



AGENDA
Meeting
of the
BOARD OF DIRECTORS
of the
SANTA BARBARA METROPOLITAN TRANSIT DISTRICT
A Public Agency
Wednesday, February 25, 2009
5:30 PM
TELEVISED (City TV Channel 18)
Santa Barbara MTD Auditorium
550 Olive Street, Santa Barbara, CA 93101

1. **CALL TO ORDER**
2. **ROLL CALL OF THE BOARD OF DIRECTORS**
David Davis, Chair; Dick Weinberg, Vice Chair; Sharon Anderson, Secretary; John Britton, Director; Chuck McQuary, Director; Roger Aceves, Director; Brian Fahnestock, Director
3. **REPORT REGARDING POSTING OF AGENDA**
4. **CASH REPORT (Attachment- action may be taken)**
The Board will be asked to review the cash report from February 3, 2009 through February 16, 2009.

CEREMONIAL ITEM

5. **EMPLOYEES' SPOTLIGHT**
The following employees will be honored as MTD Employee's of the Quarters, for their outstanding performances:
 - Raven Whitehawk ,Driver October - December 2008
 - Albert Romero Jr., Operations Supervisor January – March 2009
6. **ANNIVERSARIES**
The Board will honor anniversaries of:
 - Larry Corral, Mechanic (30 years)
 - Alicia Diehl, Customer Service Representative (30 years)

THIS CONCLUDES THE CONSENT CALENDAR

7. **RECESS TO CLOSED SESSION- 5353 OVERPASS ROAD (ACTION MAY BE TAKEN)**
The Board will meet in closed session pursuant to Government Code §54956.8, conference with real property negotiators regarding lease of the MTD owned 5353 Overpass Road Property; MTD negotiators Bob Tuler & Brian Johnson, Agents, Radius Commercial Real Estate.

8. OVERPASS LEASE AGREEMENT – (ACTION MAY BE TAKEN)

The Board will be asked to authorize the General Manager to enter into agreement with Asti Holding Company, LLC, a California Limited Liability Company regarding MTD owned 5353 Overpass Road Property.

9. PUBLIC COMMENT

Members of the public may address the Board on items within the jurisdiction of the Board that are not scheduled for public hearing. The time allotted per speaker will be at the discretion of the Board Chair. If you wish to address the Board under this item number, please complete and deliver to the MTD Board Clerk **before the meeting is convened**, a "Request to Speak" form including a description of the subject you wish to address.

TIME CERTAIN 6:15 P.M.

10. UPDATE- CITY OF SANTA BARBARA (ACTION MAY BE TAKEN)

The Board will receive an update from Helene Schneider, City of Santa Barbara Councilmember/ MTD Liaison.

11. PROPOSED BUDGET REVISIONS FOR FY 08-09 AND FINANCIAL UPDATE (ACTION MAY BE TAKEN)

Staff will present the proposed budget revisions for FY 2008/09 and provide a financial update.

12. FTA SECTION 5307 SMALL URBANIZED AREA TRANSIT FUNDING (ACTION MAY BE TAKEN)

Staff will present the Board with a recommendation to approve Section 5307 Funding Application.

13. GENERAL MANAGER REPORT

- a) Form 700- Conflict of Interest
- b) Regional Transit Service Meeting
- c) EV Pre-Bid Meeting
- d) Pass Vending Machine
- e) Other

14. OTHER BUSINESS AND COMMITTEE REPORTS

The Board will report on related public transit issues and committee meetings.

15. ADJOURNMENT

AMERICANS WITH DISABILITIES ACT: If you need special assistance to participate in this meeting, please contact the MTD Administrative Office at 963-3364 at least **48 hours in advance** of the meeting to allow time for MTD to attempt a reasonable accommodation.

Santa Barbara Metropolitan Transit District
Cash Report
Board Meeting of February 25, 2009
For the Period February 3, 2009 through February 16, 2009

MONEY MARKET

Beginning Balance February 3, 2009 **\$6,200,470.48**

Passenger Fares	201,271.82
Accounts Receivable	88,006.93
Interest Income -Jan 09	4,652.85
Miscellaneous	449.40
Total Deposits	294,381.00

Bank Credit - Jan 09	18.00
ACH Garnishment Trf	(3,599.14)
ACH Pensions Transfer	(18,378.90)
WC Trf - Jan 09	(18,414.23)
ACH Tax Deposit	(124,761.44)
Payroll Transfer	(279,375.46)
Operations Transfer	(299,488.96)
Total Disbursements	(744,000.13)

Ending Balance **\$5,750,851.35**

Total Cash and Investments as of February 16, 2009: **\$5,750,851.35**

COMPOSITION OF CASH BALANCE

Working Capital	4,399,641.95
WC / Liability Reserves :as of February 16, 2009	1,351,209.40
	5,750,851.35

Total Cash Balance **\$5,750,851.35**

**Santa Barbara Metropolitan Transit District
Accounts Payable**

Check #	Date	Company	Description	Amount	Voids
91688	2/5/2009	ROGER STEVEN ACEVES	DIRECTOR FEES	180.00	
91689	2/5/2009	AQUA-FLO	BUS WASH SUPPLIES	29.87	V
91690	2/5/2009	APPLIED INDUSTRIAL TECHNOLOGI	BUS PARTS	1,808.99	
91691	2/5/2009	SHARON ANDERSON	DIRECTOR FEES	180.00	
91692	2/5/2009	ANDREWS, HENRY	REIMBURSEMENT	260.00	
91693	2/5/2009	BATTERY SYSTEMS OF OXNARD	BUS PARTS	564.50	
91694	2/5/2009	BERENDSEN FLUID POWER	BUS PARTS	1,074.39	
91695	2/5/2009	BIG-T'S FREIGHTLINER OF VENTUR	BUS PARTS	319.50	
91696	2/5/2009	JOHN BRITTON	DIRECTOR FEES	120.00	
91697	2/5/2009	BUENA TOOL, INC.	B&G REPAIRS & SUPPLIES	12.14	
91698	2/5/2009	CALIFORNIA ELECTRIC SUPPLY, IN	BUS PARTS & SHOP SUPPLIES	447.82	
91699	2/5/2009	CAPITOL HARDWARE & BUILDING	B&G REPAIRS & SUPPLIES	17.63	
91700	2/5/2009	CARQUEST AUTO PARTS	BUS PARTS & SUPPLIES	1,227.80	
91701	2/5/2009	CENTRAL COAST CIRCULATION, LL	BUS BOOK DISTRIBUTION	575.00	
91702	2/5/2009	COASTAL VIEW NEWS DBA	MEDIA AD	1,600.00	
91703	2/5/2009	CLEVER DEVICES	BUS PARTS	950.36	
91704	2/5/2009	COAST TRUCK PARTS	BUS PARTS	581.07	
91705	2/5/2009	COX COMMUNICATIONS	INTERNET & CABLE TV	212.36	
91706	2/5/2009	CUMMINS CAL PACIFIC LLC	BUS PARTS	200.66	
91707	2/5/2009	CURVED GLASS DISTRIBUTORS CO	BUS WINDSHIELDS	3,650.00	
91708	2/5/2009	CUNNINGHAM'S RADIATOR DBA	REPAIR SERVICE	1,413.55	
91709	2/5/2009	COUNTY OF S.B.PUBLIC WORKS DE	WASTE DISPOSAL	54.00	
91710	2/5/2009	DAVID D. DAVIS JR.	DIRECTOR FEES	180.00	
91711	2/5/2009	DONS INDUSTRIAL, INC.	BUS PARTS/SHOP SUPPLIES	152.58	
91712	2/5/2009	EBUS, INC.	BUS PARTS	665.89	
91713	2/5/2009	EVERYTHING ELECTRIC	BUS PARTS	408.20	
91714	2/5/2009	EXPRESS AUTO PARTS EXCHANGE,	BUS PARTS	1,051.05	
91715	2/5/2009	EYE & VISION CARE OPTOMETRIC	MEDICAL EXAMS	175.00	
91716	2/5/2009	BRIAN FAHNESTOCK	DIRECTOR FEES	180.00	
91717	2/5/2009	GEM EQUIPMENT	BUS PARTS & SUPPLIES	205.02	
91718	2/5/2009	GIBBS INTERNATIONAL INC	BUS PARTS/SUPPLIES	6,463.68	
91719	2/5/2009	GILLIG LLC DBA	BUS PARTS	2,555.20	
91720	2/5/2009	GRAINGER, INC.	SHOP SUPPLIES	190.64	
91721	2/5/2009	H. G. PETERSEN FAMILY PROPERTI	PARKING FOR VALLEY BUSES	100.00	
91722	2/5/2009	HOME IMPROVEMENT CTR.	SHOP/B&G SUPPLIES	128.91	
91723	2/5/2009	HOWIE ENTERPRISES DBA	BUS REPAIRS	400.00	
91724	2/5/2009	HUB INTERNATIONAL OF CALIFOR	PENSION ADMINISTRATOR	335.00	

Check #	Date	Company	Description	Amount	Voids
91725	2/5/2009	HYDREX PEST CONTROL	FUMIGATION	70.00	
91726	2/5/2009	INTERCON TECHNOLOGIES DBA	EV/CHARGER REPAIRS	272.00	
91727	2/5/2009	INDOFF, INC.	OFFICE SUPPLIES	420.12	
91728	2/5/2009	JANEK CORP	BUS PARTS	1,319.94	
91729	2/5/2009	KEYT-TV DBA	ADVERTISING	1,350.00	
91730	2/5/2009	MC CORMIX CORP. (OIL)	LUBRICANTS	4,833.58	
91731	2/5/2009	MCMASTER-CARR SUPPLY CO.	SHOP SUPPLIES	163.30	
91732	2/5/2009	CHUCK MCQUARY	DIRECTOR FEES	120.00	
91733	2/5/2009	MISSION LINEN SUPPLY, INC	UNIFORM & LINEN SERVICE	4,267.25	
91734	2/5/2009	MOUNTAIN SPRING WATER	SHOP & OFFICE SUPPLIES	826.95	
91735	2/5/2009	PREVOST CAR INC.- CREDIT DEPT.	BUS PARTS	592.22	
91736	2/5/2009	OLS SERVICE, INC.	SERVICE FOR SEFAC HOISTS	958.38	
91737	2/5/2009	PACIFICARE OF CALIFORNIA	HEALTH INSURANCE	46,307.26	
91738	2/5/2009	PLATINUM PLUS FOR BUSINESS	MISC. CREDIT CARD CHARGES	115.94	
91739	2/5/2009	PRAXAIR DISTRIBUTION, INC.	SHOP SUPPLIES	71.67	
91740	2/5/2009	RAMIREZ, ANTONIO	MEDICAL REIMBURSEMENT	260.00	
91741	2/5/2009	SANTA BARBARA NEWS PRESS	SCHEDULE GUIDES	7,622.88	
91742	2/5/2009	SC VALLEY TRANSPORTATION AUT	PURCHASE OF BUSES	66.81	
91743	2/5/2009	SANTA BARBARA SIGNS, INC. DBA	PRINTING SERVICES	223.38	
91744	2/5/2009	SM TIRE, CORP.	BUS TIRE MOUNTING	272.00	
91745	2/5/2009	SMARDAN-HATCHER CO., INC	B&G REPAIRS & SUPPLIES	302.95	
91746	2/5/2009	SO. CAL. EDISON CO.	UTILITIES	6,105.81	
91747	2/5/2009	SC FUELS DBA	FUEL	29,470.87	
91748	2/5/2009	SOUTHERN CALIFORNIA GAS COMP	UTILITIES	53.32	
91749	2/5/2009	SPECIALTY TOOL & BOLT	SHOP SUPPLIES	242.92	
91750	2/5/2009	STEWART ENTERPRISES TKO, INC	PLUMBING REPAIRS	155.00	
91751	2/5/2009	SB CITY OF-REFUSE/WATER	UTILITIES	1,817.48	
91752	2/5/2009	SB COUNTY FIRE DEPARTMENT	SITE MITIGATION	2,152.00	
91753	2/5/2009	T.F. HUDGINS, INC.	BUS PARTS	81.08	
91754	2/5/2009	THE MEDCENTER	MEDICAL EXAMS	3,478.00	
91756	2/5/2009	TRI-COUNTY AUTO GLASS INC	REPLACE BUS WINDOWS	1,530.00	
91757	2/5/2009	TRANSIT PRODUCTS AND SERVICE	BUS PARTS	4,143.10	
91758	2/5/2009	UNIVISION / KPMR-TV 38, INC	MEDIA AD	1,480.00	
91759	2/5/2009	VALLEY POWER SYSTEMS, INC.	BUS PARTS	877.63	
91760	2/5/2009	WAXIE SANITARY SUPPLY DBA	JANITORIAL SUPPLIES	1,031.93	
91761	2/5/2009	RICHARD WEINBERG	DIRECTOR FEES	180.00	
91762	2/5/2009	WORKER'S COMPENSATION ADMIN.	PROFFESIONAL SERVICES	9,146.81	
91763	2/5/2009	AQUA-FLO	BUS WASH SUPPLIES	29.87	
91764	2/13/2009	ALLIED WASTE SERVICES #910	CONTAINER-DISPOSAL FEE	37.00	
91765	2/13/2009	BATTERY SYSTEMS OF OXNARD	BUS PARTS	564.50	

Check #	Date	Company	Description	Amount	Voids
91766	2/13/2009	CHEVRON & TEXACO CARD SERVIC	SERVICE VEHICLE FUEL	123.27	
91767	2/13/2009	COAST TRUCK PARTS	BUS PARTS	183.51	
91768	2/13/2009	CUMMINS CAL PACIFIC LLC	BUS PARTS	1,166.47	
91769	2/13/2009	DEAILE, MARY	PAYROLL RELATED	106.15	
91770	2/13/2009	DONS INDUSTRIAL, INC.	BUS PARTS/SHOP SUPPLIES	1,241.48	
91771	2/13/2009	FISHER, SHERRIE	REIMBURSEMENT	235.00	
91772	2/13/2009	GFI GENFARE, INC.	FAREBOX REPAIRS & PARTS	3,579.98	
91773	2/13/2009	GUARDIAN DENTAL INSURANCE	DENTAL INSURANCE	3,325.69	
91774	2/13/2009	GUARDIAN LIFE INS CO. CORP.	LIFE INSURANCE	941.20	
91775	2/13/2009	H&H WHOLESALE PARTS	SHOP SUPPLIES	1,740.77	
91776	2/13/2009	HOWIE ENTERPRISES DBA	BUS REPAIRS	725.00	
91777	2/13/2009	UNITED STATES TREASURY - IRS	PAYROLL RELATED	500.00	
91778	2/13/2009	SHERIFF CIVIL BUREAU	PAYROLL RELATED	613.54	
91779	2/13/2009	LECHUGA, JOSE	REIMBURSEMENT	44.00	
91780	2/13/2009	MC CORMIX CORP. (GAS)	FUEL-SERVICE VEHICLES	1,339.71	
91781	2/13/2009	MEDICAL EYE SERVICES, INC.	VISION SERVICES	356.24	
91782	2/13/2009	MOTOR COACH INDUSTRIES	BUS PARTS	485.15	
91783	2/13/2009	PREVOST CAR INC.- CREDIT DEPT.	BUS PARTS	169.76	
91784	2/13/2009	PLATINUM PLUS FOR BUSINESS	MISC. CREDIT CARD CHARGES	1,553.03	
91785	2/13/2009	SB COUNTY FEDERAL CREDIT UNIO	PAYROLL DEDUCTION	1,498.00	
91786	2/13/2009	SEELEY-RUIZ, KAREN	PAYROLL RELATED	75.69	
91787	2/13/2009	SO. CAL. EDISON CO.	UTILITIES	1,731.33	
91788	2/13/2009	SOCIAL SECURITY ADMINISTRATIO	PAYROLL RELATED	25.00	
91789	2/13/2009	SC FUELS DBA	FUEL	14,462.62	
91790	2/13/2009	STAR MACHINE & TOOL CORP.	SHOP EQUIPMENT REPAIR	409.68	
91791	2/13/2009	SB CITY OF-REFUSE/WATER	UTILITIES	2,475.14	
91792	2/13/2009	TEAMSTERS PENSION TRUST	UNION PENSION	87,194.29	
91793	2/13/2009	TEAMSTERS UNION LOCAL NO. 186	UNION DUES	9,320.21	
91794	2/13/2009	TRUCK TRAILER TRANSIT	BUS PARTS	1,819.52	
91795	2/13/2009	VALLEY POWER SYSTEMS, INC.	BUS PARTS	4.64	
91796	2/13/2009	VALERIANO, JUAN	PAYROLL DONATIONS	388.00	
				299,518.83	
Current Cash Report Voided Checks:				29.87	
Prior Cash Report Voided Checks:				0.00	
Grand Total:				\$299,488.96	

