

## OPTION AGREEMENT

THIS OPTION AGREEMENT (this "Agreement") is entered into and effective as of \_\_\_\_\_, 20\_\_ (the "Effective Date"), by and between \_\_\_\_\_, a \_\_\_\_\_ company ("Optionor") and \_\_\_\_\_, a \_\_\_\_\_ company ("Optionee") with reference to the following recitals of essential facts:

A. Optionee entered into that certain Residential Income Property Purchase Agreement and Joint Escrow Instructions dated \_\_\_\_\_, 20\_\_ and Counter Offer No. 1 (the "Prior Purchase Agreement") between Optionee, as buyer and \_\_\_\_\_ and \_\_\_\_\_, collectively as seller ("Seller") whereby Seller agreed to sell and Optionee agreed to purchase that certain real property in the County of \_\_\_\_\_, State of California, more particularly described on **Exhibit "A"** attached hereto and incorporated herein by this reference (the "Option Property").

B. Prior to the closing under the Prior Purchase Agreement, Optionor and Optionee shall enter into a separate Purchase and Sale Agreement and Escrow Instructions on Optionor's standard form (the "Second Purchase Agreement") in the form of **Exhibit "B"** attached hereto pursuant to a sub-escrow or with a separate escrow company if necessary. Pursuant to the Second Purchase Agreement, Optionee shall sell to Optionor all of Optionee's right, title and interest in the Option Property immediately following the closing under the Prior Purchase Agreement and Optionor shall purchase such right, title and interest. Upon the close of escrow under the Prior Purchase Agreement and immediately thereafter under the Second Purchase Agreement (referred to herein as the "Double Escrow"), Optionor shall become the fee owner of the Option Property.

C. Optionor and Optionee now desire to enter into an agreement whereby Optionor grants to Optionee an option to purchase the Option Property on the terms and conditions set forth below.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Optionor and Optionee, intending to be legally bound, hereby agree as follows:

### 1. Grant of Option.

1.1 In consideration of the payment by Optionee of the nonrefundable sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) (the "Option Fee"), which sum shall be paid by Optionee upon close of escrow under the Second Purchase Agreement and the payment by Optionee of the \_\_\_\_\_ Fee and other amounts as set forth in greater detail below, Optionor hereby grants to Optionee, and Optionee hereby accepts from Optionor, the right and option (the "Option") to purchase and acquire all of Optionor's right, title and interest in and to the Option Property upon the terms and conditions hereinafter set forth.

1.2 Optionee shall execute the Second Purchase Agreement attached hereto as **Exhibit "B"** and incorporated herein by this reference and shall be irrevocably bound to close

the Double Escrow such that Optionor shall acquire all of Optionee's right, title and interest in and to Option Property. Optionee and Optionor shall deliver executed counterpart originals of the Second Purchase Agreement to \_\_\_\_\_ Title Company, \_\_\_\_\_, Attn: \_\_\_\_\_ ("Second Escrow Holder"). Upon closing under the Double Escrow, Optionor shall pay to Seller the balance of the purchase price under the Prior Purchase Agreement, in the amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) (the "Prior Purchase Price"). Optionor and Optionee hereby acknowledge that, pursuant to the terms of the Prior Purchase Agreement, the Prior Purchase Price shall be delivered to \_\_\_\_\_ Title Company (the "Prior Escrow Holder").

2. Payment of Option Consideration. In addition to payment of the Option Fee and the \_\_\_\_\_ Fee as well as the Purchase Price (defined below), Closing Costs and the Early Exit Fee (if applicable), Optionee shall pay any and all costs of whatever amount or nature (in excess of the Prior Purchase Price) incurred by Optionor and/or associated with the closing of the transactions contemplated in the Prior Purchase Agreement and the Second Purchase Agreement (the "Prior Closing Costs") contemporaneously with the closings under the Double Escrow, including but not limited to, Optionor's legal fees, all closing costs and fees, any transfer taxes and title insurance premiums, and any costs or fees of the Prior Escrow Holder and Second Escrow Holder. In the event Optionee timely exercises the Option to purchase the Option Property, the Option Fee shall be applied to the Purchase Price. In the event Optionee does not timely exercise the Option, Optionor shall retain the Option Fee as its sole property and shall have no obligation to return the Option Fee to Optionee.

3. Term of Option. The term of the Option (the "Option Term") herein granted shall commence on the closing date under the Prior Purchase Agreement (the "Option Commencement Date") and continue in full force and effect thereafter until 5:00 p.m. Pacific Time on the date which is two (2) calendar years from the Option Commencement Date.

