RESOLUTION APPROVING THE SECOND AMENDED LONG RANGE PROPERTY MANAGEMENT PLAN OF THE CITY OF MODESTO REDEVELOPMENT SUCCESSOR AGENCY PURSUANT TO HEALTH AND SAFETY CODE SECTION 34191.5(B)

WHEREAS, on October 17, 2013, the Modesto Redevelopment Successor Agency Oversight Board adopted Resolution 2013-07 approving the City of Modesto Redevelopment Successor Agency Long Range Property Management Plan (the Plan), and

WHEREAS, the Plan was submitted to the State Department of Finance (DOF) on October 24, 2013, and

WHEREAS, City staff was contacted by the DOF to discuss the permissible uses identified in the Plan for the following properties:

1. 11th Street Parking Garage (TSP)
2. 1010 10th Street – 1st Floor Retail Space
3. 1125 9th Street – Parking Garage
4. 1150 9th Street – Centre Plaza; and

WHEREAS, the DOF’s position was these properties do not meet the definition of the Government/Public Use designation, and

WHEREAS, based on discussions with DOF staff and the City’s legal counsel, the Plan was amended (the Amended Plan) to retain these properties as Government/Public Use until the debts are retired, at which time they would be evaluated for disposition if appropriate, and
WHEREAS, the Amended Plan was approved by the City Council (Resolution No. 2014-70) and Successor Agency (Resolution No. 01-2014) on February 25, 2014 and the Oversight Board (Resolution No. 2014-06) on February 27, 2014, and submitted to the DOF on March 4, 2014, and

WHEREAS, additional discussions with the DOF staff occurred following the submission of the Amended Plan, and

WHEREAS, DOF staff maintained the position that the identified properties do not meet the Government/Public Use designation and must be designated for disposition in order for the Plan to be approved, and

WHEREAS, options regarding this designation were considered, including the option for the City of Modesto to purchase the properties, which requires the execution of a Compensation Agreement with the taxing entities, with the net sales proceeds being distributed to the taxing entities on a pro rata basis in proportion to each entity's respective share of the property tax base, and

WHEREAS, given the long-term contracts restricting the use of the properties, the disposition price for the properties is anticipated to be minimal, and

WHEREAS, the Plan has been amended a second time to designate these properties for sale to the City of Modesto in accordance with the Plan,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the Second Amended Long Range Property Management Plan (Exhibit A) of the City of Modesto Redevelopment Successor Agency pursuant to Health and Safety Code Section 34191.5(b).
The foregoing resolution was introduced at a special meeting of the Council of the City of Modesto held on the 15th day of April, 2014, by Councilmember Lopez, who moved its adoption, which motion being duly seconded by Councilmember Cogdill, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Cogdill, Gunderson, Kenoyer, Lopez, Madrigal, Zoslocki, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: __________________________

SEAL

ADAM LINDGREN, Interim City Attorney

APPROVED AS TO FORM:

By: __________________________

SEAL

ADAM LINDGREN, Interim City Attorney
DRAFT SECOND AMENDED LONG-RANGE PROPERTY MANAGEMENT PLAN

CITY OF MODESTO REDEVELOPMENT SUCCESSOR AGENCY

APRIL 2014

Prepared By:

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<td>20</td>
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<tr>
<td>3.0  Attachments</td>
<td></td>
</tr>
</tbody>
</table>
1.0 Introduction

1.1 Background & Purpose

Health and Safety Code Section 34191.5, added by AB 1484 (signed into law on June 27, 2012), requires each Successor Agency ("SA") to prepare and approve a Long-Range Property Management Plan ("LRPMP") that addresses the disposition and use of the real properties of the former redevelopment agency. Properties held by a successor agency cannot be disposed of until the State Department of Finance ("DOF") has approved the LRPMP. This document is the LRPMP for the Successor Agency to the former Modesto Redevelopment Agency.
1.2 Successor Agency Property Summary

There are eleven (11) parcels/seven (7) properties owned and controlled by the Successor Agency. All eleven (11) parcels/seven (7) properties entail fee simple property.

<table>
<thead>
<tr>
<th>#</th>
<th>Address/Description</th>
<th>APN</th>
<th>Purpose</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>11th Street Parking Garage</td>
<td>105-037-032</td>
<td>X*</td>
</tr>
<tr>
<td>2</td>
<td>1010 10th Street - 1st Floor Retail</td>
<td>105-037-033;</td>
<td>X*</td>
</tr>
<tr>
<td></td>
<td></td>
<td>105-037-034</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>9th Street Parking Lot</td>
<td>105-041-021</td>
<td>X</td>
</tr>
<tr>
<td>4</td>
<td>1125 9th Street - Parking Garage</td>
<td>105-048-006</td>
<td>X*</td>
</tr>
<tr>
<td>5</td>
<td>9th Street Pedestrian Bridge</td>
<td>105-048-008</td>
<td>X</td>
</tr>
<tr>
<td>6</td>
<td>1150 9th Street - Centre Plaza</td>
<td>105-048-011</td>
<td>X</td>
</tr>
<tr>
<td>7</td>
<td>777 10th Street - Parking Lot</td>
<td>106-042-001;</td>
<td>X</td>
</tr>
<tr>
<td></td>
<td></td>
<td>106-042-002</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>106-042-003</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>106-042-004</td>
<td></td>
</tr>
</tbody>
</table>

*At or before the retirement of debt, the City will reach compensation agreements with the other taxing entities for Sites #1, #2, #4 and #6 in accordance with all applicable laws and subject to all applicable covenants, contracts, and restrictions affecting the properties.
2.0 **Long-Range Property Management Plan (PMP)**

Property #1: 11th Street Parking Garage

---

**Parcel Data – Property #1**

<table>
<thead>
<tr>
<th>Address</th>
<th>Southwest Corner 11th Street and K Street</th>
</tr>
</thead>
<tbody>
<tr>
<td>APN</td>
<td>105-037-032</td>
</tr>
<tr>
<td>Lot Size</td>
<td>1.15 acre (50,094 square feet)</td>
</tr>
<tr>
<td>Use</td>
<td>Parking Structure</td>
</tr>
<tr>
<td>Zoning</td>
<td>DC (Downtown Core)</td>
</tr>
<tr>
<td>Current Title</td>
<td>Modesto Redevelopment Agency</td>
</tr>
<tr>
<td>Improvements</td>
<td>Four-story + basement parking structure (connected to Tenth Street Place (TSP), City-County Administration Building)</td>
</tr>
</tbody>
</table>

**Acquisition & Valuation Information – Property #1**

<table>
<thead>
<tr>
<th>Purchase Date</th>
<th>6/29/2001 (date of existing grant deed in the former RDA name)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Purchase Price</td>
<td>New Construction</td>
</tr>
<tr>
<td>Funding Source</td>
<td>Land purchased with City general fund monies; construction was financed through issuance of bonds secured by Redevelopment Agency tax increment.</td>
</tr>
<tr>
<td>Existing Debt</td>
<td>This property is collateral for the Lease Revenue Bonds scheduled to be paid in full on 9/1/2033. Outstanding balance of this debt is $28,493,199.</td>
</tr>
<tr>
<td>Purpose</td>
<td>A multi-level public parking facility constructed to serve the City-County Administration building employers and visitors and adjacent office and retail businesses.</td>
</tr>
<tr>
<td>Estimate of Current Value</td>
<td>$7,035,624</td>
</tr>
<tr>
<td>Method of Valuation</td>
<td>Straight line depreciation on fixed assets.</td>
</tr>
</tbody>
</table>
Revenues Generated by Property & Contractual Requirements – Property #1

Annual revenue generated equals $409,117. A portion of this revenue is derived from the parking fees which are charged as follows:
$1 per hour 6 a.m. to 6 p.m.
$5 flat fee 6 p.m. to 6 a.m.

Additionally, included in that revenue amount are three (3) parking agreements as summarized below:
$38,472 from Centerra Capital (Parking Garage retail space)
$44,250 from Civic Partners (TSP retail space)
$114,411 from AIM Property Management (Cinema)

Annual expenses include:
$281,291 for maintenance
$1,353,104 debt service (FY14 including Tenth Street Place)

The City of Modesto pays for all maintenance out of the City Parking Fund.

City / Successor Agency Lease Agreement

Of the 727 parking spaces, 432 are perpetually reserved under recorded contracts (Attachment A); 377 for government employees and 55 for the office building owned by Centerra Capital, to satisfy downtown parking requirements. In addition, the parking agreement with Civic Partners requires validation of parking for retail business patrons on a first-come, first-served basis. In addition, there is a parking agreement with the Joint Powers Authority per attachment A.

Approximately 52% of the parking spaces are contractually obligated to provide government employee parking for as long as the City-County JPA is in existence and the government agencies continue to operate and provide services in the public structure adjacent to the garage. In addition, the parking agreements with Centerra Capital, and Civic Partners also continue as long as the parking garage and retail and office uses are in existence and open for business, thus limiting resale value.

History of Environmental Contamination or Remediation Efforts – Property #1

None

Transit-Oriented Development & Advancement of Agency Planning Objectives – Property #1

Potential for TOD
Not applicable, fully developed as parking structure.

Agency Planning Objectives
Maintaining the property as public parking to support the adjacent City-County government building and retail businesses, is a planning objective identified in former planning Redevelopment Agency planning documents (Attachment C).
At or before the retirement of debt, the City will reach compensation agreements with the other taxing entities for Sites #1, #2, #4 and #6 in accordance with all applicable laws and subject to all applicable covenants, contracts, and restrictions affecting the properties. The agreement will specify that the net sales proceeds for the disposition will be distributed to all of the taxing entities on a pro rata basis in proportion to each entity's respective share of the property tax base, provided, however, that this provision shall not be operative if a court order, legislation or Department of Finance policy reverses the DOF's directive regarding such agreements.

Recommended for Disposition – Property #1

SALE

Unknown.
Property #2: 1010 10th Street 1st Floor Retail

<table>
<thead>
<tr>
<th>Parcel Data – Property #2</th>
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</thead>
<tbody>
<tr>
<td><strong>Address</strong></td>
</tr>
<tr>
<td><strong>APN</strong></td>
</tr>
<tr>
<td><strong>Lot Size</strong></td>
</tr>
<tr>
<td><strong>Use</strong></td>
</tr>
<tr>
<td><strong>Zoning</strong></td>
</tr>
<tr>
<td><strong>Current Title</strong></td>
</tr>
<tr>
<td><strong>Improvements</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Acquisition &amp; Valuation Information – Property #2</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Purchase Date</strong></td>
</tr>
<tr>
<td><strong>Purchase Price</strong></td>
</tr>
<tr>
<td><strong>Funding Source</strong></td>
</tr>
<tr>
<td><strong>Existing Debt</strong></td>
</tr>
<tr>
<td><strong>Purpose</strong></td>
</tr>
<tr>
<td><strong>Estimate of Current Value</strong></td>
</tr>
<tr>
<td><strong>Method of Valuation</strong></td>
</tr>
</tbody>
</table>
Revenues Generated by Property & Contractual Requirements – Property #2

**Annual Revenues:** $106,294  
**Annual Maintenance Costs:** $63,017  
**Annual Debt Service:** a portion of $1,353,104 (in conjunction with debt service on the 11th Street Parking Garage)

Agreements Affecting the Condominium Parcel

The Redevelopment Agency has a Lease Agreement with Option to Purchase with Civic Partners Modesto, Inc., on the first floor retail airspace of 1010 10th Street. The Agreement provides for a purchase price of $1,605,962; the option can be exercised at any time during the lease; the lease term runs through 2032. In addition, the condominium airspace is subject to several other agreements, including a Reciprocal Easement and Maintenance Agreement, and Conditions, Covenants and Restrictions for the City-County Administration Building.

History of Environmental Contamination or Remediation Efforts – Property #2

None

Transit-Oriented Development & Advancement of Agency Planning Objectives – Property #2

**Potential for TOD**

Not applicable, fully developed as airspace within a governmental building.

**Agency Planning Objectives**

Dependent upon the terms of the Lease Agreement with Option to Purchase By and Between Redevelopment Agency of the City of Modesto and Civic Partners Modesto, Inc. and the public financing bonds.

Brief History of Previous Development Proposals and Activities – Property #2

**History**

Unknown.

Recommendation for Disposition – Property #2

At or before the retirement of debt, the City will reach compensation agreements with the other taxing entities for Sites #1, #2, #4 and #6 in accordance with all applicable laws and subject to all applicable covenants, contracts, and restrictions affecting the properties. The agreement will specify that the net sales proceeds for the disposition will be distributed to all of the taxing entities on a pro rata basis in proportion to each entity’s respective share of the property tax base, provided, however, that this provision shall not be operative if a court order, legislation or Department of Finance policy reverses the DOF’s directive regarding such agreements.
Property #3: 9th Street Parking Lot

<table>
<thead>
<tr>
<th>Parcel Data – Property #3</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Address</strong></td>
</tr>
<tr>
<td><strong>APN</strong></td>
</tr>
<tr>
<td><strong>Lot Size</strong></td>
</tr>
<tr>
<td><strong>Use</strong></td>
</tr>
<tr>
<td><strong>Zoning</strong></td>
</tr>
<tr>
<td><strong>Current Title</strong></td>
</tr>
<tr>
<td><strong>Improvements</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Acquisition &amp; Valuation Information – Property #3</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Purchase Date</strong></td>
</tr>
<tr>
<td><strong>Purchase Price</strong></td>
</tr>
<tr>
<td><strong>Funding Source</strong></td>
</tr>
<tr>
<td><strong>Existing Debt</strong></td>
</tr>
<tr>
<td><strong>Purpose</strong></td>
</tr>
<tr>
<td><strong>Estimate of Current Value</strong></td>
</tr>
<tr>
<td><strong>Method of Valuation</strong></td>
</tr>
</tbody>
</table>
**Revenues Generated by Property & Contractual Requirements – Property #3**

| City / Successor Agency Lease Agreement | Annual revenue generated equals $30,727. This revenue is derived from the parking fees which are charged as follows: $1 per hour 6 a.m. to 6 p.m. $5 flat fee 6 p.m. to 6 a.m. The annual maintenance of this parcel is $16,250. City pays for all maintenance costs. |

**History of Environmental Contamination or Remediation Efforts – Property #3**

| None | Unknown. |

**Transit-Oriented Development & Advancement of Agency Planning Objectives – Property #3**

| Potential for TOD | The property supports the Modesto Downtown Transportation Center which resides across 9th Street and runs Amtrak, ACE, a connection to BART, Greyhound buses, and all Modesto Area Express lines. |
| Agency Planning Objectives | The property should be transferred back to the City of Modesto for continued use as a surface parking lot. |

**Brief History of Previous Development Proposals and Activities – Property #3**

| History | The proposed development with McDonald’s Corporation for the development of a restaurant, associated parking and landscaping, trash enclosures and restorative work on adjacent parking lot never occurred. It has been used for many years as a City parking lot. |

**Recommendation for Disposition – Property #3**

| Retain as Government/Public Use | Transfer to the City of Modesto. This property was previously owned by the City of Modesto and was conveyed to the Redevelopment Agency for a potential project which never occurred. No Redevelopment Agency funds were used to acquire or maintain the property. The Resolution related to this transfer specifically states “...and the Site will not be acquired by the Agency, either directly or indirectly, with tax increment monies...” (Attachment D) |
### Property #4: 1125 9th Street Parking Garage

**Parcel Data – Property #4**

<table>
<thead>
<tr>
<th>Address</th>
<th>1125 9th Street Parking Garage</th>
</tr>
</thead>
<tbody>
<tr>
<td>APN</td>
<td>105-048-006</td>
</tr>
<tr>
<td>Lot Size</td>
<td>70,567 square feet</td>
</tr>
<tr>
<td>Use</td>
<td>Parking Garage</td>
</tr>
<tr>
<td>Zoning</td>
<td>DC (Downtown Core)</td>
</tr>
<tr>
<td>Current Title</td>
<td>Modesto Redevelopment Agency</td>
</tr>
<tr>
<td>Improvements</td>
<td>Four-story parking garage</td>
</tr>
</tbody>
</table>

**Acquisition & Valuation Information – Property #4**

| Purchase Date    | 6/30/1988 (date placed in service as a fixed asset) |
| Purchase Price   | Construction financing costs (see below)            |
| Funding Source   | Underlying land was purchased using City general fund monies; construction loan/financing obtained by pledging tax increment. |
| Existing Debt    | This property (along with Properties Nos. 5 and 6) is collateral for the Certificates of Participation scheduled to be paid in full on 11/2/2023. Outstanding balance of this debt is $20,933,535. |
| Purpose          | A multi-level parking garage serving the City's Community Center and DoubleTree Hotel. |
| Estimate of Current Value | $1,714,740 |
| Method of Valuation | Straight line depreciation on fixed assets. |
Revenues Generated by Property & Contractual Requirements – Property #4

Annual revenue generated equals $175,051 which are deposited into the City’s Parking Fund. A portion of this revenue is derived from the parking fees which are charged as follows:

- $1 per hour 6 a.m. to 6 p.m.
- $5 flat fee 6 p.m. to 6 a.m.

Included in that revenue amount is an agreement with the DoubleTree Hotel in the amount of $103,440. The City of Modesto has maintained the garage since it was constructed out of its Parking Fund.

Agreements Affecting Garage

This parking structure has 787 parking spaces. As mentioned above, the garage is collateral under the COP financing agreements. In addition, the agreement between the Doubletree Hotel and the City of Modesto allocates 615 parking spaces for use by the DoubleTree employees, office tenants, hotel guests or customers 24 hours a day 7 days a week. In addition, the Amendment provides that the City shall have the right to use 120 parking spaces on the roof of the garage until May 31, 2023. The Agreement with the DoubleTree terminates on May 31, 2055 but gives DoubleTree two (2) ten year options to extend.

History of Environmental Contamination or Remediation Efforts – Property #4

This location is part of six properties subject to the Oversight Agreement within a project area as defined in Health and Safety Code Section 33320.1. Passive soil gas surveys conducted by the Regional Water Quality Control Board and consultants to the City of Modesto and the Modesto Redevelopment Agency in 1989 to 1991 and 2000 to 2001, respectively indicate that PCE has entered the subsurface soils from discharge to sanitary sewer lines. *This information is per the Department of Toxic Substances Control ENVIROSTOR database.

Transit-Oriented Development & Advancement of Agency Planning Objectives – Property #4

Potential for TOD

Not applicable, fully developed as parking structure.

Agency Planning Objectives

Maintaining the property as public parking to support the Modesto Centre Plaza/Community Center, which is a planning objective identified in former planning Redevelopment Agency planning documents (See Attachment G).

Brief History of Previous Development Proposals and Activities – Property #4

History

Construction of the existing multi-level parking garage in support of the Community Center.
At or before the retirement of debt, the City will reach compensation agreements with the other taxing entities for Sites #1, #2, #4 and #6 in accordance with all applicable laws and subject to all applicable covenants, contracts, and restrictions affecting the properties.

The agreement will specify that the net sales proceeds for the disposition will be distributed to all of the taxing entities on a pro rata basis in proportion to each entity's respective share of the property tax base, provided, however, that this provision shall not be operative if a court order, legislation or Department of Finance policy reverses the DOF's directive regarding such agreements.
Property #5: 9th Street Pedestrian Bridge

Parcel Data – Property #5

<table>
<thead>
<tr>
<th>Address</th>
<th>9th Street Pedestrian Bridge</th>
</tr>
</thead>
<tbody>
<tr>
<td>APN</td>
<td>105-48-08</td>
</tr>
<tr>
<td>Lot Size</td>
<td>703 square feet</td>
</tr>
<tr>
<td>Use</td>
<td>Pedestrian Bridge</td>
</tr>
<tr>
<td>Zoning</td>
<td>DC (Downtown Core)</td>
</tr>
<tr>
<td>Current Title</td>
<td>Modesto Redevelopment Agency</td>
</tr>
<tr>
<td>Improvements</td>
<td>703 square foot pedestrian bridge between the parking garage and the City Community Center and DoubleTree hotel.</td>
</tr>
</tbody>
</table>

Acquisition & Valuation Information – Property #5

| Purchase Date   | March 23,1984 (date of existing grant deed in the former RDA name) |
| Purchase Price  | New Construction                                                   |
| Funding Source  | Land was purchased using City general fund monies; construction loan/financing obtained by pledging tax increment. This property (along with Properties Nos. 4 and 6) is collateral for the Certificates of Participation scheduled to be paid in full on 11/2/2023. Outstanding balance of this debt is $20,933,535. |
| Existing Debt   | Public Use                                                          |
| Purpose         | Due to the nature of the reporting of fixed assets, this property is not clearly identifiable in records and therefore an estimate of current value is unknown. |
| Estimate of Current Value | N/A                                                                |

*Method of Valuation: N/A*
## Revenues Generated by Property & Contractual Requirements – Property #5

| City / Successor Agency Lease Agreement | As mentioned above, the bridge is pledged collateral under the COP financing agreements. There are no revenues for this property nor are there any contractual requirements. The City currently pays for the annual maintenance of the facility which is approximately $16,970. In addition, this property is included in the debt service payments with the Modesto Centre Plaza and the 9th Street Parking Garage – this annual payment is $1,961,450. |

## History of Environmental Contamination or Remediation Efforts – Property #5

| None | Unknown. |

## Transit-Oriented Development & Advancement of Agency Planning Objectives – Property #5

| Potential for TOD | Not Applicable. Transfer to City to maintain as pedestrian bridge to provide access from parking garage to Modesto Centre Plaza/Community Center. |
| Agency Planning Objectives | |

## Brief History of Previous Development Proposals and Activities – Property #5

| History | Property was developed as a pedestrian bridge in 1988 to support the Modesto Centre Plaza/Community Center as part of the redevelopment project identified in the 1983 RDA Master Plan (Attachment G). |

## Recommendation for Disposition – Property #5

| Retain as Government/Public Use | This property will be retained by the City for government use, as its value is undetermined due to no revenue. The City of Modesto desires to take ownership of this property "as is" as it is already responsible for the annual maintenance of this facility. |
Property #6: 1150 9th Street – Modesto Centre Plaza (Community Center)

<table>
<thead>
<tr>
<th>Parcel Data – Property #6</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Address</strong></td>
</tr>
<tr>
<td><strong>APN</strong></td>
</tr>
<tr>
<td><strong>Lot Size</strong></td>
</tr>
<tr>
<td><strong>Use</strong></td>
</tr>
<tr>
<td><strong>Zoning</strong></td>
</tr>
<tr>
<td><strong>Current Title</strong></td>
</tr>
<tr>
<td><strong>Improvements</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Acquisition &amp; Valuation Information – Property #6</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Purchase Date</strong></td>
</tr>
<tr>
<td><strong>Purchase Price</strong></td>
</tr>
<tr>
<td><strong>Funding Source</strong></td>
</tr>
<tr>
<td><strong>Existing Debt</strong></td>
</tr>
<tr>
<td><strong>Purpose</strong></td>
</tr>
<tr>
<td><strong>Estimate of Current Value</strong></td>
</tr>
<tr>
<td><strong>Method of Valuation</strong></td>
</tr>
</tbody>
</table>
Revenues Generated by Property & Contractual Requirements – Property #6

Revenue Generated by Property & Contractual Requirements; Annual revenue generated equals $744,000. This revenue is generally derived from the following sources:

<table>
<thead>
<tr>
<th>Category</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Labor Charges for Services</td>
<td>$24,000</td>
</tr>
<tr>
<td>Commissions (Cultural and Tech Services)</td>
<td>$230,000</td>
</tr>
<tr>
<td>Equipment Rentals</td>
<td>$75,000</td>
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<td>Room Rentals</td>
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<td>Misc.</td>
<td>$5,000</td>
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In addition to the leases entered into as part of the COP financing, the Modesto Centre Plaza (through the City of Modesto) is under a catering contract with the DoubleTree Hotel (Attachment H). Revenue from this catering contract is included in the line item for “Commissions.”

The existing contract expires in May 2019 and has three 10-year extension options. The contract states “DOUBLETREE will have the exclusive right to provide all catering services at the CENTER.” Catering Services is defined as “the preparation and serving of food and non-alcoholic beverages at a per-plate, per-person or per-order charge at the CENTER, regardless of the event, including, without limitation, banquet, meetings, conferences, exhibits, trade shows, concerts and any other uses of the CENTER. The exception relates to Non-Profit Organizations which are allowed to “(1) prepare their own food items in the CENTER’s kitchen if the food items are prepared by the non-profit organization’s members; and (2) supply their own donated alcoholic beverages for hosted functions provided such non-profit organizations pay any corkage fees established by DOUBLETREE from time to time.

Revenue is also received from the Parking Lot which is part of this parcel. Annual revenues total: $52,587. Annual maintenance costs total approximately: $50,000. In addition, this property is included in the debt service payments with the 9th Street Parking Garage and the 9th Street Pedestrian Bridge – this annual payment is $1,961,450. The City is responsible for all maintenance costs of the Center.

History of Environmental Contamination or Remediation Efforts – Property #6

Prior to purchase by the City of Modesto, the Modesto Centre Plaza site was occupied by Bradbury’s Cleaners. During construction and demolition work at the site, four leaking underground storage tanks used to store Stoddard Solvent were uncovered. Contaminated soils were excavated to 25 feet below ground surface, aerated, and backfilled into the excavation area. *This information is per the Department of Toxic Substances Control ENVIROSTOR database.*
### Transit-Oriented Development & Advancement of Agency Planning Objectives – Property #6

**Potential for TOD**
Not applicable, fully developed as a City community center.

**Agency Planning Objectives**
Maintaining the property as public space to increase tourism downtown as a planning objective identified in the 1983 RDA Master Plan (Attachment G).

### Brief History of Previous Development Proposals and Activities – Property #6

**History**
Unknown.

### Recommendation for Disposition – Property #6

At or before the retirement of debt, the City will reach compensation agreements with the other taxing entities for Sites #1, #2, #4 and #6 in accordance with all applicable laws and subject to all applicable covenants, contracts, and restrictions affecting the properties. The agreement will specify that the net sales proceeds for the disposition will be distributed to all of the taxing entities on a pro rata basis in proportion to each entity's respective share of the property tax base, provided, however, that this provision shall not be operative if a court order, legislation or Department of Finance policy reverses the DOF's directive regarding such agreements.
Property #7: 777 10th Street – Parking Lot (Proposed Courthouse Site)

<table>
<thead>
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<th>Parcel Data – Property #7</th>
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<tr>
<td><strong>Address</strong></td>
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<td><strong>APN</strong></td>
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<td><strong>Lot Size</strong></td>
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<td><strong>Use</strong></td>
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<td><strong>Improvements</strong></td>
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<th>Acquisition &amp; Valuation Information – Property #7</th>
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<td><strong>Purchase Date</strong></td>
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<td><strong>Purchase Price</strong></td>
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<td><strong>Estimate of Current Value</strong></td>
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<td><strong>Method of Valuation</strong></td>
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</table>
### Revenues Generated by Property & Contractual Requirements – Property #7

- **City / Successor Agency Lease Agreement**
  - Annual revenue generated equals $89,266. This revenue is derived from the parking fees which are charged as follows:
    - $1 per hour 6 a.m. to 6 p.m.
    - $5 flat fee 6 p.m. to 6 a.m.
  - Annual maintenance costs for this property are approximately $42,561.22.

### History of Environmental Contamination or Remediation Efforts – Property #7

- **None**
  - A Phase 2 environmental study was recently conducted by the State of California Administrative Office of the Courts; however, the findings have not been released for public disclosure. In addition, a Phase 1 was conducted as part of a previous development project lead by Team Modesto.

### Transit-Oriented Development & Advancement of Agency Planning Objectives – Property #7

- **Potential for TOD**
  - The property is located within close proximity (0.2 miles/5 minute walk) of the Modesto Downtown Transportation Center, which provides access to Amtrak, ACE, a connection to BART, and all Modesto Area Express lines. Also located next to bus stop for Modesto Area Express, Bus Lines include 25, 34, 37, 38, and 39. These parcels are currently part of an entire block of parcels that the State Administrative Office of the Courts has selected as the future site for the State of California Superior Court Courthouse for Stanislaus County. In addition, these parcels are located along 10th Street which is a focal point in the 2007 RDA Master Plan (Attachment I).

### Agency Planning Objectives

- **These parcels are currently part of an entire block of parcels that the State Administrative Office of the Courts has selected as the future site for the State of California Superior Court Courthouse for Stanislaus County. In addition, these parcels are located along 10th Street which is a focal point in the 2007 RDA Master Plan (Attachment I).**

### Brief History of Previous Development Proposals and Activities – Property #7

- **History**
  - These parcels were originally acquired and owned by the City of Modesto and were the subject of two mixed-use projects which did not come to fruition.
Recommendation for Disposition – Property #7

Transfer of these parcels to the City of Modesto in order to meet the State of California Administrative Office of the Courts’ deadline for securing the State of California Stanislaus County Superior Courthouse project. In addition, this property was previously owned by the City of Modesto and was conveyed to the Redevelopment Agency for purposes of disposition to a developer pursuant to a DDA. No property tax increment was used to purchase these parcels.
3.0 Attachments

A. 11th Street Parking Garage Agreements and Assignment of Agreements
C. 1994 RDA Master Plan
D. Civic Partners Lease Agreement
E. DDA between City and RDA for 9th Street Lot/McDonalds
F. Amendment to 9th Street Parking Garage Agreement with DoubleTree Hotel
G. 1983 RDA Master Plan
H. DoubleTree Catering and Concessionaire Agreement
I. 2007 RDA Master Plan
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WHEREAS, the State of California, acting by and through the Judicial Council of California, Administrative Office of the Courts (State/AOC) desires to develop a new courthouse for the Superior Court of Stanislaus County and in 2011 selected the city block bounded by G and H Streets, and 9th and 10th Streets (the 10th Street Site) as a potential site, and

WHEREAS, the City Council directed City staff to assist the State/AOC and to negotiate with the AOC project team for acquisition and sale of the 10th Street Site, and

WHEREAS, in June 2013, the State/AOC informed the City of its interest in acquiring the property comprising the 10th Street Site, and

WHEREAS, in a public meeting held March 12, 2014, the Court Facilities Advisory Committee voted to endorse a directive from its Cost Reduction Subcommittee to continue negotiations on the preferred site for the new Modesto Courthouse to be constructed on 10th Street, and
WHEREAS, the four parcels located at 10th Street and H Street in the City of Modesto having APN 106-042-001, 106-042-002, 106-042, 003 and 106-042-004 are within the city block designated by the State/AOC as the preferred site for the new Modesto Courthouse Project, and

WHEREAS, title to the four parcels is held by the former Redevelopment Agency of the City of Modesto, dissolved by operation of law and succeeded by the City of Modesto Redevelopment Successor Agency (Successor Agency), and

WHEREAS, in accordance with the Second Amended Long Range Property Management Plan, the Successor Agency is seeking approval from the State Department of Finance to transfer title to the subject parcels to the City of Modesto to permit the sale to the State/AOC for the new Modesto Courthouse Project. The Department of Finance has conditionally approved the transfer of title and written confirmation is attached (Exhibit A), and

WHEREAS, on April 17, 2014 the Modesto Redevelopment Successor Agency Oversight Board (Oversight Board) will be asked to approve and authorize the Successor Agency to transfer title of the four parcels to the City for the purpose of sale to the State/AOC for the new Modesto Courthouse Project, and

WHEREAS, the City and the State/AOC have successfully negotiated a Property Acquisition Agreement whereby the City agrees to sell and the State/AOC agrees to purchase the 10th Street Site for the new Modesto Courthouse Project so long as multiple conditions are satisfied, including the condition that title of the four parcels is transferred to the City to permit the sale to the State/AOC,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto
that subject to authorization by the Oversight Board to the Successor Agency and the State Department of Finance, in accordance with the Second Amended Long Range Property Management Plan it hereby approves the transfer by grant deed of four parcels APN 106-042-001, 106-042-002, 106-042-003, and 106-042-004 from the Successor Agency to the City for the purpose of the sale to the State of California, acting by and through the Judicial Council of California, Administrative Office of the Courts for the new Modesto Courthouse Project, and authorizes the City Manager, or his designee, to execute (1) the Certificate of Acceptance(s) for the real property (APN 106-042-001, 106-042-002, 106-042-003, and 106-042-004) and (2) all necessary and related documents required to complete the transaction, transfer title, and to close escrow.

The foregoing resolution was introduced at a special meeting of the Council of the City of Modesto held on the 15th day of April, 2014, by Councilmember Madrigal, who moved its adoption, which motion being duly seconded by Councilmember Cogdill, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Cogdill, Gunderson, Kenoyer, Lopez, Madrigal, Zoslocki, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST:  

SEAL

APPROVED AS TO FORM:

By: ADAM LINDGREN, Interim City Attorney
April 3, 2014

Ms. Laurie Smith, Administrative Services Officer
City of Modesto
1010 Tenth Street
Modesto, CA 95354

Dear Ms. Smith:

Subject: Property at 777 10th Street

Pursuant to Health and Safety Code section 34191.5 (b), the City of Modesto Successor Agency (Agency) submitted a Long-Range Property Management Plan (LRPMP) to the California Department of Finance (Finance) on October 25, 2013. The LRPMP is currently under Finance's review. However, Finance has completed its review of the LRPMP that is specific to the property located at 777 10th Street.

Based on our review and application of the law, the Agency's plan addressing the property at 777 10th Street will be approved. It is our understanding the Agency intends to transfer the property to the City of Modesto (City) for the development of a courthouse. Since a courthouse meets the definition of a government use property, Finance will approve this proposed disposition.

Outside of the LRPMP, HSC section 34181 (a) authorizes the Agency to transfer ownership of those assets that were constructed and used for government purpose, such as courthouses, to the appropriate jurisdiction. However, the courthouse has yet to be constructed and is not currently being used as a park. Therefore, the transfer of 777 10th Street to the City cannot occur until Finance completes and approves the Agency's entire LRPMP.

Nevertheless, other interested parties can rely on this letter, and conclude that Finance will approve the transfer of 777 10th Street to the City for the development of a courthouse, upon Finance's approval of the Agency's entire LRPMP.

Please direct inquiries to Wendy Griffe, Supervisor or Jenny DeAngelis, Lead Analyst at (916) 445-1546.