Santa Barbara Metropolitan Transit District
Cash Receipts of Accounts Receivable

Date	Company	Description	Amount
2/3/2009	Department of Rehabilitation	Passes/Token Sales	18.00
2/3/2009	Department of Rehabilitation	Passes/Token Sales	41.00
2/3/2009	Department of Rehabilitation	Passes/Token Sales	18.00
2/4/2009	Borrayo, Ruth	Health Insurance - Cobra	268.13
2/4/2009	Calles, Gilbert & Leandra	Health Insurance - Retiree	265.74
2/4/2009	Fountain, Melvin and Elizabeth	Health Insurance - Retiree	265.74
2/5/2009	Ali Habibi	Health Insurance - Retiree	2.87
2/6/2009	Wayne Kosaka Design	Advertising on Buses	3,040.00
2/9/2009	Blu Line Media	Advertising on Buses	293.25
2/9/2009	The Jewelry Mart	Advertising on Buses	250.00
2/10/2009	Blu Line Media	Advertising on Buses	293.25
2/10/2009	Blu Line Media	Advertising on Buses	293.25
2/11/2009	City of SB - Public Works	Passes/Token Sales	1,500.00
2/11/2009	City of SB Waterfront Department	Wharf Woody Shuttle - Feb 09	2,542.12
2/11/2009	Coastal View News	Advertising on Buses	400.00
2/11/2009	Coastal View News	Advertising on Buses	400.00
2/11/2009	Media 27	Advertising on Buses	8,807.00
2/12/2009	City of SB - Commuter Lot	Commuter Lot Shuttle - Feb 09	16,452.45
2/12/2009	City of SB - Transit Enhancement	Transit Enhancement - L1, 2, & 3 Feb 09	40,307.13
2/12/2009	City of SB Creeks Division	Advertising on Buses	483.00
2/12/2009	Godzilla Graphics	Advertising on Buses	3,866.00
2/13/2009	Cottage Hospital	Passes/Token Sales	8,200.00
Total Accounts Receivable Paid During Period			\$88,006.93



**AIR COMMERCIAL REAL ESTATE ASSOCIATION
STANDARD INDUSTRIAL/COMMERCIAL SINGLE-TENANT LEASE -- NET
(DO NOT USE THIS FORM FOR MULTI-TENANT BUILDINGS)**

1. Basic Provisions ("Basic Provisions").

1.1 **Parties:** This Lease ("Lease"), dated for reference purposes only February 26, 2009, is made by and between Santa Barbara Metropolitan Transit District ("Lessor") and Asti Holding Company, LLC, a California Limited Liability Company ("Lessee"), (collectively the "Parties," or individually a "Party").

1.2 **Premises:** That certain real property, including all improvements therein or to be provided by Lessor under the terms of this Lease, and commonly known as 5353 Overpass Road, City of Goleta, located in the County of Santa Barbara, State of California and generally described as (describe briefly the nature of the property and, if applicable, the "Project", if the property is located within a Project) An M-1 zoned lot of approximately 86,684 sf with the following structures: An office/ industrial building of approximately 6,400 sf; a "wash" building of approximately 1,300 sf; 2 overhangs totalling approximately 23,760 sf ("Premises"). (See also Paragraph 2)

1.3 **Term:** 10 years and 0 months ("Original Term") commencing May 1, 2009 ("Commencement Date") and ending April 30, 2019 ("Expiration Date"). (See also Paragraph 3)

1.4 **Early Possession:** March 1, 2009 ("Early Possession Date"). (See also Paragraphs 3.2 and 3.3)

1.5 **Base Rent:** \$14,000.00 per month ("Base Rent"), payable on the 1st day of each month commencing May 1, 2009. (See also Paragraph 4)

If this box is checked, there are provisions in this Lease for the Base Rent to be adjusted. See Paragraph 52

1.6 **Base Rent and Other Monies Paid Upon Execution:**
Base Rent: \$14,000.00 for the period May 1, 2009-May 31, 2009

- (b) **Security Deposit:** \$16,500.00 ("Security Deposit"). (See also Paragraph 5)
- (c) **Association Fees:** \$0.00 for the period _____
- (d) **Other:** \$2,500.00 for estimated NNN expenses for month of May 2009

(e) **Total Due Upon Execution of this Lease:** \$33,000.00

1.7 **Agreed Use:** As set forth in Addendum No. 1 hereto. (See also Paragraph 6)

1.8 **Insuring Party:** Lessor is the "Insuring Party" unless otherwise stated herein. (See also Paragraph 8)

1.9 **Real Estate Brokers:** (See also Paragraph 15)
(a) **Representation:** The following real estate brokers (the "Brokers") and brokerage relationships exist in this transaction (check applicable boxes):

- _____ represents Lessor exclusively ("Lessor's Broker");
- _____ represents Lessee exclusively ("Lessee's Broker"); or
- Radius Group Commercial Real Estate represents both Lessor and Lessee ("Dual Agency").

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

1.10 **Guarantor.** The obligations of the Lessee under this Lease are to be guaranteed by _____ ("Guarantor"). (See also Paragraph 37)

- 1.11 **Attachments.** Attached hereto are the following, all of which constitute a part of this Lease:
- an Addendum consisting of Paragraphs 51 through 51 ;
 - a plot plan depicting the Premises;
 - a current set of the Rules and Regulations;
 - a Work Letter;
 - other (specify): Rent Adjustment Addendum (Para. 52); First Option to Extend Addendum (Para. 53); Second Option to Extend Addendum (Para. 54); Right of First Offer Addendum (Para. 55); Hydraulic Lift Removal Addendum (Para. 56)

2. Premises.

2.1 **Letting.** Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Premises, for the term, at the rental, and upon all of the terms, covenants and conditions set forth in this Lease. Unless otherwise provided herein, any statement of size set forth in this Lease, or that may have been used in calculating Rent, is an approximation which the Parties agree is reasonable and any payments based thereon are not subject to revision whether or not the actual size is more or less. **Note: Lessee is advised to verify the actual size prior to executing this Lease.**

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

2.3 **Compliance.** ~~Lessor warrants that to the best of its knowledge the improvements on the Premises comply with the building codes, applicable laws, covenants or restrictions of record, regulations, and ordinances ("**Applicable Requirements**") that were in effect at the time that each improvement, or portion thereof, was constructed. Said warranty does not apply to the use to which Lessee will put the Premises, modifications which may be required by the Americans with Disabilities Act or any similar laws as a result of Lessee's use (see Paragraph 50), or to any Alterations or Utility Installations (as defined in Paragraph 7.3(a)) made or to be made by Lessee. **NOTE: Lessee is responsible for determining whether or not the Applicable Requirements, and especially the zoning, are appropriate for Lessee's intended use, and acknowledges that past uses of the Premises may no longer be allowed.** If the Premises do not comply with said warranty, Lessor shall, except as otherwise provided, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, rectify the same at Lessor's expense. If Lessee does not give Lessor written notice of a non-compliance with this warranty within 6 months following the Start Date, correction of that non-compliance shall be the obligation of Lessee at Lessee's sole cost and expense. If the Applicable Requirements are hereafter changed so as to require during the term of this Lease the construction of an addition to or an alteration of the Premises and/or Building, the remediation of any Hazardous Substance, or the reinforcement or other physical modification of the Unit, Premises and/or Building ("**Capital Expenditure**"), Lessor and Lessee shall allocate the cost of such work as follows:~~

(a) ~~Subject to Paragraph 2.3(c) below, if such Capital Expenditures are required as a result of the specific and unique use of the Premises by Lessee as compared with uses by tenants in general, Lessee shall be fully responsible for the cost thereof, provided, however that if such Capital Expenditure is required during the last 2 years of this Lease and the cost thereof exceeds 6 months' Base Rent, Lessee may instead terminate this Lease unless Lessor notifies Lessee, in writing, within 40 days after receipt of Lessee's termination notice that Lessor has elected to pay the difference between the actual cost thereof and an amount equal to 6 months' Base Rent. If Lessee elects termination, Lessee shall immediately cease the use of the Premises which requires such Capital Expenditure and deliver to Lessor written notice specifying a termination date at least 90 days thereafter. Such termination date shall, however, in no event be earlier than the last day that Lessee could legally utilize the Premises without commencing such Capital Expenditure.~~

(b) ~~If such Capital Expenditure is not the result of the specific and unique use of the Premises by Lessee (such as, governmentally mandated seismic modifications), then Lessor shall pay for such Capital Expenditure and Lessee shall only be obligated to pay, each month during the remainder of the term of this Lease, on the date that on which the Base Rent is due, an amount equal to 1/44th of the portion of such costs reasonably attributable to the Premises. Lessee shall pay interest on the balance but may prepay its obligation at any time. If, however, such Capital Expenditure is required during the last 2 years of this Lease or if Lessor reasonably determines that it is not economically feasible to pay its share thereof, Lessor shall have the option to terminate this Lease upon 90 days prior written notice to Lessee unless Lessee notifies Lessor, in writing, within 40 days after receipt of Lessor's termination notice that Lessee will pay for such Capital Expenditure. If Lessor does not elect to terminate, and fails to tender its share of any such Capital Expenditure, Lessee may advance such funds and deduct same, with interest, from Rent until Lessor's share of such costs have been fully paid. If Lessee is unable to finance Lessor's share, or if the balance of the Rent due and payable for the remainder of this Lease is not sufficient to fully reimburse Lessee on an offset basis, Lessee shall have the right to terminate this Lease upon 30 days written notice to Lessor.~~

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

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

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

3. **Term.**

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

3.2 **Early Possession.** If Lessee totally or partially occupies the Premises prior to the Commencement Date, the obligation to pay Base Rent shall be abated for the period of such early possession. All other terms of this Lease (including but not limited to the obligations to pay Real Property Taxes and insurance premiums and to maintain the Premises) shall be in effect during such period. Any such early possession shall not affect the Expiration Date.

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

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

4. **Rent.**

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

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

4.3 **Association Fees.** In addition to the Base Rent, Lessee shall pay to Lessor each month an amount equal to any owner's association or condominium fees levied or assessed against the Premises. Said monies shall be paid at the same time and in the same manner as the Base Rent.

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

6. **Use.**

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

to the change in the Agreed Use. (See Addendum Paragraph 51 ("Agreed Use").)

6.2 Hazardous Substances.

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

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

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

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

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

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

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

6.3 **Lessee's Compliance with Applicable Requirements.** Except as otherwise provided in this Lease, Lessee shall, at Lessee's sole expense, fully, diligently and in a timely manner, materially comply with all Applicable Requirements, the requirements of any applicable fire

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

6.4 **Inspection; Compliance.** Lessor and Lessor's "Lender" (as defined in Paragraph 30) and consultants shall have the right to enter into Premises at any time, in the case of an emergency, and otherwise at reasonable times after reasonable notice, for the purpose of inspecting the condition of the Premises and for verifying compliance by Lessee with this Lease. The cost of any such inspections shall be paid by Lessor, unless a violation of Applicable Requirements, or a Hazardous Substance Condition (see paragraph 9.1) is found to exist or be imminent, or the inspection is requested or ordered by a governmental authority. In such case, Lessee shall upon request reimburse Lessor for the cost of such inspection, so long as such inspection is reasonably related to the violation or contamination. In addition, Lessee shall provide copies of all relevant material safety data sheets (MSDS) to Lessor within 10 days of the receipt of a written request therefor.

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

7.1 **Lessee's Obligations.**

(a) **In General.** Subject to the provisions of Paragraph 2.2 (Condition), 2.3 (Compliance), 6.3 (Lessee's Compliance with Applicable Requirements), 7.2 (Lessor's Obligations), 9 (Damage or Destruction), and 14 (Condemnation), Lessee shall, at Lessee's sole expense, keep the Premises, Utility Installations (intended for Lessee's exclusive use, no matter where located), and Alterations in good order, condition and repair (whether or not the portion of the Premises requiring repairs, or the means of repairing the same, are reasonably or readily accessible to Lessee, and whether or not the need for such repairs occurs as a result of Lessee's use, any prior use, the elements or the age of such portion of the Premises), including, but not limited to, all equipment or facilities, such as plumbing, HVAC equipment, electrical, lighting facilities, boilers, pressure vessels, fire protection system, fixtures, walls (interior and exterior), foundations, ceilings, roofs, roof drainage systems, floors, windows, doors, plate glass, skylights, landscaping, driveways, parking lots, fences, retaining walls, signs, sidewalks and parkways located in, on, or adjacent to the Premises. Lessee, in keeping the Premises in good order, condition and repair, shall exercise and perform good maintenance practices, specifically including the procurement and maintenance of the service contracts required by Paragraph 7.1(b) below. Lessee's obligations shall include restorations, replacements or renewals when necessary to keep the Premises and all improvements thereon or a part thereof in good order, condition and state of repair. Lessee shall, during the term of this Lease, keep the exterior appearance of the Building in a first-class condition (including, e.g. graffiti removal) consistent with the exterior appearance of other similar facilities of comparable age and size in the vicinity, including, when necessary, the exterior repainting of the Building.

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

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

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

7.2 **Lessor's Obligations.** Subject to the provisions of Paragraphs 2.2 (Condition), 2.3 (Compliance), 9 (Damage or Destruction) and 14 (Condemnation), it is intended by the Parties hereto that Lessor have no obligation, in any manner whatsoever, to repair and maintain the Premises, or the equipment therein, all of which obligations are intended to be that of the Lessee. It is the intention of the Parties that the terms of this Lease govern the respective obligations of the Parties as to maintenance and repair of the Premises, and they expressly waive the benefit of any statute now or hereafter in effect to the extent it is inconsistent with the terms of this Lease.

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

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

(b) **Consent.** Lessee shall not make any Alterations or Utility Installations to the Premises without Lessor's prior written consent. Lessee may, however, make non-structural Utility Installations to the interior of the Premises (excluding the roof) without such consent but upon notice to Lessor, as long as they are not visible from the outside, do not involve puncturing, relocating or removing the roof or any existing walls, will not affect the electrical, plumbing, HVAC, and/or life safety systems, and the cumulative cost thereof during this Lease as extended does not exceed a sum equal

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

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

7.4 Ownership; Removal; Surrender; and Restoration.

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

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

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

8. Insurance; Indemnity.

8.1 **Payment For Insurance.** Lessee shall pay for all insurance required under Paragraph 8 except to the extent of the cost attributable to liability insurance carried by Lessor under Paragraph 8.2(b) in excess of \$5,000,000 ~~2,000,000~~ per occurrence. Premiums for policy periods commencing prior to or extending beyond the Lease term shall be prorated to correspond to the Lease term. Payment shall be made by Lessee to Lessor within 10 days following receipt of an invoice.

8.2 Liability Insurance.

(a) **Carried by Lessee.** Lessee shall obtain and keep in force a Commercial General Liability policy of insurance protecting Lessee and Lessor as an additional insured against claims for bodily injury, personal injury and property damage based upon or arising out of the ownership, use, occupancy or maintenance of the Premises and all areas appurtenant thereto. Such insurance shall be on an occurrence basis providing single limit coverage in an amount not less than \$5,000,000 ~~4,000,000~~ per occurrence, ~~with an annual aggregate of not less than \$2,000,000.~~ Lessee shall add Lessor as an additional insured by means of an endorsement at least as broad as the Insurance Service Organization's "Additional Insured-Managers or Lessors of Premises" Endorsement. The policy shall not contain any intra-insured exclusions as between insured persons or organizations, but shall include coverage for liability assumed under this Lease as an "insured contract" for the performance of Lessee's indemnity obligations under this Lease. The limits of said insurance shall not, however, limit the liability of Lessee nor relieve Lessee of any obligation hereunder. Lessee shall provide an endorsement on its liability policy(ies) which provides that its insurance shall be primary to and not contributory with any similar insurance carried by Lessor, whose insurance shall be considered excess insurance only.

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

8.3 Property Insurance - Building, Improvements and Rental Value.

(a) **Building and Improvements.** The Insuring Party shall obtain and keep in force a policy or policies in the name of Lessor, with loss payable to Lessor, any ground-lessor, and to any Lender insuring loss or damage to the Premises. The amount of such insurance shall be equal to the full insurable replacement cost of the Premises, as the same shall exist from time to time, or the amount required by any Lender, but in no event more than the commercially reasonable and available insurable value thereof. Lessee Owned Alterations and Utility Installations, Trade Fixtures, and

Lessee's personal property shall be insured by Lessee not by Lessor. If the coverage is available and commercially appropriate, such policy or policies shall insure against all risks of direct physical loss or damage (except the perils of flood and/or earthquake unless required by a Lender), including coverage for debris removal and the enforcement of any Applicable Requirements requiring the upgrading, demolition, reconstruction or replacement of any portion of the Premises as the result of a covered loss. Said policy or policies shall also contain an agreed valuation provision in lieu of any coinsurance clause, waiver of subrogation, and inflation guard protection causing an increase in the annual property insurance coverage amount by a factor of not less than the adjusted U.S. Department of Labor Consumer Price Index for All Urban Consumers for the city nearest to where the Premises are located. If such insurance coverage has a deductible clause, the deductible amount shall not exceed \$1,000 per occurrence, and Lessee shall be liable for such deductible amount in the event of an Insured Loss.

