, or into a required setback area, a correcting modification may be made in the Map, provided that such correction shall not reduce the interior square footage of the Office more than 2%. Said modification shall be in the form of a certificate of correction and shall be executed by the Parcel 2 Owner and the City (so long as

City is the sole owner of the Garage) and by City's engineer, or the City Engineer, whichever is applicable. There shall be no valid rights of access for any encroachment except as provided above in this Section.

The City grants a permanent encroachment for air-space for the maintenance of the louvers and installation and maintenance of signage and appurtenance that are within Parcel 1 and/or the public right-of-way. The louvers and signage shall be located within the space of the encroachment as defined in Exhibit C and labeled louver and signage encroachment. Owner of Parcel 2 acknowledges that there are no rights to install or construct any improvements in the public right-of-way at ground level. The Owner of Parcel 2 is the owner of the louvers and their structures adjacent to Parcel 2 and its identifying signage, and has the right to construct, maintain, upgrade, replace, remove, and operate the louvers and signage and appurtenances in the air-space encroachment. However, the Owner of Parcel 2 must obtain the approval of the City prior to making any visible changes to the louvers, their structures, and the signage. Since the louvers and their structures match others around the garage structure, the Owner of Parcel 2 shall maintain them in a similar manner to those belonging to the City to retain the unifying appearance. Prior to commencement of any construction, maintenance, upgrade, replacement or removal of facilities within the air-space encroachment which requires the use of the public right-of-way outside of Parcel 2's encroachment, the Owner of Parcel 2 or its agents shall apply for an encroachment permit from the City and meet all permit requirements.

The provisions of Section 9.2 Liability Insurance shall apply to all Parcel 2 facilities and operation within the air-space encroachment in the public right-of-way.

3.7 Public and Other Easements. Each Parcel shall also be subject to nonexclusive easements for public utility location and maintenance, public service access, and emergency service access in favor of the City, and as may be required by the City in connection with the approval of the Map or otherwise with respect to the development of the Property.

3.8 Foundation and Continued Support. City grants to the Owner of Parcel 2, subject to the terms, provisions and limitations of this Agreement, non-exclusive easements constituting the right to receive, use and maintain continuous support from the Parcel 1 and the improvements located within Parcel 1, as may be necessary for the development, existence, use and enjoyment of Parcel 2, including, without limitation, support for all improvements within Parcel 2 and the right to obtain substantial load-bearing support from exterior walls, foundations, footings, slabs, floors, ceilings, posts, columns and any other elements providing or that will provide a foundation or structural support for all or any portion of Parcel 2.

#### 4. Maintenance.

4.1 Maintenance. The Parties acknowledge and agree that there are no "common areas" associated with the Property. Each Party shall be responsible for maintenance, at its own expense (except as expressly set forth herein), of the improvements located on or within the Parcel such Party owns. For purposes of clarification, it is intended that Parcel 2 be an air space parcel which will not include any structural improvements. Without limiting the generality of the foregoing: (i) City shall retain responsibility for maintenance, repair, and replacement of all structural elements of the Garage (including, without limitation, all Garage exterior walls,

foundation and roof) regardless of whether such structural components are located in whole or in part within Parcel 2 and the sidewalks and landscaping adjacent to the Garage, and (ii) the Owner of Parcel 2 shall be responsible for maintenance, repair, and replacement of the following improvements within Parcel 2: Interior surfaces of structural walls and interior surfaces of ceilings, all portions of non-structural walls, floor coverings (but not foundation), all Utility Facilities serving Parcel 2, repair and replacement of interior finishes, all interior improvements, all equipment affixed to interior finishes and non-structural walls and floors and ceilings, dropped ceilings, all windows and the adjustable solar louvers in the exterior canopy. Notwithstanding the foregoing, no Owner without the prior written consent of the other Owner, shall alter or improve (or permit any Parcel User to alter or improve) all or any portion of the Owner's Parcel in any manner that may compromise, or adversely impact or affect the other Parcel or any easements granted in this Agreement for the benefit of the Owner of the other Parcel.

4.2 Exterior Maintenance. Each Owner agrees to maintain, as needed and at its sole cost and expense, the exterior of the improvements on its Parcel in a clean, graffiti free, visually attractive, safe and sanitary condition, all consistent with the standards of a first class project, however, as to the Parcel 2 Owner the foregoing shall not apply to the repair or replacement of any improvements that are the responsibility of the City under Section 4.1 above. The Owners shall each have the right to bring an enforcement action to bring the defaulting Owner into compliance with the requirements of this Section. The Owner of Parcel 2 agrees for itself and its successors in interest that if the improvements located on Parcel 2 are completely or partially unoccupied, it shall nonetheless: (i) maintain the windows in a clean condition, removing any graffiti or etching promptly and cleaning the windows regularly; (ii) not board up or cover the windows of the improvements located on Parcel 2; and (iii) regularly inspect such improvements and take such steps as are reasonably needed to keep the improvements from becoming an eyesore or a target for vandalism or squatters. Except as otherwise provided in Section 8, the Owner of Parcel 2 shall not modify or alter the exterior appearance of the Parcel 2 improvements without City's prior written consent.