4. Exercise of Option. The Option may be exercised by Optionee by the delivery of a written notice from Optionee to Optionor stating that Optionee has elected to purchase the Option Property on the terms and conditions set forth herein, which notice must be delivered by Optionee to Optionor no later than the date which is five (5) business days prior to the expiration of the Option Term (the "Option Notice").

5. Execution of Purchase Agreement/Opening and Closing of Escrow. Within five (5) business days of Optionee's delivery of the Option Notice as set forth in Section 4 above, the parties shall enter into an agreement for purchase and sale and escrow instructions (the "Option Purchase Agreement") for the purchase of the Option Property on Optionor's standard form purchase contract and on the terms and conditions set forth herein and shall deliver executed counterpart originals of the Purchase Agreement to \_\_\_\_\_ Title Company, \_\_\_\_\_, Attn: \_\_\_\_\_ (the "Escrow Holder"). The escrow for the Option Purchase Agreement shall close within five (5) business days of Escrow Holder's receipt of the fully executed Option Purchase Agreement.

6. Termination of Option. If Optionee fails to timely exercise the Option herein granted strictly in accordance with the requirements of Section 4 of this Agreement, then this Agreement and the Option created hereby shall automatically terminate and be of no further force or effect,

and Optionee shall forfeit the Option Fee and any and all other amounts paid by Optionee under the Prior Purchase Agreement, Second Purchase Agreement or under this Agreement and immediately pay the \_\_\_\_\_ Fee and neither party shall have any further rights or obligations hereunder.

7. Terms of Sale/Purchase Price/Fees and Costs. In the event Optionee exercises the Option, the purchase price for the Option Property shall be \_\_\_\_\_ Dollars (\$\_\_\_\_\_) (the "Purchase Price") payable as follows: In the event Optionee exercises the Option prior to the date which is three hundred seventy (370) days after the close of escrow under the Prior Purchase Agreement, Optionee shall pay to Optionor or its designee at the closing of the purchase of the Option Property, an amount equal to \_\_\_\_\_ Dollars (\$\_\_\_\_\_) ("Cash Amount") in cash and the balance of Purchase Price in the amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) shall be paid by Optionee either in cash or, at Optionee's election, pursuant to the Note as set forth below. In addition, in the event Optionee exercises the Option prior to the date which is three hundred seventy (370) days after the close of escrow under the Prior Purchase Agreement, Optionee shall pay a fee (the "Early Exercise Fee") in cash at closing of the purchase of the Option Property in the amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) which amount shall not be applied to the Purchase Price. In the event Optionee exercises the Option during the Option Term but after the date which is three hundred seventy (370) days after the close of escrow under the Prior Purchase Agreement, Optionee shall not be required to pay the Early Exercise Fee but shall be required to pay Optionor or its designee, at the closing of the purchase of the Option Property, an amount equal to the sum of the following (i) the Cash Amount, plus (ii) \_\_\_\_\_ Dollars (\$\_\_\_\_\_) per day for each day after the date which is three hundred seventy (370) days after the close of escrow under the Prior Purchase Agreement (the "Per Diem Amount"), in cash and the balance of the Purchase Price shall be paid by Optionee either in cash or, at Optionee's election, pursuant to the Note as set forth below. The Purchase Price minus the sum of the Cash Amount plus the Per Diem Amount (if any) is referred to herein as the "Balance Amount."

7.1 The entire Purchase Price shall be payable in cash upon close of escrow, which Purchase Price shall be in addition to the "Prior Closing Costs" the "\_\_\_\_\_ Fee," the Early Exercise Fee (if applicable), and "Closing Costs" as set forth in Section 7.2 below or any amounts previously paid by Optionee under the Prior Purchase Agreement, Second Purchase Agreement or under this Agreement or otherwise. Alternatively, Optionee may elect to finance the Balance Amount of the Purchase Price as follows: Optionor shall loan to Optionee the unpaid Balance Amount of the Purchase Price upon the terms and conditions stated herein (the "Loan"). Optionee shall execute a promissory note in form reasonably acceptable to Optionor and Optionee evidencing the Loan and prepared by Optionor ("Note") in the original principal amount, that when added to interest on such amount at the applicable Federal Rate, assuming a maturity date of three (3) years from the closing under the Prior Purchase Agreement, shall be equal to the Balance Amount. The Note shall be secured by a first-priority Deed of Trust ("Deed of Trust") on \_\_\_\_\_ Title Company's standard form. \_\_\_\_\_ Title Company shall, at Optionee's sole cost, issue or be willing to issue an ALTA Lender's extended policy of Title insurance with respect to the Option Property in the amount of the Loan, subject only to those exceptions agreed to by Optionee (the "Title Policy"). Optionor shall agree that the Loan may be subordinate only to a deed of trust (the "Senior Deed of Trust") securing a loan ("Senior Loan") in an amount not to exceed the sum of (i) the Cash Amount plus all financing costs thereof and