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

(c) **Adjacent Premises.** If the Premises are part of a larger building, or of a group of buildings owned by Lessor which are adjacent to the Premises, the Lessee shall pay for any increase in the premiums for the property insurance of such building or buildings if said increase is caused by Lessee's acts, omissions, use or occupancy of the Premises.

8.4 Lessee's Property; Business Interruption Insurance.

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

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

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

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

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

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

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

8.9 Failure to Provide Insurance. Lessee acknowledges that any failure on its part to obtain or maintain the insurance required herein will expose Lessor to risks and potentially cause Lessor to incur costs not contemplated by this Lease, the extent of which will be extremely difficult to ascertain. Accordingly, for any month or portion thereof that Lessee does not maintain the required insurance and/or does not provide Lessor with the required binders or certificates evidencing the existence of the required insurance, the Base Rent shall be automatically increased, without any requirement for notice to Lessee, by an amount equal to 10% of the then existing Base Rent or \$100, whichever is greater. The parties agree that such increase in Base Rent represents fair and reasonable compensation for the additional risk/costs that Lessor will incur by reason of Lessee's failure to maintain the required insurance. Such increase in Base Rent shall be in addition to any other rights or remedies of Lessor and shall in no event constitute a waiver of Lessee's Default or Breach with respect to the failure to maintain such insurance, prevent the exercise of any of the other

rights and remedies granted hereunder, nor relieve Lessee of its obligation to maintain the insurance specified in this Lease.

9. **Damage or Destruction.**

9.1 **Definitions.**

(a) "**Premises Partial Damage**" shall mean damage or destruction to the improvements on the Premises, other than Lessee Owned Alterations and Utility Installations, which can reasonably be repaired in 6 months or less from the date of the damage or destruction. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total. Notwithstanding the foregoing, Premises Partial Damage shall not include damage to windows, doors, and/or other similar items which Lessee has the responsibility to repair or replace pursuant to the provisions of Paragraph 7.1.

(b) "**Premises Total Destruction**" shall mean damage or destruction to the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which cannot reasonably be repaired in 6 months or less from the date of the damage or destruction. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

(c) "**Insured Loss**" shall mean damage or destruction to improvements on the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which was caused by an event required to be covered by the insurance described in Paragraph 8.3(a), irrespective of any deductible amounts or coverage limits involved.

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

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

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

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

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

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

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

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

damage, destruction, remediation, repair or restoration except as provided herein.

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

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

10. **Real Property Taxes.**

10.1 **Definition.** As used herein, the term "Real Property Taxes" shall include any form of assessment; real estate, general, special, ordinary or extraordinary, or rental levy or tax (other than inheritance, personal income or estate taxes); improvement bond; and/or license fee imposed upon or levied against any legal or equitable interest of Lessor, or *possessory interest of Lessee*, in the Premises or the Project, Lessor's right to other income therefrom, and/or Lessor's business of leasing, by any authority having the direct or indirect power to tax and where the funds are generated with reference to the Building address and where the proceeds so generated are to be applied by the city, county or other local taxing authority of a jurisdiction within which the Premises are located. Real Property Taxes shall also include any tax, fee, levy, assessment or charge, or any increase therein: (i) imposed by reason of events occurring during the term of this Lease, including but not limited to, a change in the ownership of the Premises, and (ii) levied or assessed on machinery or equipment provided by Lessor to Lessee pursuant to this Lease.

10.2 **Payment of Taxes.** In addition to Base Rent, Lessee shall pay to Lessor an amount equal to the Real Property Tax installment due at least 20 days prior to the applicable delinquency date. If any such installment shall cover any period of time prior to or after the expiration or termination of this Lease, Lessee's share of such installment shall be prorated. In the event Lessee incurs a late charge on any Rent payment, Lessor may estimate the current Real Property Taxes, and require that such taxes be paid in advance to Lessor by Lessee monthly in advance with the payment of the Base Rent. Such monthly payments shall be an amount equal to the amount of the estimated installment of taxes divided by the number of months remaining before the month in which said installment becomes delinquent. When the actual amount of the applicable tax bill is known, the amount of such equal monthly advance payments shall be adjusted as required to provide the funds needed to pay the applicable taxes. If the amount collected by Lessor is insufficient to pay such Real Property Taxes when due, Lessee shall pay Lessor, upon demand, such additional sum as is necessary. Advance payments may be intermingled with other moneys of Lessor and shall not bear interest. In the event of a Breach by Lessee in the performance of its obligations under this Lease, then any such advance payments may be treated by Lessor as an additional Security Deposit.

10.3 **Joint Assessment.** If the Premises are not separately assessed, Lessee's liability shall be an equitable proportion of the Real Property Taxes for all of the land and improvements included within the tax parcel assessed, such proportion to be conclusively determined by Lessor from the respective valuations assigned in the assessor's work sheets or such other information as may be reasonably available.

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

11. **Utilities and Services.** Lessee shall pay for all water, gas, heat, light, power, telephone, trash disposal and other utilities and services supplied to the Premises, together with any taxes thereon. If any such services are not separately metered or billed to Lessee, Lessee shall pay a reasonable proportion, to be determined by Lessor, of all charges jointly metered or billed. There shall be no abatement of rent and Lessor shall not be liable in any respect whatsoever for the inadequacy, stoppage, interruption or discontinuance of any utility or service due to riot, strike, labor dispute, breakdown, accident, repair or other cause beyond Lessor's reasonable control or in cooperation with governmental request or directions.

12. **Assignment and Subletting.**

12.1 **Lessor's Consent Required.**

(a) Lessee shall not voluntarily or by operation of law assign, transfer, mortgage or encumber (collectively, "assign or assignment") or sublet all or any part of Lessee's interest in this Lease or in the Premises without Lessor's prior written consent. *Lessee understands and agrees that in no event shall Lessor consent to any assignment or sublet contemplating any use (i) other than a use permitted under all applicable zoning laws and regulations; or, notwithstanding that the use is otherwise permitted under the zoning laws and regulations, (ii) which is a dirty or dusty use, including, but not limited to, dirty or dusty construction yard uses, dirty or dusty light or heavy manufacturing uses, dirty or dusty trash-handling uses, dirty or dusty recycling uses, dirty or dusty refuse uses, or dirty or dusty chemical storage uses.*

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

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

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

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

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

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

12.2 Terms and Conditions Applicable to Assignment and Subletting.

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

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

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

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

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

(f) Any assignee of, or sublessee under, this Lease shall, by reason of accepting such assignment, entering into such sublease, or entering into possession of the Premises or any portion thereof, be deemed to have assumed and agreed to conform and comply with each and every term, covenant, condition and obligation herein to be observed or performed by Lessee during the term of said assignment or sublease, other than such obligations as are contrary to or inconsistent with provisions of an assignment or sublease to which Lessor has specifically consented to in writing.

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

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

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

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

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

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

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

13. Default; Breach; Remedies.

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

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

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

LESSOR'S RIGHTS, INCLUDING LESSOR'S RIGHT TO RECOVER POSSESSION OF THE PREMISES.

(c) The failure of Lessee to allow Lessor and/or its agents access to the Premises or the commission of waste, act or acts constituting public or private nuisance, and/or an illegal activity on the Premises by Lessee, where such actions continue for a period of 3 business days following written notice to Lessee.

(d) The failure by Lessee to provide (i) reasonable written evidence of compliance with Applicable Requirements, (ii) the service contracts, (iii) the rescission of an unauthorized assignment or subletting, (iv) an Estoppel Certificate or financial statements, (v) a requested subordination, (vi) evidence concerning any guaranty and/or Guarantor, (vii) any document requested under Paragraph 42, (viii) material safety data sheets (MSDS), or (ix) any other documentation or information which Lessor may reasonably require of Lessee under the terms of this Lease, where any such failure continues for a period of 10 days following written notice to Lessee.

(e) A Default by Lessee as to the terms, covenants, conditions or provisions of this Lease, or of the rules adopted under Paragraph 40 hereof, other than those described in subparagraphs 13.1(a), (b), (c) or (d), above, where such Default continues for a period of 30 days after written notice; provided, however, that if the nature of Lessee's Default is such that more than 30 days are reasonably required for its cure, then it shall not be deemed to be a Breach if Lessee commences such cure within said 30 day period and thereafter diligently prosecutes such cure to completion.

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

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

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

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

(a) Terminate Lessee's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Lessee shall immediately surrender possession to Lessor. In such event Lessor shall be entitled to recover from Lessee: (i) the unpaid Rent which had been earned at the time of termination; (ii) the worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that the Lessee proves could have been reasonably avoided; (iii) the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that the Lessee proves could be reasonably avoided; and (iv) any other amount necessary to compensate Lessor for all the detriment proximately caused by the Lessee's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including but not limited to the cost of recovering possession of the Premises, expenses of reletting, including necessary renovation and alteration of the Premises, reasonable attorneys' fees, and that portion of any leasing commission paid by Lessor in connection with this Lease applicable to the unexpired term of this Lease. The worth at the time of award of the amount referred to in provision (iii) of the immediately preceding sentence shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of the District within which the Premises are located at the time of award plus one percent. Efforts by Lessor to mitigate damages caused by Lessee's Breach of this Lease shall not waive Lessor's right to recover damages under Paragraph 12. If termination of this Lease is obtained through the provisional remedy of unlawful detainer, Lessor shall have the right to recover in such proceeding any unpaid Rent and damages as are recoverable therein, or Lessor may reserve the right to recover all or any part thereof in a separate suit. If a notice and grace period required under Paragraph 13.1 was not previously given, a notice to pay rent or quit, or to perform or quit given to Lessee under the unlawful detainer statute shall also constitute the notice required by Paragraph 13.1. In such case, the applicable grace period required by Paragraph 13.1 and the unlawful detainer statute shall run concurrently, and the failure of Lessee to cure the Default within the greater of the two such grace periods shall constitute both an unlawful detainer and a Breach of this Lease entitling Lessor to the remedies provided for in this Lease and/or by said statute.

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

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

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

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

13.5 **Interest.** Any monetary payment due Lessor hereunder, other than late charges, not received by Lessor, when due as to scheduled payments (such as Base Rent) or within 30 days following the date on which it was due for non-scheduled payment, shall bear interest from the date when due, as to scheduled payments, or the 31st day after it was due as to non-scheduled payments. The interest ("**Interest**") charged shall be computed at the rate of 10% per annum but shall not exceed the maximum rate allowed by law. Interest is payable in addition to the potential late charge provided for in Paragraph 13.4.

13.6 **Breach by Lessor.**

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

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

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

15. **Brokerage Fees.**

15.1 **Additional Commission.** ~~In addition to the payments owed pursuant to Paragraph 1.9 above, and unless Lessor and the Brokers otherwise agree in writing, Lessor agrees that: (a) if Lessee exercises any Option, (b) if Lessee or anyone affiliated with Lessee acquires any rights to the Premises or other premises owned by Lessor and located within the same Project, if any, within which the Premises is located, (c) if Lessee remains in possession of the Premises, with the consent of Lessor, after the expiration of this Lease, or (d) if Base Rent is increased, whether by agreement or operation of an escalation clause herein, then, Lessor shall pay Brokers a fee in accordance with the schedule of the Brokers in effect at the time of the execution of this Lease.~~

15.2 **Assumption of Obligations.** ~~Any buyer or transferee of Lessor's interest in this Lease shall be deemed to have assumed Lessor's obligation hereunder. Brokers shall be third party beneficiaries of the provisions of Paragraphs 1.9, 15, 22 and 31. If Lessor fails to pay to Brokers any amounts due as and for brokerage fees pertaining to this Lease when due, then such amounts shall accrue interest. In addition, if Lessor fails to pay any amounts to Lessee's Broker when due, Lessee's Broker may send written notice to Lessor and Lessee of such failure and if Lessor fails to pay such amounts within 10 days after said notice, Lessee shall pay said monies to its Broker and offset such amounts against Rent. In addition, Lessee's Broker shall be deemed to be a third party beneficiary of any commission agreement entered into by and/or between Lessor and Lessor's Broker for the limited purpose of collecting any brokerage fee owed.~~

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

16. **Estoppel Certificates.**

(a) Each Party (as "**Responding Party**") shall within 10 days after written notice from the other Party (the "**Requesting Party**")

execute, acknowledge and deliver to the Requesting Party a statement in writing in form similar to the then most current "Estoppel Certificate" form published by the AIR Commercial Real Estate Association, plus such additional information, confirmation and/or statements as may be reasonably requested by the Requesting Party.

(b) If the Responding Party shall fail to execute or deliver the Estoppel Certificate within such 10 day period, the Requesting Party may execute an Estoppel Certificate stating that: (i) the Lease is in full force and effect without modification except as may be represented by the Requesting Party, (ii) there are no uncured defaults in the Requesting Party's performance, and (iii) if Lessor is the Requesting Party, not more than one month's rent has been paid in advance. Prospective purchasers and encumbrancers may rely upon the Requesting Party's Estoppel Certificate, and the Responding Party shall be estopped from denying the truth of the facts contained in said Certificate.

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

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

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

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

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

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

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

23. **Notices.**

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

23.2 **Date of Notice.** Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, the postmark thereon. If sent by regular mail the notice shall be deemed given 72 hours after the same is addressed as required herein and mailed with postage prepaid. Notices delivered by United States Express Mail or overnight courier that guarantee next day delivery shall be deemed given 24 hours after delivery of the same to the Postal Service or courier. Notices transmitted by facsimile transmission or similar means shall be deemed delivered upon telephone confirmation of receipt (confirmation report from fax machine is sufficient), provided a copy is also delivered via delivery or mail. If notice is received on a Saturday, Sunday or legal holiday, it shall be deemed received on the next business day.

24. **Waivers.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37. **Guarantor.**

37.1 **Execution.** The Guarantors, if any, shall each execute a guaranty in the form most recently published by the AIR Commercial Real Estate Association, and each such Guarantor shall have the same obligations as Lessee under this Lease.

37.2 **Default.** It shall constitute a Default of the Lessee if any Guarantor fails or refuses, upon request to provide: (a) evidence of the execution of the guaranty, including the authority of the party signing on Guarantor's behalf to obligate Guarantor, and in the case of a corporate

Guarantor, a certified copy of a resolution of its board of directors authorizing the making of such guaranty, (b) current financial statements, (c) an Estoppel Certificate, or (d) written confirmation that the guaranty is still in effect.

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

39. **Options.** If Lessee is granted an Option, as defined below, then the following provisions shall apply:

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

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

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

39.4 **Effect of Default on Options.**

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

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

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

40. **Multiple Buildings.** If the Premises are a part of a group of buildings controlled by Lessor, Lessee agrees that it will abide by and conform to all reasonable rules and regulations which Lessor may make from time to time for the management, safety, and care of said properties, including the care and cleanliness of the grounds and including the parking, loading and unloading of vehicles, and to cause its employees, suppliers, shippers, customers, contractors and invitees to so abide and conform. Lessee also agrees to pay its fair share of common expenses incurred in connection with such rules and regulations.

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

42. **Reservations.** Lessor reserves to itself the right, from time to time, to grant, without the consent or joinder of Lessee, such easements, rights and dedications that Lessor deems necessary, and to cause the recordation of parcel maps and restrictions, so long as such easements, rights, dedications, maps and restrictions do not unreasonably interfere with the use of the Premises by Lessee. Lessee agrees to sign any documents reasonably requested by Lessor to effectuate any such easement rights, dedication, map or restrictions.

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

44. **Authority; Multiple Parties; Execution.**

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

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

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

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

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

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

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

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

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

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

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

1. SEEK ADVICE OF COUNSEL AS TO THE LEGAL AND TAX CONSEQUENCES OF THIS LEASE.
2. RETAIN APPROPRIATE CONSULTANTS TO REVIEW AND INVESTIGATE THE CONDITION OF THE PREMISES. SAID INVESTIGATION SHOULD INCLUDE BUT NOT BE LIMITED TO: THE POSSIBLE PRESENCE OF HAZARDOUS SUBSTANCES, THE ZONING OF THE PREMISES, THE STRUCTURAL INTEGRITY, THE CONDITION OF THE ROOF AND OPERATING SYSTEMS, AND THE SUITABILITY OF THE PREMISES FOR LESSEE'S INTENDED USE.