4.3 Standards. Each Owner at its own cost and expense shall keep, maintain, repair, and operate the improvements located on such Owner's Parcel which are the responsibility of such Owner to maintain pursuant to Section 4.1 or 4.2 above, whether occupied or unoccupied, in compliance with all applicable Laws and in good and clean order, operation, condition, and repair in conformity with first-class standards, in such a manner as to establish, maintain, and present, at all times, the appearance of a clean, well-painted, well-managed, and attractive property. In addition, the Owner of Parcel 2 agrees to refrain from storing boxes, files, equipment, etc. that is visible from the exterior windows. In addition, the ceiling of Parcel 2 shall not be penetrated or pierced (except by heating, air conditioners and other penetrations initially installed by the City in accordance with the City Plans) nor shall there be any other modification of improvements within Parcel 1 that would materially increase the transmission of sound or vibration into any Parcel 2.

4.4 Failure to Maintain. If any Owner (the "**Failing Owner**") fails to maintain such Owner's Parcel in accordance with this Agreement the other Owner may deliver to Failing Owner written notice of such failure, which written notice shall describe in detail the failure and

the actions required to cure such default hereunder. If the Failing Owner fails to commence the cure of such default within ten (10) business days after receipt of such written notice or after commencing such cure the Failing Owner fails to diligently prosecute such cure to completion, then other Owner may take all such actions as reasonably necessary to cure the default, including, without limitation entry on the Parcel of the Failing Owner and curing such default, and any direct third party costs incurred by the other Owner in connection with such cure, upon demand to Failing Owner, shall be due and payable to the other Owner from Failing Owner within ten (10) days after the Failing Owner receives written demand for payment from the other Owner which shall include third party invoices reflecting incurred costs. Interest at the maximum rate allowed by Law shall accrue and be payable on any such amount not paid in accordance with the preceding sentence from the date due until paid.

4.5 Reservation of Right to Assign Obligations. City shall have the right to assign its maintenance, operation, and repair obligations under this Agreement to a successor or to a property manager in the exercise of City's sole discretion.

4.6 Construction Activities. Each Owner agrees that all construction, alteration, remodeling, and reconstruction performed by or on behalf of such Owner on its Parcel shall be in compliance with this Agreement and all applicable Laws and codes. Each Owner agrees that all improvements constructed by it on its Parcel shall be constructed in a good and workmanlike manner, using prime quality materials and only after notifying the other Owner 30 days in advance of any activities that may impact the other, emergency repairs excepted.

5. Locations. The Owner of Parcel 2 shall not be permitted to construct improvements outside of Parcel 2 except as otherwise authorized in this Agreement.

6. Compliance With Laws; Hazardous Substances. Owner shall comply with all Laws applicable to its Parcel and the improvements located thereon at its sole cost. Each Owner shall maintain its Parcel at all times so as to comply with and conform to all Laws. Each Owner shall be responsible, at its sole cost, for compliance with any and all Environmental Laws applicable to its Parcel. If a Release or Violation affecting the Property occurs on a Parcel, then the Owner of the Parcel on which the Release or Violation occurred shall, at no cost to the other Owner, promptly remove or remediate the Release or Violation, in each case to the extent required by and in full compliance with Laws and shall indemnify and hold harmless the other Owner(s) from and against any and all Losses arising out of or in connection with a Release or Violation affecting the Property. Notwithstanding the foregoing, if such a Release or Violation on a Parcel was caused by the Owner or Parcel User of the other Parcel, then the Owner of such other Parcel shall at no cost to the Owner of the Parcel affected, promptly remove or remediate the Release or Violation, in each case to the extent required by and in full compliance with Laws, and shall indemnify and hold harmless the Owner of the Parcel affected from and against any and all Losses arising out of or in connection with such Release or Violation.

7. Taxes. Each Owner agrees to pay or cause to be paid, prior to delinquency, directly to the appropriate taxing authorities, all real property taxes and general and special assessments (including any special assessment, district assessments or similar funding mechanism promulgated by the governmental authority) which are levied against the Parcel and

improvements owned by such Owner. Taxes shall include, without limitation, assessments and fees levied with respect to any special assessment district within which the Property is located.