(ii) the amounts necessary for the construction, development, entitlement and/or improvement of the Option Property; provided, however, that each of the following requirements have been met: (a) Optionee shall deliver to Optionor twenty (20) days prior written notice that Optionee desires Optionor to affect such subordination, (b) the Senior Loan may in no event exceed \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), (c) there shall be no default under the Note or the Deed of Trust securing the Note, (d) Optionor shall have determined, in its reasonable discretion, that the Senior Loan documents conform to this Agreement and (e) \_\_\_\_\_ Title Company or another reputable title insurance company acceptable to Optionor must be prepared to issue, at Optionee's expense, an endorsement to the Title Policy covering the Deed of Trust, or similar insurance, that the lien of the Deed of Trust and the title insurance therefore remain in full force and effect with no change in priority of such liens (except for the Senior Loan in accordance with this Agreement). The Loan shall be repaid in full on the date ("Maturity Date") which is the earlier of (i) three (3) years after the closing date under the Prior Purchase Agreement or (ii) the sale of the Option Property by Optionee.

7.2 In addition to the Purchase Price, Optionee shall be responsible for any and all costs incurred as a result of the transaction, including, but not limited to, Optionor's legal fees and costs, all closing costs and any transfer taxes or fees and title insurance premiums ("Closing Costs"). Either upon the closing of the purchase of the Option Property by Optionee or on the date which is two (2) calendar years after the close of escrow under the Prior Purchase Agreement, Optionee shall pay \_\_\_\_\_, the amount of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) (the "\_\_\_\_\_ Fee") for arranging the transaction regardless of whether Optionee exercises the Option or closes on the purchase of the Option Property.

8. Obligations of Optionee During the Option Term. During the Option Term, Optionee shall maintain in full force and effect and pay all premiums on commercially reasonable casualty and liability insurance policies covering the Option Property. Optionee shall punctually pay and perform all obligations affecting the Option Property, and pay before delinquency all amounts, including, but not limited to, all amounts incurred pursuant to Section 9 below and all taxes, assessments, utility charges and other expenses affecting the Option Property. Optionee shall have the right during the Option Term to have its engineers, analysts, contractors and agents, at Optionee's sole cost and expense, conduct inspection of the Option Property, including the structural, electrical and mechanical aspects of the Option Property, soil, subsurface soils, drainage, seismic and other geological and topographical matters, location of asbestos, toxic substances, hazardous materials or wastes, if any, and any other investigations as Optionee deems prudent with respect to the physical condition of the Option Property. Prior to commencing any on-site investigation of the Option Property, Optionee shall procure a policy of comprehensive general liability insurance in the minimum amount of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) per occurrence, shall name Optionor as an additional insured on such policy, and shall deliver a Certificate of Insurance to Optionor. Buyer shall repair any and all damage to the Option Property caused by such inspections or investigations in a timely manner and shall indemnify and defend Optionor from and against any liability arising from Optionee's inspection hereunder. This indemnity and defense obligation shall survive the termination of this Agreement or the closing of this transaction.

9. Entitlements.

9.1 Optionee shall, at its option and in its sole and absolute discretion, process for approval any entitlements for the Option Property (together with conditions of approval, etc., the "Entitlements") with the Authorities (as defined below) as Optionee deems necessary, at its sole cost and expense. Optionor shall have the right to review and approve any changes to the Entitlements which may decrease the density of the Option Property.

9.2 Effective upon and in the event of a termination of this Agreement for any reason or if Optionee elects not to exercise the Option, Optionee shall assign and deliver to Optionor, and does hereby assign without the need for any further act or instrument, all entitlements, permits, licenses, maps, reports, plans, studies, documents, written information and the like which has been generated by Optionee or by Optionee's employees, agents, contractors, subcontractors or third party consultants, whether prior to the Effective Date or during the period of this Agreement in connection with Optionee's proposed acquisition, development, use or sale of the Option Property (collectively, "Work Product"). In such event, Optionee shall deliver the Work Product which has been assigned to Optionor not later than five (5) days after the date of the termination of this Agreement or Optionee's election not to exercise the Option. The Work Product shall be fully paid for and shall not be subject to any lien, encumbrance or claim of any kind. The Work Product shall be delivered to Optionor with no express or implied warranty or representation of any kind by Optionee as to its accuracy or completeness. Optionee shall also return all materials and information given to it by Optionor or its consultants in the same condition as delivered to Optionee.