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

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

Executed at: _____ Executed at: _____
On: _____ On: _____

By LESSOR: SANTA BARBARA METROPOLITAN TRANSIT DISTRICT By LESSEE: ASTI HOLDING COMPANY, LLC,
a California Limited Liability Company

By: _____ By: _____
Name Printed: Sherrie Fisher Name Printed: Mario Borgatello
Title: General Manager Title: Manager

By: _____ By: _____
Name Printed: _____ Name Printed: David Borgatello
Title: _____ Title: Manager

Address: 550 Olive Street Address: 136 North Quarantina Street
Santa Barbara, CA 93101 Santa Barbara, CA 93103

Telephone: (805) 963-3364 Telephone: (805) 963-1852

Facsimile: (805) 962-4794 Facsimile: (805) 962-0552

Federal ID No. _____ Federal ID No. _____

BROKER: RADIUS GROUP COMMERCIAL REAL ESTATE **BROKER:** RADIUS GROUP COMMERCIAL REAL ESTATE

Attn: Bob Tuler Attn: Paul Gamberdella
Title: _____ Title: _____

Address: 205 E. Carrillo St., Suite 100 Address: 205 E. Carrillo St., Suite 100
Santa Barbara, CA 93101 Santa Barbara, CA 93101

Telephone: (805) 965-5500 Telephone: (805) 965-5500

Facsimile:(805) 965-5300

Facsimile:(805) 965-5300

Federal ID No. _____

Federal ID No. _____

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ADDENDUM

Date: February 26, 2009

By and Between (Lessor) Santa Barbara Metropolitan Transit District
(Lessee) Asti Holding Company, LLC, a Calif. Limited Liability Company

Address of Premises: 5353 Overpass Road
Goleta, California 93117

Paragraph 51

In the event of any conflict between the provisions of this Addendum and the printed provisions of the Lease, this Addendum shall control.

AGREED USE.

The Premises shall be used and occupied for outside storage, warehouse, office and light industrial use consistent with applicable zoning. Without limitation, such use particularly includes and excludes the following:

- 1) Lessee may store mobile shower trailers, mobile restroom trailers, portable restrooms, bins, cans, carts, roll-off boxes and storage boxes, all of which shall be empty. Lessee may wash the mobile shower trailers, mobile restroom trailers, portable restrooms, bins, cans, carts, roll-off boxes and storage boxes in the designated wash rack. Lessee will not sort, dump, or handle any garbage, refuse, or hazardous materials on site.
- 2) Lessee may store processed bailed commodities, including aluminum, plastic and fiber on-site in a clean and orderly fashion.
- 3) Lessee may park empty fleet vehicles on site and maintain empty fleet vehicles on site. Lessee may wash fleet vehicles in the designated wash rack. Lessee will not conduct fueling or refueling of vehicles on site.
- 4) Lessee may utilize the site for on site storage of confidential documents. Shredding machines may be utilized by Lessee on site for document shredding purposes. Shredded material may then be stored on-site in a clean and orderly fashion.

Consistent with Section 7.3 of the Lease, Lessee shall have the right, at its sole cost and expense, to remove the washing equipment in the wash building and convert said building for use as a warehouse. In the event Lessee removes the wash equipment, Lessee shall not be obligated to replace or re-install the removed equipment.



RENT ADJUSTMENT(S)
STANDARD LEASE ADDENDUM

Dated February 26, 2009

By and Between (Lessor) SANTA BARBARA METROPOLITAN TRANSIT DISTRICT

(Lessee) ASTI HOLDING COMPANY, LLC, a California Limited Liability Company

Address of Premises: 5353 Overpass Road
Goleta, California 93117

Paragraph 52

A. RENT ADJUSTMENTS:

The monthly rent for each month of the adjustment period(s) specified below shall be increased using the method(s) indicated below:
(Check Method(s) to be Used and Fill in Appropriately)

[X] I. Cost of Living Adjustment(s) (COLA)

a. On (Fill in COLA Dates): May 1, 2010, May 1, 2011, May 1, 2012, May 1, 2013, May 1, 2014, May 1, 2015, May 1, 2016, May 1, 2017, May 1, 2018

the Base Rent shall be adjusted by the change, if any, from the Base Month specified below, in the Consumer Price Index of the Bureau of Labor Statistics of the U.S. Department of Labor for (select one): [] CPI W (Urban Wage Earners and Clerical Workers) or [X] CPI U (All Urban Consumers), for (Fill in Urban Area):

Los Angeles-Riverside-Orange County

(1982-1984 = 100), herein referred to as "CPI". All Items

b. The monthly rent payable in accordance with paragraph A.1.a. of this Addendum shall be calculated as follows: the Base Rent set forth in paragraph 1.5 of the attached Lease, shall be multiplied by a fraction the numerator of which shall be the CPI of the calendar month 2 months prior to the month(s) specified in paragraph A.1.a. above during which the adjustment is to take effect, and the denominator of which shall be the CPI of the calendar month which is 2 months prior to (select one): the [X] first month of the term of this Lease as set forth in paragraph 1.3 ("Base Month") or [] (Fill in Other "Base Month"): . The sum so calculated shall constitute the new monthly rent hereunder, but in no event, shall any such new monthly rent be less than the rent payable for the month immediately preceding the rent adjustment. In no event shall any such new monthly rent determined under this Part I be more than 105% of the rent payable for the month immediately preceding the rent adjustment.

c. In the event the compilation and/or publication of the CPI shall be transferred to any other governmental department or bureau or agency or shall be discontinued, then the index most nearly the same as the CPI shall be used to make such calculation. In the event that the Parties cannot agree on such alternative index, then the matter shall be submitted for decision to the American Arbitration Association in accordance with the then rules of said Association and the decision of the arbitrators shall be binding upon the parties. The cost of said Arbitration shall be paid equally by the Parties.

[] II. Market Rental Value Adjustment(s) (MRV)

a. On (Fill in MRV Adjustment Date(s):

the Base Rent shall be adjusted to the "Market Rental Value" of the property as follows:

1) Four months prior to each Market Rental Value Adjustment Date described above, the Parties shall attempt to agree upon what the new MRV will be on the adjustment date. If agreement cannot be reached within thirty days, then:

(a) Lessor and Lessee shall immediately appoint a mutually acceptable appraiser or broker to establish the new MRV within the next 30 days. Any associated costs will be split equally between the Parties, or

(b) Both Lessor and Lessee shall each immediately make a reasonable determination of the MRV and submit such determination, in writing, to arbitration in accordance with the following provisions:

(i) Within 15 days thereafter, Lessor and Lessee shall each select an [] appraiser or [] broker ("Consultant" - check one) of their choice to act as an arbitrator. The two arbitrators so appointed shall immediately select a third mutually acceptable Consultant to act as a third arbitrator.

(ii) The 3 arbitrators shall within 30 days of the appointment of the third arbitrator reach a decision as to what the actual MRV for the Premises is, and whether Lessor's or Lessee's submitted MRV is the closest thereto. The decision of a majority of the arbitrators

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shall be binding on the Parties. The submitted MRV which is determined to be the closest to the actual MRV shall thereafter be used by the Parties.

(iii) If either of the Parties fails to appoint an arbitrator within the specified 15 days, the arbitrator timely appointed by one of them shall reach a decision on his or her own, and said decision shall be binding on the Parties.

(iv) The entire cost of such arbitration shall be paid by the party whose submitted MRV is not selected, i.e., the one that is NOT the closest to the actual MRV.

2) Notwithstanding the foregoing, the new MRV shall not be less than the rent payable for the month immediately preceding the rent adjustment.

b. Upon the establishment of each New Market Rental Value:
1) the new MRV will become the new "Base Rent" for the purpose of calculating any further Adjustments, and
2) the first month of each Market Rental Value term shall become the new "Base Month" for the purpose of calculating any further Adjustments.

III. Fixed Rental Adjustment(s) (FRA)

The Base Rent shall be increased to the following amounts on the dates set forth below:

On (Fill in FRA Adjustment Date(s)):

The New Base Rent shall be:

B. NOTICE:
Unless specified otherwise herein, notice of any such adjustments, other than Fixed Rental Adjustments, shall be made as specified in paragraph 23 of the Lease.

C. BROKER'S FEE:
~~The Brokers shall be paid a Brokerage Fee for each adjustment specified above in accordance with paragraph 15 of the Lease.~~

NOTICE: These forms are often modified to meet changing requirements of law and industry needs. Always write or call to make sure you are utilizing the most current form: AIR Commercial Real Estate Association, 800 W 6th Street, Suite 800, Los Angeles, CA 90017. Telephone No. (213) 687-8777. Fax No.: (213) 687-8616.

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OPTION(S) TO EXTEND
STANDARD LEASE ADDENDUM

Dated February 26, 2009

By and Between (Lessor) SANTA BARBARA METROPOLITAN TRANSIT DISTRICT

By and Between (Lessee) ASTI HOLDING COMPANY, LLC, a California
Limited Liability Company

Address of Premises: 5353 Overpass Road
Goleta, California 93117

Paragraph 53

A. FIRST OPTION(S) TO EXTEND:

Lessor hereby grants to Lessee the a first option to extend the term of this Lease for 1 additional
60 month period(s) commencing when the prior term expires upon each and all of the following terms and conditions:

- (i) In order to exercise an option to extend, Lessee must give written notice of such election to Lessor and Lessor must receive the same at
least 6 but not more than 12 months prior to the date that the option period would commence, time being of the essence.
(ii) The provisions of paragraph 39, including those relating to Lessee's Default set forth in paragraph 39.4 of this Lease, are conditions of
this Option.
(iii) Except for the provisions of this Lease granting an option or options to extend the term, all of the terms and conditions of this Lease
except where specifically modified by this option shall apply.
(iv) This Option is personal to the original Lessee, and cannot be assigned or exercised by anyone other than said original Lessee and only
while the original Lessee is in full possession of the Premises and without the intention of thereafter assigning or subletting.
(v) The monthly rent for each month of the option period shall be calculated as follows, using the method(s) indicated below:
(Check Method(s) to be Used and Fill in Appropriately)

[X] I. Cost of Living Adjustment(s) (COLA)
a. On (Fill in COLA Dates): May 1, 2020; May 1, 2021; May 1, 2022; May 1, 2023

the Base Rent shall be adjusted by the change, if any, from the Base Month specified below, in the Consumer Price Index of the Bureau of Labor
Statistics of the U.S. Department of Labor for (select one): [] CPI W (Urban Wage Earners and Clerical Workers) or [X] CPI U (All Urban Consumers),
for (Fill in Urban Area):
Los Angeles-Riverside-Orange County
All Items (1982-1984 = 100), herein referred to as "CPI".

b. The monthly rent payable in accordance with paragraph A.I.a. of this Addendum shall be calculated as follows: the Base Rent set forth in
paragraph 1.5 of the attached Lease, shall be multiplied by a fraction the numerator of which shall be the CPI of the calendar month 2 months prior to
the month(s) specified in paragraph A.I.a. above during which the adjustment is to take effect, and the denominator of which shall be the CPI of the
calendar month which is 2 months prior to (select one): [] the first month of the term of this Lease as set forth in paragraph 1.3 ("Base Month") or [X]
(Fill in Other "Base Month"):
May 1, 2019

The sum so calculated shall constitute the new monthly rent hereunder, but in no event, shall any such new monthly rent be less than the rent payable
for the month immediately preceding the rent adjustment. In no event shall any such new monthly rent determined under this Part I be more
than 105% of the rent payable for the month immediately preceding the rent adjustment.

c. In the event the compilation and/or publication of the CPI shall be transferred to any other governmental department or bureau or agency or
shall be discontinued, then the index most nearly the same as the CPI shall be used to make such calculation. In the event that the Parties cannot
agree on such alternative index, then the matter shall be submitted for decision to the American Arbitration Association in accordance with the then
rules of said Association and the decision of the arbitrators shall be binding upon the parties. The cost of said Arbitration shall be paid equally by the
Parties.

[X] II. Market Rental Value Adjustment(s) (MRV)
a. On (Fill in MRV Adjustment Date(s)) May 1, 2019

the Base Rent shall be adjusted to the "Market Rental Value" of the property as follows:
1) Four months prior to each Market Rental Value Adjustment Date described above, the Parties shall attempt to agree upon what the new
MRV will be on the adjustment date. If agreement cannot be reached, within thirty days, then:

(a) Lessor and Lessee shall immediately appoint a mutually acceptable appraiser or broker to establish the new MRV within the next 30

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days. Any associated costs will be split equally between the Parties, or

(b) Both Lessor and Lessee shall each immediately make a reasonable determination of the MRV and submit such determination, in writing, to arbitration in accordance with the following provisions:

(i) Within 15 days thereafter, Lessor and Lessee shall each select an appraiser or broker ("**Consultant**" - check one) of their choice to act as an arbitrator. The two arbitrators so appointed shall immediately select a third mutually acceptable Consultant to act as a third arbitrator.

(ii) The 3 arbitrators shall within 30 days of the appointment of the third arbitrator reach a decision as to what the actual MRV for the Premises is, and whether Lessor's or Lessee's submitted MRV is the closest thereto. The decision of a majority of the arbitrators shall be binding on the Parties. The submitted MRV which is determined to be the closest to the actual MRV shall thereafter be used by the Parties.

(iii) If either of the Parties fails to appoint an arbitrator within the specified 15 days, the arbitrator timely appointed by one of them shall reach a decision on his or her own, and said decision shall be binding on the Parties.

(iv) The entire cost of such arbitration shall be paid by the party whose submitted MRV is not selected, ie. the one that is NOT the closest to the actual MRV.

2) Notwithstanding the foregoing, the new MRV shall not be less than the rent payable for the month immediately preceding the rent adjustment.

b. Upon the establishment of each New Market Rental Value:

- 1) the new MRV will become the new "Base Rent" for the purpose of calculating any further Adjustments, and
- 2) the first month of each Market Rental Value term shall become the new "Base Month" for the purpose of calculating any further Adjustments.

III. Fixed Rental Adjustment(s) (FRA)

The Base Rent shall be increased to the following amounts on the dates set forth below:

On (Fill in FRA Adjustment Date(s)):	The New Base Rent shall be:
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

B. NOTICE:

Unless specified otherwise herein, notice of any rental adjustments, other than Fixed Rental Adjustments, shall be made as specified in paragraph 23 of the Lease.

C. BROKER'S FEE:

~~The Brokers shall be paid a Brokerage Fee for each adjustment specified above in accordance with paragraph 15 of the Lease.~~

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OPTION(S) TO EXTEND
STANDARD LEASE ADDENDUM

Dated February 26, 2009

By and Between (Lessor) SANTA BARBARA METROPOLITAN TRANSIT DISTRICT

By and Between (Lessee) ASTI HOLDING COMPANY, LLC, a California Limited Liability Company

Address of Premises: 5353 Overpass Road
Goleta, California 93117

Paragraph 54

A. SECOND OPTION(S) TO EXTEND:

Lessor hereby grants to Lessee the a second option to extend the term of this Lease for 1 additional 60 month period(s) commencing when the prior term expires upon each and all of the following terms and conditions:

(i) In order to exercise an option to extend, Lessee must give written notice of such election to Lessor and Lessor must receive the same at least 6 but not more than 12 months prior to the date that the option period would commence, time being of the essence. If proper notification of the exercise of an option is not given and/or received, such option shall automatically expire. Options (if there are more than one) may only be exercised consecutively.

(ii) The provisions of paragraph 39, including those relating to Lessee's Default set forth in paragraph 39.4 of this Lease, are conditions of this Option.

(iii) Except for the provisions of this Lease granting an option or options to extend the term, all of the terms and conditions of this Lease except where specifically modified by this option shall apply.

(iv) This Option is personal to the original Lessee, and cannot be assigned or exercised by anyone other than said original Lessee and only while the original Lessee is in full possession of the Premises and without the intention of thereafter assigning or subletting.

(v) The monthly rent for each month of the option period shall be calculated as follows, using the method(s) indicated below: (Check Method(s) to be Used and Fill in Appropriately)

I. Cost of Living Adjustment(s) (COLA)

a. On (Fill in COLA Dates): May 1, 2024; May 1, 2025; May 1, 2026; May 1, 2027

the Base Rent shall be adjusted by the change, if any, from the Base Month specified below, in the Consumer Price Index of the Bureau of Labor Statistics of the U.S. Department of Labor for (select one): CPI W (Urban Wage Earners and Clerical Workers) or CPI U (All Urban Consumers), for (Fill in Urban Area):

Los Angeles-Riverside-Orange County
All Items (1982-1984 = 100), herein referred to as "CPI".

b. The monthly rent payable in accordance with paragraph A.i.a. of this Addendum shall be calculated as follows: the Base Rent set forth in paragraph 1.5 of the attached Lease, shall be multiplied by a fraction the numerator of which shall be the CPI of the calendar month 2 months prior to the month(s) specified in paragraph A.i.a. above during which the adjustment is to take effect, and the denominator of which shall be the CPI of the calendar month which is 2 months prior to (select one): the first month of the term of this Lease as set forth in paragraph 1.3 ("Base Month") or April 1, 2024

The sum so calculated shall constitute the new monthly rent hereunder, but in no event, shall any such new monthly rent be less than the rent payable for the month immediately preceding the rent adjustment. In no event shall any such new monthly rent determined under this Part I be more than 105% of the rent payable for the month immediately preceding the rent adjustment.

c. In the event the compilation and/or publication of the CPI shall be transferred to any other governmental department or bureau or agency or shall be discontinued, then the index most nearly the same as the CPI shall be used to make such calculation. In the event that the Parties cannot agree on such alternative index, then the matter shall be submitted for decision to the American Arbitration Association in accordance with the then rules of said Association and the decision of the arbitrators shall be binding upon the parties. The cost of said Arbitration shall be paid equally by the Parties.