8. Signs. No signs, temporary or permanent, including animated or electronic copy/messages, shall be located on the structure (except signs identifying businesses conducted therein and located per Section 3.6 and directional parking and informational signs either installed or approved by the City). All signage shall be in compliance with all applicable laws and City requirements based on the “Downtown San Leandro Design Guidelines and Principles (2007)” that may be amended from time to time, and shall be subject to the prior approval of City.

9. Indemnification and Insurance.

9.1 Indemnification. Each Owner, and its successors and assigns, hereby agrees to defend, indemnify, and hold the other Owner and its members, managers, officers, directors, officials, employees, representatives, consultants, and contractors harmless from and against any and all liability, damage, expense (including reasonable attorneys’ fees), causes of action, suits, claims or judgments arising from personal injury, death or property damage occurring on or from its own Parcel, except to the extent caused by the act or negligence of the indemnified party. Each Owner covenants and agrees to keep or cause to be kept their respective Parcel(s) and the improvements thereon, free and clear of and from any and all mechanics’, materialmen’s, and other similar liens arising out of or in connection with the operations thereon or other activities undertaken by such Owner or others claiming under such Owner, and to pay and discharge when due any and all lawful claims upon which any such lien may or could be based, and to save and hold the other Owner’s Parcel(s) and the improvements thereon, free and harmless of and from any and all such liens and any and all claims of liens and suits or other proceedings pertaining thereto.

9.2 Liability Insurance.

(i) Coverage. Each Owner shall procure and maintain in full force and effect throughout the period of its ownership of a Parcel, commercial general liability insurance (or its equivalent) on an occurrence basis, in combined policy limits of not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate, with commercially reasonable deductibles, insuring the Owner (as named insured) and the other Owner (as additional insureds) against all claims, demands, actions, suits or proceedings initiated or made by or for any person as a result of bodily injury (including death), personal injury or property damage (i) occurring upon, in, or about such Owner’s Parcel or (ii) arising from any acts or omissions of such Owner or any of its agents or employees. Such insurance may be written by additional premises endorsement on any master policy of insurance carried by the Owner which may cover other property in addition to the property covered by this Agreement.

(ii) Liability Insurance Requirements. All commercial general liability insurance policies shall insure for contractual indemnity and contain a cross-liability endorsement. All insurance coverage required to be carried under this Section 9.2 shall be carried with insurance companies that are (i) licensed to do business in California, and (ii) rated in the then-most current Best’s Insurance Guide (or any successor thereto) as having a general

policyholder rating of A or better and a financial rating of "VIII" or better. All insurance policies required to be carried by either Party shall be effected under standard form policies. Such insurance shall provide that the same may not be canceled without thirty (30) days prior written notice to the other Owner. The Owners shall each provide to the other Owner certificates evidencing the fact that such insurance has been obtained. Additionally, upon the request of either Owner, and provided that such request shall be commercially reasonable taking into account the standard practices at comparable properties in the area and if economically feasible for other Owner as reasonably determined by the other Owner, the other Owner shall increase the limits of insurance carried by it hereunder, and shall carry types of insurance in addition to those required hereunder, to the extent such additional types of coverage first become standard at comparable properties after the date hereof. No Owner shall carry any insurance concurrent in coverage and contributing in the event of loss with any insurance required to be furnished by the other Owner if the effect of such separate insurance would be to reduce the coverage of, or recovery available under, the other Owner's insurance.

### 9.3 Property Insurance.

(i) At all times during its ownership of a Parcel, each Owner shall maintain or cause their respective Lessees to maintain "all risks" property insurance (or its equivalent) covering all improvements located on such Owner's Parcel in a minimum amount equal to 100% of the reasonable replacement cost thereof.

(ii) Property Insurance Requirements. All property insurance policies shall contain a severability of interests clause. All insurance coverage required to be carried under this Section 9.3 shall be carried with insurance companies that are (i) licensed to do business in California and (ii) rated in the then-most current Best's Insurance Guide (or any successor thereto) as having a general policyholder rating of A or better and a financial rating of "VIII" or better. All insurance policies required to be carried by either Owner shall be effected under standard form policies. Such insurance shall provide that the same may not be canceled without thirty (30) days prior written notice to the Owner. The Owners shall each provide to the other certificates evidencing the fact that such insurance has been obtained. Additionally, upon the request of either Owner, and provided that such request shall be commercially reasonable taking into account the standard practices at comparable properties in the area and if economically feasible for other Owner as reasonably determined by the other Owner, the other Owner shall increase the limits of insurance carried by it hereunder, and shall carry types of insurance in addition to those required hereunder, to the extent such additional types of coverage first become standard at comparable properties after the date hereof.