10. Recordation. Following the execution of this Agreement and the closing of the transaction contemplated under the Second Purchase Agreement, the Option shall be disclosed of record by the recordation of a Memorandum of Option ("Memorandum"), the form of which is attached hereto as Exhibit "C."

11. Terminate/Quitclaim. Optionee covenants, for itself and its successors and assigns, to execute and deliver to Optionor within five (5) business days after Optionee's receipt of Optionor's written request a quitclaim deed (or such other documents reasonably requested by Optionor) sufficient to terminate the Memorandum of record at any time following the expiration or earlier termination of the Option.

12. Environmental Indemnity. Contemporaneously herewith, Optionor shall execute the Environmental Indemnity attached hereto as Exhibit "D."

13. Assignment; Successors; Parties Benefited. The parties acknowledge and agree that neither party may encumber, hypothecate, assign or otherwise transfer its interest in the Option Property, this Agreement, or its interest in the Option, without the prior written consent of the other party.

14. Waivers. No waiver by any party of any provision hereof shall be deemed a waiver of any other provision or any subsequent breach by the other party of the same or any other provision.

15. Authority. Each person executing this Agreement warrants that he or she has the authority to so execute the same and that no further approval of any kind is necessary to bind the parties hereto.

16. Mediation and Binding Arbitration.

16.1 Except as specifically modified by this Section 15, and excepting matters involving provisional remedies as set forth below, any controversy or claim arising out of or relating to this Agreement, or any breach thereof, including without limitation, any claim that this Agreement, or any part thereof, is invalid, illegal or otherwise voidable or void, shall be submitted first to mediation, and then if the matter is not fully resolved, then arbitration before and in accordance with the arbitration rules of the American Arbitration Association in accordance with its commercial arbitration rules ("AAA").

16.2 The provisions of this Section 15 shall be construed as independent of any other covenant or provision of this Agreement; provided that if a court of competent jurisdiction determines that any such provisions are unlawful in any way, such court shall modify or interpret such provisions to the minimum extent necessary to have them comply with the law.

16.3 Judgment upon an arbitration award may be entered in any court having competent jurisdiction and shall be binding, final and non-appealable. Optionor and Optionee (and their respective owners and guarantors, if applicable) hereby waive to the fullest extent permitted by law, any right to or claim for any punitive or exemplary damages against the other and agree that in the event of a dispute between them each shall be limited to the recovery of any actual damages sustained by such party.

16.4 This mediation and arbitration provision shall be deemed to be self-executing and shall remain in full force and effect after expiration or termination of this Agreement. In the event either party fails to appear at any properly noticed arbitration proceeding, an award may be entered against such party by default or otherwise notwithstanding said failure to appear. Venue for any arbitration or mediation proceeding shall be in \_\_\_\_\_, California.

16.5 The obligation herein to arbitrate or mediate shall not be binding upon any party with respect to requests for temporary restraining orders, preliminary injunctions or other procedures in a court of competent jurisdiction to obtain interim relief when deemed necessary by such court to preserve the status quo or prevent irreparable injury pending resolution by mediation or arbitration of the actual dispute between the parties.

17. Notices. The Option Notice and all other notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered or sent by registered or certified mail, postage prepaid, return receipt requested, or by nationally or locally recognized overnight or same day delivery service which provides for acknowledgment of delivery and shall be deemed received upon the date of delivery to the address of the person to receive such notice at the following addresses as evidenced by the execution of the return receipt:

To Optionor: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

With a copy to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

With a copy to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

To Optionee: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Notice of change of address shall be given by written notice in the manner detailed in this Section 16.

18. Cooperation. Optionee and Optionor agree to execute all such instruments and documents and to take all actions (including, but not limited to) any action as may be reasonably necessary in order to effect the transaction contemplated herein or in the Purchase Agreement and, in the event the Option is timely exercised hereunder, shall use their best efforts to accomplish the close of escrow in accordance with the provisions of the Purchase Agreement.

19. Entire Agreement. This Agreement together with the Exhibits hereto contains the entire agreement between the parties hereto and no addition or modification of any term or provision shall be effective unless set forth in writing, signed by both Optionor and Optionee.

20. Counterparts. This Agreement together with the Exhibits attached hereto may be executed simultaneously in counterparts, each of which shall be deemed an original, but all of which shall together constitute one and the same instrument.

21. Partial Invalidity. If a court of competent jurisdiction holds any provision of this Agreement to be invalid, then, nevertheless, all of the remaining provisions shall remain valid and continue in full force and effect; provided, however, that if the provision held invalid substantially and materially affects the purpose and intent of this Agreement, then the invalidity of such provision shall invalidate this entire Agreement.