II. Market Rental Value Adjustment(s) (MRV)

a. On (Fill in MRV Adjustment Date(s))

the Base Rent shall be adjusted to the "Market Rental Value" of the property as follows:

1) Four months prior to each Market Rental Value Adjustment Date described above, the Parties shall attempt to agree upon what the new MRV will be on the adjustment date. If agreement cannot be reached, within thirty days, then:

(a) Lessor and Lessee shall immediately appoint a mutually acceptable appraiser or broker to establish the new MRV within the next 30

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days. Any associated costs will be split equally between the Parties, or

(b) Both Lessor and Lessee shall each immediately make a reasonable determination of the MRV and submit such determination, in writing, to arbitration in accordance with the following provisions:

(i) Within 15 days thereafter, Lessor and Lessee shall each select an appraiser or broker ("**Consultant**" - check one) of their choice to act as an arbitrator. The two arbitrators so appointed shall immediately select a third mutually acceptable Consultant to act as a third arbitrator.

(ii) The 3 arbitrators shall within 30 days of the appointment of the third arbitrator reach a decision as to what the actual MRV for the Premises is, and whether Lessor's or Lessee's submitted MRV is the closest thereto. The decision of a majority of the arbitrators shall be binding on the Parties. The submitted MRV which is determined to be the closest to the actual MRV shall thereafter be used by the Parties.

(iii) If either of the Parties fails to appoint an arbitrator within the specified 15 days, the arbitrator timely appointed by one of them shall reach a decision on his or her own, and said decision shall be binding on the Parties.

(iv) The entire cost of such arbitration shall be paid by the party whose submitted MRV is not selected, ie. the one that is NOT the closest to the actual MRV.

2) Notwithstanding the foregoing, the new MRV shall not be less than the rent payable for the month immediately preceding the rent adjustment.

b. Upon the establishment of each New Market Rental Value:

1) the new MRV will become the new "Base Rent" for the purpose of calculating any further Adjustments, and

2) the first month of each Market Rental Value term shall become the new "Base Month" for the purpose of calculating any further Adjustments.

III. Fixed Rental Adjustment(s) (FRA)

The Base Rent shall be increased to the following amounts on the dates set forth below:

On (Fill in FRA Adjustment Date(s)):	The New Base Rent shall be:
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

B. NOTICE:

Unless specified otherwise herein, notice of any rental adjustments, other than Fixed Rental Adjustments, shall be made as specified in paragraph 23 of the Lease.

C. BROKER'S FEE:

~~The Brokers shall be paid a Brokerage Fee for each adjustment specified above in accordance with paragraph 15 of the Lease.~~

NOTICE: These forms are often modified to meet changing requirements of law and industry needs. Always write or call to make sure you are utilizing the most current form: AIR Commercial Real Estate Association, 800 W 6th Street, Suite 800, Los Angeles, CA 90017. Telephone No. (213) 687-8777. Fax No.: (213) 687-8616.

INITIALS

INITIALS



ADDENDUM

Date: February 26, 2009

By and Between (Lessor) Santa Barbara Metropolitan Transit District
(Lessee) Asti Holding Company, LLC, a Calif. Limited Liability Company

Address of Premises: 5353 Overpass Road
Goleta, California 93117

Paragraph 55

In the event of any conflict between the provisions of this Addendum and the printed provisions of the Lease, this Addendum shall control.

RIGHT OF FIRST OFFER TO PURCHASE

a. During the lease term and any extensions thereof (the "First Offer Period"), Lessee shall have a right of First Offer to purchase the Premises. Lessee's right of First Offer shall be treated as an "Option," solely for purposes of paragraph 39 of the Lease, and is subject to all of the provisions and limitations set forth in that paragraph.

b. If, during the First Offer Period, Lessor desires to sell the Premises and Lessor has first complied with all applicable laws and regulations concerning the disposition of excess or surplus government property, and the land is not leased or sold during that process and thereafter may be offered for sale to Lessee and other members of the general public, Lessor shall give written notice (the "First Offer Notice") to Lessee of the asking price and desired general terms for a sale at least thirty (30) days prior to marketing the sale of the Premises to the general public. Lessor is not, however, under any obligation to sell the Premises regardless of Lessee's potential offer.

c. If Lessor should send a First Offer Notice to Lessee and Lessee wishes to exercise Lessee's right of First Offer with respect to the Premises, then within thirty (30) days of delivery of the First Offer Notice to Lessee, Lessee shall deliver notice to Lessor of Lessee's exercise of its right of First Offer. Lessee's notice of exercise of that right shall be in the form of a binding offer to purchase the Premises (the "Offer") for evaluation by Lessor.

d. If Lessee does not deliver to Lessor its Offer with respect to the Premises within the specified delivery period, time being of the essence, then Lessee's right of First Offer shall terminate.

e. If Lessee does deliver the required Offer in a timely fashion, then Lessor shall evaluate said Offer. If Lessor accepts said Offer, then the parties shall proceed with the sale in accordance with the terms of Lessee's Offer. However, if Lessor, in its sole and absolute discretion, determines that the Offer is unacceptable for whatever reason, then Lessor, to the extent permissible under then existing California and/or federal law, shall be precluded for a period of (ninety) 90 days from selling the Premises to a third party on terms which are materially less favorable than those offered by Lessee in its Offer.



ADDENDUM

Date: February 26, 2009

By and Between (Lessor) Santa Barbara Metropolitan Transit District
(Lessee) Asti Holding Company, LLC, a Calif. Limited Liability Company

Address of Premises: 5353 Overpass Road
Goleta, California 93117

Paragraph 56

In the event of any conflict between the provisions of this Addendum and the printed provisions of the Lease, this Addendum shall control.

HYDRAULIC LIFT REMOVAL

Lessor (at Lessor's cost) shall remove the hydraulic vehicle lift equipment on the Premises. Lessor (at Lessor's cost) shall investigate and determine whether there is a Hazardous Substance Condition (as defined in Para. 9.1(e) of the Lease) on the Premises at the location from which the equipment was removed. If a Hazardous Substance Condition is discovered, Lessor shall be responsible for remediating said condition at Lessor's sole expense. Lessor shall address the hydraulic lift removal and Hazardous Substance investigation diligently upon the mutual execution of this Lease by Lessor and Lessee. Lessee shall provide Lessor and Lessor's agents reasonable access to the Premises at reasonable times in order to carry out Lessor's responsibilities under this Paragraph. Consequently, during the time that the hydraulic lifts are being removed, the site investigated, and, if necessary, any Hazardous Substance Condition remediated, Lessee acknowledges and agrees that it will not have access to that portion of the Premises that Lessor requires to perform its responsibilities under this Paragraph. Lessee shall otherwise retain all of its rights under the Lease to occupy and use the Premises, and all of the economic terms and conditions of the Lease Agreement shall remain unchanged notwithstanding Lessee's lack of access.

Nothing in this Paragraph 56 is intended to modify Lessor's and Lessee's rights and obligations under Paragraph 6.2 (Hazardous Substances) of this Lease except as expressly set forth herein.



BOARD OF DIRECTORS REPORT

MEETING DATE: FEBRUARY 25, 2009 AGENDA ITEM #: 10

TYPE: ACTION ITEM

PREPARED BY: STEVE MAAS

REVIEWED BY: GENERAL MANAGER

Signature

GM Signature

SUBJECT: FTA Section 5307 Small Urbanized Area Transit Funding

RECOMMENDATION:

Approve MTD's "Public Transit Operating & Capital Assistance" application to be awarded all Federal Transit Administration (FTA) Section 5307 funding apportioned to the Santa Barbara Urbanized Area for FY 2010, FY 2011, and FY 2012.

DISCUSSION:

The Santa Barbara County Association of Governments (SBCAG), in collaboration with MTD and the cities of Santa Maria and Lompoc, has developed project selection procedures for transit projects funded with Federal Section 5307 funds. The procedures have been approved by the Federal Transit Administration (FTA) and the Federal Highway Administration (FHWA).

MTD, in coordination with SBCAG, conducted a call for projects for Santa Barbara Urbanized Area Section 5307 funds for FY 2010, FY 2011, and FY 2012. A public notice announcing the availability of Section 5307 funds was published in the Santa Barbara News-Press on Sunday, January 18, 2009. The public notice announced that applications were due to MTD for Section 5307 funds apportioned to the Santa Barbara Urbanized Area by 4:00 P.M. on February 6. The only application received was MTD's application for "Public Transit Operating & Capital Assistance." The MTD application is attached.

Two MTD staff members independently scored MTD's application. The average score is 95.5 out of a possible 100. A table is attached that provides the scores.

Staff recommends that the MTD Board approve MTD's "Public Transit Operating & Capital Assistance" application to be awarded all FTA Section 5307 funding apportioned to the Santa Barbara Urbanized Area for FY 2010, FY 2011, and FY 2012.

As described in the adopted "FTA 5307 Transit Project Selection Procedures," several steps remain in the process. Following the MTD Board's decision,

SBCAG's Technical Transportation Advisory Committee (TTAC) will recommend either concurrence with or rejection of the MTD Board's decision. Next, at their April 16, 2009, meeting, the SBCAG Board will either concur with or reject the MTD Board's decision. Finally, assuming SBCAG Board concurrence with the MTD Board's decision, concurrence from Caltrans and FTA is the final step in the process.

ATTACHMENTS:

- MTD Section 5307 Application for "Public Transit Operating & Capital Assistance"
- Scoring Chart for MTD Section 5307 Application



RECEIVED
FEB 06 2009 2:56P
S.B.M.T.D. (initials)



**APPLICATION FORM
FTA Section 5307
Small Urbanized Area Transit Funding**

Project Submittal Sheet

PROJECT TITLE: Public Transit Operating & Capital Assistance

PROJECT APPLICANT: Santa Barbara Metropolitan Transit District
(Agency name & address) 550 Olive Street
Santa Barbara, CA 93101

CONTACT PERSON: David Damiano
(Name, address, phone, e-mail) Santa Barbara Metropolitan Transit District
550 Olive Street
Santa Barbara, CA 93101
805-963-3364
ddamiano@sbmtd.gov

BRIEF DESCRIPTION OF PROJECT: Describe the scope of work that would be funded under the proposed project. Include project limits and project concept.

The Santa Barbara Metropolitan Transit District (MTD) is a special district authorized by the California Public Utilities Code (Section 95000 et seq.) to provide public transit service in the South Coast of Santa Barbara County. In FY 2008, MTD transported 8.1 million passengers while operating 205,206 revenue hours of service, for a systemwide average of 39.5 passengers per revenue hour. MTD provided an average of 26,500 passenger trips each weekday in FY 2008, resulting in the elimination of an estimated 22,700 vehicles daily from the roadway network. For this project, MTD will utilize the Section 5307 funds to subsidize the public transit service provided by the agency within the Santa Barbara Urbanized Area. In FY 2008, MTD recovered approximately 37 percent of its operating cost through farebox revenue. Thus, approximately 63 percent of the operating cost of the service must be provided through other sources. Section 5307 funds are one crucial source of the needed funds. MTD's Adopted Budget for FY 2009 is attached to demonstrate that MTD complies with the financial requirements outlined in the screening criteria of this application.

Submitted By: David Damiano
Please Print Full Name

(Signature) 2-6-09
Signature Date

SECTION 1: SCREENING CRITERIA

To be eligible for funding consideration, all projects requesting FTA 5307 funds must submit information to the designated grantee in the urbanized area(s) demonstrating they meet the following criteria:

1. Consistency Requirements

- a. The project must be consistent with the RTP and other adopted local or regional plans (Congestion Management Programs, Short Range Transit Plans, State Implementation Plan, etc.)
- b. The project must be consistent with federal eligibility requirements for FTA 5307 projects.

2. Financial Requirements

The project must be supported by:

- a. A reasonable cost estimate based on the best available data.
- b. Adequate financial planning with all sources of funding identified.
- c. Logical cash flow and sensible phasing.

3. Project Specific Requirements

Projects must:

- a. Be well defined with clear project limits, intended scope of work, and project concept.
- b. Be well justified; there must be a clear need directly addressed by the project.
- c. Be supported by an implementation plan and schedule which adequately provides for any necessary clearances and approvals and demonstrates that the project can be advanced to a state of readiness for implementation in the year indicated.
- d. Maintain or improve existing service levels.
- e. Be cost effective.

SECTION 2: SELECTION CRITERIA

Responses to the following questions and other information provided in this application will be used to evaluate, prioritize and select projects.

Please indicate which category (ies) the project will address and respond to questions accordingly. Attach additional narrative or documentation if necessary.

Note: Projects may score in more than one category.

Project Category

1. Operating or capital subsidy for existing local transit service.

- A) Describe how the project serves continuing local transit needs of urbanized area residents, including maintaining current service levels and service reliability.
- i. MTD will utilize the Section 5307 funds, along with state and local funds, for existing local intracity transit service. Many MTD routes experience overloads during peak hours. The existing service is heavily utilized by persons who depend on public transit for their mobility needs, as well as by persons who have mobility options. The project will allow MTD to continue to provide mobility to the residents of the Santa Barbara Urbanized Area.
- B) Demonstrate how this project is an effective and cost-efficient use of public funds using standard industry performance measures, which may include:
- Passenger Miles Traveled per Vehicle Revenue Mile
 - ✓ FY 2007 Data used by FTA for FY 2009 apportionments
 - ✓ 6.4 = FY 2008 Avg. for UZAs 200,000 - 999,999 pop.
 - ✓ 10.9 = MTD
 - Passenger Miles Traveled per Vehicle Revenue Hour
 - ✓ FY 2007 Data used by FTA for FY 2009 apportionments
 - ✓ 107.8 = FY 2008 Avg. for UZAs 200,000 - 999,999 pop.
 - ✓ 149.7 = MTD
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 - ✓ 11.8 = FY 2008 Avg. for UZAs 200,000 - 999,999 pop.
 - ✓ 15.3 = MTD
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 - ✓ FY 2007 Data used by FTA for FY 2009 apportionments
 - ✓ 0.8 = FY 2008 Avg. for UZAs 200,000 - 999,999 pop.
 - ✓ 1.1 = MTD
 - Passenger Miles Traveled Per Capita
 - ✓ FY 2007 Data used by FTA for FY 2009 apportionments
 - ✓ 89.6 = FY 2008 Avg. for UZAs 200,000 - 999,999 pop.
 - ✓ 166.7 = MTD
 - Passenger Trips Per Capita.
 - ✓ FY 2007 Data used by FTA for FY 2009 apportionments
 - ✓ 15.6 = FY 2008 Avg. for UZAs 200,000 - 999,999 pop.
 - ✓ 39.5 = MTD
- i. The Federal Transit Administration (FTA) identified MTD's service area (the Santa Barbara Urbanized Area) as a Small Transit-Intensive City, defined as smaller urbanized areas (i.e., between 50,000 and 200,000 in

population) that have a transit service intensity that exceeds the average for larger urbanized areas (i.e., over 200,000 in population). The FTA measured transit service intensity by vehicle utilization, service provision, and service consumption. MTD's service area was found to be among the top 10 small transit-intensive cities in the country by each of these measures, suggesting that MTD is one of the most efficient and effective small-city transit operators in the nation.

- C) Describe how this project is consistent with required federal, state, and local planning documents.
 - i. MTD's Short Range Transit Plan (SRTP), SBCAG's Regional Transportation Plan (RTP), and SBCAG's Federal Transportation Improvement Program (FTIP) include projects to fund existing MTD local intracity transit service.

2. Operating or capital subsidy for expanded local transit service.

- A) Describe how the project expands local transit options for urbanized area residents, including increasing service levels, improving service reliability and improving current service.
 - i. Many MTD routes experience overloads and service expansion is necessary to accommodate demand. The project will assist MTD to expand local intracity transit service in the Isla Vista and University of California at Santa Barbara (UCSB) area. Planned expansion includes a new service, the Isla Vista/UCSB Shuttle. This new service will operate every day in both peak and non-peak hours. The new shuttle service is estimated to provide an additional 366 daily passenger trips. The expanded service will increase mobility for persons who depend on public transit for their mobility needs, and will increase the attractiveness of public transit service to persons with mobility options.