Sincerely,

JUSTYN HOWARD
Assistant Program Budget Manager

cc: on following page
Mr. Stephan Christensen, Budget and Financial Analysis Manager, City of Modesto
Ms. Lauren Klein, Auditor-Controller, Stanislaus County
California State Controller's Office
RESOLUTION APPROVING A CONDITIONAL PROPERTY ACQUISITION AGREEMENT (AGREEMENT) WITH G & K ENTERPRISES, LLC., FOR THE ACQUISITION OF REAL PROPERTY AT 900 H STREET MODESTO, CA., BEING APN 106-042-012, IN THE AMOUNT OF $2,500,000, FOR THE PURPOSE OF SALE TO THE STATE OF CALIFORNIA, ACTING BY AND THROUGH THE JUDICIAL COUNCIL OF CALIFORNIA, ADMINISTRATIVE OFFICE OF THE COURTS FOR THE NEW MODESTO COURTHOUSE PROJECT, AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE (1) THE AGREEMENT, (2) CERTIFICATE OF ACCEPTANCE, AND (3) ALL NECESSARY AND RELATED DOCUMENTS REQUIRED TO COMPLETE THE TRANSACTION, TRANSFER TITLE, AND CLOSE ESCROW

WHEREAS, in 2010 the State Public Works Board (SPWB) approved the new Modesto Courthouse Project for initial funding, and

WHEREAS, in 2011 the Administrative Office of Courts (AOC) named a project advisory group to identify and advise on the site selection and design for the new courthouse, and

WHEREAS, in 2011 the SPWB approved the city block bounded by H and G Streets and 9th and 10th Streets (10th Street Site) as a potential site for the new Modesto Courthouse, and in 2012 the SPWB approved the city block bounded by H and I Streets and 13th and 14th Streets as a potential site for the new courthouse, and

WHEREAS, in 2012 the AOC had all parcels within the 10th Street Site appraised to determine fair market value, and

WHEREAS, the City Council directed staff to assist the AOC project team in negotiations with property owners for the acquisition and sale of real property within the 10th Street Site for the new Modesto Courthouse Project, and

WHEREAS, in 2013 the AOC had the privately owned parcels re-appraised to
determine fair market value, and

WHEREAS, in 2013 the Courthouse Cost Reduction Subcommittee directed the AOC project team to negotiate for the acquisition of the 10th Street Site and the AOC notified the City of its interest in acquiring the 10th Street Site property, and

WHEREAS, in 2013 the AOC concluded site selection for the new Modesto Courthouse Project was proper and reaffirmed the 10th Street Site as the preferred site for the new courthouse, and

WHEREAS, in 2014 the Court Facilities Advisory Committee endorsed a directive from the Courthouse Cost Reduction Subcommittee to continue negotiations for the acquisition of the 10th Street Site, and

WHEREAS, the City of Modesto (City) and G & K ENTERPRISES, LLC. (OWNER) have successfully negotiated a Conditional Property Acquisition Agreement (Exhibit A) containing price, terms and conditions for City’s purchase of OWNER’s property at 900 H Street, Modesto, CA., being APN 106-042-012, for the new Modesto Courthouse Project, including a purchase price of Two-Million Five Hundred Thousand Dollars ($2,500,000) so long as multiple conditions are satisfied, including the requirement that the City Council approves acquisition agreements for all privately owned parcels of the 10th Street Site, and the SPWB approves the Property Acquisition Agreement for the acquisition of all property of the 10th Street Site, and

WHEREAS, the proposed project, that includes the acquisition and sale of real property and conditional vacation of the public alley, has been determined to be Categorically Exempt under Section 15332 of the California Environmental Quality Act guidelines for in-fill development projects,
NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby finds that the proposed project that includes the acquisition and sale of real property and conditional vacation of the public alley are necessary steps for the new courthouse and has been determined to be Categorically Exempt under Section 15332 of the California Environmental Quality Act guidelines for in-fill development projects, because (a) it is consistent with the applicable general plan designation and policies, and all applicable zoning designations and regulations; (b) it is located within City limits on a project site of no more than five acres substantially surrounded by urban uses; (c) the project site has no value as habitat for endangered, rare, or threatened species; (d) approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality; and (e) the site can be adequately served by all required utilities and public services.

BE IT FURTHER RESOLVED that the Council hereby approves the Conditional Property Acquisition Agreement with G & K Enterprises, LLC. for acquisition of real property at 900 H Street, Modesto, CA., being APN 106-042-012, for the sum of Two Million Five Hundred Thousand Dollars ($2,500,000) for sale to the State of California, acting by and through the Judicial Council of the Courts, Administrative Office of the Courts for the purpose of the new Modesto Courthouse Project.

BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to execute (1) the Agreement, (2) a Certificate of Acceptance, and (3) all necessary and related documents required to complete the transaction, transfer title and close escrow.
The foregoing resolution was introduced at a special meeting of the Council of the City of Modesto held on the 15th day of April, 2014, by Councilmember Madrigal, who moved its adoption, which motion being duly seconded by Councilmember Cogdill, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Cogdill, Gunderson, Kenoyer, Lopez, Madrigal, Zoslocki, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: [Signature]

APPROVED AS TO FORM:

By: [Signature]
ADAM LINDGREN, Interim City Attorney
Exhibit A

CONDITIONAL PROPERTY ACQUISITION AGREEMENT

This Conditional Property Acquisition Agreement (the "Agreement") is made this _____ day of ________, 2014, for reference purposes and is entered into by and between G&K Enterprises, LLC, a California limited liability company (hereafter referred to as "Seller"), and the City of Modesto, a charter city and municipal corporation of the State of California (hereafter referred to as "Buyer" or "City"). Seller and Buyer or City are hereafter collectively referred to as a Party or the Parties. This Agreement shall also constitute Escrow Instructions directed to Escrow Holder to consummate the acquisition of real property in accordance with the terms and conditions set forth herein. This Agreement is made with reference to the following recitals.

RECITALS

A. The State of California, acting by and through the Judicial Council of California, Administrative Office of the Courts (hereafter "State") has tentatively approved a site for construction of new court facilities in the City of Modesto, County of Stanislaus being that property located within the city block bounded by H Street on the north, 10th Street on the east, G Street on the south, and 9th Street on the west, Modesto, Stanislaus County, California (hereafter "Court Facilities Site"). Final site approval for new court facilities is vested in the State Public Works Board (the "SPWB") and is contingent on the acquisition of all real property located in the Court Facilities Site. The Court Facilities Site is comprised of eleven (11) legal parcels. Five (5) of the parcels are owned by City or its former redevelopment agency (hereafter the "City Parcels") and City has agreed in principle to transfer title of the City Parcels to State for purposes of construction of the new court facilities so long as the remaining six (6) parcels are acquired for the same purpose. The Assessor Parcel Number and owner(s) of each of remaining six (6) parcels (hereafter the "Private Parcels") are identified as follows:

APN 106-042-005 Gina Rugani, Michael Gene Rugani and Sandra Ann Heffernan, Trustees, or any Successor Trustee(s) thereto of the Gina Rugani Survivor’s Trust Agreement dated July 17, 1978, as amended

APN 106-042-006 G & K Enterprises, LLC, a California limited liability company

APN 106-042-007 Charles W. Noble and Dorothy M. Noble, Trustees of the Noble 1995 Trust, as to an undivided ¼ interest; Von Deen Bubeck, Trustee of the Von Deen Bubeck Trust as set forth in the Bubeck Revocable Trust dated March 19, 1997, as to an undivided ¼ interest, and Jerry R. Bubeck and Von Deen Bubeck, Trustees of the Bubeck Revocable Trust dated March 19, 1997, as to an undivided ¼ interest

APN 106-042-010 Gary C. Gervasoni and Myrna Gervasoni, husband and wife, as community property

APN 106-042-011 Curtis Wayne Mote
B. Seller and City acknowledge and agree that the Private Parcels and the City Parcels constitute and collectively shall be referred to as the Court Facilities Site Property.

C. Seller acknowledges and understands that City has been authorized by State to negotiate the purchase of the Private Parcels along with the sale of the City Parcels to State for construction of new court facilities and that the final approval of the Court Facilities Site by SPWB is contingent on City obtaining executed purchase acquisition agreements for the Private Parcels and entering into an acquisition agreement to transfer the City Parcels and Private Parcels to State.

D. Seller owns that real property located in the City of Modesto, County of Stanislaus commonly described as 900 “H” Street having APN 106-042-012 and more particularly described in Exhibit “A” attached and made a part hereof (hereafter the “Property”).

E. Seller desires to sell to City, and City desires to purchase from Seller the Property on terms and conditions specified in this Agreement.

F. Seller acknowledges, understands and agrees that the agreement by City to purchase the Property is a conditional one and is contingent on multiple conditions, specified below, each of which must be satisfied.

G. Seller understands and agrees that should all conditions of purchase be satisfied that immediately following the transfer of title of Property to City, the Property shall be sold and conveyed by City to State.

The Parties agree that the foregoing recitals are true and correct and are part of this Agreement.

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, the Parties agree as follows:

Section 1. Sale of Property. Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller on the terms hereinafter stated, the Property. The term “Property” as used in this Agreement shall mean and refer to the real property described above; all improvements located thereon; all privileges, rights, easements, hereditaments and appurtenances to the real property, including, without limitation, all minerals, oil, gas, and other hydrocarbon substances on and under the real property; all air rights, water, and water rights relating to the real property; and all rights, title and interest of Seller in and to any roads, easements and other rights-of-way or appurtenances included on or adjacent to the real property used in connection with the beneficial use and enjoyment of the real property, but excluding any removable equipment, personal property, and any fixtures that are removed prior to Close of Escrow in compliance with the terms of Section 13G(7) below.
Section 2. **Purchase Price of Sale Property.** The purchase price for the Property shall be Two Million Five Hundred Thousand Dollars ($2,500,000) (the "Purchase Price").

Section 3. **Payment of Purchase Price.** Prior to the Close of Escrow (as such term is defined in Section 4, below) the Purchase Price and any sums due from Buyer to the Escrow Holder and Seller as a consequence of the purchase and sale of the Property shall be deposited into Escrow, in cash or other immediately available funds.

Section 4. **Escrow.**

A. **Opening of Escrow.** The Parties shall deliver a copy of the executed Agreement to Chicago Title Company, located at 1700 Standiford Avenue, Modesto, California 95350, Telephone Number (209) 571-6300, Attention: Karla Haney ("Escrow Holder") no later than three (3) business days after execution of the Agreement by the Parties hereto. For purposes of this Agreement, as between the Parties, the escrow ("Escrow") shall be deemed opened on the date Escrow Holder shall have received a fully executed copy or copies of executed counterparts of this Agreement from Seller and Buyer (the "Opening of Escrow"), and Escrow Holder shall notify Buyer and Seller, in writing, of the date Escrow is opened. Buyer and Seller agree to execute, deliver and be bound by any reasonable or customary supplemental escrow instructions ("Escrow Instructions") of Escrow Holder or other instruments as may reasonably be required by Escrow Holder in order to consummate the transaction contemplated by this Agreement. Any such supplemental instructions shall not conflict with, amend or supersede any portions of this Agreement. In the event of any inconsistency between the provisions of such supplemental instructions with the provisions of this Agreement, the provisions of this Agreement shall control.

B. **Close of Escrow.** For purposes of this Agreement, the "Close of Escrow" shall be defined as the date that the grant deed conveying fee simple title to the Property to Buyer, is recorded in the Official Records of Stanislaus County, California. The period commencing with the Opening of Escrow and continuing through the Close of Escrow shall hereinafter be referred to as the "Escrow Period." Escrow shall close on the date which is on or before sixty (60) days after the latter of (i) State's authorization of the acquisition of the Court Facilities Site Property, by the SPWB at a duly noticed public meeting, or (ii) the Modesto City Council’s approval of the acquisition of the Private Parcels and the sale of the City Parcels to the State (the "Closing Date"). If Close of Escrow is delayed by any cause beyond the reasonable control of Buyer or State, Buyer shall be entitled to an equitable extension of the Escrow Period, for a reasonable time agreed to and negotiated in good faith by the Parties, at no cost to Buyer or Seller. Notwithstanding the foregoing, if the Close of Escrow has not occurred by December 31, 2014, either Party may terminate this Agreement on written notice to the other. Termination by Seller will not be effective until ten (10) business days of receipt of such notice by Buyer.

C. **Extension of Close of Escrow.** No extensions shall occur unless agreed to in writing by Buyer and Seller.
D. Failure to Timely Close. If the conditions precedent to Close of Escrow as provided herein have not been satisfied by the Closing Date, this Agreement may be terminated upon written notice by Buyer and thereupon this Agreement shall become null and void, except that Buyer's restoration and indemnity obligations under Section 7A(1)(i) below shall survive such termination.

E. Cooperation for Tax Deferred Exchange. Buyer agrees to cooperate with Seller in the event that Seller desires to qualify the transaction as a tax-deferred exchange under Section 1031 of the Internal Revenue Code. Buyer shall not be liable for any additional costs or expenses as a result of such an exchange. Buyer shall not be responsible or liable for qualifications of the exchange. Seller shall hold Buyer harmless for any expense or liability incurred by Buyer as a result of such exchange. Seller shall be authorized to assign all or any part of this Agreement to an accommodator who will assume the obligations of Seller but not Seller's representations, warranties, and covenants.

Section 5. Condition of Title. It shall be a condition to the Close of Escrow for Buyer's benefit that title to the Property be conveyed immediately to Buyer upon Close of Escrow by Grant Deed, and that title to the Court Facilities Site Property be delivered free and clear of all liens, reservations, encumbrances, assessments, easements, of record or otherwise, except for existing Leases (as that term is defined in Section 7A(2) below) and those approved by State and City, in writing, prior to the Close of Escrow. Subject to State's approval, and the City's review and approval of any further amendments to that certain Amended Preliminary Report, Title No. 11-50910323-I-ML dated June 13, 2013, issued by Chicago Title Company, a copy of which is attached hereto as Exhibit B ("Preliminary Report"), City tentatively approves exceptions numbered 3, 5-14, 16, and 21 of the Preliminary Report.

To that end, Escrow Holder may expend any and all monies payable to Seller under this Agreement to discharge any monetary obligations that are liens upon the Property, and shown as exceptions in the Preliminary Report, and any exceptions shown in any subsequent amendment to it, including but not limited to those arising from judgments, assessments, taxes, or debts secured by deeds of trust or mortgages. Property taxes for the fiscal year in which Escrow closes, if unpaid, shall be paid by Seller in Escrow to and including the date of Close of Escrow as set forth in Section 11 hereof.

Section 6. Title Policy. Title shall be evidenced by the willingness of Chicago Title Company ("Title Company") to issue a CLTA Owner's Standard Coverage Form Policy of Title Insurance ("Title Policy") in the amount of the Purchase Price showing title to the Property vested subject only to the exceptions described above.

Section 7. Conditions to Close of Escrow.

A. Conditions to Buyer's Obligations. Buyer's obligation to consummate the transaction contemplated by this Agreement is subject to the satisfaction of the following conditions for Buyer's benefit (or Buyer's waiver thereof, it being agreed that Buyer may waive any or all of such conditions) on or prior to the dates designated below for the satisfaction of such conditions. Notwithstanding any other provision of this Agreement, City shall have no
obligation to purchase the Property, and no transfer of title to City or State may occur, unless each of the following conditions has been satisfied or waived by City in writing:

(1) **Buyer’s Review of the Court Facilities Site Property.** Buyer shall have until 5:00 p.m. Pacific Time on Friday, May 16, 2014 (such period of time between the execution of this Agreement by Seller and May 16, 2014 shall be referred to herein as the “Due Diligence Period”) to satisfy itself, in Buyer’s sole and absolute discretion, as to the following described matters concerning the Court Facilities Site Property, including the Property. If, during the Due Diligence Period, Buyer determines that it is dissatisfied with any aspect of the Court Facilities Site Property or its condition or suitability for Buyer’s intended use, then Buyer may terminate this Agreement and the Escrow created pursuant hereto, by delivering written notice to Seller and Escrow Holder on or before the expiration of the Due Diligence Period of Buyer’s election to terminate. If Buyer fails to deliver any such termination notice to Seller and Escrow Holder on or before the expiration of the Due Diligence Period, then, Buyer shall be deemed to be satisfied with all aspects of the Court Facilities Site Property including, without limitation, the condition and suitability of the Property for Buyer’s intended use.

(i) **Buyer’s Review of the Court Facilities Site Property and Related Matters.** Buyer shall be satisfied with all aspects of the Court Facilities Site Property, and its condition and suitability for the intended use thereof, including, without limitation, the physical condition of the Court Facilities Site Property, the net acreage of the Court Facilities Site Property, the condition of the access to public roads and condition and availability of water, electricity, natural gas, and other utilities, to the Court Facilities Site Property in adequate capacities and appropriate locations. After the execution of this Agreement by Seller and during the Due Diligence Period, Buyer, Buyer’s agents, employees, contractors and subcontractors and State’s agents, employees, contractors and subcontractors shall have the right to enter upon the Property at reasonable times during ordinary business hours, to make such inspections, surveys and tests as may be necessary in Buyer’s discretion, including, without limitation, soils tests, environmental surveys, biological resources analysis, archeological surveys, toxic waste analysis, geological and/or engineering studies and related studies. Buyer shall use care and consideration in connection with any of its inspections, surveys, studies or tests and Seller, or Seller’s agent, shall have the right to be present during any inspection of the Property by Buyer or its agents. Buyer shall restore the Property to its original condition after any and all tests and/or inspections. Buyer, and its respective employees, agents and contractors shall make reasonable efforts to avoid interfering with Seller’s or Seller’s tenants’ ongoing use, if any, of the Property. Buyer hereby indemnifies, protects, defends and holds Seller, its officers, directors, members, managers, trustees, employees, agents, representatives, immediate family members, successors and assigns (collectively “Seller Parties”), and the Property free and harmless from and against any and all costs, losses, liabilities, damages, lawsuits, judgments, actions, proceedings, penalties, demands, attorneys’ fees, mechanic’s or other liens, or expenses of any kind or nature whatsoever, arising out of or resulting from any entry and/or activities upon the Property by Buyer, and its respective agents, employees, contractors and subcontractors pursuant to this subsection (i). If Buyer does not purchase the Property, it shall furnish complete copies of all such investigations, inspections and tests described above to Seller without charge and without warranty as to their accuracy or reliability within ten (10) days of Buyer’s exercise of its right to terminate this Agreement or of Buyer otherwise failing to close hereunder.
(ii) **Environmental Condition of Court Facilities Site Property.** Buyer shall be satisfied, in Buyer’s sole and absolute discretion that the Court Facilities Site Property, including its soil and ground water under the land, is free from all Hazardous Substances, as defined in Section 13F, below, and is in full and complete compliance with the law with respect to same.

(iii) **Changes to Condition of Property.** If the condition of the Property materially changes after the expiration of the Due Diligence Period (except due to Seller’s removal of fixtures as provided in Section 13G(7) below or due to Buyer’s or its agent’s activities on or about the Property), Buyer shall have the right, but not the obligation, to deliver to Seller a written notice objecting to the condition of the Property up to the Close of Escrow (“Final Due Diligence Notice”). If Buyer does not deliver the Final Due Diligence Notice on or prior to the Close of Escrow, Buyer shall be deemed to have given its final approval of the condition of the Property. However, if Buyer does provide a Final Due Diligence Notice, Buyer shall have the right to terminate this Agreement unless the condition of the Property is restored to a condition that is acceptable to Buyer.

(2) **Existing Leases and Estoppel Certificates.** No later than three (3) business days after the Opening of Escrow, Seller shall deliver to Buyer a copy of all existing Leases, licenses or other agreements that would grant any person or entity the right to use or occupy any portion of the Property (“Leases” or individually “Lease”). In the event any of the existing Leases are oral, Seller shall deliver to Buyer a written summary of all terms of all such Leases including, without limitation, the name and telephone number of the occupants, the expiration date of the Leases, the current rent and whether occupants have any option(s) to extend the term of the Leases, and/or an option or a right of first refusal to purchase the Property. Buyer shall be satisfied, in Buyer’s sole and absolute discretion, with the terms of the Leases, in which event Buyer shall take title to the Property subject to the terms of such Leases. Buyer shall indicate its satisfaction or objections by expiration of the Due Diligence Period to any and all Leases in existence as of the full execution date of this Agreement.

Seller shall have delivered to Buyer no more than ten (10) days prior to Close of Escrow an estoppel certificate relative to each Lease, executed and acknowledged by Seller’s tenants, if any, in the form set forth in Exhibit C.

(3) **Agreement with Tenants.** Buyer shall have entered into agreements with Seller’s existing tenants, if any, regarding early termination of tenants’ Leases, and/or the termination of tenants’ option, right of first refusal, and any other rights to extend the term of the Leases or to purchase the Property, to the extent such agreements are necessary for City or State to take possession of the Property by January 1, 2016.

(4) **Approval by State Department of Finance.** The California Department of Finance shall have approved the transfer to City of those parcels to which title was formerly held by the Redevelopment Agency to the City of Modesto, a dissolved public entity.
(5) Authorization by SPWB. Authorization of the acquisition of the Court Facilities Site Property by the SPWB at a duly noticed public meeting.

(6) Approved Property Acquisition Agreements for the Private Parcels. Each of the owners of the Private Parcels shall have executed a Conditional Property Acquisition Agreement substantially in the form of this Agreement, and the City Council of the City of Modesto shall have approved such a Conditional Property Acquisition Agreement for each of the Private Parcels, including the Property.

(7) Approved Property Acquisition Agreements for the City Parcels. Approval by the City Council of the City of Modesto, State and SPWB of a Property Acquisition Agreement for each of the City Parcels.

(8) Agreement between City and State. City and State shall have executed agreements, approved by the governing bodies of each entity, specifying the rights, duties, and obligations of City and State following the transfer of title to State of the Court Facilities Site Property, including the control, management, and use of the Court Facilities Site Property.

(9) Deposit of all Documents. The timely deposit by Seller with Escrow Holder of all documents required to be deposited by Seller under this Agreement.

(10) Seller’s Performance of Obligations. Performance by Seller of all obligations, covenants and agreements on Seller’s part to be performed under this Agreement within the time provided in this Agreement for such performance.

(11) No Breach by Seller. Seller shall not be in breach of this Agreement.

(12) Accuracy of Representations and Warranties. As of the Close of Escrow, all of Seller’s representations and warranties set forth herein shall be true and accurate with the same force and effect as if remade by Seller in a separate certificate at the Close of Escrow.

(13) Title Insurance Policy. On the date of the Close of Escrow, Title Company shall be irrevocably and unconditionally committed to issue to State the Title Policy, with liability coverage in the amount of the Purchase Price, and showing fee title to the Property vested in State free and clear of all liens, taxes, assessments, reservations, encumbrances, easements of record or otherwise, except as set forth in Section 5 of this Agreement.

(14) No Modification of Existing Leases. After the date of execution of the Agreement and as of the Close of Escrow, Seller shall not have modified any material term of any existing Lease affecting the Property or entered into any new Lease containing any material term, without City’s prior written consent, which consent City may withhold or grant in its absolute discretion. For purposes of this subsection “material term” shall mean any lease term that would adversely affect the ability of City to take possession of the Property on January 1,
2016, including, but not limited to, extending the term of an existing Lease or entering into a new Lease that expires after December 31, 2015, increases landlord’s responsibilities under the Lease, decreases the rent or other charges payable by tenant under the Lease, converts a triple net Lease into a full service, gross, or modified full service Lease, or imposes on landlord any obligation that adversely affects landlord’s anticipated income from any Lease (including, but not limited to, providing for any tenant incentives [e.g. free rent, reduced rent, tenant improvements, and matters of a similar nature] to be given, made, or realized after Close of Escrow).

(15) Simultaneous Close of Escrow. Simultaneous Close of Escrow on the acquisition of the Private Parcels.

(16) Buyer’s Objections. Nothing in this Agreement shall be interpreted to require Seller to remediate the Property, or make repairs or improvements to the Property not otherwise required to be made by Seller pursuant to the terms of the Leases, prior to Close of Escrow.

(17) Survival of Provisions. If this Agreement is terminated by Buyer due to the failure of any of the conditions described herein, Buyer’s restoration and indemnity obligations under Section 7A(1)(i) shall survive such termination.

B. Conditions to Seller’s Obligations. Seller’s obligation to consummate the transaction contemplated by this Agreement is subject to the satisfaction of the following conditions for Seller’s benefit (or Seller’s waiver thereof, it being agreed that Seller may waive any or all such conditions):

(1) Deposit of All Documents and Funds. The timely deposit by City with Escrow Holder of all the documents, and the timely deposit by State, of all funds required to be deposited under this Agreement.

(2) Performance of Buyer’s Obligations. Performance by City of all obligations, covenants and agreements on City’s part to be performed under this Agreement within the time provided in the Agreement for such performance.

(3) No Breach by Buyer. Buyer shall not be in breach of this Agreement.

(4) Accuracy of Representations and Warranties. As of the Close of Escrow, all of Buyer’s representations and warranties set forth herein shall be true and accurate with the same force and effect as if remade by Buyer in a separate certificate at the Close of Escrow.

Section 8. Deposits by Seller. At least three (3) business days prior to the Close of Escrow, Seller shall deposit or cause to be deposited with Escrow Holder the following documents or instruments:
A. **Grant Deed.** A grant deed ("Grant Deed") in substantially the form attached hereto as Exhibit D, duly executed by Seller and properly acknowledged;

B. **FIRPTA Certificate.** A certificate of non-foreign status (the "FIRPTA Certificate"), duly executed by Seller; and

C. **California Real Estate Withholding Certificate.** A Real Estate Withholding Certificate (California Franchise Tax Board Form 593-C).

**Section 9. Deposits by State.** Pursuant to and conditioned upon the terms of this Agreement, prior to the Close of Escrow, Buyer shall cause State to deposit with Escrow Holder, in immediately available funds, the Purchase Price and other sums due from Buyer hereunder in the amounts set forth herein, along with any documents or instruments required of Buyer by Escrow Holder for Close of Escrow.

**Section 10. Escrow Charges and Closing Costs.** State shall bear the cost of the Title Policy, any endorsements thereto, and any extended coverage ALTA, or other title policy or accompanying survey. Buyer shall be responsible for the payment of documentary transfer taxes and recording the Grant Deed, if any. Seller shall be responsible for the cost of recording documents necessary to deliver clear title to Buyer, if any. Buyer shall pay the escrow fees. Buyer and Seller shall each bear their own respective legal and accounting costs, if any, outside of Escrow except as expressly provided in Section 18 herein or elsewhere in this Agreement. All other costs or expenses not otherwise provided for in this Agreement shall be apportioned or allocated between Buyer and Seller in the manner customary in Stanislaus County, California. Notwithstanding the foregoing, Buyer shall not be obligated to pay for its share of closing costs unless and until it receives Buyer's Estimated Closing Costs from Escrow Holder (the preceding portion of this sentence is not intended to obligate Seller to pay Buyer's share of closing costs).

**Section 11. Prorations.** The following prorations shall be made between Seller and Buyer on the Close of Escrow, computed as of the Close of Escrow:

A. **Taxes and Assessments.** Real and personal property taxes and assessments on the Property shall be prorated on the basis that Seller is responsible for (i) all such taxes for the fiscal year of the applicable taxing authorities occurring prior to the "Current Tax Period" (as hereinafter defined) and (ii) that portion of such taxes for the Current Tax Period determined on the basis of the number of days which have elapsed from the first day of the Current Tax Period to the Close of Escrow, inclusive, whether or not the same shall be payable prior to the Close of Escrow. The phrase "Current Tax Period" refers to the fiscal year of the applicable taxing authority in which the Close of Escrow occurs. In the event that as of the Close of Escrow the actual tax bills for the year or years in question are not available and the amount of taxes to be prorated as aforesaid cannot be ascertained, then rates and assessed valuation of the previous year, with known changes, shall be used, and when the actual amount of taxes and assessments for the year or years in question shall be determinable, then Seller shall be responsible for any unpaid taxes and assessments. Buyer shall not be responsible for any tax refund.
B. **Other Proratable Expenses.** Escrow Holder shall prorate other proratable expenses, based on a thirty (30)-day month through the Close of Escrow, including rent paid pursuant to existing Leases on the Property, if any. All rent and other payments due after the Close of Escrow pursuant to any Lease on the Property shall be paid to Buyer. If any rent or other payments due pursuant to any Lease on the Property are collected by Seller for any period beyond the last day of the month in which Escrow closes, Seller shall pay such amounts to Buyer. If any rent or other payments due pursuant to any Lease on the Property are collected by Buyer for any period prior to Close of Escrow, Buyer shall pay such amounts to Seller. Seller shall return to tenants under any Lease on the Property any security, cleaning, key or other deposits and indemnify and hold Buyer harmless from any claim therefor.

C. **Proration Statement.** At least two (2) business days prior to the Close of Escrow the Parties hereto shall approve an estimated proration statement prepared by Escrow Holder setting forth all of the prorations to be made.

Section 12. **Disbursements and Other Actions by Escrow Holder.** Upon the Close of Escrow, Escrow Holder shall promptly undertake all of the following in the manner indicated:

A. **Prorations.** Prorate all matters referenced in Section 11 based upon the statement delivered into Escrow signed by the Parties.

B. **Recording.** Cause the Grant Deed and any other documents which the Parties hereto may mutually direct, including reconveyance of any deeds of trust and releases of any liens recorded on the Property, to be recorded in the Official Records.

C. **Disbursements.** Disburse funds in payment of all items chargeable to Buyer and Seller with the balance paid to Seller in payment of the Purchase Price.

D. **Title Policy.** Direct the Title Company to issue the Title Policy.

E. **Documents to Seller.** Deliver to Seller a conformed copy of the recorded Grant Deed and conformed copies of any reconveyances of deeds of trust and releases of any liens on the Property.

F. **Documents to Buyer.** Deliver to Buyer the FIRPTA Certificate, the California Real Estate Withholding Certificate, and a conformed copy of the recorded Grant Deed, and conformed copies of reconveyances of deeds of trust and releases of liens on the Property, if any.

Section 13. **Seller’s Representations, Warranties and Covenants.** In consideration of Buyer entering into this Agreement and as an inducement to Buyer to purchase the Property from Seller, Seller makes the following representations, warranties, and covenants, each of which is material and is being relied upon by Buyer:

A. **Authority.**
(1) Seller has full right, power and legal authority to enter into this Agreement, sell, transfer and convey the Property to Buyer under this Agreement and to carry out Seller's obligations under this Agreement. Upon the Close of Escrow, Buyer will have good, marketable and insurable title to the Property.

(2) The individuals executing this Agreement and the instruments referenced herein on behalf of Seller have the legal power, right and actual authority to bind Seller to the terms hereof and thereof.

(3) This Agreement is, and all other instruments, documents and agreements required to be executed and delivered by Seller in connection with this Agreement are and shall be, duly authorized, executed and delivered by Seller and shall be valid, legally binding obligations of and enforceable against Seller in accordance with their terms, subject only to enforcement that may be limited by applicable bankruptcy, insolvency or similar laws, and do not, and as of the Close of Escrow will not, to the best of Seller's knowledge, violate any provisions of any agreement, law, rule, regulation or judicial order to which Seller or the Property is subject.

(4) All requisite action (corporate, trust, partnership, limited liability company or otherwise) has been taken by Seller in connection with entering into this Agreement, the instruments referenced herein, and the consummation of the transactions contemplated hereby. No consent of any partner, shareholder, member, beneficiary, creditor, investor, judicial or administrative body, authority, or other party is required.

B. No Conflicts. Neither the execution and delivery of this Agreement and documents referenced herein, nor the incurrence of the obligations set forth herein, nor the consummation of the transactions herein contemplated, nor compliance with the terms of this Agreement and the documents referenced herein conflict with or result in the material breach of any terms, conditions or provisions of, or constitute a default under, the terms of Seller trusts, the Articles of Organization or Operating Agreement of Seller, any bond, note, or other evidence of indebtedness or any contract, indenture, mortgage, deed of trust, loan, partnership agreement, lease or other agreements or instruments to which Seller is a party or which affect the Property.

C. Consents. No consent, approval, license, permit, order, qualification or authorization of, or registration, declaration, notice or filing with, any governmental entity or any other person or entity is required for or in connection with the execution and delivery by Seller of this Agreement, and the consummation by Seller of the transactions contemplated by this Agreement, other than as set forth in Section 7.A hereof.

D. Legal Matters. To the actual knowledge of the individuals executing this Agreement, without further inquiry or investigation, Seller represents and warrants that:

(1) There is no suit, action, arbitration, legal, administrative, or other proceeding or inquiry pending against the Property or pending against Seller which could affect Seller's title to the Property.
(2) There are no attachments, execution proceedings, or assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other proceedings pending against Seller.

(3) There are no: (a) agreements, written or oral, under which Seller is or could become obligated to convey all or part of the Property or any interest in the Property to a third party; (b) rights of first refusal, reversions, or options to purchase the Property or any portion thereof (other than as set forth in the Leases disclosed pursuant to Section 7A(2) hereof); (c) Leases (other than those disclosed pursuant to Section 7A(2) hereof), liens, easements, encumbrances, prescriptive rights, contracts or other agreements for services, supplies, or materials which may affect title to or use of the Property after the Close of Escrow or impose an obligation on Buyer after the Close of Escrow; (d) adverse or other parties in possession or use of any part of the Property (other than as set forth in the Leases); or (e) to the best of Seller's knowledge, special assessments, condemnation actions, moratoriums, initiatives or legislation affecting the Property (and Seller has not received any notice of any being contemplated).

(4) Except for Leases disclosed by Seller to Buyer in writing, pursuant to Section 7A(2) hereof, as of the Close of Escrow, there shall be no unrecorded leases, licenses or other agreements which would grant any person or entity the right to use or occupy any portion of the Property, including any improvements thereon.