22. California Law. This Agreement is made in \_\_\_\_\_, California and it shall be construed and interpreted under the laws of the State of California.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

OPTIONOR:

\_\_\_\_\_,  
a \_\_\_\_\_ company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

OPTIONEE:

\_\_\_\_\_,  
a \_\_\_\_\_ company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

AGREED TO AND ACCEPTED:

ESCROW HOLDER:

\_\_\_\_\_ TITLE COMPANY

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_



EXHIBIT “A”

LEGAL DESCRIPTION OF OPTION PROPERTY

EXHIBIT “B”

SECOND PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS

SCHEDULE 1  
LEGAL DESCRIPTION OF PROPERTY

EXHIBIT "C"

MEMORANDUM

RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

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

MEMORANDUM OF OPTION AGREEMENT

THIS MEMORANDUM OF OPTION AGREEMENT is made and entered into as of this is entered into and is effective as of \_\_\_\_\_, 20\_\_\_\_ (the "Effective Date"), and is made and entered into by and between \_\_\_\_\_, a \_\_\_\_\_ company ("Optionor"), and \_\_\_\_\_, a \_\_\_\_\_ company ("Optionee").

Recitals:

A. Execution of Option Agreement. Optionor and Optionee have entered into that certain written Option Agreement dated as of even date herewith (the "Option Agreement"), pertaining to that certain real property described in **Exhibit A** attached hereto (the "Option Property"). Optionor has agreed to grant to Optionee, and Optionee has agreed to accept from Optionor, the right and option to acquire all of Optionor's right, title and interest in the Option Property on the terms and conditions set forth in the Option Agreement.

B. Purpose of Memorandum. This Memorandum of Option Agreement ("Memorandum") is being made and entered into solely for the purpose of providing notice of the Option Agreement.

Agreement:

For valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Optionor and Optionee hereby declare and agree:

1. Optionor hereby grants to Optionee, and Optionee hereby accepts from Optionor, the right and option to acquire the Option Property pursuant to the terms and provisions of the Option Agreement. The Option Agreement is hereby incorporated herein by this reference as if set forth in full.

2. To the extent of any inconsistency between the terms of the Option Agreement and this Memorandum, the terms of the Option Agreement shall prevail and control.

3. This Memorandum may be executed in one or more counterparts, each of which when executed shall constitute an original, but all of which together shall constitute one and the same agreement.

4. Optionee covenants, for itself and its successors and assigns, to execute and deliver to Optionor within five (5) business days after Optionee's receipt of Optionor's written request a quitclaim deed (or such other documents reasonably requested by Optionor) sufficient to terminate the Memorandum of record at any time following the expiration or earlier termination of the Option.

5. The parties acknowledge and agree that neither party may encumber, hypothecate, assign or otherwise transfer its interest in the Option Property, the Option Agreement, or its interest in the Option, without the prior written consent of the other party.

IN WITNESS WHEREOF, the undersigned have executed this Memorandum as of the date first set forth above.

OPTIONOR:

\_\_\_\_\_,  
a \_\_\_\_\_ company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

OPTIONEE:

\_\_\_\_\_,  
a \_\_\_\_\_ company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

[illegible]

On \_\_\_\_\_, 20\_\_\_\_, before me, \_\_\_\_\_, a Notary Public in and for said State, personally appeared \_\_\_\_\_ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public

(SEAL)

[illegible]

On \_\_\_\_\_, 20\_\_\_\_, before me, \_\_\_\_\_, a Notary Public in and for said State, personally appeared \_\_\_\_\_ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

**Notary Public**

(SEAL)

EXHIBIT "A"

LEGAL DESCRIPTION OF OPTION PROPERTY

EXHIBIT "D"

ENVIRONMENTAL INDEMNITY AGREEMENT

THIS ENVIRONMENTAL INDEMNITY AGREEMENT ("Agreement") is entered into and delivered as of \_\_\_\_\_, 20\_\_ by \_\_\_\_\_, a \_\_\_\_\_ company ("\_\_\_\_\_"), \_\_\_\_\_ and \_\_\_\_\_ (collectively "Indemnitors" and each individually as "Indemnitor") in favor of \_\_\_\_\_, a \_\_\_\_\_ company ("\_\_\_\_\_") and the other Indemnified Parties referred to herein, with reference to the following:

R E C I T A L S

A. Concurrently herewith, \_\_\_\_\_ has entered into a Purchase and Sale Agreement (the "Purchase Agreement") with \_\_\_\_\_, for the purchase and sale of certain real property located in \_\_\_\_\_ County, State of California, as more particularly described in Exhibit "A" attached hereto and incorporated herein (collectively, the "Property").