- B) Demonstrate how this project is an effective and cost-efficient use of public funds using standard industry performance measures, which may include:
 - Passenger Miles Traveled per Vehicle Revenue Mile
 - ✓ FY 2007 Data used by FTA for FY 2009 apportionments
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- C) Describe how this project is consistent with required federal, state, and local planning documents.
- i. MTD's Short Range Transit Plan (SRTP), SBCAG's Regional Transportation Plan (RTP), and SBCAG's Federal Transportation Improvement Program (FTIP) include projects to fund these expansions of MTD local intracity transit service.

3. Operating or capital subsidy for existing regional transit service.

- A) Describe how the project services continuing regional transit needs of the urbanized area, including maintaining current service levels and service reliability.
- i. MTD will utilize the Section 5307 funds, along with state and local funds, to fund existing regional intercity transit service within the South Coast. The existing service is heavily utilized by persons who depend on public transit for their mobility needs, as well as by persons who have mobility options. The project will allow MTD to continue to provide mobility to the residents of the Santa Barbara Urbanized Area.
- B) Explain how the project will alleviate peak-period congestion.
- i. MTD's existing regional intercity transit services connect the communities of Santa Barbara, Goleta, Carpinteria, Summerland, Montecito, Isla Vista, and the University of California at Santa Barbara (UCSB). Many MTD routes experience overloads and service expansion is necessary to accommodate demand. These services provide an alternative mode of transportation for commuters, shoppers, and others persons.
- C) Demonstrate how this project is an effective and cost-efficient use of public funds using standard industry performance measures, which may include:
- Passenger Miles Traveled per Vehicle Revenue Mile
 - ✓ FY 2007 Data used by FTA for FY 2009 apportionments
 - ✓ 6.4 = FY 2008 Avg. for UZAs 200,000 - 999,999 pop.
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D) Describe how this project integrates with existing local transit service.

- i. MTD's existing local intracity transit service, regional intercity, and Valley Express commuter transit services are seamlessly integrated. Major MTD transfer points include the downtown Santa Barbara Transit Center, UCSB, La Cumbre, and Old Town Goleta. When transfers are required to complete travel between South Coast communities, riders can easily do so at these and other locations.

4. Operating or capital subsidy for expanded regional transit service.

A) Describe how the project expands regional transit options for the urbanized area, including increasing service levels, improving service reliability and improving current service.

- i. The project will assist MTD in efforts to expand regional intercity transit service. Many MTD routes experience overloads and service expansion is necessary to accommodate demand. For example, Line 15x service between Santa Barbara City College (SBCC) and Isla Vista, and Line 24x service between downtown Santa Barbara and UCSB, have experienced severe overloads. The project will allow MTD to continue to alleviate the overloads on these lines and other routes. The project will increase mobility for persons who depend on public transit for their mobility needs, and will increase the attractiveness of public transit service to persons with mobility options.

- B) Explain how the project will reduce peak-period congestion.
- i. MTD's regional intercity transit services improve connections between the communities of the South Coast. To the extent that MTD is able to expand regional service, this will further assist in daily regional traffic mitigation through the elimination of peak hour vehicle trips from the roadway network. Increased frequencies will make the services attractive alternative mode of transportation for commuters, shoppers, and others persons.
- C) Demonstrate how this project is an effective and cost-efficient use of public funds using standard industry performance measures, which may include:
- Passenger Miles Traveled per Vehicle Revenue Mile
 - ✓ FY 2007 Data used by FTA for FY 2009 apportionments
 - ✓ 6.4 = FY 2008 Avg. for UZAs 200,000 - 999,999 pop.
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- D) Describe how this project integrates with existing local and regional transit services.
- i. MTD's existing local intracity transit service, regional intercity, and Valley Express commuter transit services are seamlessly integrated. Major MTD transfer points include the downtown Santa Barbara Transit Center, UCSB, La Cumbre, and Old Town Goleta. When transfers are required to

complete travel between South Coast communities, riders can easily do so at these and other locations.

In addition to the need for operating subsidies, MTD has substantial needs for capital funding. Current capital needs are presented in the table below. Based on the operating and capital needs as detailed in this application, MTD requests that all FTA Section 5307 funds apportioned to the Santa Barbara Urbanized Area for FY 2010, FY 2011, and FY 2012 be awarded to MTD.

Santa Barbara Metropolitan Transit District Capital Projects

Project Description	Project Cost	Days to Award (Projected)	Responsible Agency
<u>Priority Projects:</u>			
1 Ticket/Pass Vending Machines	\$450,000	90 Days	Santa Barbara MTD
2 Service Vehicle Replacements	\$300,000	90 Days	Santa Barbara MTD
3 Transit Buses - Funded ¹	\$3,766,848	180 Days	Santa Barbara MTD
<i>Subtotal</i>	<i>\$4,516,848</i>		
<u>Unfunded Projects:</u>			
- Transit Buses - Unfunded ¹	\$8,773,152	180 Days	Santa Barbara MTD
Transit Center Capacity Improvements	\$3,000,000	1 Year	Santa Barbara MTD
Automated Vehicle Location System	\$2,200,000	180 Days	Santa Barbara MTD
Bus Signal Priority	\$150,000	90 Days	Santa Barbara MTD
Photovoltaic System	\$1,250,000	1 Year	Santa Barbara MTD
<i>Subtotal</i>	<i>\$15,373,152</i>		

Note 1: Priority Project 3 - Transit Buses" is the replacement of MTD's fleet of 33 Nova buses. The cost of the project is estimated to total \$12.54 million (if straight diesel buses are purchased). The amount shown in Priority Project 3 is the remaining funds from the TTAC recommendation after Priority Projects 1 & 2 are funded.

Source: Santa Barbara Metropolitan Transit District.

Santa Barbara Metropolitan Transit District
Scoring Criteria for FTA Section 5307 Funds Apportioned to the Santa Barbara Urbanized Area

Project Category**	Score		
	SM	JE	Avg.
1. Operating or capital subsidy for existing local transit service (45 pts. Total)			
A) Serves continuing local transit needs of urbanized area residents (15 pts.)	15.00	15.00	15.00
B) Effective and cost-efficient use of public funds (15 pts.)	15.00	15.00	15.00
C) Consistent with required Federal and state planning documents (15 pts.)	15.00	15.00	15.00
<i>Sub Total:</i>	45.00	45.00	45.00
2. Operating or capital subsidy for expanded local transit service (30 pts. Total)			
A) Expands local transit options for urbanized area residents (10 pts.)	9.00	8.00	8.50
B) Effective and cost-efficient use of public funds (10 pts.)	8.00	8.00	8.00
C) Consistent with required Federal and state planning documents (10 pts.)	10.00	10.00	10.00
<i>Sub Total:</i>	27.00	26.00	26.50
3. Operating or capital subsidy for existing regional transit service (15 pts. Total)			
A) Serves continuing regional transit needs of urbanized area (5 pts.)	5.00	5.00	5.00
B) Alleviates peak-period congestion (5 pts.)	5.00	5.00	5.00
C) Effective and cost-efficient use of public funds (2.5 pts.)	2.50	2.50	2.50
D) Integrated with existing local transit service (2.5 pts.)	2.50	2.50	2.50
<i>Sub Total:</i>	15.00	15.00	15.00
4. Operating or capital subsidy for expanded regional transit service (10 pts. Total)			
A) Expands regional transit options for urbanized area (3 pts.)	2.00	2.50	2.25
B) Reduces peak-period congestion (3 pts.)	3.00	2.50	2.75
C) Effective and cost-efficient use of public funds (2 pts.)	2.00	2.00	2.00
D) Integrated with existing local and regional transit service (2 pts.)	2.00	2.00	2.00
<i>Sub Total:</i>	9.00	9.00	9.00
Total Points (100 Maximum)	96.00	95.00	95.50

BOARD OF DIRECTORS REPORT

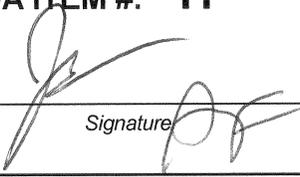
MEETING DATE: FEBRUARY 25, 2009

AGENDA ITEM #: 11

TYPE: ACTION

PREPARED BY: JERRY ESTRADA

REVIEWED BY: GENERAL MANAGER



Signature

GM Signature

SUBJECT: FINANCIAL STATUS UPDATE & FY 08-09 SIX-MONTH BUDGET REVISION

DISCUSSION:

The current economic environment has seriously impacted public transit operators as well as other local government agencies. In order to fully comprehend the magnitude of the current situation and appreciate the challenges ahead it is important to understand what has transpired in the past twelve months.

During the first half of calendar year 2008 it was becoming clear that there were four major issues that would have a significant impact on MTD's future finances, below is an update of how things stand today:

- Rising Diesel Fuel Prices
 - Staff is recommending that the budget for diesel fuel be reduced in this year's budget by \$850,000. This is a dramatic reversal of fortune for MTD as diesel fuel prices had skyrocketed to all-time highs just six months ago.
- Renewal of Measure D (Measure A)
 - Financially, the renewal of Measure D does not result in any additional operating funds for MTD. However, over \$1,800,000 dollars in operating funds will be retained and a new capital replacement fund for MTD will be created.
- Stagnant Sales Tax Returns (The Local Economy)
 - During the past few fiscal year's, sales tax revenue received by MTD had remained flat. Meanwhile, operating expenses continued to increase stretching MTD's primary subsidy (TDA-LTF) to its limit. Staff expressed their concern last summer that sales tax revenue might decrease in fiscal year 08-09 but the extent to which revenues have fallen is stunning.
 - During fiscal year 08-09, sales tax revenue (TDA-LTF) has decreased by nearly 6% or \$241,000 through January 2009. Recently, the County Auditor-Controller has estimated that this year's sales tax revenue will decrease by 8%. Staff estimates

that this year's budget should be adjusted to reflect a decrease of approximately \$515,000 in sales tax revenue.

- Compounding the matter, MTD's sales tax revenue (TDA-LTF) allocation for fiscal year 09-10 has been set at approximately \$5,907,000. That figure represents a reduction of over \$1,100,000 from MTD's original estimate.
- State Budget Deficit (State Transit Assistance)
 - The state budget crisis directly impacts MTD's State Transit Assistance (STA) funding. Historically, the State has raided this funding program to offset growing deficits in the General Fund. Due to the uncertainty regarding how much STA would be available to MTD annually, the funds have been used for capital acquisitions. Staff estimates that if MTD were to receive its entire allocation from the State that it would exceed \$2,500,000 annually. However, that has occurred only once in recent memory. On average, MTD has received approximately \$1,100,000 annually over the past seven years.
 - Staff is under the impression that the recently approved State budget eliminates the STA funding program effective fiscal year 08-09 and for the following five fiscal years at a minimum.

In Summary:

Diesel Fuel Costs	Improvement	\$850,000
Renewal of Measure D	Status Quo	
Stagnant Sales Tax Revenue	Reduction	\$515,000 (FY 08-09)
	Reduction	\$1,100,000 (FY 09-10)*
State Budget Deficit (STA)	Reduction	\$750,000 (FY 08-09)
	Reduction	\$750,000 (FY 09-10)*

*Figure based on amount included in the "Financial Forecast" of fiscal year 08-09 budget.

Financial Assessment:

The loss of MTD's only source of dedicated capital funding (STA) is a major blow to its financial health. Fortunately, MTD has built up a significant balance of STA funds (\$2,659,000) that has been allocated to bus purchases and an Automated Vehicle Location (AVL) system. However, with the reduction of \$750,000 dollars in this year's budget, anticipated expenditures and higher than expected costs related to the 40' hybrid bus acquisition that balance is expected to decrease to \$670,000 dollars which is allocated to the AVL system.

The loss of dedicated capital funding has the potential to negatively impact the operating budget. MTD's fleet of 103 buses and over 850 bus stops will need ongoing repair and maintenance. Federal grants, state bonds and other capital

assistance will help, and may allow MTD time to avoid reallocating operating revenue to capital acquisitions within next few years. However, the need to reallocate operating funds to capital acquisitions may be unavoidable if action is not taken to bridge the gap to a new dedicated capital funding source. (Measure A)

The Measure A capital replacement fund may provide MTD with some assistance as it pertains to the types of costs described. Staff has prepared a financial plan describing recommended actions that could provide a financial bridge to cover projected capital costs over the next two to three years. This plan will provide a temporary solution to the short-term capital needs; allowing staff to work with SBCAG and South Coast agencies to finalize the details of the Measure A implementation program. The plan is included in the section below titled "Recommended Action".

Actions Taken Previously:

Last year as fuel prices began to rise and stagnant sales tax revenue threatened MTD's operating budget, management took two steps to try and offset the aforementioned issues.

- Service cut – 2%

As public transit professionals, service cuts are not taken lightly. MTD has managed its resources well over the years and avoided major service cuts. Annually, MTD reassess transit service to assure that the public's resources are allocated in an efficient and productive manner. However, due to the financial concerns expressed in this report the decision was made to slightly reduce service levels by 2% last year.

- Fare Increase

Late last summer, the Board held a series of public meetings regarding MTD's financial forecasts and the need for a fare increase. Ultimately, a financial goal was determined and a new fare policy approved; implementation was set for January of 2009. The new fare policy required a vote of Santa Barbara Community College (SBCC) students who voted to accept the increase to their transportation fee. The vote was necessary due to a contractual obligation.

Recommended Actions:

As described earlier, there are significant issues that have or could negatively impact MTD's finances and its ability to sustain current service levels. In an attempt to simplify staff's recommendations, the actions will be separated into capital and operating segments.

Capital

To avoid the need to reallocate operating revenue to offset the loss of STA funding staff recommends the following actions:

Bus Purchase #1 – (7) 40' Hybrid Replacement Buses

- Change the budgeted purchase of seven replacement buses from hybrid to diesel buses. This change will result in a savings of approximately \$1,600,000 in capital funds. (\$1,200,000 in Prop. 1B Transit Capital & \$400,000 in STA funds)
- Modify MTD's fiscal year 08-09 Proposition 1B-Transit Capital project to reflect the aforementioned change from hybrid to diesel and add engine, transmission and other replacement and rehabilitation related costs to the project. This change will require State approval.

Bus Purchase #2 – (3) 29' Hybrid Expansion Buses

MTD expects to take delivery of three 29' hybrid buses for expanded Isla Vista service. Because this project is being paid for with CMAQ funds the federal share can equal 88.5% of the purchase price. Currently, the federal grant covers 75% of the purchase price.

- The aforementioned federal grant includes approximately \$319,000 in unallocated funds, which is a result of projects that came in under budget. Staff recommends that MTD request a federal budget revision to the grant allocating \$215,000 to this project bringing the federal share to 88.5% and freeing up a like amount of STA.

Bus Purchase #3 – (8) 22' Battery-Electric Replacement Shuttles

MTD is currently conducting a solicitation for the purchase of the eight battery-electric shuttles. The federal share currently represents less than the 88.5% allowable.

- Staff recommends that a federal budget revision be prepared allocating the final \$104,000 of unallocated funds to this acquisition. This will result in a savings of a like amount of STA funds.

The recommended actions will require the approval of federal and state agencies but staff believes that these changes are well within the applicable funding guidelines and requirements. Staff feels that the aforementioned actions should result in sufficient capital funds to provide the bridge funding needed to transition to Measure A.

Federal Economic Stimulus – Capital Projects Only

It is projected that MTD will receive approximately \$4,500,000 in federal economic stimulus funds. However, the requirements for use are quite stringent as it pertains to the timely use of funds. As a result of these limitations, MTD has allocated the

funds to bus acquisitions (a portion of the aging Nova fleet), service vehicle replacement and ticket vending machines as they can be completed quickly.

Operating

The loss of \$515,000 in sales tax revenue (TDA-LTF) this year and an additional \$1,100,000 next year is a dramatic setback for public transit locally. Fortunately, the sharp reduction in diesel fuel prices has, to-date, offset the loss this year. However, uncertainty regarding future diesel fuel prices is of great concern to management. Therefore, staff is recommending the following course of action:

Fixed Cost Diesel Fuel Procurement

MTD's fuel contract was scheduled to expire last summer. Rather than enter into a long-term agreement at that time, MTD opted to extend the agreement an additional six-months. The reasoning was that a new biodiesel specification would be released during the fall, which could result in considerable changes to MTD's specifications. Fortunately, diesel fuel prices have plummeted providing MTD with an opportunity to enter into a fixed price contract while prices are low.