(5) To the best of Seller's knowledge, there are no and have been no: (a) actual or pending public improvements which will result in the creation of any liens upon the Property, including public assessments or mechanic's liens and Seller agrees to indemnify, defend and hold Buyer free and harmless from and against any claims, liabilities, losses, costs, damages, expenses and attorneys' fees arising from any liens, encumbrances or assessments that have been, or may be, incurred by Seller or imposed upon the Property prior to the Close of Escrow, but only to the extent any obligations to pay a fee or assessment for infrastructure is due and payable prior to the Close of Escrow, and Buyer agrees to cooperate with Seller, at Seller's costs and to the extent permitted by law, with respect to Seller's efforts prior to Close of Escrow to remove any such liens, fees, assessments, or encumbrances; or (b) uncured notices from any governmental agency notifying Seller of any violations of law, ordinance, rule, or regulation, occurring on the Property. Other than as provided above, Buyer shall assume responsibility for assessments arising from any actual or impending public improvements as of the Close of Escrow.

E. No Works of Improvement. No works of improvement or other activities have occurred with respect to the Property which could give rise to any liens against the Property.

F. Environmental. Except as otherwise disclosed by Seller to Buyer in writing, Seller has not: (a) conducted or authorized the presence, placement, generation, transportation, storage, release, treatment, or disposal at the Property of any Hazardous Substance; or (b) received from or given to any governmental authority or other party any notice or other communication or agreement relating in any way to the presence, placement, generation, transportation, storage, release, treatment or disposal of any Hazardous Substance on the
Property. Except as otherwise disclosed by Seller to Buyer in writing, (a) there presently are not, and to the best of Seller’s knowledge there have never been any Hazardous Substances or storage tanks containing or having contained petrochemicals in, on, under, or about the Property; and (b) to the best of Seller’s knowledge, there is no pending or threatened litigation, proceedings or investigation before any governmental entity or agency in which the presence, release, threat of release, placement, generation, transportation, storage, treatment or disposal in, on, under, or about the Property of any Hazardous Substance has been alleged; and (c) to the best of Seller’s knowledge, there is no defect or condition with respect to the Property which would prevent the use of the Property by State for its intended use as a public courthouse, including, but not limited to, the condition of the soil, the existence of geologic hazards or groundwater contamination, the existence of ecological or environmental impediments or the existence of any hazardous or toxic materials on or beneath the surface of the Property at levels requiring remediation or removal under existing applicable laws and regulations. For purposes of this Agreement, the term “Hazardous Substance” means any matter which has been or is determined by any current or proposed federal, state, or local statute, law, enactment, ordinance, regulation, order, rule or judicial decision to constitute a hazardous or toxic waste, substance or material, but excepting normal commercial and office products such as cleaners and copy fluids and normal petroleum product residue from parked and moving vehicles.

G. Pending Close of Escrow.

(1) New Leases. Seller will not hereafter enter into new Leases or any other obligations or agreements affecting the Property after Seller’s execution of this Agreement, except for obligations or agreements that comply with Section 7A(14) and that are fully disclosed to Buyer, without the prior written consent of Buyer, which consent the Buyer may withhold or grant in its absolute discretion.

(2) Additional Liens. Seller will not subject the Property to any additional liens, encumbrances, covenants, conditions, easements, rights of way or similar matters after Seller’s execution of this Agreement that will not be eliminated prior to the Close of Escrow.

(3) Violations of Law. After the execution of this Agreement by Seller, Seller shall not knowingly violate nor allow violation of, any law, ordinance, rule, or regulation affecting the Property.

(4) Preservation of Easements and Other Rights. Prior to the Close of Escrow, Seller shall do or cause to be done, all things within its reasonable control to preserve intact and unimpaired any and all rights of way, easements, grants, appurtenances, privileges, and licenses in favor or consisting of any portion of the Property.

(5) Taxes and Assessments. Seller shall pay, if and when the same are due, all payments on any encumbrances or assessments presently affecting the Property and any and all taxes, assessments, and levies in respect of the Property through the Close of Escrow.
(6) **Zoning.** Prior to the Close of Escrow, Seller shall not take any action, or fail to take any action, that would result in any change, alteration, modification, addition to, or termination of any of the presently-existing general plan or zoning designation of the Property, without Buyer’s prior written approval, and Seller shall immediately provide Buyer with a copy of any written materials received by Seller evidencing or relating to any proposal or attempt to effect any such change, alteration, modification, addition to, or termination other than those sought by Buyer.

(7) **No Modification to Condition of Property.** Seller shall (i) not alter the physical condition of the Property; (ii) maintain the Property in substantially the same condition as that which existed as of the date that Buyer executed this Agreement; and (iii) deliver possession of the Property to Buyer at the Close of Escrow in substantially the same condition that existed as of the date that Seller executed this Agreement except for any remediation that Seller agrees to do in response to Buyer’s due diligence.

Notwithstanding the foregoing, Seller may remove any fixture or fixtures (as that term is defined in Civil Code Section 660) from the Property if (i) at least sixty (60) days prior to the Close of Escrow, Seller submits a list of the fixture(s) Seller wishes to remove from the Property to Buyer, identifying such fixture(s) with reasonable particularity; (ii) Buyer consents to such removal in writing (which consent may be granted or withheld in Buyer’s sole discretion); (iii) the removal of such fixture(s) is completed on or before December 31, 2015; (iv) the removal of such fixtures does not violate the terms of any lease to which the Property is subject; and (v) the removal of such fixture(s) does not interfere with the use of the Property by any tenant occupying the Property or any part thereof. Seller hereby notifies Buyer that it wishes to remove a steel safe door in the basement and a sliding steel door in the foyer of the Property, and Buyer hereby approves Seller’s removal of said doors, provided the removal complies with subsections (iii), (iv), and (v) of this Section 13G(7). The Parties agree that the doors have sentimental value only and that the failure of Seller to remove them as provided herein will not entitle Seller any compensable damages.

(8) **Notification to Buyer.** Seller shall promptly notify Buyer of any event or circumstance that could or would render any representation or warranty of Seller under this Agreement untrue or misleading, or of any covenant of Seller under this Agreement incapable or less likely of being performed; provided, however, that Seller’s foregoing obligation to provide notice to Buyer shall in no way relieve Seller of any liability for a breach by Seller of any of its representations, warranties or covenants under this Agreement.

(9) **No Recordation of CCRs.** Seller shall not record any covenants, conditions or restrictions against the Property, including without limitation any design restrictions with respect to the development of the Property.

(10) **No Assessment Districts or Special Tax Districts.** Seller shall not assist with the formation, vote for, or agree to any assessment districts or special tax districts which results in a special tax or assessment upon the Property.
(11) **Confidentiality.** Seller shall keep strictly confidential and agrees not to disclose or permit the disclosure of the terms of this Agreement to any third parties other than Seller's tax advisors, counsel, and real estate agents ("Seller's Representatives") until after the Close of Escrow. Prior to the disclosure of the terms of this Agreement to Seller's Representatives, Seller shall inform Seller's Representatives of the confidential nature of the terms of this Agreement and shall agree to act in accordance with the provisions of this Section 13G(11). Notwithstanding the foregoing, Seller and Seller's Representatives may disclose the terms of this Agreement pursuant to the order or requirement of a court, administrative agency, or other governmental agency provided, however, that Seller shall provide prompt notice of such court order or requirement to Buyer in order to enable Buyer to seek a protective order or otherwise prevent or restrict such disclosure, and shall cooperate with Buyer in connection with such efforts. Seller hereby acknowledges and agrees that any remedy at law, including, without limitation, monetary damages, for any breach or threatened breach of the provisions of this Section 13G(11) would be inadequate and impossible to ascertain, and each party hereby consents to the granting by any court of an injunction or other equitable relief, without the inadequacy of monetary damages being proved or any bond or similar security being posted, in order that the breach or threatened breach of such provisions may be effectively restrained.

(12) **Accurate Through Close of Escrow.** As of the Close of Escrow, all of Seller's representations and warranties set forth herein shall be true and accurate with the same force and effect as if remade, by Seller in a separate certificate at the Close of Escrow.

H. **General Representation.** No representation, warranty or statement of Seller in this Agreement or in any document, instrument, certificate or schedule furnished or to be furnished to Buyer pursuant hereto, to the best of Seller's knowledge, contains or will contain any untrue statement of a material fact or omits or will omit any material fact the omission of which would be misleading. Notwithstanding any terms to the contrary contained herein, Seller makes no representations or warranties about the truth, accuracy or completeness of any reports or analyses prepared by third parties that Seller furnishes to Buyer hereunder.

Seller's representations and warranties made in this Agreement shall be continuing and shall be true and correct as of the date of the Close of Escrow with the same force and effect as if remade by Seller in a separate certificate at that time. The truth and accuracy of Seller's representations and warranties made herein shall constitute a condition for the benefit of Buyer to the Close of Escrow (as elsewhere provided herein) and shall not merge into the Close of Escrow or the recordation of the Grant Deed in the Official Records, and shall survive the Close of Escrow.

Section 14. **Buyer's Representations, Warranties and Covenants.** In consideration of Seller entering into this Agreement and as an inducement to Seller to sell the Property to Buyer, Buyer makes the following representations, warranties, and covenants, each of which is material and is being relied upon by Seller, and which are true and correct as of execution hereof, and shall be true and correct as of the Close of Escrow:

A. **Authority.** Buyer has the legal right, power and authority to enter into this Agreement and to consummate the transaction contemplated hereby, and the execution, delivery
and performance of this Agreement have been duly authorized and no other action by Buyer is requisite to the valid and binding execution, delivery and performance of this Agreement, except as otherwise expressly set forth herein.

B. Binding. This Agreement is, and all other instruments, documents and agreements required to be executed and delivered by Buyer in connection with this Agreement are and shall be, duly authorized, executed and delivered by Buyer and shall be valid, legally binding obligations of and enforceable against Buyer in accordance with their terms, subject only to enforcement that may be limited by applicable bankruptcy, insolvency or similar laws, and do not, and as of the Close of Escrow will not, to the best of Buyer’s knowledge, violate any provisions of any agreement, law, rule, regulation or judicial order to which Buyer is subject.

C. Conflicts. To the best of Buyer’s knowledge, neither the execution or delivery of this Agreement nor the consummation of the transaction herein will conflict with, violate, result in a breach by, constitute a default under or accelerate the performance provided by the terms of any law, rule, regulation or agreement to which Buyer may be subject.

D. As-Is Sale. Except as explicitly warranted or represented in this Agreement, Seller makes no warranties, representations or assurances relating to the Property or any easements, rights of way, privileges, appurtenances or other rights pertaining thereto, or any surveys, tests, investigations or other reports concerning the Property (collectively “related interests”). Subject to the satisfaction or waiver of the conditions set forth in Section 7(A), and Seller’s representations, warranties, and covenants set forth in Section 13 of this Agreement, Seller is transferring the Property and related interests “AS IS”, “WITH ALL DEFECTS” and Buyer is relying on the explicit warranties and representations made by Seller in this Agreement as well as its own due diligence inspection, investigation and testing in purchasing the same. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, SELLER IS MAKING NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY MATTER, INCLUDING WARRANTIES OF MERCHANTABILITY, SUITABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR OTHERWISE INCLUDING ANY WARRANTIES WITH REGARD TO THE CONDITION OF THE PROPERTY AND RELATED INTERESTS OR THEIR FITNESS FOR ANY INTENDED USE. UPON THE CLOSE OF ESCROW, BUYER SHALL BE DEEMED TO HAVE BEEN AFFORDED THE OPPORTUNITY TO INSPECT THE PROPERTY AND RELATED INTERESTS ALONG WITH ALL DOCUMENTS AND INSTRUMENTS RELATED THERETO DISCLOSED IN THE PUBLIC RECORD OR DISCLOSED BY SELLER INCLUDING THOSE DOCUMENTS RELATING TO LAND USE ENTITLEMENTS, UTILITIES AND PERMITS AND IS RELYING UPON ITS OWN INSPECTIONS AND ANALYSES OF THE FOREGOING, IN ADDITION TO SELLER’S EXPlicit WARRANTIES AND REPRESENTATIONS MADE IN THIS AGREEMENT, IN PURCHASING THE PROPERTY AND RELATED INTERESTS. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, SELLER HAS NOT AND DOES NOT MAKE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY AS TO THE LOCATION OF THE BOUNDARIES OF THE PROPERTY, THE NUMBER OF SQUARE FEET LOCATED

E. **Survival.** The provisions of this Section 14 shall survive the Close of Escrow or any termination of this Agreement and shall not merge with the Grant Deed to be delivered at the Close of Escrow.

**Section 15. Brokers.** Buyer and Seller each represents and warrants to the other that it has had no dealings with any real estate broker or agent in connection with the sale contemplated by this Agreement and that they have not engaged any other real estate broker or agent who is entitled to a commission or finder's fee in connection with this transaction. Each Party shall indemnify, protect, defend, and hold harmless the other Party against all claims, demands, losses, liabilities, lawsuits, judgments, and costs and expenses (including reasonable attorney fees) for any commission, finder's fee, or equivalent compensation alleged to be owing on account of the indemnifying Party's dealings with any real estate broker or agent.

**Section 16. Damage or Condemnation Prior to Closing.** Seller shall promptly notify Buyer of any casualty to the Property or any condemnation proceeding commenced prior to the Close of Escrow. If any such damage or proceeding (other than such damage or proceeding caused or commenced by City or State) relates to or may result in the loss of any material portion of the Property, Buyer may, at Buyer's option, elect either to: (a) terminate this Agreement, in which event neither party shall have any further rights or obligations hereunder, except for Buyer's restoration and indemnity obligations under Section 7A(1)(i), or (b) proceed to close as provided herein without reduction of the Purchase Price for destruction of the Property or any portion thereof, or in the case of any eminent domain proceedings, (i) proceed to close as provided herein, with the Purchase Price being reduced by the total of any awards or other proceeds received or assured to be received by Seller as a result of such proceedings or (ii) proceed to close as provided herein with an assignment by Seller to Buyer, or if directed by Buyer, to State, of all of Seller's rights, title, and interest in and to all such eminent domain awards and proceeds.

**Section 17. Notices.** All notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered or sent by registered or certified mail, postage prepaid, return receipt requested, or sent by facsimile, and shall be deemed received upon the earlier of (a) if personally delivered, the date of delivery to the address of the person to receive such notice, (b) if mailed, three (3) business days after the date of posting by the United States post office, (c) if delivered by Federal Express or other overnight courier, the next business day, or (iv) if given by facsimile or electronic transmission, when sent with confirmation of receipt. Any notice, request, demand, direction or other communication sent by facsimile or electronic transmission must be confirmed within twenty-four (24) hours by letter mailed or delivered in accordance with the foregoing.
Notice of change of address shall be given by written notice in the manner detailed in this Section 17. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to constitute receipt of the notice, demand, request or communication sent.
Section 18. **Legal Fees.** In the event of bringing any action or suit by a Party hereto against another Party or Parties hereunder by reason of any breach of any of the covenants or agreements herein or any inaccuracies in any of the representations and warranties on the part of the other Party or Parties arising out of this Agreement, then in that event, the prevailing Party or Parties in such action or dispute, whether by final judgment, or out of court settlement shall be entitled to have and recover of and from the other Party or Parties all costs and expenses of suit, including reasonable attorneys’ fees. Any judgment or order entered in any final judgment shall contain a specific provision providing for the recovery of all costs and expenses of suit, including actual attorneys’ fees (collectively “Costs”) incurred in enforcing, perfecting and executing such judgment. For the purposes of this Section, Costs shall include, without limitation, attorneys’ fees, costs and expenses incurred in the following (a) arbitration and petitions to enter judgment on arbitration awards; (b) post-judgment motions; (c) garnishment, levy, and debtor and third party examination; (d) discovery; (e) bankruptcy litigation; and (f) obtaining release of funds from Escrow.

Section 19. **Miscellaneous.**

A. **Required Actions of Buyer and Seller.** Buyer and Seller agree to execute such instruments and documents and to diligently undertake such actions as may be required in order to consummate the purchase and sale herein contemplated and shall use good faith efforts to accomplish the Close of Escrow in accordance with the provisions hereof.

B. **Time of Essence.** Time is of the essence of each and every term, condition, obligation and provision hereof. All references herein to a particular time of day shall be deemed to refer to California time.

C. **Facsimile Signatures.** Facsimile signatures shall not be accepted unless prior agreement is obtained in writing by the Parties. If agreed that facsimile signatures are acceptable, they will be treated as original signatures; however, in no instance shall facsimile signatures be accepted on any document to be recorded. Such documents must bear original signatures.

D. **Captions Interpretation.** Any captions to, or headings of, the sections or subsections of this Agreement are solely for the convenience of the Parties hereto, are not a part of this Agreement, and shall not be used for the interpretation or determination of the validity of this Agreement or any provision hereof. The use of the terms “hereof”, “herein” and “hereunder” shall mean and refer to this Agreement as a whole, unless the context expressly requires otherwise. This Agreement shall be construed without regard to any presumption or other rule requiring construction against the Party or Parties causing this Agreement to be drafted.

E. **No Obligations to Third Parties.** Except as otherwise expressly provided herein, the execution and delivery of this Agreement shall not be deemed to confer any rights upon, nor obligate any of the Parties hereto, to any person or entity other than the Parties hereto.
F. **Exhibits.** The Exhibits attached hereto, if any, are hereby incorporated herein by this reference for all purposes.

G. **Amendment to this Agreement.** The terms of this Agreement may not be modified or amended except by an instrument in writing executed by each of the Parties hereto.

H. **Waiver.** The waiver or failure to enforce any provision of this Agreement shall not operate as a waiver of any future breach of any such provision or any other provision hereof.

I. **Applicable Law.** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of California.

J. **Fees and Other Expenses.** Except as otherwise provided herein, each of the Parties shall pay its own fees and expenses in connection with this Agreement.

K. **Entire Agreement.** This Agreement supersedes any prior agreements, negotiations and communications, oral or written, and contains the entire agreement between Buyer and Seller as to the subject matter hereof. No subsequent agreement, representation, or promise made by either Party hereto, or by or to an employee, officer, agent or representative of either Party shall be of any effect unless it is in writing and executed by the Party to be bound thereby.

L. **Partial Invalidity.** If any portion of this Agreement as applied to either Party or to any circumstances shall be adjudged by a court to be void or unenforceable, such portion shall be deemed severed from this Agreement and shall in no way affect the validity or enforceability of the remaining portions of this Agreement.

M. **Assignment; Successor and Assigns.** Seller shall not assign any interest under this Agreement or in the Property at any time prior to the Close of Escrow other than to an accommodator under the terms of Section 4.E above, or to a principal in Seller or his or her trust or other entity in which the principal has a controlling interest, or to an affiliate controlled by or controlling Seller, without the express written consent of Buyer, which will not unreasonably be withheld, conditioned or delayed, and providing any such assignee is fully bound by the provisions of this Agreement. This Agreement shall be binding upon and shall inure to the benefit of the executors, administrators, heirs, successors and assigns of the Parties hereto. Notwithstanding the foregoing, Seller may still enter into new or modify existing Leases subject to the terms of Section 7A(14) above.

N. **Business Days.** In the event any date described in this Agreement relative to the performance of actions hereunder by Buyer, Seller and/or Escrow Holder falls on a Saturday, Sunday or legal holiday, such date shall be deemed postponed until the next business day thereafter. The term "legal holiday" shall mean all and only those State holidays specified in Sections 6700 and 7701 of the California Government Code.
O. **Severability.** Nothing contained herein shall be construed as to require the commission of any act contrary to law, and wherever there is any conflict between any provision contained herein and any present statute, law, ordinance or regulation as to which the Parties have no legal right to contradict, the latter shall prevail, but the affected provisions of this Agreement shall be limited only to the extent necessary to bring them within the requirements of such law.

P. **Foreign Person.** Seller represents that it, he or she is not a "foreign person" as defined in Section 1445 of the Internal Revenue Code of 1986, as amended (the "Code"), or under any corresponding provisions of applicable California law.

Q. **Gender.** As used herein, the masculine, feminine or neuter gender, and the singular and plural numbers, shall each be deemed to include the others whenever and wherever the context so indicates.

R. **Waivers.** No delay or omission by any Party hereto in exercising any right or power hereunder shall impair any such right or power or be construed to be a waiver thereof, unless this Agreement specifies a time limit for the exercise of such right or power or unless such waiver is set forth in a written instrument duly executed by the party granting such waiver. A waiver by any Party hereto of any of the covenants, conditions, or agreements hereof to be performed by any other Party shall not be construed as a waiver of any succeeding breach of the same or any other covenants, agreements, restrictions or conditions hereof.

S. **Authorization, Approvals, Binding Nature.** This Agreement has no force and effect and is not binding on City until and unless it is authorized by the City Council of the City of Modesto at a duly noticed public meeting.

T. **Survival.** All terms and conditions in this Agreement, which represent continuing obligations and duties of the Parties, that have not been satisfied prior to Close of Escrow shall survive Close of Escrow and transfer of title by Seller and shall continue to be binding on the respective obligated Party in accordance with their terms, unless otherwise provided herein. All representations and warranties and statements made by the respective Parties contained herein or made in writing pursuant to this Agreement are intended to be, and shall remain, true and correct as of the Close of Escrow, shall be deemed to be material, and, together with all conditions, covenants and indemnities made by the respective Parties contained herein or made in writing pursuant to this Agreement (except as otherwise expressly limited or expanded by the terms of this Agreement), shall survive the execution and delivery of this Agreement and the Close of Escrow, or, to the extent the context requires, beyond any termination of this Agreement.

U. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which, when so executed, shall be deemed to be an original, and such counterparts shall, together, constitute and be one and the same instrument. A signature on a counterpart may be made by facsimile (if agreed in advance by the Parties) or otherwise electronically transmitted, and such signature shall have the same force and effect as an original signature.
IN WITNESS WHEREOF, the City of Modesto, a municipal corporation, has authorized the execution of this Agreement by its City Manager and attestation by its City Clerk by Resolution No. 2014-__ adopted by the Council on the ____ day of ____________, 2014, and Seller has caused this Agreement to be duly executed. The Parties hereto have caused this Agreement to be executed as of the date first written above.

BUYER

CITY OF MODESTO, a charter city and municipal corporation

By: __________________________
    Greg Nyhoff,
    City Manager

APPROVED AS TO LEGAL FORM

ADAM LINDGREN,
Interim City Attorney

By: __________________________
    RICHARD B. EVANS,
    Senior Deputy City Attorney

Dated: ________________________

SELLER

G&K ENTERPRISES, LLC, a California limited liability company

[Signature]
    Gregory Reed,
    Manager
EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY

PARCEL ONE:

Lots 25 through 32 in Block 54 of the CITY OF MODESTO according to the Official Map thereof, filed in the Office of the Recorder of Stanislaus County, California, on December 21, 1942 in Volume 15 of Maps.

PARCEL ONE A:

The South one-half of the Alley lying between the Northwesterly line of Lot Thirty Two, extended Northerly, and the Southeasterly line of Lot Twenty Five, extended Northerly, in Block 54 of the CITY OF MODESTO according to the Official Map thereof, filed in the Office of the Recorder of Stanislaus County, California, on December 21, 1942 in Volume 15 of Maps.

APN: 106-042-012
EXHIBIT B
PRELIMINARY REPORT
EXHIBIT C
FORM OF TENANT ESTOPPEL LETTER

____________, 2014

City of Modesto

____________

Re: Lease at _____________, Modesto, California

Ladies and Gentlemen:

The undersigned ("Tenant") hereby acknowledges the following information with respect to the premises leased by Tenant at _____________ under the lease (the "Lease") described below:

1. Name and mailing address of Tenant:

2. The undersigned is the Tenant under the following described Lease:

3. The Lease, as identified below, is in full force and effect and, except as set forth below, the Lease has not been amended, altered, supplemented, or otherwise modified: ________

4. Landlord currently holds no security deposit and no advance payments, and Tenant has no other claims for security deposits or advance payments except: ________________

5. Tenant is currently paying a monthly rent of $__________. Tenant is currently paying monthly operating expense charges, taxes, insurance, and/or other charges of $______. Monthly rent, monthly operating expense, monthly taxes, insurance, and/or other charges are hereafter referred to as "rentals."

6. Rentals accruing under the Lease have been paid through ___________, 2014. There are no offsets or credits against rentals payable by Tenant under the Lease nor are there any defenses or counterclaims against rentals payable by Tenant under the Lease. No rental payable under the Lease is in arrears or has been prepaid more than thirty (30) days in advance.
7. Tenant's execution of an Estoppel Certificate notwithstanding, Tenant reserves the right to bring a legal action to require an audit and/or accounting of Landlord's books and records pertaining to rent, operating expenses, taxes, insurance and/or other charges, and to assert any claims arising therefrom ("Claims") against Landlord. Tenant waives the right of offset against future rentals for any Claims against Landlord arising from acts or omissions that occurred prior to the date hereof, and releases Landlord's successors in interest from any such Claims. Notwithstanding the foregoing, nothing contained herein shall be deemed to constitute a waiver of Tenant's right of offset against Landlord's successors in interest arising from acts or omissions that occur after the date such successors in interest take title to the property of which the demised premises are a part.

8. The expiration of the term of the Lease is ___________________.

9. There are no renewals or extension options with respect to the Lease except as follows: ____________________

10. There are no expansion or first refusal rights with respect to additional space except as follows: ____________________

11. Tenant has accepted possession of the premises demised under the Lease, and Landlord has completed or provided in all respects all tenant incentives (e.g. free or reduced rent) and all improvements required to be furnished by Landlord under the Lease. Subject to any audit currently underway or any future audits, Landlord is not in default in the performance of any of Landlord's obligations under the Lease.

12. There are no purchase options under the Lease or other agreements giving Tenant any rights or options to purchase the real property and/or improvements, or any part thereof, on which the space covered by the Lease is located except as follows: ____________________

It is understood that this letter is being given in contemplation of a sale of the property located at _____________________________, and it is intended that this letter may be relied upon by any purchaser of such property in connection therewith. If there are any conflicts between the terms of this Estoppel Certificate and the Lease, the terms of the Lease will prevail.

TENANT NAME:

____________________________________________________

By: __________________________
Name: _________________________
Title: _________________________
Date: _________________________
EXHIBIT D
FORM OF GRANT DEED
RESOLUTION APPROVING A CONDITIONAL PROPERTY ACQUISITION AGREEMENT WITH CURTIS MOTE (OWNER), FOR THE ACQUISITION OF REAL PROPERTY AT 716 9TH STREET MODESTO, CA., BEING APN 106-042-011, IN THE AMOUNT OF $325,000 FOR THE PURPOSE OF SALE TO THE STATE OF CALIFORNIA, ACTING BY AND THROUGH THE JUDICIAL COUNCIL OF CALIFORNIA, ADMINISTRATIVE OFFICE OF THE COURTS FOR THE NEW MODESTO COURTHOUSE PROJECT, AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE (1) THE AGREEMENT, (2) CERTIFICATE OF ACCEPTANCE, AND (3) ALL NECESSARY AND RELATED DOCUMENTS REQUIRED TO COMPLETE THE TRANSACTION, TRANSFER TITLE, AND CLOSE ESCROW

WHEREAS, in 2010 the State Public Works Board (SPWB) approved the new Modesto Courthouse Project for initial funding, and

WHEREAS, in 2011 the Administrative Office of Courts (AOC) named a project advisory group to identify and advise on the site selection and design for the new courthouse, and

WHEREAS, in 2011 the SPWB approved the city block bounded by H and G Streets and 9th and 10th Streets (10th Street Site) as a potential site for the new Modesto Courthouse, and in 2012 the SPWB approved the city block bounded by H and I Streets and 13th and 14th Streets as a potential site for the new courthouse, and

WHEREAS, in 2012 the AOC had all parcels within the 10th Street Site appraised to determine fair market value, and

WHEREAS, the City Council directed staff to assist the AOC project team in negotiations with property owners for the acquisition and sale of real property within the 10th Street Site for the new Modesto Courthouse Project, and

WHEREAS, in 2013 the AOC had the privately owned parcels re-appraised to
determine fair market value, and

WHEREAS, in 2013 the Courthouse Cost Reduction Subcommittee directed the AOC project team to negotiate for the acquisition of the 10th Street Site and the AOC notified the City of its interest in acquiring the 10th Street Site property, and

WHEREAS, in 2013 the AOC concluded site selection for the new Modesto Courthouse Project was proper and reaffirmed the 10th Street Site as the preferred site for the new courthouse, and

WHEREAS, in 2014 the Court Facilities Advisory Committee endorsed a directive from the Courthouse Cost Reduction Subcommittee to continue negotiations for the acquisition of the 10th Street Site, and

WHEREAS, City of Modesto and Curtis Mote (OWNER) have successfully negotiated a Conditional Property Acquisition Agreement (Exhibit A) containing price, terms and conditions for City's purchase of OWNER's property at 716 9th Street, Modesto, CA., being APN 106-042-011, for the new Modesto Courthouse Project, including a purchase price of Three Hundred Twenty-Five Thousand Dollars ($325,000), so long as multiple conditions are satisfied, including the requirement that the City Council approves acquisition agreements for all privately owned parcels of the 10th Street Site, and the SPWB approves the Property Acquisition Agreement for the acquisition of all property of the 10th Street Site, and

WHEREAS, the proposed project, that includes the acquisition and sale of real property and conditional vacation of the public alley, has been determined to be Categorically Exempt under Section 15332 of the California Environmental Quality Act guidelines for in-fill development projects,
NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby finds that the proposed project that includes the acquisition and sale of real property and conditional vacation of the public alley are necessary steps for the new courthouse and has been determined to be Categorically Exempt under Section 15332 of the California Environmental Quality Act guidelines for in-fill development projects, because (a) it is consistent with the applicable general plan designation and policies, and all applicable zoning designations and regulations; (b) it is located within City limits on a project site of no more than five acres substantially surrounded by urban uses; (c) the project site has no value as habitat for endangered, rare, or threatened species; (d) approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality; and (e) the site can be adequately served by all required utilities and public services.

BE IT FURTHER RESOLVED that the Council hereby approves the Conditional Property Acquisition Agreement with Curtis Mote for acquisition of real property at 716 9th Street, Modesto, CA., being APN 106-042-011, for the sum of Three Hundred Twenty-Five Thousand Dollars ($325,000) for sale to the State of California, acting by and through the Judicial Council of the Courts, Administrative Office of the Courts for the purpose of the new Modesto Courthouse Project.

BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to execute (1) the Agreement, (2) a Certificate of Acceptance, and (3) all necessary and related documents required to complete the transaction, transfer title, and close escrow.
The foregoing resolution was introduced at a special meeting of the Council of the City of Modesto held on the 15th day of April, 2014, by Councilmember Madrigal, who moved its adoption, which motion being duly seconded by Councilmember Cogdill, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Cogdill, Gunderson, Kenoyer, Lopez, Madrigal, Zoslocki, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: Stephanie Lopez, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: Adam Lindgren, Interim City Attorney
CONDITIONAL PROPERTY ACQUISITION AGREEMENT

This Conditional Property Acquisition Agreement (the "Agreement") is made this _____ day of ________, 2014, for reference purposes and is entered into by and between Curtis Wayne Mote (hereafter collectively referred to as "Seller"), and the City of Modesto, a charter city and municipal corporation of the State of California (hereafter referred to as "Buyer" or "City"). Seller and Buyer or City are hereafter collectively referred to as a Party or the Parties. This Agreement shall also constitute Escrow Instructions directed to Escrow Holder to consummate the acquisition of real property in accordance with the terms and conditions set forth herein. This Agreement is made with reference to the following recitals.

RECITALS

A. The State of California, acting by and through the Judicial Council of California, Administrative Office of the Courts (hereafter "State") has tentatively approved a site for construction of new court facilities in the City of Modesto, County of Stanislaus being that property located within the city block bounded by H Street on the north, 10th Street on the east, G Street on the south, and 9th Street on the west, Modesto, Stanislaus County, California (hereafter "Court Facilities Site"). Final site approval for new court facilities is vested in the State Public Works Board (the "SPWB") and is contingent on the acquisition of all real property located in the Court Facilities Site. The Court Facilities Site is comprised of eleven (11) legal parcels. Five (5) of the parcels are owned by City or its former redevelopment agency (hereafter the "City Parcels") and City has agreed in principle to transfer title of the City Parcels to State for purposes of construction of the new court facilities so long as the remaining six (6) parcels are acquired for the same purpose. The Assessor Parcel Number and owner(s) of each of remaining six (6) parcels (hereafter the "Private Parcels") are identified as follows:

<table>
<thead>
<tr>
<th>APN</th>
<th>Owner</th>
</tr>
</thead>
<tbody>
<tr>
<td>106-042-005</td>
<td>Gina Rugani, Michael Gene Rugani and Sandra Ann Heffernan, Trustees, or any Successor Trustee(s) thereto of the Gina Rugani Survivor's Trust Agreement dated July 17, 1978, as amended</td>
</tr>
<tr>
<td>106-042-006</td>
<td>G &amp; K Enterprises, LLC, a California limited liability company</td>
</tr>
<tr>
<td>106-042-007</td>
<td>Charles W. Noble and Dorothy M. Noble, Trustees of the Noble 1995 Trust, as to an undivided ½ interest; Von Deen Bubeck, Trustee of the Von Deen Bubeck Trust as set forth in the Bubeck Revocable Trust dated March 19, 1997, as to an undivided ¼ interest, and Jerry R. Bubeck and Von Deen Bubeck, Trustees of the Bubeck Revocable Trust dated March 19, 1997, as to an undivided ¼ interest</td>
</tr>
<tr>
<td>106-042-010</td>
<td>Gary C. Gervasoni and Myrna Gervasoni, husband and wife, as community property</td>
</tr>
<tr>
<td>106-042-011</td>
<td>Curtis Wayne Mote</td>
</tr>
</tbody>
</table>
B. Seller and City acknowledge and agree that the Private Parcels and the City Parcels constitute and collectively shall be referred to as the Court Facilities Site Property.

C. Seller acknowledges and understands that City has been authorized by State to negotiate the purchase of the Private Parcels along with the sale of the City Parcels to State for construction of new court facilities and that the final approval of the Court Facilities Site by SPWB is contingent on City obtaining executed purchase acquisition agreements for the Private Parcels and entering into an acquisition agreement to transfer the City Parcels and Private Parcels to State.

D. Seller owns that real property located in the City of Modesto, County of Stanislaus commonly described as 716 – 9th Street having APN 106-042-011 and more particularly described in Exhibit “A” attached and made a part hereof (hereafter the “Property”).