(iii) Waiver. Each Owner hereby waives, and releases the other Owner from, any and all claims, liabilities, and rights of action with respect to any property loss caused by the other Owner which is covered by the property insurance required to be maintained by the first Owner. Each Owner hereby agrees that any property insurance maintained by it shall contain a waiver by the insurer of any and all rights of subrogation against the other Owner.

10. Damage/Destruction.

10.1 Utility Facilities. In the event of any damage to the Utility Facilities, the Owner of the Parcel served by the Utility Facilities shall promptly repair the damage and restore the Utility Facilities as near as possible to their condition existing prior to the damage; unless such damage was caused by the Owner of the other Parcel or its Parcel Users in which case such other Owner shall be responsible for the cost of such repair and/or restoration. The foregoing shall not apply to those portions of Utility Facilities that the utility companies or public utility districts providing the utilities are obligated to rebuild or repair.

10.2 Damage and Destruction. Upon any damage or destruction to any portion of the Garage and its appurtenant improvements, other than improvements which are the responsibility of the Parcel 2 Owner to maintain under this Agreement (the “**City Improvements**”), the City shall, at its sole cost and expense, promptly and diligently cause the repair or rebuilding of such City Improvements to a condition at least equal to that which existed immediately prior to the event causing such damage or destruction. Upon any damage or destruction to any portion of the improvements that are to be maintained by the Parcel 2 Owner under this Agreement (the “**Parcel 2 Owner Improvements**”) the Parcel 2 Owner shall, at its sole cost and expense, promptly and diligently cause the repair or rebuilding of such Parcel 2 Owner Improvements to a condition at least equal to that which existed immediately prior to the event causing such damage or destruction.

11. Eminent Domain.

(a) Owner’s Right to Award. Nothing herein shall be construed to give any Owner any interest in any award or payment made to another Owner in connection with any exercise of eminent domain or transfer in lieu thereof affecting said other Owner’s Parcel or giving the public or any government any rights in said Parcel. In the event of any exercise of eminent domain or transfer in lieu thereof of any improvements located on any Parcel, the award attributable to the land and improvements shall be payable only to the Owner thereof.

(b) Lessee’s Claim. Only as between an Owner and a Lessee of that Owner’s Parcel, nothing in this Section shall supersede or control over the terms and the provisions of any lease between such Owner and such Lessee relating to the disposition or right to seek any awards in connection with any condemnation or eminent domain proceeding regarding the Parcel in question.

(c) Buildings. The Owner of any portion of improvements so condemned shall (i) repair and restore the remaining portion of the building on its Parcel to a safe and usable condition for retail use or (ii) raze the building, remove all rubble and debris, and place the building area in a safe and slightly condition.

12. Rights and Obligations of Lenders. Any holder of a mortgage lien on any Parcel (the “**Mortgagee**”) who acquires title to such Parcel (or any Person who acquires title to such Parcel upon foreclosure by such lienholder), and any assignee or successor in interest of such first lienholder or Person, shall be subject to the terms and conditions of this Agreement. Nothing in this Agreement nor any amendment hereto, and no breach of any covenant, condition or

restriction contained in this Agreement or any amendment hereto, shall render the lien of any mortgage, deed of trust or other security agreement or instrument invalid; provided that, such Mortgagee shall take title to the Parcel or portion thereof subject to the obligations under this Agreement. Any Mortgagee, upon written request to an Owner, shall be entitled to receive written notification from such Owner of any default in the performance of the obligations imposed by this Agreement by the Owner whose Parcel is encumbered by such Mortgagee's mortgage concurrently with the delivery of such notice to the defaulting Owner; provided, however, an Owner shall only be obligated to provide such notice to Mortgagees who have delivered a written request therefor to the Owner specifying the Parcel to which such request relates. In addition to the foregoing, any Mortgagee who has delivered to an Owner the written notification described in the preceding sentence shall have the right to receive written notice of the expiration of any cure period applicable to any default by the Owner whose Parcel secures the Mortgagee's mortgage, and such Mortgagee shall be provided with not less than ten (10) business days after the delivery of such second notice to the Mortgagee to cure such default on behalf of its mortgagor prior to the other Owner's enforcement of its right to foreclose upon the defaulting Owner's Parcel pursuant to this Agreement.

(c) As used in this Agreement, the term "Mortgage" shall mean any duly recorded mortgage or deed of trust encumbering a Parcel, and the term "Mortgagee" shall mean the mortgagee or beneficiary under any Mortgage.