Based on staff's research, it is likely that MTD will not be able to enter into a fixed-price agreement that exceeds 12-months. However, 12-months of controlled diesel fuel prices are welcome in these uncertain economic times. Staff anticipates bringing this matter to the Board at the March 10 meeting seeking authority to enter into a fixed-price contract within 24-hours of bid receipt and evaluation.

Staff is also researching fuel hedging programs being utilized by other transit operators. These types of programs are not risk free, but could provide MTD with diesel fuel price certainty beyond one-year. This concept will require thorough assessment and thus will be brought to the Board at a later date so as not to delay the release of the fixed-price solicitation.

Fixing the price of diesel fuel costs for 12-months will not close what is forecasted to become a structural imbalance between operating revenue and expense. However, it may buy MTD time to adjust to lowered revenue expectations and to determine if the economy has bottomed. The sharp reduction in sales tax revenue (TDA-LTF) is of a magnitude never before experienced by MTD. Essentially, it is estimated that MTD will experience an 8% reduction this year and an additional 8% next year in its primary source of operating revenue.

FY 08-09 Budget Revision Summary – Significant Items

Operating Revenue

- Reduce Sales Tax Revenue (TDA-LTF) by \$515,000
- Reduce Overpass Lease by \$161,000
- Reduce Advertising Revenue by \$55,500
- Increase Passenger Fare Categories by \$718,377

Operating Expense

- Reduce Diesel Fuel Budget by \$850,000
- Increase Driver Expense by \$20,111
- Increase Dispatch and Supervision by \$16,493
- Increase Existing Driver/Supervision by \$27,715
- Increase Risk & Safety Supervision by \$45,995
- Reduce Liability Related \$48,500
- Increase Easy Lift Support by \$44,434
- Increase Workers Compensation related costs by \$136,500
- Reduce Media Ad Placement by \$53,000
- Increase Fare Revenue Collection by \$19,171
- Reduce Operating Facility Costs by \$33,425
- Reduce Miscellaneous Services by \$25,000
- Reduce Mandated Fees by \$30,000



OPERATING & CAPITAL BUDGET
FISCAL YEAR 2008/2009
SIX-MONTH BUDGET REVISION

Santa Barbara Metropolitan Transit District
*550 Olive Street * Santa Barbara, CA 93101*
*Telephone (805) 963-3364 * FAX (805) 962-4794*
*Website: sbmtd.gov * E-Mail: cservice@sbmtd.gov*

Submitted: FEBRUARY 25, 2009

OPERATING & CAPITAL BUDGET
FISCAL YEAR 2008/2009

	Proposed Revision FY 08/09	Original FY 08/09	\$ Budget Variance
Operating Budget			
<u>Revenue</u>			
Passenger Fares	\$8,029,656	\$7,311,279	\$718,377
Federal Operating Assistance	4,083,198	4,083,198	0
FTA CMAQ Operating Assistance	205,400	205,400	0
Property Tax Revenue	784,052	784,052	0
Local Operating Assistance	1,332,338	1,332,338	0
Non-Transportation Income	514,750	731,250	(216,500)
Sales Tax Revenue (TDA-LTF) Current Year	6,175,217	6,983,542	(808,325)
Total Operating Revenue	<u>\$21,124,612</u>	<u>\$21,431,059</u>	<u>(\$306,447)</u>
<u>Expense</u>			
Route Operations	\$11,574,814	\$11,432,152	\$142,662
Vehicle Maintenance	5,386,433	6,106,955	(720,522)
Passenger Accommodations	1,692,795	1,699,852	(7,057)
General Overhead	2,470,570	2,566,072	(95,502)
Total Operating Expense	<u>\$21,124,612</u>	<u>\$21,805,030</u>	<u>(\$680,419)</u>
<u>Required to Balance Operating Budget:</u>			
Deferred Credits (TDA - LTF) Prior Year	\$0	\$373,971	(\$373,971)
Capital Budget			
<u>Revenue</u>			
Sales Tax Revenue (TDA - LTF) Current Year	\$134,811	\$0	\$134,811
Other Capital Assistance	4,768,726	3,176,175	1,592,551
State Transit Assistance (TDA - STA) - Current Year	0	750,000	(750,000)
State Transit Assistance (TDA - STA) - Prior Year	1,854,263	1,132,321	721,942
Federal Capital Assistance	3,421,085	3,421,085	0
Total Capital Revenue	<u>\$10,178,885</u>	<u>\$8,479,581</u>	<u>\$1,699,304</u>
<u>Expense - Projects</u>			
Buses	\$8,445,672	\$6,950,000	\$1,495,672
Bus Rehab	587,600	637,600	(50,000)
Fixed Facilities	515,483	275,351	240,132
WIP - Calle Real Development	25,000	25,000	0
Radios & Fareboxes	26,000	25,000	1,000
Service Vehicles	28,000	28,000	0
Bus Stops	451,130	438,630	12,500
Shop Equipment	65,000	65,000	0
Management Info Systems	55,000	55,000	0
Office Furniture & Equipment	5,000	5,000	0
Total Capital Projects	<u>\$10,203,885</u>	<u>\$8,504,581</u>	<u>\$1,699,304</u>
<u>Required to Balance Capital Budget:</u>			
Deferred Credits (TDA - LTF) Prior Year	\$25,000	\$25,000	0
TOTAL OPERATING & CAPITAL	\$31,328,497	\$30,309,611	(\$1,018,886)
Deferred Credits Balance			
Beginning Balance	<u>\$7,330,378</u>	<u>\$7,330,378</u>	
Deferred Credits (TDA - LTF) Prior Year	<u>(25,000)</u>	<u>(398,971)</u>	
Ending Balance	<u>\$7,305,378</u>	<u>\$6,931,407</u>	

OPERATING REVENUE BUDGET
FISCAL YEAR 2008/2009

	Revised Budget FY 08/09	Original Budget FY 08/09	Variance
<i>FAREBOX REVENUE</i>			
Cash Fares	\$3,220,274	\$3,014,027	\$206,248
Downtown-Waterfront Shuttle/My Ri	1,361,563	1,387,088	(25,525)
UCSB Contract Fares	803,818	653,126	150,692
SBCC Contract Fares	651,513	548,578	102,935
Carpinteria Seaside Shuttle	80,491	80,491	0
Amtrak Fares	225	225	0
Special Event Fares	500	500	0
Brooks Pass Program	2,000	2,000	0
Day Pass	2,500	0	2,500
Adult 10-Ride Passes	586,467	411,924	174,543
Student 10-Ride Passes	369,600	276,011	93,589
Senior/Disabled 10-Ride Passes	80,761	74,480	6,281
Valley Express 10-Ride Passes	105,020	84,546	20,474
Adult 30-Day Pass	451,668	514,200	(62,532)
Student 30-Day Pass	126,185	94,214	31,970
Senior/Disabled 30-Day Pass	132,307	137,389	(5,082)
Valley Express 30-Day Pass	54,764	32,480	22,284
<i>Subtotal</i>	<u>\$8,029,656</u>	<u>\$7,311,279</u>	<u>\$718,377</u>
<i>NON-TRANSPORTATION INCOME</i>			
Advertising on Buses	\$370,000	\$425,500	(\$55,500)
Interest on Investments	106,750	106,750	0
Overpass Lease & Misc	38,000	199,000	(161,000)
<i>Subtotal</i>	<u>\$514,750</u>	<u>\$731,250</u>	<u>(\$216,500)</u>
<i>SUBSIDIES</i>			
TDA Sales Tax Revenue	\$6,310,028	\$6,310,028	\$0
(Amount applied to captial)	(134,811)	0	(134,811)
FTA Formula Assistance	4,083,198	4,083,198	0
FTA CMAQ Operating Assistance	205,400	205,400	0
Property Tax Revenue	784,052	784,052	0
LOA (City of SB)	1,332,338	1,332,338	0
<i>Subtotal</i>	<u>\$12,580,205</u>	<u>\$12,715,016</u>	<u>(\$134,811)</u>
TOTAL OPERATING REVENUE	<u><u>\$21,124,612</u></u>	<u><u>\$20,757,545</u></u>	<u><u>\$367,067</u></u>

OPERATING EXPENSE BUDGET
FISCAL YEAR 2008/2009

	Revised Budget FY 08/09	Original Budget FY 08/09	Variance
<i>ROUTE OPERATIONS</i>			
Drivers	\$8,765,855	\$8,745,744	\$20,111
Dispatch & Supervision	484,701	468,208	16,493
Hiring & Training	314,992	280,071	34,921
Risk & Safety	1,487,074	1,460,370	26,704
Transportation Subsidies	522,192	477,758	44,434
<i>Subtotal</i>	<u>\$11,574,814</u>	<u>\$11,432,152</u>	<u>\$142,662</u>
<i>VEHICLE MAINTENANCE</i>			
Mechanics	\$1,020,560	\$1,020,560	\$0
Cleaners & Fuelers	662,425	662,425	0
Supervision	521,972	528,994	(7,022)
Vehicle Consumables	2,265,853	3,115,853	(850,000)
Bus Parts & Supplies	742,744	742,744	0
Vendor Services	54,750	54,750	0
Risk & Safety	118,130	(18,370)	136,500
<i>Subtotal</i>	<u>\$5,386,433</u>	<u>\$6,106,955</u>	<u>(\$720,522)</u>
<i>PASSENGER ACCOMMODATIONS</i>			
Passenger Facilities	\$727,045	\$722,395	\$4,650
Transit Development	342,178	339,798	2,380
Promotion & Information	376,748	410,006	(33,258)
Fare Revenue Collection	246,823	227,652	19,171
<i>Subtotal</i>	<u>\$1,692,795</u>	<u>\$1,699,852</u>	<u>(\$7,057)</u>
<i>GENERAL OVERHEAD</i>			
Finance	\$561,371	\$579,755	-\$18,384
Personnel	97,777	94,086	3,690
Utilities & Communication	203,000	203,000	0
Operating Facilities	375,684	409,109	(33,425)
District Administration	1,232,738	1,280,121	(47,383)
<i>Subtotal</i>	<u>\$2,470,570</u>	<u>\$2,566,072</u>	<u>(\$95,502)</u>
TOTAL OPERATING COST	<u><u>\$21,124,612</u></u>	<u><u>\$21,805,030</u></u>	<u><u>(\$680,418)</u></u>

CAPITAL PROJECT DETAIL
FISCAL YEAR 2008/2009

<i>REVENUE VEHICLE PURCHASES</i>		
40' Hybrid Buses (7) (\$601,783)	\$4,212,486	
29' Hybrids (3) (531,062)	1,593,186	
22' Shuttles (8) (\$330,000)	<u>2,640,000</u>	
<i>Subtotal</i>		\$8,445,672
 <i>REVENUE VEHICLE IMPROVEMENTS</i>		
Diesel Fleet Drivetrains	\$339,000	
EV Drivetrain/Battery Chargers etc	<u>248,600</u>	
<i>Subtotal</i>		\$587,600
 <i>OFFICE FURNITURE & EQUIPMENT</i>		
Office Furniture Allowance	<u>\$5,000</u>	
<i>Subtotal</i>		\$5,000
 <i>MANAGEMENT INFORMATION SYSTEMS</i>		
Software Programming	\$10,000	
Mobile On-Time Performance Solution	20,000	
PC Hardware/ Major Software Upgrades	<u>25,000</u>	
<i>Subtotal</i>		\$55,000
 <i>SERVICE VEHICLES</i>		
Service Vehicle Replacements (1 @ \$28k)	<u>\$28,000</u>	
<i>Subtotal</i>		\$28,000
 <i>BUS STOP EQUIPMENT</i>		
Superstops	\$313,630	
Bus Stop Upgrades	<u>137,500</u>	
<i>Subtotal</i>		\$451,130
 <i>FIXED FACILITIES</i>		
Facilities	\$25,000	
Security Improvements T1	480,483	
TC Fixed Facilities	10,000	
WIP - Calle Real Development	<u>25,000</u>	
<i>Subtotal</i>		\$540,483
 <i>FAREBOXES & RADIOS</i>		
Farebox & Radio Allowance	<u>\$26,000</u>	
<i>Subtotal</i>		\$26,000
 <i>SHOP EQUIPMENT</i>		
Shop Equipment Allowance	<u>\$65,000</u>	
<i>Subtotal</i>		\$65,000
 TOTAL CAPITAL PROJECTS		 <u><u>\$10,203,885</u></u>

ROUTE OPERATIONS BUDGET
FISCAL YEAR 2008/2009

	Revised Budget FY 08/09	Original Budget FY 08/09	Change
<i>DRIVERS</i>			
Scheduled	\$5,390,040	\$5,397,776	(\$7,736)
Scheduled Overtime	246,138	234,138	12,000
Unscheduled Pay	223,959	183,959	40,000
Driver Lite Duty	10,407	10,407	0
FICA	516,969	506,522	10,447
Pension	784,989	794,244	(9,254)
Health	784,801	784,801	0
Sick Pay	129,897	139,897	(10,000)
Vacation Pay	397,051	412,051	(15,000)
Holiday Pay	218,630	218,976	(346)
Other Paid Leave	24,000	24,000	0
Unemployment Insurance	20,974	20,974	0
Uniforms	18,000	18,000	0
<i>Drivers Subtotal</i>	<u>\$8,765,855</u>	<u>\$8,745,744</u>	<u>\$20,111</u>
<i>DISPATCH & SUPERVISION</i>			
Supervisors	\$151,432	\$134,035	\$17,397
Staff	155,079	155,079	0
FICA	27,485	25,772	1,713
Pension	34,074	34,074	0
Health	62,940	70,557	(7,617)
Sick Pay	10,153	5,153	5,000
Vacation Pay	22,892	22,892	0
Holiday Pay	14,226	14,226	0
Other Paid Leave	5,502	5,502	0
Unemployment Insurance	919	919	0
<i>Dispatch & Supervision Subtotal</i>	<u>\$484,701</u>	<u>\$468,208</u>	<u>\$16,493</u>
<i>HIRING & TRAINING</i>			
Staff	\$35,686	\$35,686	\$0
Student Drivers	53,280	53,280	0
Existing Drivers/Supers	122,227	94,512	27,715
FICA	17,246	14,987	2,259
Pension	16,608	13,486	3,122
Health	25,560	22,047	3,513
Sick Pay	2,830	2,297	533
Vacation Pay	4,207	4,207	0
Holiday Pay	5,660	4,595	1,066
Other Paid Leave	1,544	1,331	213
Unemployment Insurance	294	294	0
Medical Exams & License Fees	24,100	24,100	0
Employment Advertising	2,450	4,950	(2,500)
Training, Travel & Meetings	3,300	4,300	(1,000)
<i>Hiring & Training Subtotal</i>	<u>\$314,992</u>	<u>\$280,071</u>	<u>\$34,921</u>

ROUTE OPERATIONS BUDGET
FISCAL YEAR 2008/2009

	Revised Budget FY 08/09	Original Budget FY 08/09	Change
<i>RISK & SAFETY</i>			
<i>Wages & Benefits</i>			
Staff	\$61,666	\$61,666	\$0
Supervisors	241,732	195,737	45,995
Driver Accident Pay	1,084	1,084	0
FICA	25,362	21,843	3,519
Pension	26,993	26,993	0
Health	38,267	34,577	3,690
Sick Pay	3,046	3,046	0
Vacation Pay	12,494	12,494	0
Holiday Pay	9,487	9,487	0
Other Paid Leave	2,015	2,015	0
Unemployment Insurance	478	478	0
<i>Wages & Benefits Subtotal</i>	<i>\$422,623</i>	<i>\$369,419</i>	<i>\$53,204</i>
<i>Public Liability</i>			
Professional Services	\$125,413	\$141,413	(\$16,000)
Insurance	240,563	240,563	0
Current Year Incident Payouts	30,000	20,000	10,000
Current Year Incident Reserves	38,500	25,000	13,500
Prior Years Incident Payouts	30,000	200,000	(170,000)
Change in Prior Years Reserves	(46,000)	(160,000)	114,000
<i>Public Liability Subtotal</i>	<i>\$418,476</i>	<i>\$466,976</i>	<i>(\$48,500)</i>
<i>Workers' Compensation</i>			
Professional Services	\$195,932	\$195,932	\$0
Insurance	53,543	53,543	0
Current Year Incident Payouts	70,000	25,000	45,000
Current Year Incident Reserves	112,000	65,000	47,000
Prior Years Incident Payouts	225,000	325,000	(100,000)
Change in Prior Years Reserves	(20,000)	(50,000)	30,000
Miscellaneous Risk & Safety	9,500	9,500	0
<i>Workers' Compensation Subtotal</i>	<i>\$645,975</i>	<i>\$623,975</i>	<i>\$22,000</i>
<i>Risk & Safety Subtotal</i>	<u><i>\$1,487,074</i></u>	<u><i>\$1,460,370</i></u>	<u><i>\$26,704</i></u>
<i>TRANSPORTATION SUBSIDIES</i>			
Dial-a-Ride (Easy Lift)	\$522,192	\$477,758	\$44,434
<i>Transportation Subsidies Subtotal</i>	<u><i>\$522,192</i></u>	<u><i>\$477,758</i></u>	<u><i>\$44,434</i></u>
<i>TOTAL ROUTE OPERATIONS</i>	<u><u><i>\$11,574,814</i></u></u>	<u><u><i>\$11,432,152</i></u></u>	<u><u><i>\$142,662</i></u></u>