E. Seller desires to sell to City, and City desires to purchase from Seller the Property on terms and conditions specified in this Agreement.

F. Seller acknowledges, understands and agrees that the agreement by City to purchase the Property is a conditional one and is contingent on multiple conditions, specified below, each of which must be satisfied.

G. Seller understands and agrees that should all conditions of purchase be satisfied that immediately following the transfer of title of Property to City, the Property shall be sold and conveyed by City to State.

The Parties agree that the foregoing recitals are true and correct and are part of this Agreement.

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, the Parties agree as follows:

Section 1. Sale of Property. Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller on the terms hereinafter stated, the Property. The term “Property” as used in this Agreement shall mean and refer to the real property described above; all improvements located thereon; all privileges, rights, easements, hereditaments and appurtenances to the real property, including, without limitation, all minerals, oil, gas, and other hydrocarbon substances on and under the real property; all air rights, water, and water rights relating to the real property; and all rights, title and interest of Seller in and to any roads, easements and other rights-of-way or appurtenances included on or adjacent to the real property used in connection with the beneficial use and enjoyment of the real property, but excluding any removable equipment,
personal property, and any fixtures that are removed prior to Close of Escrow in compliance with the terms of Section 13G(7) below.

Section 2. **Purchase Price of Sale Property.** The purchase price for the Property shall be Three Hundred Twenty Five Thousand Dollars ($325,000) (the “Purchase Price”).

Section 3. **Payment of Purchase Price.** Prior to the Close of Escrow (as such term is defined in Section 4, below) the Purchase Price and any sums due from Buyer to the Escrow Holder and Seller as a consequence of the purchase and sale of the Property shall be deposited into Escrow, in cash or other immediately available funds.

Section 4. **Escrow.**

A. **Opening of Escrow.** The Parties shall deliver a copy of the executed Agreement to Chicago Title Company, located at 1700 Standiford Avenue, Modesto, California 95350, Telephone Number (209) 571-6300, Attention: Karla Haney (“Escrow Holder”) no later than three (3) business days after execution of the Agreement by the Parties hereto. For purposes of this Agreement, as between the Parties, the escrow (“Escrow”) shall be deemed opened on the date Escrow Holder shall have received a fully executed copy or copies of executed counterparts of this Agreement from Seller and Buyer (the “Opening of Escrow”), and Escrow Holder shall notify Buyer and Seller, in writing, of the date Escrow is opened. Buyer and Seller agree to execute, deliver and be bound by any reasonable or customary supplemental escrow instructions (“Escrow Instructions”) of Escrow Holder or other instruments as may reasonably be required by Escrow Holder in order to consummate the transaction contemplated by this Agreement. Any such supplemental instructions shall not conflict with, amend or supersede any portions of this Agreement. In the event of any inconsistency between the provisions of such supplemental instructions with the provisions of this Agreement, the provisions of this Agreement shall control.

B. **Close of Escrow.** For purposes of this Agreement, the “Close of Escrow” shall be defined as the date that the grant deed conveying fee simple title to the Property to Buyer, is recorded in the Official Records of Stanislaus County, California. The period commencing with the Opening of Escrow and continuing through the Close of Escrow shall hereinafter be referred to as the “Escrow Period.” Escrow shall close on the date which is on or before sixty (60) days after the latter of (i) State’s authorization of the acquisition of the Court Facilities Site Property by the SPWB at a duly noticed public meeting, or (ii) the Modesto City Council’s approval of the acquisition of the Private Parcels and the sale of the City Parcels to the State (the “Closing Date”). If Close of Escrow is delayed by any cause beyond the reasonable control of Buyer or State, Buyer shall be entitled to an equitable extension of the Escrow Period, for a reasonable time agreed to and negotiated in good faith by the Parties, at no cost to Buyer or Seller. Notwithstanding the foregoing, if the Close of Escrow has not occurred by December 31, 2014, either Party may terminate this Agreement on written notice to the other. Termination by Seller will not be effective until ten (10) business days of receipt of such notice by Buyer.
C. **Extension of Close of Escrow.** No extensions shall occur unless agreed to in writing by Buyer and Seller.

D. **Failure to Timely Close.** If the conditions precedent to Close of Escrow as provided herein have not been satisfied by the Closing Date, this Agreement may be terminated upon written notice by Buyer and thereupon this Agreement shall become null and void, except that Buyer's restoration and indemnity obligations under Section 7A(1)(i) below shall survive such termination.

E. **Cooperation for Tax Deferred Exchange.** Buyer agrees to cooperate with Seller in the event that Seller desires to qualify the transaction as a tax-deferred exchange under Section 1031 of the Internal Revenue Code. Buyer shall not be liable for any additional costs or expenses as a result of such an exchange. Buyer shall not be responsible or liable for qualifications of the exchange. Seller shall hold Buyer harmless for any expense or liability incurred by Buyer as a result of such exchange. Seller shall be authorized to assign all or any part of this Agreement to an accommodator who will assume the obligations of Seller but not Seller's representations, warranties, and covenants.

**Section 5. Condition of Title.** It shall be a condition to the Close of Escrow for Buyer's benefit that title to the Property be conveyed immediately to Buyer upon Close of Escrow by Grant Deed, and that title to the Court Facilities Site Property be delivered free and clear of all liens, reservations, encumbrances, assessments, easements, of record or otherwise, except:

A. Exceptions numbered 3, 5-14, 16, and 21 of that certain Amended Preliminary Report, Title No. 11-50910332-I-ML dated June 13, 2013, issued by Chicago Title Company, a copy of which is attached hereto as Exhibit B ("Preliminary Title Report").

To that end, Escrow Holder may expend any and all monies payable to Seller under this Agreement to discharge any monetary obligations that are liens upon the Property, and shown as exceptions in the Preliminary Title Report, including but not limited to those arising from judgments, assessments, taxes, or debts secured by deeds of trust or mortgages. Property taxes for the fiscal year in which Escrow closes, if unpaid, shall be paid by Seller in Escrow to and including the date of Close of Escrow as set forth in Section 11 hereof.

**Section 6. Title Policy.** Title shall be evidenced by the willingness of Chicago Title Company ("Title Company") to issue a CLTA Owner's Standard Coverage Form Policy of Title Insurance ("Title Policy") in the amount of the Purchase Price showing title to the Property vested subject only to the exceptions described above.

**Section 7. Conditions to Close of Escrow.**

A. **Conditions to Buyer's Obligations.** Buyer's obligation to consummate the transaction contemplated by this Agreement is subject to the satisfaction of the following
conditions for Buyer’s benefit (or Buyer’s waiver thereof, it being agreed that Buyer may waive any or all of such conditions) on or prior to the dates designated below for the satisfaction of such conditions. Notwithstanding any other provision of this Agreement, City shall have no obligation to purchase the Property, and no transfer of title to City or State may occur, unless each of the following conditions has been satisfied or waived by City in writing:

(1) Buyer’s Review of the Court Facilities Site Property. Buyer shall have until 5:00 p.m. Pacific Time on Friday, May 16, 2014 (such period of time between the execution of this Agreement by Seller and May 16, 2014 shall be referred to herein as the “Due Diligence Period”) to satisfy itself, in Buyer’s sole and absolute discretion, as to the following described matters concerning the Court Facilities Site Property, including the Property. If, during the Due Diligence Period, Buyer determines that it is dissatisfied with any aspect of the Court Facilities Site Property or its condition or suitability for Buyer’s intended use, then Buyer may terminate this Agreement and the Escrow created pursuant hereto, by delivering written notice to Seller and Escrow Holder on or before the expiration of the Due Diligence Period of Buyer’s election to terminate. If Buyer fails to deliver any such termination notice to Seller and Escrow Holder on or before the expiration of the Due Diligence Period, then, Buyer shall be deemed to be satisfied with all aspects of the Court Facilities Site Property including, without limitation, the condition and suitability of the Property for Buyer’s intended use.

(i) Buyer’s Review of the Court Facilities Site Property and Related Matters. Buyer shall be satisfied with all aspects of the Court Facilities Site Property, and its condition and suitability for the intended use thereof, including, without limitation, the physical condition of the Court Facilities Site Property, the net acreage of the Court Facilities Site Property, the condition of the access to public roads and condition and availability of water, electricity, natural gas, and other utilities, to the Court Facilities Site Property in adequate capacities and appropriate locations. After the execution of this Agreement by Seller and during the Due Diligence Period, Buyer, Buyer’s agents, employees, contractors and subcontractors and State’s agents, employees, contractors and subcontractors shall have the right to enter upon the Property at reasonable times during ordinary business hours, to make such inspections, surveys and tests as may be necessary in Buyer’s discretion, including, without limitation, soils tests, environmental surveys, biological resources analysis, archeological surveys, toxic waste analysis, geological and/or engineering studies and related studies. Buyer shall use care and consideration in connection with any of its inspections, surveys, studies or tests and Seller, or Seller’s agent, shall have the right to be present during any inspection of the Property by Buyer or its agents. Buyer shall restore the Property to its original condition after any and all tests and/or inspections. Buyer, and its respective employees, agents and contractors shall make reasonable efforts to avoid interfering with Seller’s or Seller’s tenants’ ongoing use, if any, of the Property. Buyer hereby indemnifies, protects, defends and holds Seller, its officers, directors, members, managers, trustees, employees, agents, representatives, immediate family members, successors and assigns (collectively “Seller Parties”), and the Property free and harmless from and against any and all costs, losses, liabilities, damages, lawsuits, judgments, actions, proceedings, penalties, demands, attorneys’ fees, mechanic’s or other liens, or expenses of any kind or nature whatsoever, arising out of or resulting from any entry and/or activities upon the Property by Buyer, and its respective agents, employees, contractors and subcontractors pursuant
to this subsection (i). If Buyer does not purchase the Property, it shall furnish complete copies of all such investigations, inspections and tests described above to Seller without charge and without warranty as to their accuracy or reliability within ten (10) days of Buyer's exercise of its right to terminate this Agreement or of Buyer otherwise failing to close hereunder.

(ii) Environmental Condition of Court Facilities Site Property. Buyer shall be satisfied, in Buyer’s sole and absolute discretion that the Court Facilities Site Property, including its soil and ground water under the land, is free from all Hazardous Substances, as defined in Section 13F, below, and is in full and complete compliance with the law with respect to same.

(iii) Changes to Condition of Property. If the condition of the Property materially changes after the expiration of the Due Diligence Period (except due to Seller’s removal of fixtures as provided in Section 13G(7) below or due to Buyer’s or its agent’s activities on or about the Property), Buyer shall have the right, but not the obligation, to deliver to Seller a written notice objecting to the condition of the Property up to the Close of Escrow (“Final Due Diligence Notice”). If Buyer does not deliver the Final Due Diligence Notice on or prior to the Close of Escrow, Buyer shall be deemed to have given its final approval of the condition of the Property. However, if Buyer does provide a Final Due Diligence Notice, Buyer shall have the right to terminate this Agreement unless the condition of the Property is restored to a condition that is acceptable to Buyer.

(2) Existing Leases and Estoppel Certificates. No later than three (3) business days after the Opening of Escrow, Seller shall deliver to Buyer a copy of all existing leases, licenses or other agreements that would grant any person or entity the right to use or occupy any portion of the Property (“Leases” or individually “Lease”). In the event any of the existing Leases are oral, Seller shall deliver to Buyer a written summary of all terms of all such Leases including, without limitation, the name and telephone number of the occupants, the expiration date of the Leases, the current rent and whether occupants have any option(s) to extend the term of the Leases, and/or an option or a right of first refusal to purchase the Property. Buyer shall be satisfied, in Buyer’s sole and absolute discretion, with the terms of the Leases, in which event Buyer shall take title to the Property subject to the terms of such Leases. Buyer shall indicate its satisfaction or objections by expiration of the Due Diligence Period to any and all Leases in existence as of the full execution date of this Agreement.

Seller shall have delivered to Buyer no more than ten (10) days prior to Close of Escrow an estoppel certificate relative to each Lease, executed and acknowledged by Seller’s tenants, if any, in the form set forth in Exhibit C.

(3) Agreement with Tenants. Buyer shall have entered into agreements with Seller’s existing tenants, if any, regarding early termination of tenants’ Leases, and/or the termination of tenants’ option, right of first refusal, and any other rights to extend the term of the Leases or to purchase the Property, to the extent such agreements are necessary for City or State to take possession of the Property by January 1, 2016.
(4) **Approval by State Department of Finance.** The California Department of Finance shall have approved the transfer to City of those parcels to which title was formerly held by the Redevelopment Agency to the City of Modesto, a dissolved public entity.

(5) **Authorization by SPWB.** Authorization of the acquisition of the Court Facilities Site Property by the SPWB at a duly noticed public meeting.

(6) **Approved Property Acquisition Agreements for the Private Parcels.** Each of the owners of the Private Parcels shall have executed a Conditional Property Acquisition Agreement substantially in the form of this Agreement, and the City Council of the City of Modesto shall have approved such a Conditional Property Acquisition Agreement for each of the Private Parcels, including the Property.

(7) **Approved Property Acquisition Agreements for the City Parcels.** Approval by the City Council of the City of Modesto, State and SPWB of a Property Acquisition Agreement for each of the City Parcels.

(8) **Agreement between City and State.** City and State shall have executed agreements, approved by the governing bodies of each entity, specifying the rights, duties, and obligations of City and State following the transfer of title to State of the Court Facilities Site Property, including the control, management, and use of the Court Facilities Site Property.

(9) **Deposit of all Documents.** The timely deposit by Seller with Escrow Holder of all documents required to be deposited by Seller under this Agreement.

(10) **Seller's Performance of Obligations.** Performance by Seller of all obligations, covenants and agreements on Seller's part to be performed under this Agreement within the time provided in this Agreement for such performance.

(11) **No Breach by Seller.** Seller shall not be in breach of this Agreement.

(12) **Accuracy of Representations and Warranties.** As of the Close of Escrow, all of Seller's representations and warranties set forth herein shall be true and accurate with the same force and effect as if remade by Seller in a separate certificate at the Close of Escrow.

(13) **Title Insurance Policy.** On the date of the Close of Escrow, Title Company shall be irrevocably and unconditionally committed to issue to State the Title Policy, with liability coverage in the amount of the Purchase Price, and showing fee title to the Property vested in State free and clear of all liens, taxes, assessments, reservations, encumbrances, easements of record or otherwise, except as set forth in Section 5 of this Agreement.
(14) **No Modification of Existing Leases.** After the date of execution of the Agreement and as of the Close of Escrow, Seller shall not have modified any material term of any existing Lease affecting the Property or entered into any new Lease containing any material term, without City's prior written consent, which consent City may withhold or grant in its absolute discretion. For purposes of this subsection "material term" shall mean any lease term that would adversely affect the ability of City to take possession of the Property on January 1, 2016, including, but not limited to, extending the term of an existing Lease or entering into a new Lease that expires after December 31, 2015, increases landlord's responsibilities under the Lease, decreases the rent or other charges payable by tenant under the Lease, converts a triple net Lease into a full service, gross, or modified full service Lease, or imposes on landlord any obligation that adversely affects landlord's anticipated income from any Lease (including, but not limited to, providing for any tenant incentives [e.g. free rent, reduced rent, tenant improvements, and matters of a similar nature] to be given, made, or realized after Close of Escrow).

(15) **Simultaneous Close of Escrow.** Simultaneous Close of Escrow on the acquisition of the Private Parcels.

(16) **Buyer's Objections.** Nothing in this Agreement shall be interpreted to require Seller to remediate the Property, or make repairs or improvements to the Property not otherwise required to be made by Seller pursuant to the terms of the Leases, prior to Close of Escrow.

(17) **Survival of Provisions.** If this Agreement is terminated by Buyer due to the failure of any of the conditions described herein, Buyer's restoration and indemnity obligations under Section 7A(1)(i) shall survive such termination.

B. **Conditions to Seller's Obligations.** Seller's obligation to consummate the transaction contemplated by this Agreement is subject to the satisfaction of the following conditions for Seller's benefit (or Seller's waiver thereof, it being agreed that Seller may waive any or all such conditions):

1. **Deposit of All Documents and Funds.** The timely deposit by City with Escrow Holder of all the documents and funds required to be deposited under this Agreement.

2. **Performance of Buyer's Obligations.** Performance by City of all obligations, covenants and agreements on City's part to be performed under this Agreement within the time provided in the Agreement for such performance.

3. **No Breach by Buyer.** Buyer shall not be in breach of this Agreement.

4. **Accuracy of Representations and Warranties.** As of the Close of Escrow, all of Buyer's representations and warranties set forth herein shall be true and accurate.
with the same force and effect as if remade by Buyer in a separate certificate at the Close of Escrow.

Section 8. Deposits by Seller. At least three (3) business days prior to the Close of Escrow, Seller shall deposit or cause to be deposited with Escrow Holder the following documents or instruments:

A. Grant Deed. A grant deed ("Grant Deed") in substantially the form attached hereto as Exhibit D, duly executed by Seller and properly acknowledged;

B. FIRPTA Certificate. A certificate of non-foreign status (the "FIRPTA Certificate"), duly executed by Seller; and

C. California Real Estate Withholding Certificate. A Real Estate Withholding Certificate (California Franchise Tax Board Form 593-C).

Section 9. Deposits by State. Pursuant to and conditioned upon the terms of this Agreement, prior to the Close of Escrow, Buyer shall cause State to deposit with Escrow Holder, in immediately available funds, the Purchase Price and other sums due from Buyer hereunder in the amounts set forth herein, along with any documents or instruments required of Buyer by Escrow Holder for Close of Escrow.

Section 10. Escrow Charges and Closing Costs. State shall bear the cost of the Title Policy, any endorsements thereto, and any extended coverage ALTA, or other title policy or accompanying survey. Buyer shall be responsible for the payment of documentary transfer taxes and recording the Grant Deed, if any. Seller shall be responsible for the cost of recording documents necessary to deliver clear title to Buyer, if any. Buyer shall pay the escrow fees. Buyer and Seller shall each bear their own respective legal and accounting costs, if any, outside of Escrow except as expressly provided in Section 18 herein or elsewhere in this Agreement. All other costs or expenses not otherwise provided for in this Agreement shall be apportioned or allocated between Buyer and Seller in the manner customary in Stanislaus County, California. Notwithstanding the foregoing, Buyer shall not be obligated to pay for its share of closing costs unless and until it receives Buyer’s Estimated Closing Costs from Escrow Holder (the preceding portion of this sentence is not intended to obligate Seller to pay Buyer’s share of closing costs).

Section 11. Prorations. The following prorations shall be made between Seller and Buyer on the Close of Escrow, computed as of the Close of Escrow:

A. Taxes and Assessments. Real and personal property taxes and assessments on the Property shall be prorated on the basis that Seller is responsible for (i) all such taxes for the fiscal year of the applicable taxing authorities occurring prior to the "Current Tax Period" (as hereinafter defined) and (ii) that portion of such taxes for the Current Tax Period determined on the basis of the number of days which have elapsed from the first day of the Current Tax Period to the Close of Escrow, inclusive, whether or not the same shall be payable prior to the Close of Escrow. The phrase "Current Tax Period" refers to the fiscal year of the
applicable taxing authority in which the Close of Escrow occurs. In the event that as of the Close of Escrow the actual tax bills for the year or years in question are not available and the amount of taxes to be prorated as aforesaid cannot be ascertained, then rates and assessed valuation of the previous year, with known changes, shall be used, and when the actual amount of taxes and assessments for the year or years in question shall be determinable, then Seller shall be responsible for any unpaid taxes and assessments. Buyer shall not be responsible for any tax refund.

B. **Other Proratable Expenses.** Escrow Holder shall prorate other proratable expenses, based on a thirty (30)-day month through the Close of Escrow, including rent paid pursuant to existing Leases on the Property, if any. All rent and other payments due after the Close of Escrow pursuant to any Lease on the Property shall be paid to Buyer. If any rent or other payments due pursuant to any Lease on the Property are collected by Seller for any period beyond the last day of the month in which Escrow closes, Seller shall pay such amounts to Buyer. If any rent or other payments due pursuant to any Lease on the Property are collected by Buyer for any period prior to Close of Escrow, Buyer shall pay such amounts to Seller. Seller shall return to tenants under any Lease on the Property any security, cleaning, key or other deposits and indemnify and hold Buyer harmless from any claim therefor.

C. **Proration Statement.** At least two (2) business days prior to the Close of Escrow the Parties hereto shall approve an estimated proration statement prepared by Escrow Holder setting forth all of the prorations to be made.

**Section 12. Disbursements and Other Actions by Escrow Holder.** Upon the Close of Escrow, Escrow Holder shall promptly undertake all of the following in the manner indicated:

A. **Prorations.** Prorate all matters referenced in Section 11 based upon the statement delivered into Escrow signed by the Parties.

B. **Recording.** Cause the Grant Deed and any other documents which the Parties hereto may mutually direct, including reconveyance of any deeds of trust and releases of any liens recorded on the Property, to be recorded in the Official Records.

C. **Disbursements.** Disburse funds in payment of all items chargeable to Buyer and Seller with the balance paid to Seller in payment of the Purchase Price.

D. **Title Policy.** Direct the Title Company to issue the Title Policy.

E. **Documents to Seller.** Deliver to Seller a conformed copy of the recorded Grant Deed and conformed copies of any reconveyances of deeds of trust and releases of any liens on the Property.

F. **Documents to Buyer.** Deliver to Buyer the FIRPTA Certificate, the California Real Estate Withholding Certificate, and a conformed copy of the recorded Grant
Deed, and conformed copies of reconveyances of deeds of trust and releases of liens on the Property, if any.

**Section 13. Seller’s Representations, Warranties and Covenants.** In consideration of Buyer entering into this Agreement and as an inducement to Buyer to purchase the Property from Seller, Seller makes the following representations, warranties, and covenants, each of which is material and is being relied upon by Buyer:

**A. Authority.**

(1) Seller has full right, power and legal authority to enter into this Agreement, sell, transfer and convey the Property to Buyer under this Agreement and to carry out Seller’s obligations under this Agreement. Upon the Close of Escrow, Buyer will have good, marketable and insurable title to the Property.

(2) The individuals executing this Agreement and the instruments referenced herein on behalf of Seller have the legal power, right and actual authority to bind Seller to the terms hereof and thereof.

(3) This Agreement is, and all other instruments, documents and agreements required to be executed and delivered by Seller in connection with this Agreement are and shall be, duly authorized, executed and delivered by Seller and shall be valid, legally binding obligations of and enforceable against Seller in accordance with their terms, subject only to enforcement that may be limited by applicable bankruptcy, insolvency or similar laws, and do not, and as of the Close of Escrow will not, to the best of Seller’s knowledge, violate any provisions of any agreement, law, rule, regulation or judicial order to which Seller or the Property is subject.

(4) All requisite action (corporate, trust, partnership, limited liability company or otherwise) has been taken by Seller in connection with entering into this Agreement, the instruments referenced herein, and the consummation of the transactions contemplated hereby. No consent of any partner, shareholder, member, beneficiary, creditor, investor, judicial or administrative body, authority, or other party is required.

**B. No Conflicts.** Neither the execution and delivery of this Agreement and documents referenced herein, nor the incurrence of the obligations set forth herein, nor the consummation of the transactions herein contemplated, nor compliance with the terms of this Agreement and the documents referenced herein conflict with or result in the material breach of any terms, conditions or provisions of, or constitute a default under, the terms of Seller trusts, the Articles of Organization or Operating Agreement of Seller, any bond, note, or other evidence of indebtedness or any contract, indenture, mortgage, deed of trust, loan, partnership agreement, lease or other agreements or instruments to which Seller is a party or which affect the Property.

**C. Consents.** No consent, approval, license, permit, order, qualification or authorization of, or registration, declaration, notice or filing with, any governmental entity or any
other person or entity is required for or in connection with the execution and delivery by Seller of this Agreement, and the consummation by Seller of the transactions contemplated by this Agreement, other than as set forth in Section 7.A hereof.

D. **Legal Matters.** To the actual knowledge of the individuals executing this Agreement, without further inquiry or investigation, Seller represents and warrants that:

1. There is no suit, action, arbitration, legal, administrative, or other proceeding or inquiry pending against the Property or pending against Seller which could affect Seller's title to the Property.

2. There are no attachments, execution proceedings, or assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other proceedings pending against Seller.

3. There are no: (a) agreements, written or oral, under which Seller is or could become obligated to convey all or part of the Property or any interest in the Property to a third party; (b) rights of first refusal, reversions, or options to purchase the Property or any portion thereof (other than as set forth in the Leases disclosed pursuant to Section 7A(2) hereof; (c) Leases (other than those disclosed pursuant to Section 7A(2) hereof), liens, easements, encumbrances, prescriptive rights, contracts or other agreements for services, supplies, or materials which may affect title to or use of the Property after the Close of Escrow or impose an obligation on Buyer after the Close of Escrow; (d) adverse or other parties in possession or use of any part of the Property (other than as set forth in the Leases); or (e) to the best of Seller's knowledge, special assessments, condemnation actions, moratoriums, initiatives or legislation affecting the Property (and Seller has not received any notice of any being contemplated).

4. Except for Leases disclosed by Seller to Buyer in writing, pursuant to Section 7A(2) hereof, as of the Close of Escrow, there shall be no unrecorded leases, licenses or other agreements which would grant any person or entity the right to use or occupy any portion of the Property, including any improvements thereon.

5. To the best of Seller's knowledge, there are no and have been no: (a) actual or pending public improvements which will result in the creation of any liens upon the Property, including public assessments or mechanic's liens and Seller agrees to indemnify, defend and hold Buyer free and harmless from and against any claims, liabilities, losses, costs, damages, expenses and attorneys' fees arising from any liens, encumbrances or assessments that have been, or may be, incurred by Seller or imposed upon the Property prior to the Close of Escrow, but only to the extent any obligations to pay a fee or assessment for infrastructure is due and payable prior to the Close of Escrow, and Buyer agrees to cooperate with Seller, at Seller's costs and to the extent permitted by law, with respect to Seller's efforts prior to Close of Escrow to remove any such liens, fees, assessments, or encumbrances; or (b) uncured notices from any governmental agency notifying Seller of any violations of law, ordinance, rule, or regulation, occurring on the Property. Other than as provided above, Buyer shall assume responsibility for
assessments arising from any actual or impending public improvements as of the Close of Escrow.

E. No Works of Improvement. No works of improvement or other activities have occurred with respect to the Property which could give rise to any liens against the Property.

F. Environmental. Except as otherwise disclosed by Seller to Buyer in writing, Seller has not: (a) conducted or authorized the presence, placement, generation, transportation, storage, release, treatment, or disposal at the Property of any Hazardous Substance; or (b) received from or given to any governmental authority or other party any notice or other communication or agreement relating in any way to the presence, placement, generation, transportation, storage, release, treatment or disposal of any Hazardous Substance on the Property. Except as otherwise disclosed by Seller to Buyer in writing, (a) there presently are not, and to the best of Seller's knowledge there have never been any Hazardous Substances or storage tanks containing or having contained petrochemicals in, on, under, or about the Property; and (b) to the best of Seller's knowledge, there is no pending or threatened litigation, proceedings or investigation before any governmental entity or agency in which the presence, release, threat of release, placement, generation, transportation, storage, treatment or disposal in, on, under, or about the Property of any Hazardous Substance has been alleged; and (c) to the best of Seller's knowledge, there is no defect or condition with respect to the Property which would prevent the use of the Property by State for its intended use as a public courthouse, including, but not limited to, the condition of the soil, the existence of geologic hazards or groundwater contamination, the existence of ecological or environmental impediments or the existence of any hazardous or toxic materials on or beneath the surface of the Property at levels requiring remediation or removal under existing applicable laws and regulations. For purposes of this Agreement, the term "Hazardous Substance" means any matter which has been or is determined by any current or proposed federal, state, or local statute, law, enactment, ordinance, regulation, order, rule or judicial decision to constitute a hazardous or toxic waste, substance or material, but excepting normal commercial and office products such as cleaners and copy fluids and normal petroleum product residue from parked and moving vehicles.

G. Pending Close of Escrow.

1. New Leases. Seller will not hereafter enter into new Leases or any other obligations or agreements affecting the Property after Seller's execution of this Agreement, except for obligations or agreements that comply with Section 7A(14) and that are fully disclosed to Buyer, without the prior written consent of Buyer, which consent the Buyer may withhold or grant in its absolute discretion.

2. Additional Liens. Seller will not subject the Property to any additional liens, encumbrances, covenants, conditions, easements, rights of way or similar matters after Seller's execution of this Agreement that will not be eliminated prior to the Close of Escrow.
(3) **Violations of Law.** After the execution of this Agreement by Seller, Seller shall not knowingly violate nor allow violation of, any law, ordinance, rule, or regulation affecting the Property.

(4) **Preservation of Easements and Other Rights.** Prior to the Close of Escrow, Seller shall do or cause to be done, all things within its reasonable control to preserve intact and unimpaired any and all rights of way, easements, grants, appurtenances, privileges, and licenses in favor or consisting of any portion of the Property.

(5) **Taxes and Assessments.** Seller shall pay, if and when the same are due, all payments on any encumbrances or assessments presently affecting the Property and any and all taxes, assessments, and levies in respect of the Property through the Close of Escrow.

(6) **Zoning.** Prior to the Close of Escrow, Seller shall not take any action, or fail to take any action, that would result in any change, alteration, modification, addition to, or termination of any of the presently-existing general plan or zoning designation of the Property, without Buyer's prior written approval, and Seller shall immediately provide Buyer with a copy of any written materials received by Seller evidencing or relating to any proposal or attempt to effect any such change, alteration, modification, addition to, or termination other than those sought by Buyer.

(7) **No Modification to Condition of Property.** Seller shall (i) not alter the physical condition of the Property; (ii) maintain the Property in substantially the same condition as that which existed as of the date that Buyer executed this Agreement; and (iii) deliver possession of the Property to Buyer at the Close of Escrow in substantially the same condition that existed as of the date that Seller executed this Agreement except for any remediation that Seller agrees to do in response to Buyer's due diligence.

Notwithstanding the foregoing, Seller may remove any fixture or fixtures (as that term is defined in Civil Code Section 660) from the Property if (i) at least sixty (60) days prior to the Close of Escrow, Seller submits a list of the fixture(s) Seller wishes to remove from the Property to Buyer, identifying such fixture(s) with reasonable particularity; (ii) Buyer consents to such removal in writing (which consent may be granted or withheld in Buyer's sole discretion); (iii) the removal of such fixture(s) is completed on or before December 31, 2015; (iv) the removal of such fixtures does not violate the terms of any lease to which the Property is subject; and (v) the removal of such fixture(s) does not interfere with the use of the Property by any tenant occupying the Property or any part thereof.

(8) **Notification to Buyer.** Seller shall promptly notify Buyer of any event or circumstance that could or would render any representation or warranty of Seller under this Agreement untrue or misleading, or of any covenant of Seller under this Agreement incapable or less likely of being performed; provided, however, that Seller's foregoing obligation to provide notice to Buyer shall in no way relieve Seller of any liability for a breach by Seller of any of its representations, warranties or covenants under this Agreement.
(9) **No Recordation of CCRs.** Seller shall not record any covenants, conditions or restrictions against the Property, including without limitation any design restrictions with respect to the development of the Property.

(10) **No Assessment Districts or Special Tax Districts.** Seller shall not assist with the formation, vote for, or agree to any assessment districts or special tax districts which results in a special tax or assessment upon the Property.

(11) **Confidentiality.** Seller shall keep strictly confidential and agrees not to disclose or permit the disclosure of the terms of this Agreement to any third parties other than Seller's tax advisors, counsel, and real estate agents ("Seller’s Representatives") until after the Close of Escrow. Prior to the disclosure of the terms of this Agreement to Seller’s Representatives, Seller shall inform Seller’s Representatives of the confidential nature of the terms of this Agreement and shall agree to act in accordance with the provisions of this Section 13G(11). Notwithstanding the foregoing, Seller and Seller’s Representatives may disclose the terms of this Agreement pursuant to the order or requirement of a court, administrative agency, or other governmental agency provided, however, that Seller shall provide prompt notice of such court order or requirement to Buyer in order to enable Buyer to seek a protective order or otherwise prevent or restrict such disclosure, and shall cooperate with Buyer in connection with such efforts. Seller hereby acknowledges and agrees that any remedy at law, including, without limitation, monetary damages, for any breach or threatened breach of the provisions of this Section 13G(11) would be inadequate and impossible to ascertain, and each party hereby consents to the granting by any court of an injunction or other equitable relief, without the inadequacy of monetary damages being proved or any bond or similar security being posted, in order that the breach or threatened breach of such provisions may be effectively restrained.

(12) **Accurate Through Close of Escrow.** As of the Close of Escrow, all of Seller’s representations and warranties set forth herein shall be true and accurate with the same force and effect as if remade, by Seller in a separate certificate at the Close of Escrow.

H. **General Representation.** No representation, warranty or statement of Seller in this Agreement or in any document, instrument, certificate or schedule furnished or to be furnished to Buyer pursuant hereto, to the best of Seller’s knowledge, contains or will contain any untrue statement of a material fact or omits or will omit any material fact the omission of which would be misleading. Notwithstanding any terms to the contrary contained herein, Seller makes no representations or warranties about the truth, accuracy or completeness of any reports or analyses prepared by third parties that Seller furnishes to Buyer hereunder.

Seller’s representations and warranties made in this Agreement shall be continuing and shall be true and correct as of the date of the Close of Escrow with the same force and effect as if remade by Seller in a separate certificate at that time. The truth and accuracy of Seller's representations and warranties made herein shall constitute a condition for the benefit of Buyer to the Close of Escrow (as elsewhere provided herein) and shall not merge into the Close of Escrow or the recordation of the Grant Deed in the Official Records, and shall survive the Close of Escrow.
Section 14. **Buyer’s Representations, Warranties and Covenants.** In consideration of Seller entering into this Agreement and as an inducement to Seller to sell the Property to Buyer, Buyer makes the following representations, warranties, and covenants, each of which is material and is being relied upon by Seller, and which are true and correct as of execution hereof, and shall be true and correct as of the Close of Escrow:

A. **Authority.** Buyer has the legal right, power and authority to enter into this Agreement and to consummate the transaction contemplated hereby, and the execution, delivery and performance of this Agreement have been duly authorized and no other action by Buyer is requisite to the valid and binding execution, delivery and performance of this Agreement, except as otherwise expressly set forth herein.