B. As a condition to and an inducement of \_\_\_\_\_ entering into the Purchase Agreement with \_\_\_\_\_, Indemnitors have agreed to execute and deliver this Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Indemnitors hereby agree and covenant for the benefit of \_\_\_\_\_ and the other Indemnified Parties as follows:

1. Definitions. For the purposes of this Agreement, the capitalized terms shall have the meanings specified below unless otherwise indicated.

(a) "Hazardous Material" means any chemical substance:

(i) the presence of which requires investigation or remediation under any applicable federal, state or local statute, regulation, ordinance, order, action, policy or common law; or

(ii) which is or becomes defined as a "hazardous waste" or "hazardous substance" under any applicable federal, state or local statute, regulation or ordinance or amendments thereto including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9601 et seq.) "CERCLA") and/or the Resource Conservation and Recovery Act (42 U.S.C. Section 6901 et seq.); or

(iii) which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous and is or becomes regulated by any governmental authority, agency, department, commission, board, agency or instrumentality of the United States, the State of California or any political subdivision thereof; or



(iv) the presence of which on the Property causes or threatens to cause a nuisance upon the Property or to adjacent properties or poses or threatens to pose a hazard to the health or safety of persons or about the Property; or

(v) the presence of which on adjacent properties could constitute a trespass by the Indemnitors; or

(vi) without limitation which contains gasoline, diesel fuel or other petroleum hydrocarbon; or

(vii) without limitation which contains polychlorinated biphenyls (PCBs), or urea formaldehyde foam insulation; or

(viii) without limitation which contains asbestos or asbestos-containing material.

(b) “Environmental Requirements” means all applicable present and future statutes, regulation, rules, ordinances, codes, licenses, permits, orders, approvals, plans, authorizations, concessions, franchises and similar items, of all governmental agencies, departments, commissions, boards, bureaus or instrumentalities of the United States, states and political subdivisions thereof and all applicable judicial and administrative and regulatory decrees, judgments and orders relating to the protection of human health or the environment, including, without limitation:

(i) all requirements, including but not limited to those pertaining to reporting, licensing, permitting, investigation and remediation of emissions, discharges, releases or threatened releases of “Hazardous Materials,” chemical substances, pollutants, contaminants or hazardous or toxic substances, materials or wastes whether solid, liquid or gaseous in nature, into the air, surface water, groundwater or land, or relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of chemical substances, pollutants, contaminants or hazardous or toxic substances, materials, or wastes, whether solid, liquid or gaseous in nature; and

(ii) all requirements pertaining to the protection of the health and safety of employees or the public.

(c) “Environmental Damages” means all claims, judgments, damages, losses, penalties, fines, liabilities (including strict liability), encumbrances, liens, costs and expenses of investigation and defense of any claim, whether or not such claim is ultimately defeated, and of any good faith settlement of judgment, of whatever kind or nature, contingent or otherwise, matured or unmatured, foreseeable or unforeseeable, including without limitation reasonable attorney’s fees and disbursements and consultants’ fees, any of which are incurred at any time as a result of the existence on, prior to or after the date hereof of “Hazardous Material” upon, about, beneath the Property or migrating or threatening to migrate to or from the Property, or the existence of a violation of “Environmental Requirements” pertaining to the Property, regardless

of whether the existence of such “Hazardous Material” or the violation of “Environmental Requirements” arose prior to the present ownership or operation of the Property, and including without limitation:

(i) damages for personal injury, or injury to property or natural resources occurring upon or off of the Property, including, without limitation, the cost of demolition and rebuilding of any improvements on real property, interest and penalties;

(ii) fees incurred for the services of attorneys, consultants, contractors, experts, laboratories and all other costs incurred in connection with the investigation or remediation of such “Hazardous Materials” or violation of “Environmental Requirements” including, but not limited to, the preparation of any feasibility studies or reports or the performance of any cleanup, remedial, removal, response, abatement, containment, closure, restoration or monitoring work required by any federal, state or local governmental agency or political subdivision, or reasonably necessary to make full economic use of the Property or any other property or otherwise expended in connection with such conditions, and including without limitation any attorneys’ fees, costs and expenses incurred in enforcing this agreement or collecting any sums due hereunder;

(iii) liability to any third person or governmental agency to indemnify such person or agency for costs expended in connection with the items referenced in this subparagraph (c) or in subparagraph (b) above; and

(iv) diminution in the value of the Property, and damages for the loss of business and restriction on the use of or adverse impact on the marketing of rentable or usable space or of any amenity of the Property.