(d) The Owners, without the obligation to take on any financial or other liability, hereby agree to and will reasonably cooperate with each other and execute any and all documentation that may be requested by the other in order to facilitate the obtaining of a Mortgage on such Owner's Parcel.

13. Obligation to Refrain from Discrimination. There shall be no discrimination on the basis of race, color, religion, creed, sex, sexual orientation, marital status, ancestry or national origin in the hiring, firing, promoting or demoting of any person engaged in construction work in the Property, and each Owner and tenant shall direct its contractors and subcontractors to refrain from discrimination on such basis. Additionally, each Owner and Lessee shall not restrict the rental, sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, or any portion thereof, on the basis of race, color, religion, creed, sex, sexual orientation, disability, marital status, ancestry, or national origin of any person. City covenants for itself and all persons claiming under or through it that there shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (n) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property or part thereof, nor shall any City or any Owner or tenant, or any person claiming under or through any of them respectively, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in, of, or for the Property or part thereof. Each Owner and tenant shall include this provision in all deeds, leases, contracts and other instruments executed by such Owner or tenant, and shall enforce the same diligently and in good faith.

14. Release from Liability. Any person acquiring fee or leasehold title to any Parcel shall be bound by this Agreement only as to the rights and obligations pertaining to the Parcel acquired by such person. In addition, such Owner or Lessee shall be bound by this Agreement only during the period such Owner or Lessee is the fee or leasehold owner of such Parcel, except as to obligations, liabilities or responsibilities that accrue during said period. Although persons may be released from liability under this Section, the easements, covenants and restrictions in this Agreement shall continue to be benefits to and servitudes upon said Parcels running with the land and binding upon successors.

15. Remedies; Injunctive Relief. The Parties acknowledge and agree that they have bargained for specific performance of the covenants, conditions, restrictions, rights, and easements contained in this Agreement, and all other provisions hereof, and that each Owner entitled to enforcement of the terms hereof, shall be entitled to seek injunctive relief, including but not limited to temporary restraining orders, preliminary injunctions, and permanent injunctions, both mandatory and prohibitory. Subject to the limitations contained in this Agreement, the Owners shall have all remedies, at law or in equity, in order to enforce the terms of this Agreement. An Owner shall be in default or breach of this Agreement if such Owner fails to perform or cause to be performed any other provision under this Agreement required to be performed by such Owner and such failure is not cured within thirty (30) days after notice to such defaulting Owner or, if such failure cannot be cured within such thirty (30) day period, such defaulting Owner fails within such thirty (30) day period to commence all actions necessary to cure such failure, or after commencing such actions thereafter fails to diligently pursue such actions and cure to completion, but in all events within one hundred twenty (120) days after the delivery of the original default notice by the non-defaulting Owner to the defaulting Owner.

16. Enforcement Proceedings. In the event of a breach of the provisions of this Agreement, the Owner of a Parcel shall be entitled to institute proceedings for full and adequate relief from the consequences thereof. The unsuccessful party in any action shall pay the prevailing party's reasonable attorney's fees, accruing from the date such action was filed, and costs.

17. Election of Remedies; No Waiver. Subject to Section 19, in addition to the rights, powers, and remedies given in this Agreement, the Parties may, in its/their own absolute discretion, at any time, and from time to time, exercise any and all rights and powers, and pursue any and all remedies now or hereafter given at law or in equity, including but not limited to any rights or remedies granted herein or by California or federal case, statutory or regulatory law. Their failure to exercise any such right or remedy shall not be deemed a waiver of that right or remedy unless the Person entitled to that right or remedy has so agreed, expressly and in writing, and the failure to so exercise any right or remedy shall not preclude the Person entitled thereto from later exercising any such right or remedy. Any written waiver of default shall not constitute a continuing waiver or waiver of any other same, similar or different events of default on any future occasion, unless such a waiver of such future defaults is expressed, in writing, with precision. No course of dealing between any person, or any Owner, lessee, or user of any Parcel, or any encumbrance thereof, in exercising any rights under this Agreement shall operate as a waiver of such rights, nor shall any such delay, unless agreed to in writing by the persons entitled to enforce this Agreement, constitute a waiver of any obligation or default. No waiver of default shall extend to or impair any other obligation not expressly waived, nor impair any right

otherwise consequent on such covenant, provision or obligation. Any waiver may be given subject to satisfaction of conditions stated therein. No power or remedy herein conferred is exclusive of or shall prejudice any other power or remedy given by law or by the terms of this Agreement.

18. Rights of Successors; Covenants Running with the Land.

18.1 Rights of Successors. The easements, restrictions, benefits and obligations hereunder shall create mutual benefits and servitudes running with the land. This Agreement shall bind and inure to the benefit of the Owners, their respective heirs, representatives, lessees, successors and assigns. This Agreement shall bind and inure to the benefit of all Owners as provided herein.