B. **Binding.** This Agreement is, and all other instruments, documents and agreements required to be executed and delivered by Buyer in connection with this Agreement are and shall be, duly authorized, executed and delivered by Buyer and shall be valid, legally binding obligations of and enforceable against Buyer in accordance with their terms, subject only to enforcement that may be limited by applicable bankruptcy, insolvency or similar laws, and do not, and as of the Close of Escrow will not, to the best of Buyer’s knowledge, violate any provisions of any agreement, law, rule, regulation or judicial order to which Buyer is subject.

C. **Conflicts.** To the best of Buyer’s knowledge, neither the execution or delivery of this Agreement nor the consummation of the transaction herein will conflict with, violate, result in a breach by, constitute a default under or accelerate the performance provided by the terms of any law, rule, regulation or agreement to which Buyer may be subject.

D. **As-Is Sale.** Except as explicitly warranted or represented in this Agreement, Seller makes no warranties, representations or assurances relating to the Property or any easements, rights of way, privileges, appurtenances or other rights pertaining thereto, or any surveys, tests, investigations or other reports concerning the Property (collectively “related interests”). Subject to the satisfaction or waiver of the conditions set forth in Section 7(A), and Seller’s representations, warranties, and covenants set forth in Section 13 of this Agreement, Seller is transferring the Property and related interests “AS IS”, “WITH ALL DEFECTS” and Buyer is relying on the explicit warranties and representations made by Seller in this Agreement as well as its own due diligence inspection, investigation and testing in purchasing the same. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, SELLER IS MAKING NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY MATTER, INCLUDING WARRANTIES OF MERCHANTABILITY, SUITABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR OTHERWISE INCLUDING ANY WARRANTIES WITH REGARD TO THE CONDITION OF THE PROPERTY AND RELATED INTERESTS OR THEIR FITNESS FOR ANY INTENDED USE. UPON THE CLOSE OF ESCROW, BUYER SHALL BE DEEMED TO HAVE BEEN AFFORDED THE OPPORTUNITY TO INSPECT THE PROPERTY AND RELATED INTERESTS ALONG WITH ALL DOCUMENTS AND INSTRUMENTS RELATED THERETO DISCLOSED IN THE PUBLIC RECORD OR DISCLOSED BY SELLER INCLUDING THOSE DOCUMENTS.

E. **Survival.** The provisions of this Section 14 shall survive the Close of Escrow or any termination of this Agreement and shall not merge with the Grant Deed to be delivered at the Close of Escrow.

Section 15. **Brokers.** Buyer and Seller each represents and warrants to the other that it has had no dealings with any real estate broker or agent in connection with the sale contemplated by this Agreement and that they have not engaged any other real estate broker or agent who is entitled to a commission or finder's fee in connection with this transaction. Each Party shall indemnify, protect, defend, and hold harmless the other Party against all claims, demands, losses, liabilities, lawsuits, judgments, and costs and expenses (including reasonable attorney fees) for any commission, finder's fee, or equivalent compensation alleged to be owing on account of the indemnifying Party's dealings with any real estate broker or agent.

Section 16. **Damage or Condemnation Prior to Closing.** Seller shall promptly notify Buyer of any casualty to the Property or any condemnation proceeding commenced prior to the Close of Escrow. If any such damage or proceeding (other than such damage or proceeding caused or commenced by City or State) relates to or may result in the loss of any material portion of the Property, Buyer may, at Buyer's option, elect either to: (a) terminate this Agreement, in which event neither party shall have any further rights or obligations hereunder, except for Buyer's restoration and indemnity obligations under Section 7A(1)(i), or (b) proceed to close as provided herein without reduction of the Purchase Price for destruction of the Property or any portion thereof, or in the case of any eminent domain proceedings, (i) proceed to close as provided herein, with the Purchase Price being reduced by the total of any awards or other proceeds received or assured to be received by Seller as a result of such proceedings or (ii) proceed to close as provided herein with an assignment by Seller to Buyer, or if directed by Buyer, to State, of all of Seller's rights, title, and interest in and to all such eminent domain awards and proceeds.
Section 17. Notices. All notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered or sent by registered or certified mail, postage prepaid, return receipt requested, or sent by facsimile, and shall be deemed received upon the earlier of (a) if personally delivered, the date of delivery to the address of the person to receive such notice, (b) if mailed, three (3) business days after the date of posting by the United States post office, (c) if delivered by Federal Express or other overnight courier, the next business day, or (iv) if given by facsimile or electronic transmission, when sent with confirmation of receipt. Any notice, request, demand, direction or other communication sent by facsimile or electronic transmission must be confirmed within twenty-four (24) hours by letter mailed or delivered in accordance with the foregoing.

To Seller:  Curtis Wayne Mote  
P.O. Box 3391  
Modesto, CA 95353  
Facsimile: N/A  
Email: N/A

With a copy to:  Michael A. Rein, Esq.  
520 13th Street  
Modesto, CA 95354  
Facsimile: (209) 544-3695  
Email: mike@reinlaw.net

To Buyer:  City of Modesto  
Attn: Brent Sinclair  
1010 - 10th Street  
Modesto, CA 95354  
Facsimile:  
Email: bsinclair@modestogov.com

With a copy to:  City of Modesto  
Office of the City Attorney  
P.O. Box 642  
Modesto, CA 95353  
Attn: Richard Evans  
Facsimile: (209) 544-8260  
Email: revans@modestogov.com

With a copy to:  Matthew Pacher  
Damrell, Nelson, Schrimp, Pallios, Pacher & Silva  
1601 I Street, 5th Floor  
Modesto, CA 95354  
Facsimile: (209) 526-3534  
Email: mpacher@damrell.com
Notice of change of address shall be given by written notice in the manner detailed in this Section 17. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to constitute receipt of the notice, demand, request or communication sent.

Section 18. Legal Fees. In the event of bringing any action or suit by a party hereto against another party or parties hereunder by reason of any breach of any of the covenants or agreements herein or any inaccuracies in any of the representations and warranties on the part of the other party or parties arising out of this Agreement, then in that event, the prevailing party or parties in such action or dispute, whether by final judgment, or out of court settlement shall be entitled to have and recover of and from the other party or parties all costs and expenses of suit, including reasonable attorneys' fees. Any judgment or order entered in any final judgment shall contain a specific provision providing for the recovery of all costs and expenses of suit, including actual attorneys' fees (collectively “Costs”) incurred in enforcing, perfecting and executing such judgment. For the purposes of this Section, Costs shall include, without limitation, attorneys' fees, costs and expenses incurred in the following (a) arbitration and petitions to enter judgment on arbitration awards; (b) post-judgment motions; (c) garnishment, levy, and debtor and third party examination; (d) discovery; (e) bankruptcy litigation; and (f) obtaining release of funds from Escrow.

Section 19. Miscellaneous.

A. Required Actions of Buyer and Seller. Buyer and Seller agree to execute such instruments and documents and to diligently undertake such actions as may be required in order to consummate the purchase and sale herein contemplated and shall use good faith efforts to accomplish the Close of Escrow in accordance with the provisions hereof.

B. Time of Essence. Time is of the essence of each and every term, condition, obligation and provision hereof. All references herein to a particular time of day shall be deemed to refer to California time.

C. Facsimile Signatures. Facsimile signatures shall not be accepted unless prior agreement is obtained in writing by the Parties. If agreed that facsimile signatures are acceptable, they will be treated as original signatures; however, in no instance shall facsimile signatures be accepted on any document to be recorded. Such documents must bear original signatures.
D. **Captions Interpretation.** Any captions to, or headings of, the sections or subsections of this Agreement are solely for the convenience of the Parties hereto, are not a part of this Agreement, and shall not be used for the interpretation or determination of the validity of this Agreement or any provision hereof. The use of the terms "hereof", "herein" and "hereunder" shall mean and refer to this Agreement as a whole, unless the context expressly requires otherwise. This Agreement shall be construed without regard to any presumption or other rule requiring construction against the Party or Parties causing this Agreement to be drafted.

E. **No Obligations to Third Parties.** Except as otherwise expressly provided herein, the execution and delivery of this Agreement shall not be deemed to confer any rights upon, nor obligate any of the Parties hereto, to any person or entity other than the Parties hereto.

F. **Exhibits.** The Exhibits attached hereto, if any, are hereby incorporated herein by this reference for all purposes.

G. **Amendment to this Agreement.** The terms of this Agreement may not be modified or amended except by an instrument in writing executed by each of the Parties hereto.

H. **Waiver.** The waiver or failure to enforce any provision of this Agreement shall not operate as a waiver of any future breach of any such provision or any other provision hereof.

I. **Applicable Law.** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of California.

J. **Fees and Other Expenses.** Except as otherwise provided herein, each of the Parties shall pay its own fees and expenses in connection with this Agreement.

K. **Entire Agreement.** This Agreement supersedes any prior agreements, negotiations and communications, oral or written, and contains the entire agreement between Buyer and Seller as to the subject matter hereof. No subsequent agreement, representation, or promise made by either Party hereto, or by or to an employee, officer, agent or representative of either Party shall be of any effect unless it is in writing and executed by the Party to be bound thereby.

L. **Partial Invalidity.** If any portion of this Agreement as applied to either Party or to any circumstances shall be adjudged by a court to be void or unenforceable, such portion shall be deemed severed from this Agreement and shall in no way affect the validity or enforceability of the remaining portions of this Agreement.

M. **Assignment; Successor and Assigns.** Seller shall not assign any interest under this Agreement or in the Property at any time prior to the Close of Escrow other than to an accommodator under the terms of Section 4.E above, or to a principal in Seller or his or her trust or other entity in which the principal has a controlling interest, or to an affiliate controlled by or
controlling Seller, without the express written consent of Buyer, which will not unreasonably be withheld, conditioned or delayed, and providing any such assignee is fully bound by the provisions of this Agreement. This Agreement shall be binding upon and shall inure to the benefit of the executors, administrators, heirs, successors and assigns of the Parties hereto. Notwithstanding the foregoing, Seller may still enter into new or modify existing Leases subject to the terms of Section 7A(14) above.

N. **Business Days.** In the event any date described in this Agreement relative to the performance of actions hereunder by Buyer, Seller and/or Escrow Holder falls on a Saturday, Sunday or legal holiday, such date shall be deemed postponed until the next business day thereafter. The term "legal holiday" shall mean all and only those State holidays specified in Sections 6700 and 7701 of the California Government Code.

O. **Severability.** Nothing contained herein shall be construed as to require the commission of any act contrary to law, and wherever there is any conflict between any provision contained herein and any present statute, law, ordinance or regulation as to which the Parties have no legal right to contradict, the latter shall prevail, but the affected provisions of this Agreement shall be limited only to the extent necessary to bring them within the requirements of such law.

P. **Foreign Person.** Seller represents that it, he or she is not a "foreign person" as defined in Section 1445 of the Internal Revenue Code of 1986, as amended (the "Code"), or under any corresponding provisions of applicable California law.

Q. **Gender.** As used herein, the masculine, feminine or neuter gender, and the singular and plural numbers, shall each be deemed to include the others whenever and wherever the context so indicates.

R. **Waivers.** No delay or omission by any Party hereto in exercising any right or power hereunder shall impair any such right or power or be construed to be a waiver thereof, unless this Agreement specifies a time limit for the exercise of such right or power or unless such waiver is set forth in a written instrument duly executed by the party granting such waiver. A waiver by any Party hereto of any of the covenants, conditions, or agreements hereof to be performed by any other Party shall not be construed as a waiver of any succeeding breach of the same or any other covenants, agreements, restrictions or conditions hereof.

S. **Authorization, Approvals, Binding Nature.** This Agreement has no force and effect and is not binding on City until and unless it is authorized by the City Council of the City of Modesto at a duly noticed public meeting.

T. **Survival.** All terms and conditions in this Agreement, which represent continuing obligations and duties of the Parties, that have not been satisfied prior to Close of Escrow shall survive Close of Escrow and transfer of title by Seller and shall continue to be binding on the respective obligated Party in accordance with their terms, unless otherwise provided herein. All representations and warranties and statements made by the respective
Parties contained herein or made in writing pursuant to this Agreement are intended to be, and shall remain, true and correct as of the Close of Escrow, shall be deemed to be material, and, together with all conditions, covenants and indemnities made by the respective Parties contained herein or made in writing pursuant to this Agreement (except as otherwise expressly limited or expanded by the terms of this Agreement), shall survive the execution and delivery of this Agreement and the Close of Escrow, or, to the extent the context requires, beyond any termination of this Agreement.

U. Counterparts. This Agreement may be executed in any number of counterparts, each of which, when so executed, shall be deemed to be an original, and such counterparts shall, together, constitute and be one and the same instrument. A signature on a counterpart may be made by facsimile (if agreed in advance by the Parties) or otherwise electronically transmitted, and such signature shall have the same force and effect as an original signature.

IN WITNESS WHEREOF, the City of Modesto, a municipal corporation, has authorized the execution of this Agreement by its City Manager and attestation by its City Clerk by Resolution No. 2014-__ adopted by the Council on the ____ day of __________, 2014, and Seller has caused this Agreement to be duly executed. The Parties hereto have caused this Agreement to be executed as of the date first written above.

BUYER

CITY OF MODESTO, a charter city and municipal corporation

By: ______________________
Greg Nyhoff,
City Manager

APPROVED AS TO LEGAL FORM

ADAM LINDGREN,
Interim City Attorney

By: ______________________
RICHARD B. EVANS,
Senior Deputy City Attorney

Dated: ______________________

APPROVED AS TO LEGAL FORM

ADAM LINDGREN,
Interim City Attorney

By: ______________________
RICHARD B. EVANS,
Senior Deputy City Attorney

Dated: ______________________
EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY

PARCEL ONE:
Lot 24 in Block 54 of the CITY OF MODESTO according to the Official Map thereof, filed in the Office of the Recorder of Stanislaus County, California, on December 21, 1942 in Volume 15 of Maps.

PARCEL ONE A:
The South one-half of the Alley lying between the Northwesterly line of Lot Twenty Four, extended Northerly, and the Southeasterly line of Lot Twenty Four, extended Northerly, in Block 54 of the CITY OF MODESTO according to the Official Map thereof, filed in the Office of the Recorder of Stanislaus County, California, on December 21, 1942 in Volume 15 of Maps.

APN: 106-042-011
RESOLUTION APPROVING A CONDITIONAL PROPERTY ACQUISITION AGREEMENT (AGREEMENT) WITH GARY GERVASONI AND MYRNA GERVASONI (OWNER), FOR THE ACQUISITION OF REAL PROPERTY AT 712 AND 706 9th STREET MODESTO, CA., BEING APN 106-042-010, FOR TOTAL COMPENSATION TO EXCEED $492,000, FOR THE PURPOSE OF SALE TO THE STATE OF CALIFORNIA, ACTING BY AND THROUGH THE JUDICIAL COUNCIL OF CALIFORNIA, ADMINISTRATIVE OFFICE OF THE COURTS FOR THE NEW MODESTO COURTHOUSE PROJECT, AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE (1) THE AGREEMENT, (2) CERTIFICATE OF ACCEPTANCE, AND (3) ALL NECESSARY AND RELATED DOCUMENTS REQUIRED TO COMPLETE THE TRANSACTION, TRANSFER TITLE, AND CLOSE ESCROW

WHEREAS, in 2010 the State Public Works Board (SPWB) approved the new Modesto Courthouse Project for initial funding, and

WHEREAS, in 2011 the Administrative Office of Courts (AOC) named a project advisory group to identify and advise on the site selection and design for the new courthouse, and

WHEREAS, in 2011 the SPWB approved the city block bounded by H and G Streets and 9th and 10th Streets (10th Street Site) as a potential site for the new Modesto Courthouse, and in 2012 the SPWB approved the city block bounded by H and I Streets and 13th and 14th Streets as a potential site for the new courthouse, and

WHEREAS, in 2012 the AOC had all parcels within the 10th Street Site appraised to determine fair market value, and

WHEREAS, the City Council directed staff to assist the AOC project team in negotiations with property owners for the acquisition and sale of real property within the 10th Street Site for the new Modesto Courthouse Project, and

WHEREAS, in 2013 the AOC had the privately owned parcels re-appraised to
determine fair market value, and

WHEREAS, in 2013 the Courthouse Cost Reduction Subcommittee directed the AOC project team to negotiate for the acquisition of the 10th Street Site and the AOC notified the City of its interest in acquiring the 10th Street Site property, and

WHEREAS, in 2013 the AOC concluded site selection for the new Modesto Courthouse Project was proper and reaffirmed the 10th Street Site as the preferred site for the new courthouse, and

WHEREAS, in 2014 the Court Facilities Advisory Committee endorsed a directive from the Courthouse Cost Reduction Subcommittee to continue negotiations for the acquisition of the 10th Street Site, and

WHEREAS, City of Modesto (City) and GARY GERVASONI AND MYRNA GERVASONI (OWNER) have successfully negotiated a Conditional Property Acquisition Agreement (Exhibit A) containing price, terms and conditions for City’s purchase of OWNER’s Property at 712 AND 706 9th Street, Modesto, CA., being APN 106-042-010, for the new Modesto Courthouse Project, for total compensation not to exceed Four Hundred Ninety-Two Thousand Dollars ($492,000) so long as multiple conditions are satisfied, including the requirement that the City Council approves acquisition agreements for all privately owned parcels of the 10th Street Site, and the SPWB approves the Property Acquisition Agreement for the acquisition of all property of the 10th Street Site, and

WHEREAS, the proposed project, that includes the acquisition and sale of real property and conditional vacation of the public alley, has been determined to be Categorically Exempt under Section 15332 of the California Environmental Quality Act.
guidelines for in-fill development projects, and

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby finds that the proposed project that includes the acquisition and sale of real property and conditional vacation of the public alley are necessary steps for the new courthouse and has been determined to be Categorically Exempt under Section 15332 of the California Environmental Quality Act guidelines for in-fill development projects, because (a) it is consistent with the applicable general plan designation and policies, and all applicable zoning designations and regulations; (b) it is located within City limits on a project site of no more than five acres substantially surrounded by urban uses; (c) the project site has no value as habitat for endangered, rare, or threatened species; (d) approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality; and (e) the site can be adequately served by all required utilities and public services.

BE IT FURTHER RESOLVED that the Council hereby approves the Conditional Property Acquisition Agreement with Gary Gervasoni and Myrna Gervasoni for acquisition of real property at 712 and 706 9th Street, Modesto, CA., being APN 106-042-010, with total compensation not to exceed Four Hundred Ninety-Two Thousand Dollars ($492,000) for sale to the State of California, acting by and through the Judicial Council of the Courts, Administrative Office of the Courts for the purpose of the new Modesto Courthouse Project.

BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to execute (1) the Agreement, (2) a Certificate of Acceptance, and (3) all necessary and related documents required to complete the transaction, transfer title, and
close escrow.

The foregoing resolution was introduced at a special meeting of the Council of the City of Modesto held on the 15th day of April, 2014, by Councilmember Madrigal, who moved its adoption, which motion being duly seconded by Councilmember Cogdill, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Cogdill, Gunderson, Kenoyer, Lopez, Madrigal, Zoslocki, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST:  

(SEAL)

APPROVED AS TO FORM:

By:  

ADAM LINDGREN, Interim City Attorney
CONDITIONAL PROPERTY ACQUISITION AGREEMENT

This Conditional Property Acquisition Agreement (the "Agreement") is made this day of _______, 2014, for reference purposes and is entered into by and between GARY C. GERVASONI and MYRNA GERVASONI, husband and wife, as community property (hereafter collectively referred to as "Seller"); and the City of Modesto, a charter city and municipal corporation of the State of California (hereafter referred to as "Buyer" or "City"). Seller and Buyer or City are hereafter collectively referred to as a Party or the Parties. This Agreement shall also constitute Escrow Instructions directed to Escrow Holder to consummate the acquisition of real property in accordance with the terms and conditions set forth herein. This Agreement is made with reference to the following recitals.

RECOLALS

A. The State of California, acting by and through the Judicial Council of California, Administrative Office of the Courts (hereafter "State") has tentatively approved a site for construction of new court facilities in the City of Modesto, County of Stanislaus being that property located within the city block bounded by H Street on the north, 10th Street on the east, G Street on the south, and 9th Street on the west, Modesto, Stanislaus County, California (hereafter "Court Facilities Site"). Final site approval for new court facilities is vested in the State Public Works Board (the "SPWB") and is contingent on the acquisition of all real property located in the Court Facilities Site. The Court Facilities Site is comprised of eleven (11) legal parcels. Five (5) of the parcels are owned by City or its former redevelopment agency (hereafter the "City Parcels") and City has agreed in principle to transfer title of the City Parcels to State for purposes of construction of the new court facilities so long as the remaining six (6) parcels are acquired for the same purpose. The Assessor Parcel Number and owner(s) of each of remaining six (6) parcels (hereafter the "Private Parcels") are identified as follows:

APN 106-042-005  Gina Rugani, Michael Gene Rugani and Sandra Ann Heffernan, Trustees, or any Successor Trustee (s) thereto of the Gina Rugani Survivor's Trust Agreement dated July 17, 1978, as amended

APN 106-042-006  G & K Enterprises, LLC, a California limited liability company

APN 106-042-007  Charles W. Noble and Dorothy M. Noble, Trustees of the Noble 1995 Trust, as to an undivided ½ interest; Von Deen Bubeck, Trustee of the Von Deen Bubeck Trust as set forth in the Bubeck Revocable Trust dated March 19, 1997, as to an undivided ½ interest, and Jerry R. Bubeck and Von Deen Bubeck, Trustees of the Bubeck Revocable Trust dated March 19, 1997, as to an undivided ¼ interest

APN 106-042-010  Gary C. Gervasoni and Myrna Gervasoni, husband and wife, as community property
B. Seller and City acknowledge and agree that the Private Parcels and the City Parcels constitute and collectively shall be referred to as the Court Facilities Site Property.

C. Seller acknowledges and understands that City has been authorized by State to negotiate the purchase of the Private Parcels along with the sale of the City Parcels to State for construction of new court facilities and that the final approval of the Court Facilities Site by SPWB is contingent on City obtaining executed purchase acquisition agreements for the Private Parcels and entering into an acquisition agreement to transfer the City Parcels and Private Parcels to State.

D. Seller owns that real property located in the City of Modesto, County of Stanislaus commonly described as 706 & 712 9th Street having APN 106-042-010 and more particularly described in Exhibit “A” attached and made a part hereof (hereafter the “Property”).

E. Seller desires to sell to City, and City desires to purchase from Seller the Property on terms and conditions specified in this Agreement.

F. Seller acknowledges, understands and agrees that the agreement by City to purchase the Property is a conditional one and is contingent on multiple conditions, specified below, each of which must be satisfied.

G. Seller understands and agrees that should all conditions of purchase be satisfied that immediately following the transfer of title of Property to City, the Property shall be sold and conveyed by City to State.

The Parties agree that the foregoing recitals are true and correct and are part of this Agreement.

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, the Parties agree as follows:

Section 1. Sale of Property. Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller on the terms hereinafter stated, the Property. The term “Property” as used in this Agreement shall mean and refer to the real property described above; all improvements located thereon; all privileges, rights, easements, hereditaments and appurtenances to the real property, including, without limitation, all minerals, oil, gas, and other hydrocarbon substances on and under the real property; all air rights, water, and water rights relating to the real property; and all rights, title and interest of Seller in and to any roads, easements and other rights-of-way or appurtenances included on or adjacent to the real property used in connection with the beneficial use and enjoyment of the real property, but excluding any removable equipment,
personal property, and any fixtures that are removed prior to Close of Escrow in compliance with the terms of Section 13G(7) below.

Section 2. Purchase Price of Sale Property. The purchase price for the Property shall be Four Hundred Thirty Five Thousand Dollars ($435,000) (the "Purchase Price").

Section 3. Payment of Purchase Price. Prior to the Close of Escrow (as such term is defined in Section 4, below) the Purchase Price and any sums due from Buyer to the Escrow Holder and Seller as a consequence of the purchase and sale of the Property shall be deposited into Escrow, in cash or other immediately available funds.

Section 4. Escrow.

A. Opening of Escrow. The Parties shall deliver a copy of the executed Agreement to Chicago Title Company, located at 1700 Standiford Avenue, Modesto, California 95350, Telephone Number (209) 571-6300, Attention: Karla Haney ("Escrow Holder") no later than three (3) business days after execution of the Agreement by the Parties hereto. For purposes of this Agreement, as between the Parties, the escrow ("Escrow") shall be deemed opened on the date Escrow Holder shall have received a fully executed copy or copies of executed counterparts of this Agreement from Seller and Buyer (the "Opening of Escrow"), and Escrow Holder shall notify Buyer and Seller, in writing, of the date Escrow is opened. Buyer and Seller agree to execute, deliver and be bound by any reasonable or customary supplemental escrow instructions ("Escrow Instructions") of Escrow Holder or other instruments as may reasonably be required by Escrow Holder in order to consummate the transaction contemplated by this Agreement. Any such supplemental instructions shall not conflict with, amend or supersede any portions of this Agreement. In the event of any inconsistency between the provisions of such supplemental instructions with the provisions of this Agreement, the provisions of this Agreement shall control.

B. Close of Escrow. For purposes of this Agreement, the "Close of Escrow" shall be defined as the date that the grant deed conveying fee simple title to the Property to Buyer, is recorded in the Official Records of Stanislaus County, California. The period commencing with the Opening of Escrow and continuing through the Close of Escrow shall hereinafter be referred to as the "Escrow Period." Escrow shall close on the date which is on or before sixty (60) days after the latter of (i) State's authorization of the acquisition of the Court Facilities Site Property, by the SPWB at a duly noticed public meeting, or (ii) the Modesto City Council's approval of the acquisition of the Private Parcels and the sale of the City Parcels to the State (the "Closing Date"). If Close of Escrow is delayed by any cause beyond the reasonable control of Buyer or State, Buyer shall be entitled to an equitable extension of the Escrow Period, for a reasonable time agreed to and negotiated in good faith by the Parties, at no cost to Buyer or Seller. Notwithstanding the foregoing, if the Close of Escrow has not occurred by December 31, 2014, either Party may terminate this Agreement on written notice to the other. Termination by Seller will not be effective until ten (10) business days of receipt of such notice by Buyer.
C. Extension of Close of Escrow. No extensions shall occur unless agreed to in writing by Buyer and Seller.

D. Failure to Timely Close. If the conditions precedent to Close of Escrow as provided herein have not been satisfied by the Closing Date, this Agreement may be terminated upon written notice by Buyer and thereupon this Agreement shall become null and void, except that Buyer’s restoration and indemnity obligations under Section 7A(1)(i) below shall survive such termination.

E. Cooperation for Tax Deferred Exchange. Buyer agrees to cooperate with Seller in the event that Seller desires to qualify the transaction as a tax-deferred exchange under Section 1031 of the Internal Revenue Code. Buyer shall not be liable for any additional costs or expenses as a result of such an exchange. Buyer shall not be responsible or liable for qualifications of the exchange. Seller shall hold Buyer harmless for any expense or liability incurred by Buyer as a result of such exchange. Seller shall be authorized to assign all or any part of this Agreement to an accommodator who will assume the obligations of Seller but not Seller’s representations, warranties, and covenants.

Section 5. Condition of Title. It shall be a condition to the Close of Escrow for Buyer’s benefit that title to the Property be conveyed immediately to Buyer upon Close of Escrow by Grant Deed, and that title to the Court Facilities Site Property be delivered free and clear of all liens, reservations, encumbrances, assessments, easements, of record or otherwise, except for existing Leases (as that term is defined in Section 7A(2) below) and those approved by State and City, in writing, prior to the Close of Escrow. Subject to State’s approval, and the City’s review and approval of any further amendments to that certain Amended Preliminary Report, Title No. 11-50910332-I-ML dated June 13, 2013, issued by Chicago Title Company, a copy of which is attached hereto as Exhibit B (“Preliminary Report”), City tentatively approves exceptions numbered 3, 5-14,16, and 21 of the Preliminary Report.

To that end, Escrow Holder may expend any and all monies payable to Seller under this Agreement to discharge any monetary obligations that are liens upon the Property, and shown as exceptions in the Preliminary Report, and any exceptions shown in any subsequent amendment to it, including but not limited to those arising from judgments, assessments, taxes, or debts secured by deeds of trust or mortgages. Property taxes for the fiscal year in which escrow closes, if unpaid, shall be paid by Seller in escrow to and including the date of Close of Escrow as set forth in Section 11 hereof.

Section 6. Title Policy. Title shall be evidenced by the willingness of Chicago Title Company (“Title Company”) to issue a CLTA Owner’s Standard Coverage Form Policy of Title Insurance (“Title Policy”) in the amount of the Purchase Price showing title to the Property vested in State subject only to the exceptions described above.

Section 7. Conditions to Close of Escrow.
A. Conditions to Buyer's Obligations. Buyer's obligation to consummate the transaction contemplated by this Agreement is subject to the satisfaction of the following conditions for Buyer's benefit (or Buyer's waiver thereof, it being agreed that Buyer may waive any or all of such conditions) on or prior to the dates designated below for the satisfaction of such conditions. Notwithstanding any other provision of this Agreement, City shall have no obligation to purchase the Property, and no transfer of title to City or State may occur, unless each of the following conditions has been satisfied or waived by City in writing:

(1) Buyer's Review of the Court Facilities Site Property. Buyer shall have until 5:00 p.m. Pacific Time on Friday, May 16, 2014 (such period of time between the execution of this Agreement by Seller and May 16, 2014 shall be referred to herein as the “Due Diligence Period”) to satisfy itself, in Buyer's sole and absolute discretion, as to the following described matters concerning the Court Facilities Site Property, including the Property. If, during the Due Diligence Period, Buyer determines that it is dissatisfied with any aspect of the Court Facilities Site Property or its condition or suitability for Buyer's intended use, then Buyer may terminate this Agreement and the Escrow created pursuant hereto, by delivering written notice to Seller and Escrow Holder on or before the expiration of the Due Diligence Period of Buyer's election to terminate. If Buyer fails to deliver any such termination notice to Seller and Escrow Holder on or before the expiration of the Due Diligence Period, then, Buyer shall be deemed to be satisfied with all aspects of the Court Facilities Site Property including, without limitation, the condition and suitability of the Property for Buyer's intended use.

(i) Buyer's Review of the Court Facilities Site Property and Related Matters. Buyer shall be satisfied with all aspects of the Court Facilities Site Property, and its condition and suitability for the intended use thereof, including, without limitation, the physical condition of the Court Facilities Site Property, the net acreage of the Court Facilities Site Property, the condition of the access to public roads and condition and availability of water, electricity, natural gas, and other utilities, to the Court Facilities Site Property in adequate capacities and appropriate locations. After the execution of this Agreement by Seller and during the Due Diligence Period, Buyer, Buyer's agents, employees, contractors and subcontractors and State's agents, employees, contractors and subcontractors shall have the right to enter upon the Property at reasonable times during ordinary business hours, to make such inspections, surveys and tests as may be necessary in Buyer's discretion, including, without limitation, soils tests, environmental surveys, biological resources analysis, archeological surveys, toxic waste analysis, geological and/or engineering studies and related studies. Buyer shall use care and consideration in connection with any of its inspections, surveys, studies or tests and Seller, or Seller's agent, shall have the right to be present during any inspection of the Property by Buyer or its agents. Buyer shall restore the Property to its original condition after any and all tests and/or inspections. Buyer, and its respective employees, agents and contractors shall make reasonable efforts to avoid interfering with Seller's or Seller's tenants' ongoing use, if any, of the Property. Buyer hereby indemnifies, protects, defends and holds Seller, its officers, directors, members, managers, trustees, employees, agents, representatives, immediate family members, successors and assigns (collectively "Seller Parties") and the Property free and harmless from and against any and all costs, losses, liabilities, damages, lawsuits, judgments, actions, proceedings, penalties, demands, attorneys' fees, mechanic's or other liens, or expenses of any
kind or nature whatsoever, arising out of or resulting from any entry and/or activities upon the Property by Buyer and its respective agents, employees, contractors and subcontractors pursuant to this subsection (i). If Buyer does not purchase the Property, it shall furnish complete copies of all such investigations, inspections and tests described above to Seller without charge and without warranty as to their accuracy or reliability within ten (10) days of Buyer's exercise of its right to terminate this Agreement or of Buyer- otherwise failing to close hereunder.

(ii) Environmental Condition of Court Facilities Site Property. Buyer shall be satisfied, in Buyer's sole and absolute discretion that the Court Facilities Site Property, including its soil and ground water under the land, is free from all Hazardous Substances, as defined in Section 13F, below, and is in full and complete compliance with the law with respect to same.

(iii) Changes to Condition of Property. If the condition of the Property materially changes after the expiration of the Due Diligence Period (except due to Seller's removal of fixtures as provided in Section 13G(7) below), Buyer shall have the right, but not the obligation, to deliver to Seller a written notice objecting to the condition of the Property up to the Close of Escrow (“Final Due Diligence Notice”). If Buyer does not deliver the Final Due Diligence Notice on or prior to the Close of Escrow, Buyer shall be deemed to have given its final approval of the condition of the Property. However, if Buyer does provide a Final Due Diligence Notice, Buyer shall have the right to terminate this Agreement unless the condition of the Property is restored to a condition that is acceptable to Buyer.

(2) Existing Leases and Estoppel Certificates. No later than three (3) business days after the Opening of Escrow, Seller shall deliver to Buyer a copy of all existing leases, licenses or other agreements that would grant any person or entity the right to use or occupy any portion of the Property (“Leases” or individually “Lease”). In the event any of the existing Leases are oral, Seller shall deliver to Buyer a written summary of all terms of all such Leases including, without limitation, the name and telephone number of the occupants, the expiration date of the Leases, the current rent and whether occupants have any option(s) to extend the term of the Leases, and/or an option or a right of first refusal to purchase the Property. Buyer shall be satisfied, in Buyer's sole and absolute discretion, with the terms of the Leases, in which event Buyer shall take title to the Property subject to the terms of such Leases. Buyer shall indicate its satisfaction or objections by expiration of the Due Diligence Period to any and all Leases in existence as of the full execution date of this Agreement.