2. Representations and Warranties. Each Indemnitor hereby makes the following representations and warranties, each of which is material and is being relied upon by \_\_\_\_\_ in its decision to enter into the Purchase Agreement:

(a) Indemnitors have not participated in or approved, and there has not occurred, any release, disposal, generation or storage upon the Property or contamination of the Property by any Hazardous Material, and there is no violation of any Environmental Requirement relating to the presence or existence of any Hazardous Material upon the Property.

(b) No Indemnitor has received any written notice that (i) the Property is, or was, in violation of any Environmental Requirement for the Property, or (ii) any person or entity has used, generated, stored or disposed of on, under, or about the Property or transferred to or from the Property any Hazardous Material.

3. Covenants. Indemnitors shall: (a) comply and cause all tenants, if any, and other persons on or occupying the Property, to comply with all Environmental Requirements; (b) without limiting the generality of clause (a) above, not engage in, permit nor acquiesce to any Hazardous Material on, under or about the Property, except in strict accordance with all Environmental Requirements, and then only with prudent business practices as

determined by Indemnitors in their capacity as a prudent owners; (c) immediately advise \_\_\_\_\_ in writing of (i) the receipt by Indemnitors of written notice of any and all Environmental Damages, and, as soon thereafter as possible, advise \_\_\_\_\_ of the correctness or probability of such Environmental Damages, (ii) any knowledge by Indemnitors that the Property does not comply with any Environmental Requirements, (iii) any remedial action taken by Indemnitors in response to any Hazardous Material on, under or about the Property, or to any Environmental Damages, and (iv) Indemnitors' discovery of the presence of any Hazardous Material on, under or about the Property whether or not the same requires notice to be given to any governmental entity or agency under Environmental Requirements; (d) submit to \_\_\_\_\_, promptly upon receipt or preparation, copies of any and all reports, studies, analyses, correspondence, governmental comments or approvals, proposed removal or other remedial work contracts and similar information prepared or received by Indemnitors in connection with any Hazardous Materials relating to the Property; (e) maintain property management services at the Property which shall provide for periodic inspections of the Property (subject to access restrictions under leases, if any, and at law) and for periodic meetings with representatives of Indemnitors and, upon request, \_\_\_\_\_ to review the results of such inspections; and (f) if the Property is used for commercial purposes, use reasonable efforts to negotiate leases which provide (i) that periodic entry and inspection by Indemnitors, Indemnitors' representatives, property manager and/or upon request, \_\_\_\_\_, is authorized and (ii) that Indemnitors are authorized under the lease to perform remedial work after a failure by a tenant to respond to Indemnitors' request for remedial work by such tenant.

4. Obligation to Protect, Indemnify, Defend, Reimburse, Save and Hold Harmless. Indemnitors, their successors, assigns and guarantors, agree to protect, indemnify, defend, reimburse, save and hold harmless \_\_\_\_\_ and \_\_\_\_\_'s shareholders, directors, officers, agents, successors and assigns (collectively, referred to hereinafter as "Indemnified parties" and individually as an "Indemnified Party") from and against any and all Environmental Damages arising from the presence of Hazardous Materials upon, about or beneath the Property or migrating to or from the Property, or arising in any manner whatsoever out of the violation of any Environmental Requirements pertaining to the Property and the activities thereon, any of which conditions exist on, prior to or after the date hereof. This obligation shall include, but not be limited to, the burden and expense of defending all suits and administrative proceedings (with counsel reasonably approved by the Indemnified Parties), and conducting all negotiations of any description, and paying and discharging, when and as the same become due, any and all judgments, penalties or other sums due against such Indemnified Parties. The obligations of the Indemnitors in this Paragraph 4 shall survive the sale of the Property, the discharge of all other obligations owed by the Indemnitors and \_\_\_\_\_ to each other, any and transfer of title to the Property, whether by sale, foreclosure, deed in lieu of foreclosure or otherwise. The obligations of the Indemnitors under this Paragraph 4 shall not be affected by any investigation by or on behalf of the Indemnified Parties, or by any information which the Indemnified Parties may have or obtain with respect thereto.

5. Inspection. Indemnitors shall permit \_\_\_\_\_ to enter the Indemnitors' office and the Property during all reasonable business hours (after giving reasonable notice to Indemnitors) to conduct environmental testing and, in the event of Indemnitors' failure to undertake remedial work, to perform remedial work, and Indemnitors

hereby grant to \_\_\_\_\_ (and its employees and agents) an irrevocable and non-exclusive license for the purpose of conducting such testing and/or remedial work. \_\_\_\_\_'s right to enter and inspect the Indemnitors' office and the Property shall include all rights conferred upon \_\_\_\_\_ by California Civil Code Section 2929.5.