18.2 Covenants Running with the Land. The covenants, conditions, restrictions, and easements contained herein shall run with the land, shall constitute equitable servitudes upon each Parcel in favor of the other Parcels, and shall be binding upon and inure to the benefit of the respective successors and assigns of the Owners thereto.

18.3 Benefit to Parcels. Each Owner expressly acknowledges and agrees that the Parcels shall benefit from, and be burdened by, the provisions of this Agreement only as specifically set forth herein. The Owner, Lessee, or user of a Parcel shall not have the right to claim that any right or easement herein granted for the benefit of a Parcel also benefits its Parcel unless such right or easement is expressly granted herein to and for the benefit of such Parcel.

19. Arbitration.

(a) Disputes to be Resolved By Binding Arbitration. The submission of all matters to arbitration in accordance with the terms of this Section is the sole and exclusive method, means, and procedure to resolve any and all claims, disputes, or disagreements arising under this Agreement, except for claims by an Owner which (a) seek anything other than enforcement of rights under this Agreement, or (b) are primarily founded upon matters of fraud, willful misconduct, bad faith, or any other damages, which disputes shall be resolved by suit filed in the Superior Court of the County of Alameda, California, the decision of which court shall be subject to appeal pursuant to applicable law.

(b) Waiver of Right to Litigate. Each Owner hereby irrevocably waives any and all rights to resolve a dispute in a manner which is contrary to the provisions of this Section 19. The Owners shall at all times conduct themselves in strict, full, complete, and timely accordance with the terms of this Section 19 and all attempts to circumvent the terms of this Section 19 shall be absolutely null and void and of no force or effect whatsoever.

(c) Selection of Arbitrator. Any dispute to be arbitrated pursuant to the provisions of this Section 19 shall be determined by binding arbitration before a retired judge of the Superior Court of the State of California (the “**Arbitrator**”) under the auspices of Judicial Arbitration & Mediation Services, Inc. (“**JAMS**”). Such arbitration shall be initiated by the Owners, or either of them, within ten (10) days after either Owner sends written notice (the “**Arbitration Notice**”) of a demand to arbitrate by registered or certified mail to the other Owner and to JAMS. The

Arbitration Notice shall contain a description of the subject matter of the arbitration, the dispute with respect thereto, the amount involved, if any, and the remedy or determination sought. The Owners shall, within ten (10) days, after the initiation of the arbitration, attempt to agree on a retired judge from the JAMS panel to serve as the Arbitrator. If they are unable to so agree, JAMS will provide a list of three available judges and each party may strike one. The remaining judge (or if there are two, the one selected by JAMS) will serve as the Arbitrator. If JAMS shall no longer exist or if JAMS fails or refuses to accept submission of the dispute, the dispute shall be resolved by binding arbitration before the American Arbitration Association (“AAA”) under the AAA’s commercial arbitration rules then in effect.

(d) Pre-Decision Arbitration Procedures. The Arbitrator shall schedule a pre-hearing conference to resolve procedural matters, arrange for the exchange of information, obtain stipulations, and narrow the issues. The Owners will submit proposed discovery schedules to the Arbitrator at the pre-hearing conference. The scope and duration of discovery will be within the sole discretion of the Arbitrator. The Arbitrator shall have the discretion to order a pre-hearing exchange of information by the parties, including, without limitation, production of requested documents, exchange of summaries of testimony of proposed witnesses, and examination by deposition of Owners and third-party witnesses. This discretion shall be exercised so as to limit the scope of discovery to the amount of discovery which the Arbitrator determines to be reasonable under the circumstances.

(e) Arbitration Hearing. The arbitration shall be conducted in San Leandro, California. Any Owner may be represented by counsel or other authorized representative. The Owners may offer such evidence as is relevant and material to the dispute. The Arbitrator shall be the judge of relevance and materiality.

(f) Governing Law. In rendering a decision, the Arbitrator shall determine the rights and obligations of the parties according to the substantive and procedural laws of California and the terms and provisions of this Lease.

(g) Arbitration Award. The Arbitrator shall issue the award as soon as reasonably possible following the conclusion of the arbitration hearing, but in no event later than thirty (30) days after the conclusion of the arbitration hearing. The Arbitrator’s award shall be based on the evidence introduced at the hearing, including all logical and reasonable inferences therefrom. The Arbitrator may make any determination, and/or grant any remedy or relief that is just and equitable; provided, however, in no event may the Arbitrator award punitive damages. The award must be based on, and accompanied by, a written statement of decision explaining the factual and legal basis for the award as to each of the principal controverted issues. The award shall be conclusive and binding, and it may thereafter be confirmed as a judgment by the Superior Court of the State of California, subject to challenge only (i) on the grounds set forth in California Code of Civil Procedure Section 1286.2, or (ii) based upon the Arbitrator’s incorrect application of the substantive laws of California. The validity and enforceability of the Arbitrator’s decision is to be determined exclusively by the California courts pursuant to the provisions of this Agreement.