Seller shall have delivered to Buyer no more than ten (10) days prior to Close of Escrow an estoppel certificate relative to each Lease, executed and acknowledged by Seller’s tenants, if any, in the form set forth in Exhibit C.

(3) Agreement with Tenants. Buyer shall have entered into agreements with Seller’s existing tenants, if any, regarding early termination of tenants’ Leases, and/or the termination of tenants’ option, right of first refusal, and any other rights to extend the term of the Leases or to purchase the Property, to the extent such agreements are necessary for City or State to take possession of the Property by January 1, 2016.
(4) **Approval by State Department of Finance.** The California Department of Finance shall have approved the transfer to City of those parcels to which title was formerly held by the Redevelopment Agency to the City of Modesto, a dissolved public entity.

(5) **Authorization by SPWB.** Authorization of the acquisition of the Court Facilities Site Property by the SPWB at a duly noticed public meeting.

(6) **Approved Property Acquisition Agreements for the Private Parcels.** Each of the owners of the Private Parcels shall have executed a Conditional Property Acquisition Agreement substantially in the form of this Agreement, and the City Council of the City of Modesto shall have approved such a Conditional Property Acquisition Agreement for each of the Private Parcels, including the Property.

(7) **Approved Property Acquisition Agreements for the City Parcels.** Approval by the City Council of the City of Modesto, State and SPWB of a Property Acquisition Agreement for each of the City Parcels.

(8) **Agreement between City and State.** City and State shall have executed agreements, approved by the governing bodies of each entity, specifying the rights, duties, and obligations of City and State following the transfer of title to State of the Court Facilities Site Property, including the control, management, and use of the Court Facilities Site Property.

(9) **Deposit of all Documents.** The timely deposit by Seller with Escrow Holder of all documents required to be deposited by Seller under this Agreement.

(10) **Seller's Performance of Obligations.** Performance by Seller of all obligations, covenants and agreements on Seller's part to be performed under this Agreement within the time provided in this Agreement for such performance.

(11) **No Breach by Seller.** Seller shall not be in breach of this Agreement.

(12) **Accuracy of Representations and Warranties.** As of the Close of Escrow, all of Seller's representations and warranties set forth herein shall be true and accurate with the same force and effect as if remade by Seller in a separate certificate at the Close of Escrow.

(13) **Title Insurance Policy.** On the date of the Close of Escrow, Title Company shall be irrevocably and unconditionally committed to issue to State the Title Policy, with liability coverage in the amount of the Purchase Price, and showing fee title to the Property vested in State free and clear of all liens, taxes, assessments, reservations, encumbrances, easements of record or otherwise, except as set forth in Section 5 of this Agreement.
(14) **No Modification of Existing Leases.** After the date of execution of
the Agreement and as of the Close of Escrow, Seller shall not have modified any material term of
any existing Lease affecting the Property or entered into any new Lease containing any material
term, without City’s prior written consent, which consent City may withhold or grant in its
absolute discretion. For purposes of this subsection “material term” shall mean any lease term
that would adversely affect the ability of City to take possession of the Property on January 1,
2016, including, but not limited to, extending the term of an existing Lease or entering into a new
Lease that expires after December 31, 2015, increases landlord’s responsibilities under the
Lease, decreases the rent or other charges payable by tenant under the Lease, converts a triple net
Lease into a full service, gross, or modified full service Lease, or imposes on landlord any
obligation that adversely affects landlord’s anticipated income from any Lease (including, but
not limited to, providing for any tenant incentives [e.g. free rent, reduced rent, tenant
improvements, and matters of a similar nature] to be given, made, or realized after Close of
Escrow).

(15) **Simultaneous Close of Escrow.** Simultaneous Close of Escrow on
the acquisition of the Private Parcels.

(16) **Buyer’s Objections.** Nothing in this Agreement shall be
interpreted to require Seller to remediate the Property, or make repairs or improvements to the
Property not otherwise required to be made by Seller pursuant to the terms of the Leases, prior to
Close of Escrow.

B. **Conditions to Seller’s Obligations.** Seller’s obligation to consummate the
transaction contemplated by this Agreement is subject to the satisfaction of the following
conditions for Seller’s benefit (or Seller’s waiver thereof, it being agreed that Seller may waive
any or all such conditions):

(1) **Deposit of All Documents and Funds.** The timely deposit by City
with Escrow Holder of all the documents and the timely deposit by State of all funds required to
be deposited under this Agreement.

(2) **Performance of Buyer’s Obligations.** Performance by City of all
obligations, covenants and agreements on City’s part to be performed under this Agreement
within the time provided in the Agreement for such performance.

(3) **No Breach by Buyer.** Buyer shall not be in breach of this
Agreement.

(4) **Accuracy of Representations and Warranties.** As of the Close of
Escrow, all of Buyer’s representations and warranties set forth herein shall be true and accurate
with the same force and effect as if remade by Buyer in a separate certificate at the Close of
Escrow.
Section 8. Deposits by Seller. At least three (3) business days prior to the Close of Escrow, Seller shall deposit or cause to be deposited with Escrow Holder the following documents or instruments:

A. Grant Deed. A grant deed ("Grant Deed") in substantially the form attached hereto as Exhibit D, duly executed by Seller and properly acknowledged;

B. FIRPTA Certificate. A certificate of non-foreign status (the "FIRPTA Certificate"), duly executed by Seller;

C. California Real Estate Withholding Certificate. A Real Estate Withholding Certificate (California Franchise Tax Board Form 593-C).

Section 9. Deposits by State. Pursuant to and conditioned upon the terms of this Agreement, prior to the Close of Escrow, Buyer shall cause State to deposit with Escrow Holder, in immediately available funds, the Purchase Price and other sums due from Buyer hereunder in the amounts set forth herein, along with any documents or instruments required of Buyer by Escrow Holder for Close of Escrow.

Section 10. Escrow Charges and Closing Costs. State shall bear the cost of the Title Policy, any endorsements thereto, and any extended coverage ALTA, or other title policy or accompanying survey. Buyer shall be responsible for the payment of documentary transfer taxes and recording the Grant Deed, if any. Seller shall be responsible for the cost of recording documents necessary to deliver clear title to Buyer, if any. Buyer and Seller shall each pay one-half (1/2) of the escrow fees. Buyer and Seller shall each bear their own respective legal and accounting costs, if any, outside of Escrow except as expressly provided in Section 18 herein or elsewhere in this Agreement. All other costs or expenses not otherwise provided for in this Agreement shall be apportioned or allocated between Buyer and Seller in the manner customary in Stanislaus County, California. Notwithstanding the foregoing, Buyer shall not be obligated to pay for its share of closing costs unless and until it receives Buyer's Estimated Closing Costs from Escrow Holder (the preceding portion of this sentence is not intended to obligate Seller to pay Buyer's share of closing costs).

Section 11. Prorations. The following prorations shall be made between Seller and Buyer on the Close of Escrow, computed as of the Close of Escrow:

A. Taxes and Assessments. Real and personal property taxes and assessments on the Property shall be prorated on the basis that Seller is responsible for (i) all such taxes for the fiscal year of the applicable taxing authorities occurring prior to the "Current Tax Period" (as hereinafter defined) and (ii) that portion of such taxes for the Current Tax Period determined on the basis of the number of days which have elapsed from the first day of the Current Tax Period to the Close of Escrow, inclusive, whether or not the same shall be payable prior to the Close of Escrow. The phrase "Current Tax Period" refers to the fiscal year of the applicable taxing authority in which the Close of Escrow occurs. In the event that as of the Close of Escrow the actual tax bills for the year or years in question are not available and the
amount of taxes to be prorated as aforesaid cannot be ascertained, then rates and assessed
valuation of the previous year, with known changes, shall be used, and when the actual amount
of taxes and assessments for the year or years in question shall be determinable, then Seller shall
be responsible for any unpaid taxes and assessments. Buyer shall not be responsible for any tax refund.

B. Other Proratable Expenses. Escrow Holder shall prorate other proratable expenses, based on a thirty (30)-day month through the Close of Escrow, including rent paid pursuant to existing Leases on the Property, if any. All rent and other payments due after the Close of Escrow pursuant to any Lease on the Property shall be paid to Buyer. If any rent or other payments due pursuant to any Lease on the Property are collected by Seller for any period beyond the last day of the month in which Escrow closes, Seller shall pay such amounts to Buyer. If any rent or other payments due pursuant to any Lease on the Property are collected by Buyer for any period prior to Close of Escrow, Buyer shall pay such amounts to Seller. Seller shall return to tenants under any Lease on the Property any security, cleaning, key or other deposits and indemnify and hold Buyer harmless from any claim therefor.

C. Proration Statement. At least two (2) business days prior to the Close of Escrow the Parties hereto shall approve an estimated proration statement prepared by Escrow Holder setting forth all of the prorations to be made.

Section 12. Disbursements and Other Actions by Escrow Holder. Upon the Close of Escrow, Escrow Holder shall promptly undertake all of the following in the manner indicated:

A. Prorations. Prorate all matters referenced in Section 11 based upon the statement delivered into Escrow signed by the Parties.

B. Recording. Cause the Grant Deed and any other documents which the Parties hereto may mutually direct, including reconveyance of any deeds of trust and releases of any liens recorded on the Property, to be recorded in the Official Records.

C. Disbursements. Disburse funds in payment of all items chargeable to Buyer and Seller with the balance paid to Seller in payment of the Purchase Price.

D. Title Policy. Direct the Title Company to issue the Title Policy.

E. Documents to Seller. Deliver to Seller a conformed copy of the recorded Grant Deed and conformed copies of any reconveyances of deeds of trust and releases of any liens on the Property.

F. Documents to Buyer. Deliver to Buyer the FIRPTA Certificate, the California Real Estate Withholding Certificate, and a conformed copy of the recorded Grant Deed, and conformed copies of reconveyances of deeds of trust and releases of liens on the Property, if any.
Section 13. Seller's Representations, Warranties and Covenants. In consideration of Buyer entering into this Agreement and as an inducement to Buyer to purchase the Property from Seller, Seller makes the following representations, warranties, and covenants, each of which is material and is being relied upon by Buyer:

A. Authority.

(1) Seller has full right, power and legal authority to enter into this Agreement, sell, transfer and convey the Property to Buyer under this Agreement and to carry out Seller's obligations under this Agreement. Upon the Close of Escrow, Buyer will have good, marketable and insurable title to the Property.

(2) The individuals executing this Agreement and the instruments referenced herein on behalf of Seller have the legal power, right and actual authority to bind Seller to the terms hereof and thereof.

(3) This Agreement is, and all other instruments, documents and agreements required to be executed and delivered by Seller in connection with this Agreement are and shall be, duly authorized, executed and delivered by Seller and shall be valid, legally binding obligations of and enforceable against Seller in accordance with their terms, subject only to enforcement that may be limited by applicable bankruptcy, insolvency or similar laws, and do not, and as of the Close of Escrow will not, to the best of Seller's knowledge, violate any provisions of any agreement, law, rule, regulation or judicial order to which Seller or the Property is subject.

(4) All requisite action (corporate, trust, partnership, limited liability company or otherwise) has been taken by Seller in connection with entering into this Agreement, the instruments referenced herein, and the consummation of the transactions contemplated hereby. No consent of any partner, shareholder, member, beneficiary, creditor, investor, judicial or administrative body, authority, or other party is required.

B. No Conflicts. Neither the execution and delivery of this Agreement and documents referenced herein, nor the incurrence of the obligations set forth herein, nor the consummation of the transactions herein contemplated, nor compliance with the terms of this Agreement and the documents referenced herein conflict with or result in the material breach of any terms, conditions or provisions of, or constitute a default under, the terms of Seller trusts, the Articles of Organization or Operating Agreement of Seller, any bond, note, or other evidence of indebtedness or any contract, indenture, mortgage, deed of trust, loan, partnership agreement, lease or other agreements or instruments to which Seller is a party or which affect the Property.

C. Consents. No consent, approval, license, permit, order, qualification or authorization of, or registration, declaration, notice or filing with, any governmental entity or any other person or entity is required for or in connection with the execution and delivery by Seller
of this Agreement, and the consummation by Seller of the transactions contemplated by this Agreement, other than as set forth in Section 7.A hereof.

D. Legal Matters. To the actual knowledge of the individuals executing this Agreement, without further inquiry or investigation, Seller represents and warrants that:

(1) There is no suit, action, arbitration, legal, administrative, or other proceeding or inquiry pending against the Property or pending against Seller which could affect Seller's title to the Property.

(2) There are no attachments, execution proceedings, or assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other proceedings pending against Seller.

(3) There are no: (a) agreements, written or oral, under which Seller is or could become obligated to convey all or part of the Property or any interest in the Property to a third party; (b) rights of first refusal, reversions, or options to purchase the Property or any portion thereof (other than as set forth in the Leases disclosed pursuant to Section 7A(1)(iii) hereof; (c) Leases (other than those disclosed pursuant to Section 7A(1)(iii) hereof), liens, easements, encumbrances, prescriptive rights, contracts or other agreements for services, supplies, or materials which may affect title to or use of the Property after the Close of Escrow or impose an obligation on Buyer after the Close of Escrow; (d) adverse or other parties in possession or use of any part of the Property (other than as set forth in the Leases); or (e) to the best of Seller's knowledge, special assessments, condemnation actions, moratoriums, initiatives or legislation affecting the Property (and Seller has not received any notice of any being contemplated).

(4) Except for Leases disclosed by Seller to Buyer in writing, pursuant to Section 7A(1)(iii) hereof, as of the Close of Escrow, there shall be no unrecorded leases, licenses or other agreements which would grant any person or entity the right to use or occupy any portion of the Property, including any improvements thereon.

(5) To the best of Seller's knowledge, there are no and have been no: (a) actual or pending public improvements which will result in the creation of any liens upon the Property, including public assessments or mechanic's liens and Seller agrees to indemnify, defend and hold Buyer free and harmless from and against any claims, liabilities, losses, costs, damages, expenses and attorneys' fees arising from any liens, encumbrances or assessments that have been, or may be, incurred by Seller or imposed upon the Property prior to the Close of Escrow, but only to the extent any obligations to pay a fee or assessment for infrastructure is due and payable prior to the Close of Escrow, and Buyer agrees to cooperate with Seller, at Seller's costs and to the extent permitted by law, with respect to Seller's efforts prior to Close of Escrow to remove any such liens, fees, assessments, or encumbrances; or (b) uncured notices from any governmental agency notifying Seller of any violations of law, ordinance, rule, or regulation, occurring on the Property. Other than as provided above, Buyer shall assume responsibility for
assessments arising from any actual or impending public improvements as of the Close of Escrow.

E. No Works of Improvement. No works of improvement or other activities have occurred with respect to the Property which could give rise to any liens against the Property.

F. Environmental. Except as otherwise disclosed by Seller to Buyer in writing, Seller has not: (a) conducted or authorized the presence, placement, generation, transportation, storage, release, treatment, or disposal at the Property of any Hazardous Substance; or (b) received from or given to any governmental authority or other party any notice or other communication or agreement relating in any way to the presence, placement, generation, transportation, storage, release, treatment or disposal of any Hazardous Substance on the Property. Except as otherwise disclosed by Seller to Buyer in writing, (a) there presently are not, and to the best of Seller's knowledge there have never been any Hazardous Substances or storage tanks containing or having contained petrochemicals in, on, under, or about the Property; and (b) to the best of Seller's knowledge, there is no pending or threatened litigation, proceedings or investigation before any governmental entity or agency in which the presence, release, threat of release, placement, generation, transportation, storage, treatment or disposal in, on, under, or about the Property of any Hazardous Substance has been alleged; and (c) to the best of Seller's knowledge, there is no defect or condition with respect to the Property which would prevent the use of the Property by State for its intended use as a public courthouse, including, but not limited to, the condition of the soil, the existence of geologic hazards or groundwater contamination, the existence of ecological or environmental impediments or the existence of any hazardous or toxic materials on or beneath the surface of the Property at levels requiring remediation or removal under existing applicable laws and regulations. For purposes of this Agreement, the term "Hazardous Substance" means any matter which has been or is determined by any current or proposed federal, state, or local statute, law, enactment, ordinance, regulation, order, rule or judicial decision to constitute a hazardous or toxic waste, substance or material, but excepting normal commercial and office products such as cleaners and copy fluids and normal petroleum product residue from parked and moving vehicles.

G. Pending Close of Escrow.

(1) New Leases. Seller will not hereafter enter into new Leases or any other obligations or agreements affecting the Property after Seller's execution of this Agreement, except for obligations or agreements that terminate at or before Close of Escrow and that are fully disclosed to Buyer, without the prior written consent of Buyer, which consent the Buyer may withhold or grant in its absolute discretion.

(2) Additional Liens. Seller will not subject the Property to any additional liens, encumbrances, covenants, conditions, easements, rights of way or similar matters after Seller's execution of this Agreement that will not be eliminated prior to the Close of Escrow.
(3) **Violations of Law.** After the execution of this Agreement by Seller, Seller shall not knowingly violate nor allow violation of, any law, ordinance, rule, or regulation affecting the Property.

(4) **Preservation of Easements and Other Rights.** Prior to the Close of Escrow, Seller shall do or cause to be done, all things within its reasonable control to preserve intact and unimpaired any and all rights of way, easements, grants, appurtenances, privileges, and licenses in favor or consisting of any portion of the Property.

(5) **Taxes and Assessments.** Seller shall pay, if and when the same are due, all payments on any encumbrances or assessments presently affecting the Property and any and all taxes, assessments, and levies in respect of the Property through the Close of Escrow.

(6) **Zoning.** Prior to the Close of Escrow, Seller shall not take any action, or fail to take any action, that would result in any change, alteration, modification, addition to, or termination of any of the presently-existing general plan or zoning designation of the Property, without Buyer's prior written approval, and Seller shall immediately provide Buyer with a copy of any written materials received by Seller evidencing or relating to any proposal or attempt to effect any such change, alteration, modification, addition to, or termination other than those sought by Buyer.

(7) **No Modification to Condition of Property.** Seller shall (i) not alter the physical condition of the Property; (ii) maintain the Property in substantially the same condition as that which existed as of the date that Buyer executed this Agreement; and (iii) deliver possession of the Property to Buyer at the Close of Escrow in substantially the same condition that existed as of the date that Seller executed this Agreement except for any remediation that Seller agrees to do in response to Buyer's due diligence.

Notwithstanding the foregoing, Seller may remove any fixture or fixtures (as that term is defined in Civil Code Section 660) from the Property if (i) at least sixty (60) days prior to the Close of Escrow, Seller submits a list of the fixture(s) Seller wishes to remove from the Property to Buyer, identifying such fixture(s) with reasonable particularity; (ii) Buyer consents to such removal in writing (which consent may be granted or withheld in Buyer's sole discretion); (iii) the removal of such fixture(s) is completed on or before December 31, 2015; and (iv) the removal of such fixture(s) does not interfere with the use of the Property by any tenant occupying the Property or any part thereof.

(8) **Notification to Buyer.** Seller shall promptly notify Buyer of any event or circumstance that could or would render any representation or warranty of Seller under this Agreement untrue or misleading, or of any covenant of Seller under this Agreement incapable or less likely of being performed; provided, however, that Seller's foregoing obligation to provide notice to Buyer shall in no way relieve Seller of any liability for a breach by Seller of any of its representations, warranties or covenants under this Agreement.
(9) No Recordation of CCRs. Seller shall not record any covenants, conditions or restrictions against the Property, including without limitation any design restrictions with respect to the development of the Property.

(10) No Assessment Districts or Special Tax Districts. Seller shall not assist with the formation, vote for, or agree to any assessment districts or special tax districts which results in a special tax or assessment upon the Property.

(11) Confidentiality. Seller shall keep strictly confidential and agrees not to disclose or permit the disclosure of the terms of this Agreement to any third parties other than Seller's tax advisors, counsel, and real estate agents ("Seller's Representatives") until after the Close of Escrow. Prior to the disclosure of the terms of this Agreement to Seller's Representatives, Seller shall inform Seller's Representatives of the confidential nature of the terms of this Agreement and shall agree to act in accordance with the provisions of this Section 13G(11). Notwithstanding the foregoing, Seller and Seller's Representatives may disclose the terms of this Agreement pursuant to the order or requirement of a court, administrative agency, or other governmental agency provided, however, that Seller shall provide prompt notice of such court order or requirement to Buyer in order to enable Buyer to seek a protective order or otherwise prevent or restrict such disclosure, and shall cooperate with Buyer in connection with such efforts. Seller hereby acknowledges and agrees that any remedy at law, including, without limitation, monetary damages, for any breach or threatened breach of the provisions of this Section 13G(11) would be inadequate and impossible to ascertain, and each party hereby consents to the granting by any court of an injunction or other equitable relief, without the inadequacy of monetary damages being proved or any bond or similar security being posted, in order that the breach or threatened breach of such provisions may be effectively restrained.

(12) Accurate Through Close of Escrow. As of the Close of Escrow, all of Seller's representations and warranties set forth herein shall be true and accurate with the same force and effect as if remade, by Seller in a separate certificate at the Close of Escrow.

H. General Representation. No representation, warranty or statement of Seller in this Agreement or in any document, instrument, certificate or schedule furnished or to be furnished to Buyer pursuant hereto, to the best of Seller's knowledge, contains or will contain any untrue statement of a material fact or omits or will omit any material fact the omission of which would be misleading. Notwithstanding any terms to the contrary contained herein, Seller makes no representations or warranties about the truth, accuracy or completeness of any reports or analyses prepared by third parties that Seller furnishes to Buyer hereunder.

Seller's representations and warranties made in this Agreement shall be continuing and shall be true and correct as of the date of the Close of Escrow with the same force and effect as if remade by Seller in a separate certificate at that time. The truth and accuracy of Seller's representations and warranties made herein shall constitute a condition for the benefit of Buyer to the Close of Escrow (as elsewhere provided herein) and shall not merge into the Close of Escrow or the recordation of the Grant Deed in the Official Records, and shall survive the Close of Escrow.
Section 14. **Buyer’s Representations, Warranties and Covenants.** In consideration of Seller entering into this Agreement and as an inducement to Seller to sell the Property to Buyer, Buyer makes the following representations, warranties, and covenants, each of which is material and is being relied upon by Seller, and which are true and correct as of execution hereof, and shall be true and correct as of the Close of Escrow:

A. **Authority.** Buyer has the legal right, power and authority to enter into this Agreement and to consummate the transaction contemplated hereby, and the execution, delivery and performance of this Agreement have been duly authorized and no other action by Buyer is requisite to the valid and binding execution, delivery and performance of this Agreement, except as otherwise expressly set forth herein.

B. **Binding.** This Agreement is, and all other instruments, documents and agreements required to be executed and delivered by Buyer in connection with this Agreement are and shall be, duly authorized, executed and delivered by Buyer and shall be valid, legally binding obligations of and enforceable against Buyer in accordance with their terms, subject only to enforcement that may be limited by applicable bankruptcy, insolvency or similar laws, and do not, and as of the Close of Escrow will not, to the best of Buyer’s knowledge, violate any provisions of any agreement, law, rule, regulation or judicial order to which Buyer is subject.

C. **Conflicts.** To the best of Buyer’s knowledge, neither the execution or delivery of this Agreement nor the consummation of the transaction herein will conflict with, violate, result in a breach by, constitute a default under or accelerate the performance provided by the terms of any law, rule, regulation or agreement to which Buyer may be subject.

D. **Survival.** The provisions of this Section 14 shall survive the Close of Escrow or any termination of this Agreement and shall not merge with the Grant Deed to be delivered at the Close of Escrow.

Section 15. **Brokers.** Buyer and Seller each represent and warrants to the other that it has had no dealings with any real estate broker or agent in connection with the sale contemplated by this Agreement and that they have not engaged any other real estate broker or agent who is entitled to a commission or finder’s fee in connection with this transaction. Each Party shall indemnify, protect, defend, and hold harmless the other Party against all claims, demands, losses, liabilities, lawsuits, judgments, and costs and expenses (including reasonable attorney fees) for any commission, finder’s fee, or equivalent compensation alleged to be owing on account of the indemnifying Party’s dealings with any real estate broker or agent.

Section 16. **Damage or Condemnation Prior to Closing.** Seller shall promptly notify Buyer of any casualty to the Property or any condemnation proceeding commenced prior to the Close of Escrow. If any such damage or proceeding (other than such a proceeding commenced by City or State) relates to or may result in the loss of any material portion of the Property, Buyer may, at Buyer’s option, elect either to: (a) terminate this Agreement, in which
event neither party shall have any further rights or obligations hereunder, except for Buyer’s indemnity obligations under Section 7A(1)(i), or (b) proceed to close as provided herein without reduction of the Purchase Price for destruction of the Property or any portion thereof, or in the case of any eminent domain proceedings, (i) proceed to close as provided herein, with the Purchase Price being reduced by the total of any awards or other proceeds received or assured to be received by Seller as a result of such proceedings or (ii) proceed to close as provided herein with an assignment by Seller to Buyer, or if directed by Buyer, to State, of all of Seller’s rights, title, and interest in and to all such eminent domain awards and proceeds.

Section 17. Notices. All notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered or sent by registered or certified mail, postage prepaid, return receipt requested, or sent by facsimile, and shall be deemed received upon the earlier of (a) if personally delivered, the date of delivery to the address of the person to receive such notice, (b) if mailed, three (3) business days after the date of posting by the United States post office, (c) if delivered by Federal Express or other overnight courier, the next business day, or (iv) if given by facsimile or electronic transmission, when sent with confirmation of receipt. Any notice, request, demand, direction or other communication sent by facsimile or electronic transmission must be confirmed within twenty-four (24) hours by letter mailed or delivered in accordance with the foregoing.

To Seller: Gary & Myrna Gervasoni
676 Geer Court
Modesto, CA 95354
Telephone: 209-522-7789

To Buyer: City of Modesto
Attn: Brent Sinclair
1010 – 10th Street
Modesto, CA 95354
Facsimile: 209-491-5798
Email: bsinclair@modestogov.com

With a copy to: City of Modesto
Office of the City Attorney
P.O. Box 642
Modesto, CA 95353
Attn: Richard Evans
Facsimile: (209) 544-8260
Email: revans@modestogov.com

With a copy to: Matthew Pacher
Damrell, Nelson, Schrimp, Pallios, Pacher & Silva
1601 I Street, 5th Floor
To Escrow Holder: Chicago Title Company
1700 Standiford Avenue
Modesto, CA 95350
Facsimile: (209) 569-7257
Email: haneyk@ctt.com
Attention: Karla Haney

Notice of change of address shall be given by written notice in the manner detailed in this
Section 17. Rejection or other refusal to accept or the inability to deliver because of changed
address of which no notice was given shall be deemed to constitute receipt of the notice, demand,
request or communication sent.

Section 18. Legal Fees. In the event of bringing any action or suit by a party
hereto against another party or parties hereunder by reason of any breach of any of the covenants
or agreements herein or any inaccuracies in any of the representations and warranties on the part
of the other party or parties arising out of this Agreement, then in that event, the prevailing party
or parties in such action or dispute, whether by final judgment, or out of court settlement shall be
entitled to have and recover of and from the other party or parties all costs and expenses of suit,
including reasonable attorneys' fees. Any judgment or order entered in any final judgment shall
contain a specific provision providing for the recovery of all costs and expenses of suit, including
actual attorneys' fees (collectively “Costs”) incurred in enforcing, perfecting and executing such
judgment. For the purposes of this Section, Costs shall include, without limitation, attorneys' fees,
costs and expenses incurred in the following (a) arbitration and petitions to enter judgment
on arbitration awards; (b) post-judgment motions; (c) garnishment, levy, and debtor and third
party examination; (d) discovery; (e) bankruptcy litigation; and (f) obtaining release of funds
from Escrow.

Section 19. Rent Revenue. 712 9th Street. The Property is currently
improved with a commercial building with two separate addresses, 706 9th Street which is vacant
and 712 9th Street which is leased by SELLER to Serena Sisson and Rosalie Clark (hereafter
“Tenants”) who own and operate Gervasoni’s, a restaurant (the “Leased Premises”). Tenants pay
SELLER the sum of $3,000.00 a month in rent for the Leased Premises. SELLER acknowledges
and understands that under an agreement with the State of California, BUYER has agreed to
manage and control the Court Facilities Site Property, including the Leased Premises, from the
Close of Escrow until BUYER vacates the Court Facilities Site Property or by May 31, 2016.
Under BUYER’s agreement with the State of California, all other occupants, tenants and
subtenants must vacate the Court Facilities Site Property no later than December 31, 2015.
Consequently, unless Tenants vacate the Leased Premises earlier, they must vacate the Leased
Premises by or before December 31, 2015.

In further consideration of the promises and other valuable consideration herein
BUYER agrees to pay SELLER in monthly installments the equivalent of Tenant's monthly rent based on the following terms and conditions:

On the 1st of the month following Close of Escrow and on the same date for each successive month thereafter, BUYER shall pay SELLER the sum of $3,000.00. BUYER's obligation to pay SELLER the monthly sum of $3,000.00 hereunder shall terminate on (1) the date Tenants no longer occupy and operate their restaurant business on the Leased Premises or (2) upon delivery of BUYER's monthly installment payment to SELLER for the month of December, 2015, whichever first occurs.

The Parties acknowledge that the lease agreement between SELLER and Tenants includes a clause granting Tenants the right of first refusal with respect to the Leased Premises in the event SELLER seeks to sell the Property. This provision for rent revenue contained in Section 19. herein, is conditioned on Tenants' executing a release and waiver of their right of first refusal in a form satisfactory to BUYER. SELLER shall cooperate with BUYER in obtaining such release and waiver.

Section 20. Miscellaneous.

A. Required Actions of Buyer and Seller. Buyer and Seller agree to execute such instruments and documents and to diligently undertake such actions as may be required in order to consummate the purchase and sale herein contemplated and shall use good faith efforts to accomplish the Close of Escrow in accordance with the provisions hereof.

B. Time of Essence. Time is of the essence of each and every term, condition, obligation and provision hereof. All references herein to a particular time of day shall be deemed to refer to California time.

C. Facsimile Signatures. Facsimile signatures shall not be accepted unless prior agreement is obtained in writing by the Parties. If agreed that facsimile signatures are acceptable, they will be treated as original signatures; however, in no instance shall facsimile signatures be accepted on any document to be recorded. Such documents must bear original signatures.

D. Captions Interpretation. Any captions to, or headings of, the sections or subsections of this Agreement are solely for the convenience of the Parties hereto, are not a part of this Agreement, and shall not be used for the interpretation or determination of the validity of this Agreement or any provision hereof. The use of the terms "hereof", "herein" and "hereunder" shall mean and refer to this Agreement as a whole, unless the context expressly requires otherwise. This Agreement shall be construed without regard to any presumption or other rule requiring construction against the Party or Parties causing this Agreement to be drafted.
E. No Obligations to Third Parties. Except as otherwise expressly provided herein, the execution and delivery of this Agreement shall not be deemed to confer any rights upon, nor obligate any of the Parties hereto, to any person or entity other than the Parties hereto.

F. Exhibits. The Exhibits attached hereto, if any, are hereby incorporated herein by this reference for all purposes.

G. Amendment to this Agreement. The terms of this Agreement may not be modified or amended except by an instrument in writing executed by each of the Parties hereto.

H. Waiver. The waiver or failure to enforce any provision of this Agreement shall not operate as a waiver of any future breach of any such provision or any other provision hereof.

I. Applicable Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of California.

J. Fees and Other Expenses. Except as otherwise provided herein, each of the Parties shall pay its own fees and expenses in connection with this Agreement.

K. Entire Agreement. This Agreement supersedes any prior agreements, negotiations and communications, oral or written, and contains the entire agreement between Buyer and Seller as to the subject matter hereof. No subsequent agreement, representation, or promise made by either Party hereto, or by or to an employee, officer, agent or representative of either Party shall be of any effect unless it is in writing and executed by the Party to be bound thereby.

L. Partial Invalidity. If any portion of this Agreement as applied to either Party or to any circumstances shall be adjudged by a court to be void or unenforceable, such portion shall be deemed severed from this Agreement and shall in no way affect the validity or enforceability of the remaining portions of this Agreement.

M. Assignment; Successor and Assigns. Seller shall not assign any interest under this Agreement or in the Property at any time prior to the Close of Escrow other than to an accommodator under the terms of Section 4.E above, or to a principal in Seller or his or her trust or other entity in which the principal has a controlling interest, or to an affiliate controlled by or controlling Seller, without the express written consent of Buyer, which will not unreasonably be withheld, conditioned or delayed, and providing any such assignee is fully bound by the provisions of this Agreement. This Agreement shall be binding upon and shall inure to the benefit of the executors, administrators, heirs, successors and assigns of the Parties hereto. Notwithstanding the foregoing, Seller may still enter into new or modify existing Leases subject to the terms of Section 7A(14) above.

N. Business Days. In the event any date described in this Agreement relative to the performance of actions hereunder by Buyer, Seller and/or Escrow Holder falls on a
Saturday, Sunday or legal holiday, such date shall be deemed postponed until the next business
today thereafter. The term "legal holiday" shall mean all and only those State holidays specified in
Sections 6700 and 7701 of the California Government Code.

O. **Severability.** Nothing contained herein shall be construed as to require the
commission of any act contrary to law, and wherever there is any conflict between any provision
contained herein and any present statute, law, ordinance or regulation as to which the Parties
have no legal right to contradict, the latter shall prevail, but the affected provisions of this
Agreement shall be limited only to the extent necessary to bring them within the requirements of
such law.

P. **Foreign Person.** Seller represents that it, he or she is not a "foreign
person" as defined in Section 1445 of the Internal Revenue Code of 1986, as amended (the
"Code"), or under any corresponding provisions of applicable California law.

Q. **Gender.** As used herein, the masculine, feminine or neuter gender, and the
singular and plural numbers, shall each be deemed to include the others whenever and wherever
the context so indicates.

R. **Waivers.** No delay or omission by any Party hereto in exercising any right
or power hereunder shall impair any such right or power or be construed to be a waiver thereof,
unless this Agreement specifies a time limit for the exercise of such right or power or unless such
waiver is set forth in a written instrument duly executed by the party granting such waiver. A
waiver by any Party hereto of any of the covenants, conditions, or agreements hereof to be
performed by any other Party shall not be construed as a waiver of any succeeding breach of the
same or any other covenants, agreements, restrictions or conditions hereof.