6.      Actions by Indemnified Parties. If any Indemnified Party becomes aware of any Hazardous Material on, under or near the Property, whether or not a claim is asserted against \_\_\_\_\_ or any of the other Indemnified Parties, \_\_\_\_\_, in its sole and absolute discretion, shall have the right, but not the obligation, after reasonable prior notice to Indemnitors (except in an emergency, as determined by \_\_\_\_\_, in which even no prior notice shall be required), to take such action as \_\_\_\_\_ shall deem necessary (a) to protect the health and safety of individuals that may be on or near the Property and the value of the Property, and (b) to minimize the probability or extent of liability to \_\_\_\_\_ and/or the other Indemnified Parties, including, without limitation, complying with the Environmental Requirements. Indemnitors shall be liable to \_\_\_\_\_ and/or the other Indemnified Parties in accordance with the terms hereof for all Environmental Damages suffered or incurred by \_\_\_\_\_ and/or the other Indemnified Parties as a result of the foregoing.

7.      Further Actions. No action or proceeding brought or instituted under this Agreement and no recovery made as a result thereon shall be a bar or defense to any further action or proceeding under this Agreement.

8.      Successors and Assigns. The covenants, agreements, indemnities, terms and conditions contained in this Agreement shall extend to, and be binding upon, each Indemnitor, their heirs, executors, administrators, successors and assigns, and shall inure to the benefit of, any may be enforced by, \_\_\_\_\_ or any of the other Indemnified Parties and its and their successors and assigns.

9.      Validity. Each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited, invalid, or ineffective under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Agreement.

10.     Attorney's Fees. The Indemnitors shall reimburse \_\_\_\_\_ and the other Indemnified Parties for all attorneys' fees and expenses incurred in connection with the enforcement of the Indemnified Parties' rights under this Agreement, including those incurred in any case action proceeding claim under the Federal Bankruptcy Code or any successor statute.

11.     Joint and Several Liability. Each and every provision of this Agreement shall be binding on each and every one of the Indemnitors and they shall be jointly and severally liable hereunder. \_\_\_\_\_ and/or the Indemnified Parties shall have the right to join any or all of them in any proceeding or to proceed against them in any order. Each Indemnitor agrees that it shall have no right of contribution (including, without limitation, any rights of contribution under CERCLA) or subrogation against any other Indemnitor hereunder unless and until all obligations of such Indemnitor have been satisfied. Each Indemnitor further agrees that,

to the extent that the waiver of its rights of subrogation and contribution as set forth herein is found by a court of competent jurisdiction to be void or voidable for any reason, any rights of subrogation or contribution such Indemnitor may have shall be junior and subordinate to the rights of \_\_\_\_\_ against any Indemnitor hereunder.

12. Governing Law; Venue. This Agreement is and shall be deemed to be a contract entered into and pursuant to the laws of the State of California and shall in all respects be governed, construed, applied and enforced in accordance with the laws thereof. Each Indemnitor hereby consents to venue for purposes of any action brought by \_\_\_\_\_ under this Agreement in any court located in the County of \_\_\_\_\_.

13. Remedies. In addition to all other rights provided herein or as may be provided by law, \_\_\_\_\_ and each Indemnified Party shall be entitled to all equitable remedies, including those specific performance and injunction, to enforce their respective rights hereunder.

14. Execution of Other Documents. Indemnitors hereby agree that they will cooperate with \_\_\_\_\_ and the Indemnified Parties and will execute and deliver, or cause to be delivered, all such other instruments and will take all such other actions, as \_\_\_\_\_ or an Indemnified Party hereto reasonably requests from time to time in order to effectuate the provisions and purposes hereof.

15. Imputation of Knowledge. Each Indemnitor acknowledges that the other Indemnitor is an affiliate, and agrees that any and all notices to or knowledge of such affiliate Indemnitor shall be conclusively imputed to the other Indemnitor.

16. Waiver. No failure or delay on the part of an Indemnified Party to exercise any power, right or privilege under this Agreement shall impair any such power, right or privilege, or be construed to be a waiver of any default or an acquiescence therein, nor shall any single or partial exercise of such power, right or privilege preclude other or further exercise thereof or of any other right, power or privilege. No provision of this Agreement may be changed, waived, discharged or terminated except by an instrument in writing signed by the party against whom enforcement of the change, waiver, discharge or termination is sought.

**[SIGNATURES ON FOLLOWING PAGE]**

IN WITNESS WHEREOF, the Indemnitors have executed this Agreement as the day and year first above written.

INDEMNITORS:

\_\_\_\_\_,  
a \_\_\_\_\_ company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
\_\_\_\_\_, an individual

By: \_\_\_\_\_  
\_\_\_\_\_, an individual

EXHIBIT “A”  
[Legal Description of Property]