(h) Attorneys’ Fees and Costs. The Arbitrator may award costs, including, without limitation, attorneys’ fees, and expert and witness costs, to the prevailing party, if any, as

determined by the Arbitrator in the Arbitrator's discretion. The Arbitrator's fees and costs shall be paid by the non-prevailing party as determined by the Arbitrator in his discretion. A party shall be determined by the Arbitrator to be the prevailing party if its proposal for the resolution of dispute is the closer to that adopted by the Arbitrator.

20. Miscellaneous.

20.1 Modification and Cancellation. This Agreement may be amended or canceled only by the mutual written agreement of one hundred percent (100%) of the Owners of all Parcels.

20.2 Integration. This Agreement, together with Exhibits A and B attached hereto and incorporated herein by reference, constitutes the final agreement of the Parties with respect to the subject matter hereof, and supersedes all prior oral and written agreements pertaining thereto, including the drawings referenced in Section 2.1.

20.3 Non-merger. So long as City is an Owner or Lessee of any Parcel, this Agreement shall not be subject to the doctrine of merger.

20.4 Duration. Unless otherwise canceled or terminated, all the easements granted in this Agreement shall continue in perpetuity, and all other rights and obligations hereof shall automatically terminate and be of no further force and effect upon the date that the Garage is demolished.

20.5 No Implied Covenant to Operate. It is expressly agreed by the parties hereto, for their own benefit and that of their successors-in-interest, that no Lessee shall be bound by this Agreement to operate from its premises.

20.6 Headings. The headings herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this document nor in any way affect the terms and provisions hereof.

20.7 Notice. Any notice, request, demand, instruction or other communication required to be given hereunder shall be in writing and shall be either (a) personally delivered to the party named below by a commercial messenger service regularly retaining receipts for such delivery, (b) sent by registered or certified mail, return receipt requested, or (c) delivered by recognized air courier services, and such notice shall be effective upon delivery thereof, and shall be addressed to the party as listed below:

City: City of San Leandro and the City when acting in its capacity as the  
Parking Authority of the City of San Leandro  
835 East 14<sup>th</sup> Street  
San Leandro, CA 94577-3767  
Attention: City Manager

Chamber: San Leandro Chamber of Commerce  
120 Estudillo Avenue  
San Leandro, CA 94577

If a Party desires to change its address for the purpose of receipt of notice, such notice or change of address shall be given in the manner specified herein. However, unless and until such written notice of change is actually received, the last address and addressee as stated by written notice, or provided herein if no written notice of change has been received, shall be deemed to continue in effect for all purposes hereunder. This notice provision shall be inapplicable to any judicial or nonjudicial proceeding where California law governs the manner and timing of notice, commencing and prosecuting an action, commencing and prosecuting a foreclosure, or seeking the appointment of a receiver.

20.8 Time of the Essence. Time is of the essence with regard to performance under the terms and provisions of this Agreement, and any amendment, modification or revision thereof, with respect to the actions and obligations of each person bound by the terms hereof. No extension of time for payment of any sum due hereunder shall operate to release, discharge, modify, change, or affect the original liability as established hereunder, either in whole or in part. In accepting an interest in any Parcel, each Owner, lessee, user, mortgagee, and trust deed beneficiary shall be deemed to take its interest knowingly and willingly subject to this time is of the essence clause.

20.9 Severability. Invalidation of any of the provisions contained in this Agreement, or of the application thereof to any Person by judgment or court order, shall in no way affect any of the other provisions hereof or the application thereof to any other Person and the same shall remain in full force and effect.

20.10 Negation of Partnership. None of the terms or provisions of this Agreement shall be deemed to create a partnership between or among the Parties, nor shall it cause them to be considered joint venturers or members of any joint enterprise. No Owner shall have the right to act as an agent for another, unless expressly authorized to do so herein or by separate written instrument signed by the Owner to be charged.

20.11 Not a Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Property, or of any Parcel or portion thereof to the general public, or for any public use of purpose whatsoever. Except as herein specifically provided, no right, privileges or immunities of any Owner shall inure to the benefit of any third-party person, nor shall any third-party person be deemed to be a beneficiary of any of the provisions contained herein.