S. **Authorization, Approvals, Binding Nature.** This Agreement has no force
and effect and is not binding on City until and unless it is authorized by the City Council of the
City of Modesto at a duly noticed public meeting.

T. **Survival.** All terms and conditions in this Agreement, which represent
continuing obligations and duties of the Parties, that have not been satisfied prior to Close of
Escrow shall survive Close of Escrow and transfer of title by Seller and shall continue to be
binding on the respective obligated Party in accordance with their terms, unless otherwise
provided herein. All representations and warranties and statements made by the respective
Parties contained herein or made in writing pursuant to this Agreement are intended to be, and
shall remain, true and correct as of the Close of Escrow, shall be deemed to be material, and,
together with all conditions, covenants and indemnities made by the respective Parties contained
herein or made in writing pursuant to this Agreement (except as otherwise expressly limited or
expanded by the terms of this Agreement), shall survive the execution and delivery of this
Agreement and the Close of Escrow, or, to the extent the context requires, beyond any
termination of this Agreement.
U. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which, when so executed, shall be deemed to be an original, and such counterparts shall, together, constitute and be one and the same instrument. A signature on a counterpart may be made by facsimile (if agreed in advance by the Parties) or otherwise electronically transmitted, and such signature shall have the same force and effect as an original signature.

///

IN WITNESS WHEREOF, the City of Modesto, a municipal corporation, has authorized the execution of this Agreement by its City Manager and attestation by its City Clerk by Resolution No. 2014-____ adopted by the Council on the ___ day of March, 2014, and Seller has caused this Agreement to be duly executed. The Parties hereto have caused this Agreement to be executed as of the date first written above.

BUYER

CITY OF MODESTO, a charter city and municipal corporation

By: __________________________
Greg Nyhoff,
City Manager

SELLER

GARY C. GERVASONI and MYRNA GERVASONI, husband and wife, as community property

By: __________________________
GARY C. GERVASONI

By: __________________________
MYRNA GERVASONI

APPROVED AS TO LEGAL FORM

ADAM LINDGREN,
Interim City Attorney

By: __________________________
RICHARD B. EVANS,
Senior Deputy City Attorney

Dated: ________________________

[Signature]
EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY

PARCEL ONE:

Lots 21, 22, 23 Block 54 of the CITY OF MODESTO according to the Official Map thereof, filed in the Office of the Recorder of Stanislaus County, California, on December 21, 1942 in Volume 15 of Maps.

PARCEL ONE A:

The South one-half of the Alley lying between the Northwesterly line of Lot Twenty Three, extended Northerly, and the Southeasterly line of Lot Twenty One, extended Northerly, in Block 54 of the CITY OF MODESTO according to the Official Map thereof, filed in the Office of the Recorder of Stanislaus County, California, on December 21, 1942 in Volume 15 of Maps.

APN: 106-042-010
EXHIBIT C
FORM OF TENANT ESTOPPEL LETTER

____________, 2013

City of Modesto

__________________________

Re: Lease at _______________, Modesto, California

Ladies and Gentlemen:

The undersigned ("Tenant") hereby acknowledges the following information with respect to the premises leased by Tenant at _______________ under the lease (the "Lease") described below:

1. Name and mailing address of Tenant:

__________________________

__________________________

2. The undersigned is the Tenant under the following described Lease:

3. The Lease, as identified below, is in full force and effect and, except as set forth below, the Lease has not been amended, altered, supplemented, or otherwise modified: ______

4. Landlord currently holds no security deposit and no advance payments, and Tenant has no other claims for security deposits or advance payments except: ______

5. Tenant is currently paying a monthly rent of $__________. Tenant is currently paying monthly operating expense charges, taxes, insurance, and/or other charges of $_____. Monthly rent, monthly operating expense, monthly taxes, insurance, and/or other charges are hereafter referred to as "rentals."

6. Rentals accruing under the Lease have been paid through __________, 2013. There are no offsets or credits against rentals payable by Tenant under the Lease nor are there any defenses or counterclaims against rentals payable by Tenant under the Lease. No rental payable under the Lease is in arrears or has been prepaid more than thirty (30) days in advance.
7. Under the Lease and/or pursuant to law, Tenant has the right to cause an audit and/or an accounting to be performed of Landlord's operations and/or books and records pertaining to rent, operating expenses, taxes, insurance, and/or other charges. Such an audit and/or accounting could result in a claim or an offset for rents paid under the Lease. Tenant's execution of an Estoppel Certificate notwithstanding, Tenant reserves its right to perform such an audit and/or accounting and to assert any claims arising therefrom ("Claims") against Landlord. Tenant waives the right of offset against future rentals for any Claims against Landlord arising from acts or omissions that occurred prior to the date hereof, and releases Landlord's successors in interest from any such Claims. Notwithstanding the foregoing, nothing contained herein shall be deemed to constitute a waiver of Tenant's right of offset against Landlord's successors in interest arising from acts or omissions that occur after the date such successors in interest take title to the property of which the demised premises are a part.

8. The expiration of the term of the Lease is ________________.

9. There are no renewals or extension options with respect to the Lease except as follows: ________________________________________________

10. There are no expansion or first refusal rights with respect to additional space except as follows: __________________________________

11. Tenant has accepted possession of the premises demised under the Lease, and Landlord has completed or provided in all respects all tenant incentives (e.g. free or reduced rent) and all improvements required to be furnished by Landlord under the Lease. Subject to any audit currently underway or any future audits, Landlord is not in default in the performance of any of Landlord's obligations under the Lease.

12. There are no purchase options under the Lease or other agreements giving Tenant any rights or options to purchase the real property and/or improvements, or any part thereof, on which the space covered by the Lease is located except as follows: ________________________________

   It is understood that this letter is being given in contemplation of a sale of the property located at ________________________________, and it is intended that this letter may be relied upon by any purchaser of such property in connection therewith. If there are any conflicts between the terms of this Estoppel Certificate and the Lease, the terms of the Lease will prevail.

TENANT NAME:

__________________________________________

By: ____________________________
Name: ____________________________
Title: ____________________________
Date: ____________________________
EXHIBIT D
FORM OF GRANT DEED

WHEREAS, in 2010 the State Public Works Board (SPWB) approved the new Modesto Courthouse Project for initial funding, and

WHEREAS, in 2011 the Administrative Office of Courts (AOC) named a project advisory group to identify and advise on the site selection and design for the new courthouse, and

WHEREAS, in 2011 the SPWB approved the city block bounded by H and G Streets and 9th and 10th Streets (10th Street Site) as a potential site for the new Modesto Courthouse, and in 2012 the SPWB approved the city block bounded by H and I Streets and 13th and 14th Streets as a potential site for the new courthouse, and

WHEREAS, in 2012 the AOC had all parcels within the 10th Street Site appraised to determine fair market value, and

WHEREAS, the City Council directed staff to assist the AOC project team in
negotiations with property owners for the acquisition and sale of real property within the
10th Street Site for the new Modesto Courthouse Project, and

WHEREAS, in 2013 the AOC had the privately owned parcels re-appraised to
determine fair market value, and

WHEREAS, in 2013 the Courthouse Cost Reduction Subcommittee directed the
AOC project team to negotiate for the acquisition of the 10th Street Site and the AOC
notified the City of its interest in acquiring the 10th Street Site property, and

WHEREAS, in 2013 the AOC concluded site selection for the new Modesto
Courthouse Project was proper and reaffirmed the 10th Street Site as the preferred site for
the new courthouse, and

WHEREAS, in 2014 the Court Facilities Advisory Committee endorsed a
directive from the Courthouse Cost Reduction Subcommittee to continue negotiations for
the acquisition of the 10th Street Site, and

WHEREAS, the City of Modesto (City) and Charles W. Noble and Dorothy M.
Noble, Trustees of the Noble 1995 Trust, as to an undivided ½ interest; Von Deen
Bubeck, Trustee of the Von Deen Bubeck Trust, as set forth in the Bubeck Revocable
Trust dated March 19, 1997, as to an undivided ¼ interest, and Jerry Bubeck and Von
Deen Bubeck, as Trustees of the Bubeck Revocable Trust dated March 19, 1997, as to an
undivided ¼ interest (Collectively OWNER) have successfully negotiated a Conditional
Property Acquisition Agreement (Exhibit A) containing price, terms and conditions for
the City’s purchase of OWNER’s property at 701 10th Street, Modesto, CA., being APN
106-042-007, for the new Modesto Courthouse Project, including a purchase price of
Two Hundred Seventy Thousand Dollars ($270,000) so long as multiple conditions are
satisfied, including the requirement that the City Council approves the acquisition
agreements for all privately owned parcels of the 10th Street Site, and the SPWB approves
the Property Acquisition Agreement for the acquisition of all property of the 10th Street
Site, and

WHEREAS, the proposed project, that includes the acquisition and sale of real
property and conditional vacation of the public alley, has been determined to be
Categorically Exempt under Section 15332 of the California Environmental Quality Act
guidelines for in-fill development projects,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto
that it hereby finds that the proposed project that includes the acquisition and sale of real
property and conditional vacation of the public alley are necessary steps for the new
courthouse and has been determined to be Categorically Exempt under Section 15332 of
the California Environmental Quality Act guidelines for in-fill development projects,
because (a) it is consistent with the applicable general plan designation and policies, and
all applicable zoning designations and regulations; (b) it is located within City limits on a
project site of no more than five acres substantially surrounded by urban uses; (c) the
project site has no value as habitat for endangered, rare, or threatened species; (d)
approval of the project would not result in any significant effects relating to traffic, noise,
air quality, or water quality; and (e) the site can be adequately served by all required
utilities and public services.

BE IT FURTHER RESOLVED that the Council hereby approves the Conditional
Property Acquisition Agreement with Charles W. Noble and Dorothy M. Noble, Trustees
of the Noble 1995 Trust, as to an undivided 1/2 interest; Von Deen Bubeck, Trustee of
the Von Deen Bubeck Trust as set forth in the Bubeck Revocable Trust dated March 19, 1997, as to an undivided 1/4 interest, and Jerry Bubeck and Von Deen Bubeck, Trustees of the Bubeck Revocable Trust dated March 19, 1997, as to an undivided 1/4 interest for acquisition of real property at 701 10th Street, Modesto, CA., being APN 106-042-007, for the sum of Two Hundred Seventy Thousand Dollars ($270,000) for sale to the State of California, acting by and through the Judicial Council of the Courts, Administrative Office of the Courts for the purpose of the new Modesto Courthouse Project.

BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to execute (1) the Agreement, (2) a Certificate of Acceptance, and (3) all necessary and related documents required to complete the transaction, transfer title, and close escrow.

The foregoing resolution was introduced at a special meeting of the Council of the City of Modesto held on the 15th day of April, 2014, by Councilmember Madrigal, who moved its adoption, which motion being duly seconded by Councilmember Cogdill, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Cogdill, Gunderson, Kenoyer, Lopez, Madrigal, Zoslocki, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: 

(Seal)

APPROVED AS TO FORM:

By: ADAM LINDGREN, Interim City Attorney
Exhibit A

CONDITIONAL PROPERTY ACQUISITION AGREEMENT

This Conditional Property Acquisition Agreement (the “Agreement”) is made this ______ day of ______, 2014, for reference purposes and is entered into by and between CHARLES W. NOBLE and DOROTHY M. NOBLE, Trustees of the Noble 1995 Trust, as to an undivided ½ interest; VON DEEN BUBECK, Trustee of the Von Deen Bubeck Trust as set forth in the Bubeck Revocable Trust dated March 19, 1997, as to an undivided ¼ interest, and JERRY R. BUBECK and VON DEEN BUBECK, Trustees of the Bubeck Revocable Trust dated March 19, 1997, as to an undivided ¼ interest (hereafter collectively referred to as “Seller”), and the City of Modesto, a charter city and municipal corporation of the State of California (hereafter referred to as “Buyer” or “City”). Seller and Buyer or City are hereafter collectively referred to as a Party or the Parties. This Agreement shall also constitute Escrow Instructions directed to Escrow Holder to consummate the acquisition of real property in accordance with the terms and conditions set forth herein. This Agreement is made with reference to the following recitals.

RECITALS

A. The State of California, acting by and through the Judicial Council of California, Administrative Office of the Courts (hereafter “State”) has tentatively approved a site for construction of new court facilities in the City of Modesto, County of Stanislaus being that property located within the city block bounded by H Street on the north, 10th Street on the east, G Street on the south, and 9th Street on the west, Modesto, Stanislaus County, California (hereafter “Court Facilities Site”). Final site approval for new court facilities is vested in the State Public Works Board (the “SPWB”) and is contingent on the acquisition of all real property located in the Court Facilities Site. The Court Facilities Site is comprised of eleven (11) legal parcels. Five (5) of the parcels are owned by City or its former redevelopment agency (hereafter the “City Parcels”) and City has agreed in principle to transfer title of the City Parcels to State for purposes of construction of the new court facilities so long as the remaining six (6) parcels are acquired for the same purpose. The Assessor Parcel Number and owner(s) of each of remaining six (6) parcels (hereafter the “Private Parcels”) are identified as follows:

| APN 106-042-005 | Gina Rugani, Michael Gene Rugani and Sandra Ann Heffernan, Trustees, or any Successor Trustee(s) thereto of the Gina Rugani Survivor’s Trust Agreement dated July 17, 1978, as amended |
| APN 106-042-006 | G & K Enterprises, LLC, a California limited liability company |
| APN 106-042-007 | Charles W. Noble and Dorothy M. Noble, Trustees of the Noble 1995 Trust, as to an undivided ½ interest; Von Deen Bubeck, Trustee of the Von Deen Bubeck Trust as set forth in the Bubeck Revocable Trust dated March 19, 1997, as to an undivided ¼ interest, and Jerry R. Bubeck and Von Deen Bubeck, Trustees of the Bubeck Revocable Trust dated March 19, 1997, as to an undivided ¼ interest |
B. Seller and City acknowledge and agree that the Private Parcels and the City Parcels constitute and collectively shall be referred to as the Court Facilities Site Property.

C. Seller acknowledges and understands that City has been authorized by State to negotiate the purchase of the Private Parcels along with the sale of the City Parcels to State for construction of new court facilities and that the final approval of the Court Facilities Site by SPWB is contingent on City obtaining executed purchase acquisition agreements for the Private Parcels and entering into an acquisition agreement to transfer the City Parcels and Private Parcels to State.

D. Seller owns that real property located in the City of Modesto, County of Stanislaus commonly described as 701 - 10th Street having APN 106-042-007 and more particularly described in Exhibit “A” attached and made a part hereof (hereafter the “Property”).

E. Seller desires to sell to City, and City desires to purchase from Seller the Property on terms and conditions specified in this Agreement.

F. Seller acknowledges, understands and agrees that the agreement by City to purchase the Property is a conditional one and is contingent on multiple conditions, specified below, each of which must be satisfied.

G. Seller understands and agrees that should all conditions of purchase be satisfied that immediately following the transfer of title of Property to City, the Property shall be sold and conveyed by City to State.

The Parties agree that the foregoing recitals are true and correct and are part of this Agreement.

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, the Parties agree as follows:

Section 1. Sale of Property. Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller on the terms hereinafter stated, the Property. The term “Property” as used in this Agreement shall mean and refer to the real property described above; all improvements located thereon; all privileges, rights, easements, hereditaments and appurtenances to the real property, including, without limitation, all minerals, oil, gas, and other hydrocarbon substances on and under the real property; all air rights, water, and water rights relating to the real property;
and all rights, title and interest of Seller in and to any roads, easements and other rights-of-way or appurtenances included on or adjacent to the real property used in connection with the beneficial use and enjoyment of the real property, but excluding any removable equipment, personal property, and any fixtures that are removed prior to Close of Escrow in compliance with the terms of Section 13G(7) below.

Section 2. **Purchase Price of Sale Property.** The purchase price for the Property shall be Two Hundred Seventy Thousand Dollars ($270,000) (the “Purchase Price”).

Section 3. **Payment of Purchase Price.** Prior to the Close of Escrow (as such term is defined in Section 4, below) the Purchase Price and any sums due from Buyer to the Escrow Holder and Seller as a consequence of the purchase and sale of the Property shall be deposited into Escrow, in cash or other immediately available funds.

Section 4. **Escrow.**

A. **Opening of Escrow.** The Parties shall deliver a copy of the executed Agreement to Chicago Title Company, located at 1700 Standiford Avenue, Modesto, California 95350, Telephone Number (209) 571-6300, Attention: Karla Haney (“Escrow Holder”) no later than three (3) business days after execution of the Agreement by the Parties hereto. For purposes of this Agreement, as between the Parties, the escrow (“Escrow”) shall be deemed opened on the date Escrow Holder shall have received a fully executed copy or copies of executed counterparts of this Agreement from Seller and Buyer (the “Opening of Escrow”), and Escrow Holder shall notify Buyer and Seller, in writing, of the date Escrow is opened. Buyer and Seller agree to execute, deliver and be bound by any reasonable or customary supplemental escrow instructions (“Escrow Instructions”) of Escrow Holder or other instruments as may reasonably be required by Escrow Holder in order to consummate the transaction contemplated by this Agreement. Any such supplemental instructions shall not conflict with, amend or supersede any portions of this Agreement. In the event of any inconsistency between the provisions of such supplemental instructions with the provisions of this Agreement, the provisions of this Agreement shall control.

B. **Close of Escrow.** For purposes of this Agreement, the “Close of Escrow” shall be defined as the date that the grant deed conveying fee simple title to the Property to Buyer, is recorded in the Official Records of Stanislaus County, California. The period commencing with the Opening of Escrow and continuing through the Close of Escrow shall hereinafter be referred to as the “Escrow Period.” Escrow shall close on the date which is on or before sixty (60) days after the latter of (i) State’s authorization of the acquisition of the Court Facilities Site Property, by the SPWB at a duly noticed public meeting, or (ii) the Modesto City Council’s approval of the acquisition of the Private Parcels and the sale of the City Parcels to the State (the “Closing Date”). If Close of Escrow is delayed by any cause beyond the reasonable control of Buyer or State, Buyer shall be entitled to an equitable extension of the Escrow Period, for a reasonable time agreed to and negotiated in good faith by the Parties, at no cost to Buyer or Seller. Notwithstanding the foregoing, if the Close of Escrow has not occurred by December 31,
2014, either Party may terminate this Agreement on written notice to the other. Termination by Seller will not be effective until ten (10) business days of receipt of such notice by Buyer.

C. Extension of Close of Escrow. No extensions shall occur unless agreed to in writing by Buyer and Seller.

D. Failure to Timely Close. If the conditions precedent to Close of Escrow as provided herein have not been satisfied by the Closing Date, this Agreement may be terminated upon written notice by Buyer and thereupon this Agreement shall become null and void, except that Buyer’s restoration and indemnity obligations under Section 7A(1)(i) below shall survive such termination.

E. Cooperation for Tax Deferred Exchange. Buyer agrees to cooperate with Seller in the event that Seller desires to qualify the transaction as a tax-deferred exchange under Section 1031 of the Internal Revenue Code. Buyer shall not be liable for any additional costs or expenses as a result of such an exchange. Buyer shall not be responsible or liable for qualifications of the exchange. Seller shall hold Buyer harmless for any expense or liability incurred by Buyer as a result of such exchange. Seller shall be authorized to assign all or any part of this Agreement to an accommodator who will assume the obligations of Seller but not Seller’s representations, warranties, and covenants.

Section 5. Condition of Title. It shall be a condition to the Close of Escrow for Buyer’s benefit that title to the Property be conveyed immediately to Buyer upon Close of Escrow by Grant Deed, and that title to the Court Facilities Site Property be delivered free and clear of all liens, reservations, encumbrances, assessments, easements, of record or otherwise, except for existing Leases (as that term is defined in Section 7A(2) below) and those approved by State and City, in writing, prior to the Close of Escrow. Subject to State’s approval, and the City’s review and approval of any further amendments to of that certain Amended Preliminary Report, Title No. 11-50910332-I-ML dated June 13, 2013, issued by Chicago Title Company, a copy of which is attached hereto as Exhibit B (“Preliminary Report”), City tentatively approves exceptions numbered 3, 5-14, 16, and 21 of the Preliminary Report.

To that end, Escrow Holder may expend any and all monies payable to Seller under this Agreement to discharge any monetary obligations that are liens upon the Property, and shown as exceptions in the Preliminary Report, and any exceptions shown in any subsequent amendment to it, including but not limited to those arising from judgments, assessments, taxes, or debts secured by deeds of trust or mortgages. Property taxes for the fiscal year in which escrow closes, if unpaid, shall be paid by Seller in escrow to and including the date of Close of Escrow as set forth in Section 11 hereof.

Section 6. Title Policy. Title shall be evidenced by the willingness of Chicago Title Company (“Title Company”) to issue a CLTA Owner’s Standard Coverage Form Policy of Title Insurance (“Title Policy”) in the amount of the Purchase Price showing title to the Property vested in State subject only to the exceptions described above.
Section 7. Conditions to Close of Escrow.

A. Conditions to Buyer's Obligations. Buyer's obligation to consummate the transaction contemplated by this Agreement is subject to the satisfaction of the following conditions for Buyer's benefit (or Buyer's waiver thereof, it being agreed that Buyer may waive any or all of such conditions) on or prior to the dates designated below for the satisfaction of such conditions. Notwithstanding any other provision of this Agreement, City shall have no obligation to purchase the Property, and no transfer of title to City or State may occur, unless each of the following conditions has been satisfied or waived by City in writing:

(1) Buyer's Review of the Court Facilities Site Property. Buyer shall have until 5:00 p.m. Pacific Time on Friday, May 16, 2014 (such period of time between the execution of this Agreement by Seller and May 16, 2014 shall be referred to herein as the "Due Diligence Period") to satisfy itself, in Buyer's sole and absolute discretion, as to the following described matters concerning the Court Facilities Site Property, including the Property. If, during the Due Diligence Period, Buyer determines that it is dissatisfied with any aspect of the Court Facilities Site Property or its condition or suitability for Buyer's intended use, then Buyer may terminate this Agreement and the Escrow created pursuant hereto, by delivering written notice to Seller and Escrow Holder on or before the expiration of the Due Diligence Period of Buyer's election to terminate. If Buyer fails to deliver any such termination notice to Seller and Escrow Holder on or before the expiration of the Due Diligence Period, then, Buyer shall be deemed to be satisfied with all aspects of the Court Facilities Site Property including, without limitation, the condition and suitability of the Property for Buyer's intended use.

(i) Buyer's Review of the Court Facilities Site Property and Related Matters. Buyer shall be satisfied with all aspects of the Court Facilities Site Property, and its condition and suitability for the intended use thereof, including, without limitation, the physical condition of the Court Facilities Site Property, the net acreage of the Court Facilities Site Property, the condition of the access to public roads and condition and availability of water, electricity, natural gas, and other utilities, to the Court Facilities Site Property in adequate capacities and appropriate locations. After the execution of this Agreement by Seller and during the Due Diligence Period, Buyer, Buyer's agents, employees, contractors and subcontractors and State's agents, employees, contractors and subcontractors shall have the right to enter upon the Property at reasonable times during ordinary business hours, to make such inspections, surveys and tests as may be necessary in Buyer's discretion, including, without limitation, soils tests, environmental surveys, biological resources analysis, archeological surveys, toxic waste analysis, geological and/or engineering studies and related studies. Buyer shall use care and consideration in connection with any of its inspections, surveys, studies or tests and Seller, or Seller's agent, shall have the right to be present during any inspection of the Property by Buyer or its agents. Buyer shall restore the Property to its original condition after any and all tests and/or inspections. Buyer, and its respective employees, agents and contractors shall make reasonable efforts to avoid interfering with Seller's or Seller's tenants' ongoing use, if any, of the Property. Buyer hereby indemnifies, protects, defends and holds Seller, its officers, directors, members, managers, trustees, employees, agents, representatives, immediate family members, successors and assigns (collectively "Seller Parties") and the Property free and harmless from
and against any and all costs, losses, liabilities, damages, lawsuits, judgments, actions, proceedings, penalties, demands, attorneys’ fees, mechanic’s or other liens, or expenses of any kind or nature whatsoever, arising out of or resulting from any entry and/or activities upon the Property by Buyer and its respective agents, employees, contractors and subcontractors pursuant to this subsection (i). If Buyer does not purchase the Property, it shall furnish complete copies of all such investigations, inspections and tests described above to Seller without charge and without warranty as to their accuracy or reliability within ten (10) days of Buyer’s exercise of its right to terminate this Agreement or of Buyer otherwise failing to close hereunder.

(ii) Environmental Condition of Court Facilities Site Property. Buyer shall be satisfied, in Buyer’s sole and absolute discretion that the Court Facilities Site Property, including its soil and ground water under the land, is free from all Hazardous Substances, as defined in Section 13F, below, and is in full and complete compliance with the law with respect to same.

(iii) Changes to Condition of Property. If the condition of the Property materially changes after the expiration of the Due Diligence Period (except due to Seller’s removal of fixtures as provided in Section 13G(7) below), Buyer shall have the right, but not the obligation, to deliver to Seller a written notice objecting to the condition of the Property up to the Close of Escrow (“Final Due Diligence Notice”). If Buyer does not deliver the Final Due Diligence Notice on or prior to the Close of Escrow, Buyer shall be deemed to have given its final approval of the condition of the Property. However, if Buyer does provide a Final Due Diligence Notice, Buyer shall have the right to terminate this Agreement unless the condition of the Property is restored to a condition that is acceptable to Buyer.

(2) Existing Leases and Estoppel Certificates. No later than three (3) business days after the Opening of Escrow, Seller shall deliver to Buyer a copy of all existing leases, licenses or other agreements that would grant any person or entity the right to use or occupy any portion of the Property (“Leases” or individually “Lease”). In the event any of the existing Leases are oral, Seller shall deliver to Buyer a written summary of all terms of all such Leases including, without limitation, the name and telephone number of the occupants, the expiration date of the Leases, the current rent and whether occupants have any option(s) to extend the term of the Leases, and/or an option or a right of first refusal to purchase the Property. Buyer shall be satisfied, in Buyer’s sole and absolute discretion, with the terms of the Leases, in which event Buyer shall take title to the Property subject to the terms of such Leases. Buyer shall indicate its satisfaction or objections by expiration of the Due Diligence Period to any and all Leases in existence as of the full execution date of this Agreement.

Seller shall have delivered to Buyer no more than ten (10) days prior to Close of Escrow an estoppel certificate relative to each Lease, executed and acknowledged by Seller’s tenants, if any, in the form set forth in Exhibit C.

(3) Agreement with Tenants. Buyer shall have entered into agreements with Seller’s existing tenants, if any, regarding early termination of tenants’ Leases, and/or the termination of tenants’ option, right of first refusal, and any other rights to extend the
term of the Leases or to purchase the Property, to the extent such agreements are necessary for City or State to take possession of the Property by January 1, 2016.

(4) **Approval by State Department of Finance.** The California Department of Finance shall have approved the transfer to City of those parcels to which title was formerly held by the Redevelopment Agency to the City of Modesto, a dissolved public entity.

(5) **Authorization by SPWB.** Authorization of the acquisition of the Court Facilities Site Property by the SPWB at a duly noticed public meeting.

(6) **Approved Property Acquisition Agreements for the Private Parcels.** Each of the owners of the Private Parcels shall have executed a Conditional Property Acquisition Agreement substantially in the form of this Agreement, and the City Council of the City of Modesto shall have approved such a Conditional Property Acquisition Agreement for each of the Private Parcels, including the Property.

(7) **Approved Property Acquisition Agreements for the City Parcels.** Approval by the City Council of the City of Modesto, State and SPWB of a Property Acquisition Agreement for each of the City Parcels.

(8) **Agreement between City and State.** City and State shall have executed agreements, approved by the governing bodies of each entity, specifying the rights, duties, and obligations of City and State following the transfer of title to State of the Court Facilities Site Property, including the control, management, and use of the Court Facilities Site Property.

(9) **Deposit of all Documents.** The timely deposit by Seller with Escrow Holder of all documents required to be deposited by Seller under this Agreement.

(10) **Seller’s Performance of Obligations.** Performance by Seller of all obligations, covenants and agreements on Seller’s part to be performed under this Agreement within the time provided in this Agreement for such performance.

(11) **No Breach by Seller.** Seller shall not be in breach of this Agreement.

(12) **Accuracy of Representations and Warranties.** As of the Close of Escrow, all of Seller’s representations and warranties set forth herein shall be true and accurate with the same force and effect as if remade by Seller in a separate certificate at the Close of Escrow.

(13) **Title Insurance Policy.** On the date of the Close of Escrow, Title Company shall be irrevocably and unconditionally committed to issue to State the Title Policy, with liability coverage in the amount of the Purchase Price, and showing fee title to the Property
vested in State free and clear of all liens, taxes, assessments, reservations, encumbrances, easements of record or otherwise, except as set forth in Section 5 of this Agreement.

(14) No Modification of Existing Leases. After the date of execution of the Agreement and as of the Close of Escrow, Seller shall not have modified any material term of any existing Lease affecting the Property or entered into any new Lease containing any material term, without City's prior written consent, which consent City may withhold or grant in its absolute discretion. For purposes of this subsection "material term" shall mean any lease term that would adversely affect the ability of City to take possession of the Property on January 1, 2016, including, but not limited to, extending the term of an existing Lease or entering into a new Lease that expires after December 31, 2015, increases landlord's responsibilities under the Lease, decreases the rent or other charges payable by tenant under the Lease, converts a triple net Lease into a full service, gross, or modified full service Lease, or imposes on landlord any obligation that adversely affects landlord's anticipated income from any Lease (including, but not limited to, providing for any tenant incentives [e.g. free rent, reduced rent, tenant improvements, and matters of a similar nature] to be given, made, or realized after Close of Escrow).

(15) Simultaneous Close of Escrow. Simultaneous Close of Escrow on the acquisition of the Private Parcels.

(16) Buyer's Objections. Nothing in this Agreement shall be interpreted to require Seller to remediate the Property, or make repairs or improvements to the Property not otherwise required to be made by Seller pursuant to the terms of the Leases, prior to Close of Escrow.

B. Conditions to Seller's Obligations. Seller's obligation to consummate the transaction contemplated by this Agreement is subject to the satisfaction of the following conditions for Seller's benefit (or Seller's waiver thereof, it being agreed that Seller may waive any or all such conditions):

(1) Deposit of All Documents and Funds. The timely deposit by City with Escrow Holder of all the documents and the timely deposit by State of all funds required to be deposited under this Agreement.

(2) Performance of Buyer's Obligations. Performance by City of all obligations, covenants and agreements on City's part to be performed under this Agreement within the time provided in the Agreement for such performance.

(3) No Breach by Buyer. Buyer shall not be in breach of this Agreement.

(4) Accuracy of Representations and Warranties. As of the Close of Escrow, all of Buyer's representations and warranties set forth herein shall be true and accurate.
with the same force and effect as if remade by Buyer in a separate certificate at the Close of Escrow.

Section 8. Deposits by Seller. At least three (3) business days prior to the Close of Escrow, Seller shall deposit or cause to be deposited with Escrow Holder the following documents or instruments:

A. Grant Deed. A grant deed ("Grant Deed") in substantially the form attached hereto as Exhibit D, duly executed by Seller and properly acknowledged;

B. FIRPTA Certificate. A certificate of non-foreign status (the "FIRPTA Certificate"), duly executed by Seller; and

C. California Real Estate Withholding Certificate. A Real Estate Withholding Certificate (California Franchise Tax Board Form 593-C).

Section 9. Deposits by State. Pursuant to and conditioned upon the terms of this Agreement, prior to the Close of Escrow, Buyer shall cause State to deposit with Escrow Holder, in immediately available funds, the Purchase Price and other sums due from Buyer hereunder in the amounts set forth herein, along with any documents or instruments required of Buyer by Escrow Holder for Close of Escrow.

Section 10. Escrow Charges and Closing Costs. State shall bear the cost of the Title Policy, any endorsements thereto, and any extended coverage ALTA, or other title policy or accompanying survey. Buyer shall be responsible for the payment of documentary transfer taxes and recording the Grant Deed, if any. Seller shall be responsible for the cost of recording documents necessary to deliver clear title to Buyer, if any. Buyer and Seller shall each pay one-half (1/2) of the escrow fees. Buyer and Seller shall each bear their own respective legal and accounting costs, if any, outside of Escrow except as expressly provided in Section 18 herein or elsewhere in this Agreement. All other costs or expenses not otherwise provided for in this Agreement shall be apportioned or allocated between Buyer and Seller in the manner customary in Stanislaus County, California. Notwithstanding the foregoing, Buyer shall not be obligated to pay for its share of closing costs unless and until it receives Buyer’s Estimated Closing Costs from Escrow Holder (the preceding portion of this sentence is not intended to obligate Seller to pay Buyer’s share of closing costs).

Section 11. Prorations. The following prorations shall be made between Seller and Buyer on the Close of Escrow, computed as of the Close of Escrow:

A. Taxes and Assessments. Real and personal property taxes and assessments on the Property shall be prorated on the basis that Seller is responsible for (i) all such taxes for the fiscal year of the applicable taxing authorities occurring prior to the "Current Tax Period" (as hereinafter defined) and (ii) that portion of such taxes for the Current Tax Period determined on the basis of the number of days which have elapsed from the first day of the Current Tax Period to the Close of Escrow, inclusive, whether or not the same shall be payable
prior to the Close of Escrow. The phrase “Current Tax Period” refers to the fiscal year of the applicable taxing authority in which the Close of Escrow occurs. In the event that as of the Close of Escrow the actual tax bills for the year or years in question are not available and the amount of taxes to be prorated as aforesaid cannot be ascertained, then rates and assessed valuation of the previous year, with known changes, shall be used, and when the actual amount of taxes and assessments for the year or years in question shall be determinable, then Seller shall be responsible for any unpaid taxes and assessments. Buyer shall not be responsible for any tax refund.