VEHICLE MAINTENANCE BUDGET
FISCAL YEAR 2008/2009

	Revised Budget FY 08/09	Original Budget FY 08/09	Change
<i>MECHANICS</i>			
Mechanics	\$687,596	\$687,596	\$0
Less Mechanic Labor Capitalizati	(39,181)	(39,181)	0
Mechanics-OT	3,918	3,918	0
FICA	60,706	60,706	0
Pension	84,908	84,908	0
Health	91,121	91,121	0
Sick Pay	18,285	18,285	0
Vacation Pay	53,032	53,032	0
Holiday Pay	29,255	29,255	0
Other Paid Leave	1,463	1,463	0
Unemployment Insurance	2,058	2,058	0
Uniforms	12,000	12,000	0
Tool Allowance	15,400	15,400	0
<i>Mechanics Subtotal</i>	<u>\$1,020,560</u>	<u>\$1,020,560</u>	<u>\$0</u>
<i>CLEANERS & FUELERS</i>			
Service Workers	\$407,132	\$407,132	\$0
FICA	33,743	33,743	0
Pension	73,293	73,293	0
Health	92,041	92,041	0
Sick Pay	6,762	6,762	0
Vacation Pay	18,164	18,164	0
Holiday Pay	18,547	18,547	0
Other Paid Leave	706	706	0
Unemployment Insurance	1,939	1,939	0
Uniforms	6,760	6,760	0
Medical Exams & License Fees	3,338	3,338	0
<i>Cleaners & Fuelers Subtotal</i>	<u>\$662,425</u>	<u>\$662,425</u>	<u>\$0</u>
<i>SUPERVISION</i>			
Staff	\$321,088	\$321,088	\$0
FICA	27,456	27,456	0
Pension	35,890	35,890	0
Health	86,492	93,514	(7,022)
Sick Pay	1,708	1,708	0
Vacation Pay	19,019	19,019	0
Holiday Pay	11,389	11,389	0
Other Paid Leave	5,694	5,694	0
Unemployment Insurance	735	735	0
Training, Travel & Meetings	12,500	12,500	0
<i>Supervision Subtotal</i>	<u>\$521,972</u>	<u>\$528,994</u>	<u>(\$7,022)</u>

VEHICLE MAINTENANCE BUDGET
FISCAL YEAR 2008/2009

	Revised Budget FY 08/09	Original Budget FY 08/09	Change
<i>VEHICLE CONSUMABLES</i>			
Fuel & Lubricants	\$2,011,080	\$2,861,080	(\$850,000)
Electric Vehicle Power	90,900	90,900	0
Tire Lease	153,873	153,873	0
Tire Mounting	10,000	10,000	0
<i>Vehicle Consumables Subtotal</i>	<u>\$2,265,853</u>	<u>\$3,115,853</u>	<u>(\$850,000)</u>
<i>VEHICLE PARTS & SUPPLIES</i>			
Bus Parts Issued	\$650,744	\$650,744	\$0
Shop Supplies	60,000	60,000	0
Bus Servicing Supplies	14,000	14,000	0
Hazmat Disposal & Compliance	18,000	18,000	0
<i>Vehicle Part & Supplies Subtotal</i>	<u>\$742,744</u>	<u>\$742,744</u>	<u>\$0</u>
<i>VENDOR BUS REPAIRS</i>			
Vandalism Repairs	\$18,750	\$18,750	\$0
Accident Damage Repairs	13,500	13,500	0
Accident Claim Collections	(7,500)	(7,500)	0
Other Vendor Repairs	30,000	30,000	0
<i>Vendor Bus Repairs Subtotal</i>	<u>\$54,750</u>	<u>\$54,750</u>	<u>\$0</u>
<i>RISK & SAFETY</i>			
Workers' Comp Services	\$10,312	\$10,312	\$0
Workers' Comp Insurance	2,818	2,818	0
Current Year Incident Payouts	25,000	1,500	23,500
Current Year Incident Reserves	55,000	2,000	53,000
Prior Years Incident Payouts	35,000	25,000	10,000
Change in Prior Years Reserves	(10,000)	(60,000)	50,000
<i>Risk & Safety Subtotal</i>	<u>\$118,130</u>	<u>(\$18,370)</u>	<u>\$136,500</u>
TOTAL VEHICLE MAINTENANCE	<u><u>\$5,386,433</u></u>	<u><u>\$6,106,955</u></u>	<u><u>(\$720,522)</u></u>

PASSENGER ACCOMMODATIONS BUDGET
FISCAL YEAR 2008/2009

	Revised Budget FY 08/09	Original Budget FY 08/09	Change
<i>PASSENGER FACILITIES</i>			
Wages & Benefits			
Supervisors	\$190,148	\$185,974	\$4,175
TC Advisors	108,188	104,333	3,855
Staff	119,622	119,622	0
FICA	35,635	34,888	747
Pension	38,624	36,488	2,136
Health	98,392	106,392	(8,000)
Sick Pay	10,546	8,687	1,859
Vacation Pay	21,868	21,868	0
Holiday Pay	15,240	15,338	(98)
Other Paid Leave	2,763	2,787	(24)
Unemployment Insurance	1,507	1,507	0
Wages & Benefits Subtotal	\$642,535	\$637,886	\$4,650
Buildings & Grounds			
TC Contract Maintenance	\$52,160	\$52,160	\$0
TC Repairs/Supplies	10,000	10,000	0
Bus Stop Repairs/Supplies	20,900	20,900	0
TC Property Insurance	1,450	1,450	0
Buildings & Grounds Subtotal	\$84,510	\$84,510	\$0
<i>Passenger Facilities Subtotal</i>	<u>\$727,045</u>	<u>\$722,395</u>	<u>\$4,650</u>
 <i>TRANSIT DEVELOPMENT</i>			
Staff	\$207,469	\$207,469	\$0
FICA	17,823	17,823	0
Pension	23,298	23,298	0
Health	47,638	40,258	7,380
Sick Pay	2,151	2,151	0
Vacation Pay	15,294	15,294	0
Holiday Pay	5,376	5,376	0
Other Paid Leave	2,688	2,688	0
Unemployment Insurance	441	441	0
Training, Travel & Meetings	5,000	5,000	0
Planning Services & Supplies	15,000	20,000	(5,000)
Transit Development Subtotal	<u>\$342,178</u>	<u>\$339,798</u>	<u>\$2,380</u>
 <i>PROMOTION & INFORMATION</i>			
Wages & Benefits			
Staff	\$92,192	\$78,749	\$13,443
FICA	7,543	6,396	1,148
Pension	9,861	8,361	1,500
Health	18,053	15,995	2,058

PASSENGER ACCOMMODATIONS BUDGET
FISCAL YEAR 2008/2009

	Revised Budget FY 08/09	Original Budget FY 08/09	Change
Sick Pay	836	525	311
Vacation Pay	2,235	2,235	0
Holiday Pay	1,672	1,049	623
Other Paid Leave	1,672	1,049	623
Unemployment Insurance	184	147	37
Wages & Benefits Subtotal	\$134,248	\$114,506	\$19,742
Outside Services			
Media Ad Placement	75,000	128,000	(53,000)
Brochures & Publications	22,000	22,000	0
Promotional Giveaways	5,000	5,000	0
Bus/Shuttle Decorations	5,000	5,000	0
Other Promotions	5,000	5,000	0
Route Schedules & Information	126,000	126,000	0
Training, Travel & Meetings	4,500	4,500	0
Outside Services Subtotal	\$242,500	\$295,500	(\$53,000)
Promotion & Information Subtotal	\$376,748	\$410,006	(\$33,258)
FARE REVENUE COLLECTION			
Wages & Benefits			
Security Officer	\$74,160	\$62,201	\$11,958
FICA	6,359	5,334	1,025
Pension	8,313	6,973	1,340
Health	28,293	24,425	3,868
Sick Pay	1,052	854	198
Vacation Pay	3,773	3,277	496
Holiday Pay	300	300	0
Other Paid Leave	1,360	1,112	248
Unemployment Insurance	213	176	37
Wages & Benefits Subtotal	\$123,823	\$104,652	\$19,171
Outside Services			
Fare Processing	\$11,000	\$1,000	\$10,000
Farebox Parts & Repairs	50,000	70,000	(20,000)
Tickets, Tokens & Transfers	62,000	52,000	10,000
Outside Services Subtotal	\$123,000	\$123,000	\$0
Fare Revenue Collection Subtotal	\$246,823	\$227,652	\$19,171
TOTAL PSNGR ACCOMMODATIONS	\$1,692,795	\$1,699,852	(\$7,057)

GENERAL OVERHEAD BUDGET
FISCAL YEAR 2008/2009

	Revision Budget FY 08/09	Original Budget FY 08/09	Change
<i>FINANCE</i>			
Staff	\$331,265	\$331,104	\$162
FICA	29,201	29,616	(415)
Pension	38,171	38,714	(543)
Health	66,507	81,504	(14,997)
Sick Pay	3,040	3,040	0
Vacation Pay	27,604	30,194	(2,590)
Holiday Pay	15,202	15,202	0
Other Paid Leave	7,601	7,601	0
Unemployment Insurance	779	779	0
Financial Audit Services	42,000	42,000	0
<i>Finance Subtotal</i>	<u>\$561,371</u>	<u>\$579,755</u>	<u>(\$18,384)</u>
<i>PERSONNEL</i>			
Staff	\$60,515	\$60,515	\$0
FICA	5,322	5,322	0
Pension	6,956	6,956	0
Health	15,789	12,099	3,690
Sick Pay	1,992	1,992	0
Vacation Pay	3,868	3,868	0
Holiday Pay	2,656	2,656	0
Other Paid Leave	531	531	0
Unemployment Insurance	147	147	0
<i>Personnel Subtotal</i>	<u>\$97,777</u>	<u>\$94,086</u>	<u>\$3,690</u>
<i>UTILITIES</i>			
Telephone & Data Communications	\$55,000	\$55,000	\$0
Power, Water & Refuse	123,000	123,000	0
Two-Way Radios	25,000	25,000	0
<i>Utilities Subtotal</i>	<u>\$203,000</u>	<u>\$203,000</u>	<u>\$0</u>
<i>OPERATING FACILITIES</i>			
<i>Wages & Benefits</i>			
Staff	\$39,523	\$39,523	\$0
FICA	3,338	3,338	0
Pension	4,364	4,364	0
Health	15,746	15,746	0
Sick Pay	658	658	0
Vacation Pay	1,646	1,646	0
Holiday Pay	1,646	1,646	0
Other Paid Leave	165	165	0
Unemployment Insurance	147	147	0
<i>Wages & Benefits Subtotal</i>	<u>\$67,234</u>	<u>\$67,234</u>	<u>\$0</u>
<i>OPERATING FACILITIES (cont'd)</i>			
<i>Service Vehicles</i>			

GENERAL OVERHEAD BUDGET
FISCAL YEAR 2008/2009

	Revision Budget FY 08/09	Original Budget FY 08/09	Change
Parts & Repairs	\$20,000	\$20,000	\$0
Fuel	50,000	50,000	0
Service Vehicles Subtotal	\$70,000	\$70,000	\$0
Buildings & Grounds			
Contract Maintenance	\$60,400	\$60,400	\$0
Overpass Site	100,000	118,425	(18,425)
B&G Repairs/Supplies	65,000	80,000	(15,000)
Property Insurance	13,050	13,050	0
Buildings & Grounds Subtotal	\$238,450	\$271,875	(\$33,425)
<i>Operating Facilities Subtotal</i>	<u>\$375,684</u>	<u>\$409,109</u>	<u>(\$33,425)</u>
 <i>DISTRICT ADMINISTRATION</i>			
Wages & Benefits			
Staff	\$428,602	\$434,495	(\$5,894)
Bus Ad Revenue Placement	5,907	5,907	0
FICA	38,324	38,324	0
Pension	50,097	50,097	0
Health	109,291	101,674	7,617
Sick Pay	7,018	7,018	0
Vacation Pay	39,992	34,098	5,894
Holiday Pay	19,317	19,317	0
Other Paid Leave	6,037	6,037	0
Unemployment Insurance	919	919	0
Wages & Benefits Subtotal	\$705,502	\$697,886	\$7,617
Administrative Services			
Directors Fees	\$15,120	\$15,120	\$0
Public Officials Insurance	31,224	31,224	0
Legal Counsel	57,000	57,000	0
Pension Administration	11,900	11,900	0
Office Equipment Maintenance	81,644	81,644	0
Miscellaneous Services	92,640	117,640	(25,000)
Office & Computer Supplies	58,000	58,000	0
Dues & Subscriptions	37,075	37,075	0
Conferences, Meetings & Training	11,000	11,000	0
Employee Relations	15,000	15,000	0
Retiree Health Insurance	83,433	83,433	0
Mandated Fees & Permits	16,700	46,700	(30,000)
Bus Ad Revenue Program	1,500	1,500	0
Miscellaneous	15,000	15,000	0
Environmental Cleanup Costs	0	0	0
Administrative Services Subtotal	\$527,236	\$582,236	(\$55,000)
<i>District Administration Subtotal</i>	<u>\$1,232,738</u>	<u>\$1,280,121</u>	<u>(\$47,383)</u>
TOTAL GENERAL OVERHEAD	<u><u>\$2,470,570</u></u>	<u><u>\$2,566,072</u></u>	<u><u>(\$95,502)</u></u>

To: Chair Davis
Members of the Board of Directors
From: Sherrie Fisher, General Manager
Date: 2/20/2009
Subject: Administrative Update



MTD provided a Saturday level of service on Monday, February 16th for Presidents' Day holiday.

The Valley Express service will detour on Friday the 20th to accommodate the Amgen Tour of California time trials taking place in Solvang. Bus stops are posted with detour information and flyers were distributed on all Valley Express buses.

The driver bid for March is ongoing. MTD is required by our union contract to have a minimum of four driver bids annually.

Driver trainees Adam Delatorre, David Pentland, and Alex Paciano are nearing the end of their training. All are doing well.

David Damiano and Jim Haggerty met with County of Santa Barbara Public Works representatives to review the plans for the next phase of the Summerland street improvements. MTD bus stops will be included in the project.

The Marketing Department attended two Cottage Hospital employee benefit fairs this week. Schedule guides were distributed to Cottage employees along with trip planning assistance.

For reasons of safety, the City of Goleta plans extension of the red curbing at the bus stop near Brandon School. The proposed Red Curb parking restrictions would be in effect 24/7. This proposal will be at Goleta City Council meeting on March 17, 2009.

Steve Maas attended a Goleta Chamber of Commerce "Issue & Policy Roundtable" meeting on February 10th. The roundtable included a discussion by County & UCSB staff regarding UCSB's Long Range Development Plan (LRDP). Staff will continue to monitor the LRDP process.

Staff is currently working on the application for liability insurance in preparation for a presentation at March 10th Board meeting.

MTD is currently at a full staffing level for drivers. We continue to monitor necessary driver staffing levels and will adjust the number as needed.

Training continues for the three mechanics in process of attaining their Class A-CDL to qualify for towing buses. The plan is to have them prepared over the next two weeks to take the DMV tests.

Quotes are being solicited for storage racks and wire mesh bins to store components to be removed from the five salvage EV's. Racks are also planned for storing Ni-Cd and lead-acid batteries. We are also seeking storage for the EV holiday decorative "Toppers" due to the significant floor space currently in use in the EV sheds. The overall intent is to free up enough space to park the three new 29' hybrid buses that are on order.

The city water department has completed testing of our water meter and found it to be within allowable tolerance. The programming of the bus wash water softening system will be reviewed and readjusted. The intent is to reduce water consumption without adversely affecting water quality.

While police investigation of the February 2nd pedestrian accident continues, we have provided opportunities for employees to seek recovery assistance.

Tom McIlmoil from MTD's Employee Assistance Program was on site at MTD on February 5th to counsel employees as well as offer private sessions as appropriate. In addition, on February 11th MTD Attorney Phil Moncharsh met with employees. I also invited Hospice to provide grief/loss/bereavement sessions for employees who wish to attend on February 19th, 20th, and 21st.

As is the case of any accident, training involves all drivers even when it is clear that MTD is not responsible.

Due to an unexpected illness, the minutes from the meeting of February 10, 2009 are not available. These will be completed and forwarded to you no later than next Tuesday at noon.