20.12 Lessee Obligations. The performance by a Lessee of an Owner's obligations under this Agreement shall satisfy such Owner's obligations hereunder to the extent of such performance with respect to the matter so performed by such Lessee.

20.13 Governing Law. This Agreement has been entered into and executed in the State of California and shall be interpreted in accordance with the laws of said state, excluding, however, the choice of law provisions in regard to conflicts.

20.14 Force Majeure. If an Owner is delayed or hindered in performing any act required hereunder by reason of strikes, lockouts, labor troubles, inability to procure materials, unusually severe weather, terrorism, earthquake, failure of power, restrictive governmental laws or regulations, riots, insurrection, war or other substantial reason of a similar or dissimilar nature that is beyond such Owner's reasonable control, then the time for performance of such act shall be extended for a period equivalent to the period of such delay (not to exceed 120 days in the aggregate). The Owner delayed or hindered shall promptly notify the other Owner of the event causing the delay or hindrance. The foregoing shall not excuse any Owner from securing necessary financing or from making any payments due under this Agreement.

20.15 Attorneys' Fees. If there is any legal action or proceeding to enforce or interpret any provision of this Agreement or to protect or establish any right or remedy of any party, the unsuccessful party to such action or proceeding shall pay to the prevailing party as finally determined all costs and expenses, including attorneys' fees and costs, incurred by such prevailing party in such action or proceeding, in enforcing such judgment, and in connection with any appeal from such judgment. Attorneys' fees and costs incurred in enforcing any judgment or in connection with any appeal shall be recoverable separately from and in addition to any other amount included in such judgment. This Section is intended to be severable from the other provisions of this Agreement, and the prevailing party's rights under this Section shall not merge into any judgment and this Section and any judgment shall survive until all such fees and costs have been paid.

20.16 No Third Party Beneficiaries. Except as herein specifically provided, no rights, privileges or immunities conferred on the Owners by this Agreement shall inure to the benefit of any third party; nor shall any third party be deemed to be a third party beneficiary of any of the provisions contained herein.

20.17 Further Assurances. Each Owner shall execute such other and further documents and instruments reasonably requested by the other Owner (so long as it owns fee title to any Parcel) to more clearly evidence and carry out the provisions of this Agreement.

20.18 Counterparts. This Agreement may be executed in counterparts, each of which shall be an original and all of which taken together shall constitute one and the same agreement.

20.19. Estoppel Certificates. Any Owner (the "**Certifying Party**") shall at any time and from time to time upon not less than ten (10) days' prior written notice from the other Owner (the "**Requesting Party**"), execute, acknowledge, and deliver to the Requesting Party a statement in writing, as requested by the Requesting Party or any current or prospective purchaser, assignee, Lessee or lender of all or any portion of the Requesting Party's certifying: (a) that this Agreement and the applicable easements created hereby are unmodified and in full force and effect (or, if modified, adequately identifying such modification and certifying that this Agreement and such easements as so modified are in full force and effect), (b) whether or not to the knowledge of the Certifying Party there is any material default by the Requesting Party in the

performance of any term, covenant, condition, provision or agreement contained in this Agreement and further whether or not there are any setoffs, defenses or counterclaims against enforcement of the obligations to be performed under this Agreement and, if there are, specifying each such material default, setoff, defense or counterclaim, and (c) such other matters as the Requesting Party may reasonably request in writing. Any such statement may be relied upon by any such prospective purchaser, assignee, Lessee or lender of a Parcel. The Certifying Party's failure to deliver such statement within such time shall be deemed a statement that this Agreement is in full force and effect, without modification except as may be represented by the Requesting Party in such request, and that there are no uncured material defaults in Certifying Party's or Requesting Party's or any other party's performance. If a particular Requesting Party requests more than one such statement from a particular Certifying Party per calendar year, such Certifying Party shall be entitled to charge such Requesting Party a reasonable fee to cover its administrative costs in preparing such statement

*SIGNATURE(S) ON FOLLOWING PAGE(S).*

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

**CITY**

\_\_\_\_\_  
By: Chris Zapata  
Its: City Manager and Executive Director of the  
Parking Authority

Attest: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

**CHAMBER**

By: \_\_\_\_\_  
Name: David P. Johnson  
Its: President & CEO

By: \_\_\_\_\_  
Name: David Grodin  
Its: Chair, Board of Directors

State of California            )  
  )  
County of Alameda            )

On \_\_\_\_\_, 20\_\_, before me, \_\_\_\_\_, (here insert name and title of the officer), personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

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

EXHIBIT A

EXHIBIT B

LEGAL DESCRIPTIONS OF PARCEL

Waste Room

Mechanical Equipment Area

Parking Spaces

EXHIBIT C

2075099.1