B. **Other Proratable Expenses.** Escrow Holder shall prorate other proratable expenses, based on a thirty (30)-day month through the Close of Escrow, including rent paid pursuant to existing Leases on the Property, if any. All rent and other payments due after the Close of Escrow pursuant to any Lease on the Property shall be paid to Buyer. If any rent or other payments due pursuant to any Lease on the Property are collected by Seller for any period beyond the last day of the month in which Escrow closes, Seller shall pay such amounts to Buyer. If any rent or other payments due pursuant to any Lease on the Property are collected by Buyer for any period prior to Close of Escrow, Buyer shall pay such amounts to Seller. Seller shall return to tenants under any Lease on the Property any security, cleaning, key or other deposits and indemnify and hold Buyer harmless from any claim therefor.

C. **Proration Statement.** At least two (2) business days prior to the Close of Escrow the Parties hereto shall approve an estimated proration statement prepared by Escrow Holder setting forth all of the prorations to be made.

**Section 12. Disbursements and Other Actions by Escrow Holder.** Upon the Close of Escrow, Escrow Holder shall promptly undertake all of the following in the manner indicated:

A. **Prorations.** Prorate all matters referenced in Section 11 based upon the statement delivered into Escrow signed by the Parties.

B. **Recording.** Cause the Grant Deed and any other documents which the Parties hereto may mutually direct, including reconveyance of any deeds of trust and releases of any liens recorded on the Property, to be recorded in the Official Records.

C. **Disbursements.** Disburse funds in payment of all items chargeable to Buyer and Seller with the balance paid to Seller in payment of the Purchase Price.

D. **Title Policy.** Direct the Title Company to issue the Title Policy.

E. **Documents to Seller.** Deliver to Seller a conformed copy of the recorded Grant Deed and conformed copies of any reconveyances of deeds of trust and releases of any liens on the Property.
F. Documents to Buyer. Deliver to Buyer the FIRPTA Certificate, the California Real Estate Withholding Certificate, and a conformed copy of the recorded Grant Deed, and conformed copies of reconveyances of deeds of trust and releases of liens on the Property, if any.

Section 13. Seller's Representations, Warranties and Covenants. In consideration of Buyer entering into this Agreement and as an inducement to Buyer to purchase the Property from Seller, Seller makes the following representations, warranties, and covenants, each of which is material and is being relied upon by Buyer:

A. Authority.

(1) Seller has full right, power and legal authority to enter into this Agreement, sell, transfer and convey the Property to Buyer under this Agreement and to carry out Seller's obligations under this Agreement. Upon the Close of Escrow, Buyer will have good, marketable and insurable title to the Property.

(2) The individuals executing this Agreement and the instruments referenced herein on behalf of Seller have the legal power, right and actual authority to bind Seller to the terms hereof and thereof.

(3) This Agreement is, and all other instruments, documents and agreements required to be executed and delivered by Seller in connection with this Agreement are and shall be, duly authorized, executed and delivered by Seller and shall be valid, legally binding obligations of and enforceable against Seller in accordance with their terms, subject only to enforcement that may be limited by applicable bankruptcy, insolvency or similar laws, and do not, and as of the Close of Escrow will not, to the best of Seller's knowledge, violate any provisions of any agreement, law, rule, regulation or judicial order to which Seller or the Property is subject.

(4) All requisite action (corporate, trust, partnership, limited liability company or otherwise) has been taken by Seller in connection with entering into this Agreement, the instruments referenced herein, and the consummation of the transactions contemplated hereby. No consent of any partner, shareholder, member, beneficiary, creditor, investor, judicial or administrative body, authority, or other party is required.

B. No Conflicts. Neither the execution and delivery of this Agreement and documents referenced herein, nor the incurrence of the obligations set forth herein, nor the consummation of the transactions herein contemplated, nor compliance with the terms of this Agreement and the documents referenced herein conflict with or result in the material breach of any terms, conditions or provisions of, or constitute a default under, the terms of Seller trusts, the Articles of Organization or Operating Agreement of Seller, any bond, note, or other evidence of indebtedness or any contract, indenture, mortgage, deed of trust, loan, partnership agreement, lease or other agreements or instruments to which Seller is a party or which affect the Property.
C. **Consents.** No consent, approval, license, permit, order, qualification or authorization of, or registration, declaration, notice or filing with, any governmental entity or any other person or entity is required for or in connection with the execution and delivery by Seller of this Agreement, and the consummation by Seller of the transactions contemplated by this Agreement, other than as set forth in Section 7.A hereof.

D. **Legal Matters.** To the actual knowledge of the individuals executing this Agreement, without further inquiry or investigation, Seller represents and warrants that:

1. There is no suit, action, arbitration, legal, administrative, or other proceeding or inquiry pending against the Property or pending against Seller which could affect Seller's title to the Property.

2. There are no attachments, execution proceedings, or assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other proceedings pending against Seller.

3. There are no: (a) agreements, written or oral, under which Seller is or could become obligated to convey all or part of the Property or any interest in the Property to a third party; (b) rights of first refusal, reversions, or options to purchase the Property or any portion thereof (other than as set forth in the Leases disclosed pursuant to Section 7A(1)(iii) hereof); (c) Leases (other than those disclosed pursuant to Section 7A(1)(iii) hereof), liens, easements, encumbrances, prescriptive rights, contracts or other agreements for services, supplies, or materials which may affect title to or use of the Property after the Close of Escrow or impose an obligation on Buyer after the Close of Escrow; (d) adverse or other parties in possession or use of any part of the Property (other than as set forth in the Leases); or (e) to the best of Seller's knowledge, special assessments, condemnation actions, moratoriums, initiatives or legislation affecting the Property (and Seller has not received any notice of any being contemplated).

4. Except for Leases disclosed by Seller to Buyer in writing, pursuant to Section 7A(1)(iii) hereof, as of the Close of Escrow, there shall be no unrecorded leases, licenses or other agreements which would grant any person or entity the right to use or occupy any portion of the Property, including any improvements thereon.

5. To the best of Seller's knowledge, there are no and have been no: (a) actual or pending public improvements which will result in the creation of any liens upon the Property, including public assessments or mechanic's liens and Seller agrees to indemnify, defend and hold Buyer free and harmless from and against any claims, liabilities, losses, costs, damages, expenses and attorneys' fees arising from any liens, encumbrances or assessments that have been, or may be, incurred by Seller or imposed upon the Property prior to the Close of Escrow, but only to the extent any obligations to pay a fee or assessment for infrastructure is due and payable prior to the Close of Escrow, and Buyer agrees to cooperate with Seller, at Seller's costs and to the extent permitted by law, with respect to Seller's efforts prior to Close of Escrow to remove any such liens, fees, assessments, or encumbrances; or (b) uncured notices from
any governmental agency notifying Seller of any violations of law, ordinance, rule, or regulation, occurring on the Property. Other than as provided above, Buyer shall assume responsibility for assessments arising from any actual or impending public improvements as of the Close of Escrow.

**E. No Works of Improvement.** No works of improvement or other activities have occurred with respect to the Property which could give rise to any liens against the Property.

**F. Environmental.** Except as otherwise disclosed by Seller to Buyer in writing, Seller has not: (a) conducted or authorized the presence, placement, generation, transportation, storage, release, treatment, or disposal at the Property of any Hazardous Substance; or (b) received from or given to any governmental authority or other party any notice or other communication or agreement relating in any way to the presence, placement, generation, transportation, storage, release, treatment or disposal of any Hazardous Substance on the Property. Except as otherwise disclosed by Seller to Buyer in writing, (a) there presently are not, and to the best of Seller's knowledge there have never been any Hazardous Substances or storage tanks containing or having contained petrochemicals in, on, under, or about the Property; and (b) to the best of Seller's knowledge, there is no pending or threatened litigation, proceedings or investigation before any governmental entity or agency in which the presence, release, threat of release, placement, generation, transportation, storage, treatment or disposal in, on, under, or about the Property of any Hazardous Substance has been alleged; and (c) to the best of Seller's knowledge, there is no defect or condition with respect to the Property which would prevent the use of the Property by State for its intended use as a public courthouse, including, but not limited to, the condition of the soil, the existence of geologic hazards or groundwater contamination, the existence of ecological or environmental impediments or the existence of any hazardous or toxic materials on or beneath the surface of the Property at levels requiring remediation or removal under existing applicable laws and regulations. For purposes of this Agreement, the term "Hazardous Substance" means any matter which has been or is determined by any current or proposed federal, state, or local statute, law, enactment, ordinance, regulation, order, rule or judicial decision to constitute a hazardous or toxic waste, substance or material, but excepting normal commercial and office products such as cleaners and copy fluids and normal petroleum product residue from parked and moving vehicles.

**G. Pending Close of Escrow.**

1. **New Leases.** Seller will not hereafter enter into new Leases or any other obligations or agreements affecting the Property after Seller's execution of this Agreement, except for obligations or agreements that terminate at or before Close of Escrow and that are fully disclosed to Buyer, without the prior written consent of Buyer, which consent the Buyer may withhold or grant in its absolute discretion.

2. **Additional Liens.** Seller will not subject the Property to any additional liens, encumbrances, covenants, conditions, easements, rights of way or similar
matters after Seller’s execution of this Agreement that will not be eliminated prior to the Close of Escrow.

(3) **Violations of Law.** After the execution of this Agreement by Seller, Seller shall not knowingly violate nor allow violation of, any law, ordinance, rule, or regulation affecting the Property.

(4) **Preservation of Easements and Other Rights.** Prior to the Close of Escrow, Seller shall do or cause to be done, all things within its reasonable control to preserve intact and unimpaired any and all rights of way, easements, grants, appurtenances, privileges, and licenses in favor or consisting of any portion of the Property.

(5) **Taxes and Assessments.** Seller shall pay, if and when the same are due, all payments on any encumbrances or assessments presently affecting the Property and any and all taxes, assessments, and levies in respect of the Property through the Close of Escrow.

(6) **Zoning.** Prior to the Close of Escrow, Seller shall not take any action, or fail to take any action, that would result in any change, alteration, modification, addition to, or termination of any of the presently-existing general plan or zoning designation of the Property, without Buyer’s prior written approval, and Seller shall immediately provide Buyer with a copy of any written materials received by Seller evidencing or relating to any proposal or attempt to effect any such change, alteration, modification, addition to, or termination other than those sought by Buyer.

(7) **No Modification to Condition of Property.** Seller shall (i) not alter the physical condition of the Property; (ii) maintain the Property in substantially the same condition as that which existed as of the date that Buyer executed this Agreement; and (iii) deliver possession of the Property to Buyer at the Close of Escrow in substantially the same condition that existed as of the date that Seller executed this Agreement except for any remediation that Seller agrees to do in response to Buyer’s due diligence.

Notwithstanding the foregoing, Seller may remove any fixture or fixtures (as that term is defined in Civil Code Section 660) from the Property if (i) at least sixty (60) days prior to the Close of Escrow, Seller submits a list of the fixture(s) Seller wishes to remove from the Property to Buyer, identifying such fixture(s) with reasonable particularity; (ii) Buyer consents to such removal in writing (which consent may be granted or withheld in Buyer’s sole discretion); (iii) the removal of such fixture(s) is completed on or before December 31, 2015; and (iv) the removal of such fixture(s) does not interfere with the use of the Property by any tenant occupying the Property or any part thereof.

(8) **Notification to Buyer.** Seller shall promptly notify Buyer of any event or circumstance that could or would render any representation or warranty of Seller under this Agreement untrue or misleading, or of any covenant of Seller under this Agreement incapable or less likely of being performed; provided, however, that Seller’s foregoing obligation
to provide notice to Buyer shall in no way relieve Seller of any liability for a breach by Seller of any of its representations, warranties or covenants under this Agreement.

(9) No Recordation of CCRs. Seller shall not record any covenants, conditions or restrictions against the Property, including without limitation any design restrictions with respect to the development of the Property.

(10) No Assessment Districts or Special Tax Districts. Seller shall not assist with the formation, vote for, or agree to any assessment districts or special tax districts which results in a special tax or assessment upon the Property.

(11) Confidentiality. Seller shall keep strictly confidential and agrees not to disclose or permit the disclosure of the terms of this Agreement to any third parties other than Seller’s tax advisors, counsel, and real estate agents (“Seller’s Representatives”) until after the Close of Escrow. Prior to the disclosure of the terms of this Agreement to Seller’s Representatives, Seller shall inform Seller’s Representatives of the confidential nature of the terms of this Agreement and shall agree to act in accordance with the provisions of this Section 13G(11). Notwithstanding the foregoing, Seller and Seller’s Representatives may disclose the terms of this Agreement pursuant to the order or requirement of a court, administrative agency, or other governmental agency provided, however, that Seller shall provide prompt notice of such court order or requirement to Buyer in order to enable Buyer to seek a protective order or otherwise prevent or restrict such disclosure, and shall cooperate with Buyer in connection with such efforts. Seller hereby acknowledges and agrees that any remedy at law, including, without limitation, monetary damages, for any breach or threatened breach of the provisions of this Section 13G(11) would be inadequate and impossible to ascertain, and each party hereby consents to the granting by any court of an injunction or other equitable relief, without the inadequacy of monetary damages being proved or any bond or similar security being posted, in order that the breach or threatened breach of such provisions may be effectively restrained.

(12) Accurate Through Close of Escrow. As of the Close of Escrow, all of Seller’s representations and warranties set forth herein shall be true and accurate with the same force and effect as if remade, by Seller in a separate certificate at the Close of Escrow.

H. General Representation. No representation, warranty or statement of Seller in this Agreement or in any document, instrument, certificate or schedule furnished to Buyer pursuant hereto, to the best of Seller’s knowledge, contains or will contain any untrue statement of a material fact or omits or will omit any material fact the omission of which would be misleading. Notwithstanding any terms to the contrary contained herein, Seller makes no representations or warranties about the truth, accuracy or completeness of any reports or analyses prepared by third parties that Seller furnishes to Buyer hereunder.

Seller’s representations and warranties made in this Agreement shall be continuing and shall be true and correct as of the date of the Close of Escrow with the same force and effect as if remade by Seller in a separate certificate at that time. The truth and accuracy of Seller’s representations and warranties made herein shall constitute a condition for the benefit of
Buyer to the Close of Escrow (as elsewhere provided herein) and shall not merge into the Close of Escrow or the recordation of the Grant Deed in the Official Records, and shall survive the Close of Escrow.

Section 14. Buyer’s Representations, Warranties and Covenants. In consideration of Seller entering into this Agreement and as an inducement to Seller to sell the Property to Buyer, Buyer makes the following representations, warranties, and covenants, each of which is material and is being relied upon by Seller, and which are true and correct as of execution hereof, and shall be true and correct as of the Close of Escrow:

A. Authority. Buyer has the legal right, power and authority to enter into this Agreement and to consummate the transaction contemplated hereby, and the execution, delivery and performance of this Agreement have been duly authorized and no other action by Buyer is requisite to the valid and binding execution, delivery and performance of this Agreement, except as otherwise expressly set forth herein.

B. Binding. This Agreement is, and all other instruments, documents and agreements required to be executed and delivered by Buyer in connection with this Agreement are and shall be, duly authorized, executed and delivered by Buyer and shall be valid, legally binding obligations of and enforceable against Buyer in accordance with their terms, subject only to enforcement that may be limited by applicable bankruptcy, insolvency or similar laws, and do not, and as of the Close of Escrow will not, to the best of Buyer’s knowledge, violate any provisions of any agreement, law, rule, regulation or judicial order to which Buyer is subject.

C. Conflicts. To the best of Buyer’s knowledge, neither the execution or delivery of this Agreement nor the consummation of the transaction herein will conflict with, violate, result in a breach by, constitute a default under or accelerate the performance provided by the terms of any law, rule, regulation or agreement to which Buyer may be subject.

D. Survival. The provisions of this Section 14 shall survive the Close of Escrow or any termination of this Agreement and shall not merge with the Grant Deed to be delivered at the Close of Escrow.

Section 15. Brokers. Buyer and Seller each represents and warrants to the other that it has had no dealings with any real estate broker or agent in connection with the sale contemplated by this Agreement and that they have not engaged any other real estate broker or agent who is entitled to a commission or finder’s fee in connection with this transaction. Each Party shall indemnify, protect, defend, and hold harmless the other Party against all claims, demands, losses, liabilities, lawsuits, judgments, and costs and expenses (including reasonable attorney fees) for any commission, finder's fee, or equivalent compensation alleged to be owing on account of the indemnifying Party's dealings with any real estate broker or agent.

Section 16. Damage or Condemnation Prior to Closing. Seller shall promptly notify Buyer of any casualty to the Property or any condemnation proceeding commenced prior
to the Close of Escrow. If any such damage or proceeding (other than such a proceeding
commenced by City or State) relates to or may result in the loss of any material portion of the
Property, Buyer may, at Buyer’s option, elect either to: (a) terminate this Agreement, in which
event neither party shall have any further rights or obligations hereunder, except for Buyer’s
indemnity obligations under Section 7A(1)(i), or (b) proceed to close as provided herein without
reduction of the Purchase Price for destruction of the Property or any portion thereof, or in the
case of any eminent domain proceedings, (i) proceed to close as provided herein, with the
Purchase Price being reduced by the total of any awards or other proceeds received or assured
to be received by Seller as a result of such proceedings or (ii) proceed to close as provided herein
with an assignment by Seller to Buyer, or if directed by Buyer, to State, of all of Seller’s rights,
title, and interest in and to all such eminent domain awards and proceeds.

Section 17. Notices. All notices or other communications required or permitted
hereunder shall be in writing, and shall be personally delivered or sent by registered or certified
mail, postage prepaid, return receipt requested, or sent by facsimile, and shall be deemed
received upon the earlier of (a) if personally delivered, the date of delivery to the address of the
person to receive such notice, (b) if mailed, three (3) business days after the date of posting by
the United States post office, (c) if delivered by Federal Express or other overnight courier, the
next business day, or (iv) if given by facsimile or electronic transmission, when sent with
confirmation of receipt. Any notice, request, demand, direction or other communication sent by
facsimile or electronic transmission must be confirmed within twenty-four (24) hours by letter
mailed or delivered in accordance with the foregoing.

To Seller: Charles W. Noble
1500 Scenic Drive, #11
Modesto, CA 95355
Facsimile: N/A
Email: N/A

To Buyer: City of Modesto
Attn: Brent Sinclair
1010 - 10th Street
Modesto, CA 95354
Facsimile: 209-491-5798
Email: bsinclair@modestogov.com

With a copy to: City of Modesto
Office of the City Attorney
P.O. Box 642
Modesto, CA 95353
Attn: Richard Evans
Facsimile: (209) 544-8260
Email: revans@modestogov.com
Notice of change of address shall be given by written notice in the manner detailed in this Section 17. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to constitute receipt of the notice, demand, request or communication sent.

Section 18. Legal Fees. In the event of bringing any action or suit by a party hereto against another party or parties hereunder by reason of any breach of any of the covenants or agreements herein or any inaccuracies in any of the representations and warranties on the part of the other party or parties arising out of this Agreement, then in that event, the prevailing party or parties in such action or dispute, whether by final judgment, or out of court settlement shall be entitled to have and recover of and from the other party or parties all costs and expenses of suit, including reasonable attorneys’ fees. Any judgment or order entered in any final judgment shall contain a specific provision providing for the recovery of all costs and expenses of suit, including actual attorneys’ fees (collectively “Costs”) incurred in enforcing, perfecting and executing such judgment. For the purposes of this Section, Costs shall include, without limitation, attorneys’ fees, costs and expenses incurred in the following (a) arbitration and petitions to enter judgment on arbitration awards; (b) post-judgment motions; (c) garnishment, levy, and debtor and third party examination; (d) discovery; (e) bankruptcy litigation; and (f) obtaining release of funds from Escrow.

Section 19. Holdover Term. SELLER’s Continued Use of Property.
The Property is currently improved with a commercial building. SELLER currently uses the Property for storage and for vehicle parking. SELLER understands that STATE will not commence construction activity until it secures additional funding which is expected in 2016. BUYER has agreed to manage and control the Court Facilities Site Property, including the Property, from the Close of Escrow until BUYER vacates the Court Facilities Site Property or May 31, 2016, whichever first occurs. Under the agreement between BUYER and STATE, all occupants, tenants and subtenants of must vacate the Court Facilities Site Property no later than December 31, 2015.
In further consideration of the promises and other valuable consideration herein contained, BUYER agrees that SELLER may continue to occupy and use the Property without charge for (1) storage of personal property and (2) private vehicle parking for the period commencing on Close of Escrow herein and expiring on the date SELLER ceases use of and vacates the Property but in no event later than December 31, 2015 (the “Holdover Term”), provided SELLER continues to comply with all of the following conditions:

A. **Use of Property.** During the Holdover Term SELLER shall be permitted to occupy and use the Property for motor vehicle parking and storage of personal property for the benefit of SELLER as described herein. For purposes of this Section 19., SELLER includes SELLER’s employees.

1. **Storage.** SELLER is permitted to store on the Property personal property of SELLER, but not personal property owned by or claimed by a third party. Personal property shall include ____________________________

2. **No Hazardous Substances.** SELLER shall not conduct, authorize or permit the storage, use or disposal in, on or about the Property of hazardous substances, as defined in Section 13. F. of this Agreement, excepting reasonable and customary amounts of petroleum residue from parked and moving vehicles.

3. **Parking.** SELLER shall be permitted to use the Property for private parking of motor vehicles of SELLER and SELLER’s employees. SELLER shall not use or permit the use of the Property for public parking of motor vehicles.

4. **No Vehicle Repairs.** SELLER shall not repair or permit the repair of any motor vehicle or heavy machinery or equipment on the Property without the prior written consent of BUYER.

5. **No Other Use.** Except as expressly provided herein, no use shall be made or permitted on the Property without the prior written consent of BUYER.

6. **Assumption of Liability.** SELLER assumes complete and total responsibility and liability for all aspects of SELLER’s use and occupancy of the Property. Neither BUYER or BUYER’s employees and agents shall be liable in any manner or to any extent in connection with SELLER’s use and occupancy of the Property during the Holdover Term. All personal property and vehicles are stored on the Property by SELLER at SELLER’s sole risk. Insurance for personal property and motor vehicles is SELLER’s sole responsibility. SELLER acknowledges and agrees that BUYER will not insure SELLER’s personal property or motor vehicles.
B. **Non Exclusive Use and Occupancy.** SELLER's occupancy and use of the Property shall not be exclusive. During the Holdover Term, BUYER, STATE and their respective employees, representatives and agents shall have complete access to enter the Property for purposes of conducting any activity required by them upon not less than 24 hours' advance notice to SELLER. In the event of an emergency, or SELLER is present and consents to entry, or if SELLER has abandoned the Property, BUYER, STATE or their respective employees, representatives and agents may enter the Property without giving SELLER prior notice. For purposes of this subsection B., notice to SELLER will be in accordance with Section 17. Notices., of this Agreement.

C. **No Rent.** SELLER shall have no obligation to pay BUYER or STATE any rent for SELLER's occupancy and use of the Property during the Holdover Term.

D. **SELLER Pays Services to Property.** SELLER shall pay electrical, water, telephone, gas and other utility services used at the Property during the Holdover Term.

E. **Repairs.** Neither BUYER nor STATE shall have any responsibility to make any repairs to the Property during the Holdover Term.

E. **No Assignment.** SELLER shall not assign its interest in the Property granted by this holdover term of this Section 19., herein or sublet any portion of the Property without prior written consent of BUYER.

F. **Insurance Requirements.** SELLER shall obtain at its own expense and keep in force at all times through the Holdover Term the following insurance with insurance companies licensed in the State of California and shall provide certificates evidencing existence of insurance, loss payee endorsement and additional insured certificates to the Risk Manager of the City of Modesto no later than the Close of Escrow, signed by an authorized agent of the insurance carrier setting forth the general provisions of coverage. The policies shall name BUYER as loss payee. The policies or certificates thereof shall provide that thirty (30) days prior to cancellation or material change in the policy, notices of same shall be given to the Risk Manager of the City of Modesto by certified mail, return receipt requested, for all of the following stated insurance policies:

1. **General Liability.** General liability insurance with a minimum limit of liability per occurrence of $1,000,000.00 for bodily injury and $100,000.00 for property damage or $1,000,000.00 combined single limit. This insurance shall indicate on the certificate of insurance the following coverages and indicate the policy aggregate limit applying to: premises and operations; broad form contractual; independent consultants and subcontractors; products and completed operations.
2. **Worker’s Compensation.** Worker’s Compensation insurance in compliance with the statutes of the State of California, plus employer’s liability with a minimum limit of liability of $500,000.00.

3. **Automobile Liability Insurance.** Automobile liability insurance, including owned and non-owned vehicles, with a minimum limit of liability per occurrence of $1,000,000.00 for bodily injury and property damage.

Each policy of insurance shall name BUYER, its agents, officials and employees as an additional insured. SELLER’s insurance policies shall include a provision that the coverage is primary as respects to the BUYER and shall include no special limitations to coverage provided to additional insured.

G. **Indemnity, Release.** SELLER shall indemnify, defend, and hold BUYER and STATE, BUYER’s and STATE’s employees and agents harmless from any and all demands, losses, liabilities, claims, expenses, damages or causes of action whatsoever, including costs, fines, penalties and attorney fees, incurred by reason of or arising from or connected in any way with SELLER’s occupancy and use of the Property.

SELLER hereby releases BUYER and STATE and their employees and agents from any and all losses, liability, claims, expenses or damages to any property located on or about the Property from any cause whatsoever during the Holdover Term.

SELLER further releases BUYER and STATE and their employees and agents from any injury or death suffered by any person, including SELLER, SELLER’s employees or agents, guest, invitee or any third party, occurring in, on or about the Property, from any cause whatsoever.

H. **As-Is. Surrender of Property.** SELLER acknowledges that SELLER has personal knowledge regarding the condition of the Property, and by agreeing to the terms of this Holdover Term acknowledges and agrees that the Property is in good condition and repair and is in satisfactory condition for the purposes for which SELLER shall occupy and use the Property. SELLER accepts the Property in an “as-is” condition as of the Close of Escrow. SELLER promises to surrender the Property at the expiration of the Holdover Term in the same condition as it is in as of the date SELLER executes this Agreement, except for normal wear and tear and except for alterations authorized by BUYER.
I. **No Alterations.** During the Holdover Term, SELLER shall not make or permit to be made any alterations, additions, or improvements to the Property or any part thereof, or attach any fixtures or equipment thereto without prior written consent of BUYER.

J. **No Waste.** SELLER promises it will not commit or suffer to be committed any waste, damage or nuisance on or to the Property.

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**Section 20. Miscellaneous.**

A. **Required Actions of Buyer and Seller.** Buyer and Seller agree to execute such instruments and documents and to diligently undertake such actions as may be required in order to consummate the purchase and sale herein contemplated and shall use good faith efforts to accomplish the Close of Escrow in accordance with the provisions hereof.

B. **Time of Essence.** Time is of the essence of each and every term, condition, obligation and provision hereof. All references herein to a particular time of day shall be deemed to refer to California time.

C. **Facsimile Signatures.** Facsimile signatures shall not be accepted unless prior agreement is obtained in writing by the Parties. If agreed that facsimile signatures are acceptable, they will be treated as original signatures; however, in no instance shall facsimile signatures be accepted on any document to be recorded. Such documents must bear original signatures.

D. **Captions Interpretation.** Any captions to, or headings of, the sections or subsections of this Agreement are solely for the convenience of the Parties hereto, are not a part of this Agreement, and shall not be used for the interpretation or determination of the validity of this Agreement or any provision hereof. The use of the terms “hereof”, “herein” and “hereunder” shall mean and refer to this Agreement as a whole, unless the context expressly requires otherwise. This Agreement shall be construed without regard to any presumption or other rule requiring construction against the Party or Parties causing this Agreement to be drafted.

E. **No Obligations to Third Parties.** Except as otherwise expressly provided herein, the execution and delivery of this Agreement shall not be deemed to confer any rights upon, nor obligate any of the Parties hereto, to any person or entity other than the Parties hereto.

F. **Exhibits.** The Exhibits attached hereto, if any, are hereby incorporated herein by this reference for all purposes.

G. **Amendment to this Agreement.** The terms of this Agreement may not be modified or amended except by an instrument in writing executed by each of the Parties hereto.
H. **Waiver.** The waiver or failure to enforce any provision of this Agreement shall not operate as a waiver of any future breach of any such provision or any other provision hereof.

I. **Applicable Law.** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of California.

J. **Fees and Other Expenses.** Except as otherwise provided herein, each of the Parties shall pay its own fees and expenses in connection with this Agreement.

K. **Entire Agreement.** This Agreement supersedes any prior agreements, negotiations and communications, oral or written, and contains the entire agreement between Buyer and Seller as to the subject matter hereof. No subsequent agreement, representation, or promise made by either Party hereto, or by or to an employee, officer, agent or representative of either Party shall be of any effect unless it is in writing and executed by the Party to be bound thereby.

L. **Partial Invalidity.** If any portion of this Agreement as applied to either Party or to any circumstances shall be adjudged by a court to be void or unenforceable, such portion shall be deemed severed from this Agreement and shall in no way affect the validity or enforceability of the remaining portions of this Agreement.

M. **Assignment; Successor and Assigns.** Seller shall not assign any interest under this Agreement or in the Property at any time prior to the Close of Escrow other than to an accommodator under the terms of Section 4.E above, or to a principal in Seller or his or her trust or other entity in which the principal has a controlling interest, or to an affiliate controlled by or controlling Seller, without the express written consent of Buyer, which will not unreasonably be withheld, conditioned or delayed, and providing any such assignee is fully bound by the provisions of this Agreement. This Agreement shall be binding upon and shall inure to the benefit of the executors, administrators, heirs, successors and assigns of the Parties hereto. Notwithstanding the foregoing, Seller may still enter into new or modify existing Leases subject to the terms of Section 7A(14) above.

N. **Business Days.** In the event any date described in this Agreement relative to the performance of actions hereunder by Buyer, Seller and/or Escrow Holder falls on a Saturday, Sunday or legal holiday, such date shall be deemed postponed until the next business day thereafter. The term "legal holiday" shall mean all and only those State holidays specified in Sections 6700 and 7701 of the California Government Code.

O. **Severability.** Nothing contained herein shall be construed as to require the commission of any act contrary to law, and wherever there is any conflict between any provision contained herein and any present statute, law, ordinance or regulation as to which the Parties have no legal right to contradict, the latter shall prevail, but the affected provisions of this Agreement shall be limited only to the extent necessary to bring them within the requirements of such law.
P. Foreign Person. Seller represents that it, he or she is not a "foreign person" as defined in Section 1445 of the Internal Revenue Code of 1986, as amended (the "Code"), or under any corresponding provisions of applicable California law.

Q. Gender. As used herein, the masculine, feminine or neuter gender, and the singular and plural numbers, shall each be deemed to include the others whenever and wherever the context so indicates.

R. Waivers. No delay or omission by any Party hereto in exercising any right or power hereunder shall impair any such right or power or be construed to be a waiver thereof, unless this Agreement specifies a time limit for the exercise of such right or power or unless such waiver is set forth in a written instrument duly executed by the party granting such waiver. A waiver by any Party hereto of any of the covenants, conditions, or agreements hereof to be performed by any other Party shall not be construed as a waiver of any succeeding breach of the same or any other covenants, agreements, restrictions or conditions hereof.

S. Authorization. Approvals, Binding Nature. This Agreement has no force and effect and is not binding on City until and unless it is authorized by the City Council of the City of Modesto at a duly noticed public meeting.

T. Survival. All terms and conditions in this Agreement, which represent continuing obligations and duties of the Parties, that have not been satisfied prior to Close of Escrow shall survive Close of Escrow and transfer of title by Seller and shall continue to be binding on the respective obligated Party in accordance with their terms, unless otherwise provided herein. All representations and warranties and statements made by the respective Parties contained herein or made in writing pursuant to this Agreement are intended to be, and shall remain, true and correct as of the Close of Escrow, shall be deemed to be material, and, together with all conditions, covenants and indemnities made by the respective Parties contained herein or made in writing pursuant to this Agreement (except as otherwise expressly limited or expanded by the terms of this Agreement), shall survive the execution and delivery of this Agreement and the Close of Escrow, or, to the extent the context requires, beyond any termination of this Agreement.

U. Counterparts. This Agreement may be executed in any number of counterparts, each of which, when so executed, shall be deemed to be an original, and such counterparts shall, together, constitute and be one and the same instrument. A signature on a counterpart may be made by facsimile (if agreed in advance by the Parties) or otherwise electronically transmitted, and such signature shall have the same force and effect as an original signature.
IN WITNESS WHEREOF, the City of Modesto, a municipal corporation, has authorized the execution of this Agreement by its City Manager and attestation by its City Clerk by Resolution No. 2014-__ adopted by the Council on the _____ day of ____________ , 2014, and Seller has caused this Agreement to be duly executed. The Parties hereto have caused this Agreement to be executed as of the date first written above.

BUYER

CITY OF MODESTO, a charter city and municipal corporation

By: ____________________________
   Greg Nyhoff,
   City Manager

SELLER

CHARLES W. NOBEL and DOROTHY M. NOBLE, Trustees of the NOBLE 1995 TRUST, as to an undivided ½ interest; VON DEEN BUBECK, Trustee of the VON DEEN BUBECK, TRUST as set forth in the BUBECK REVOCABLE TRUST dated March 19, 1997, as to an undivided ¼ interest, and JERRY R. BUBECK and VON DEEN BUBECK, Trustees of the BUBECK REVOCABLE TRUST, dated March 19, 1997, as to an undivided ¼ interest

By: ____________________________
   CHARLES W. NOBEL, Trustee

By: ____________________________
   DOROTHY M. NOBLE, Trustee

By: ____________________________
   VON DEEN BUBECK, Trustee

By: ____________________________
   JERRY R. BUBECK, Trustee

By: ____________________________
   VON DEEN BUBECK, Trustee

APPROVED AS TO LEGAL FORM

ADAM LINDGREN,
Interim City Attorney

By: ____________________________
   RICHARD B. EVANS,
   Senior Deputy City Attorney

Dated: ____________________________
EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY

PARCEL ONE:

Lots 13, 14, 15 and 16 in Block 54 of the CITY OF MODESTO according to the Official Map thereof, filed in the Office of the Recorder of Stanislaus County, California, on December 21, 1942 in Volume 15 of Maps.

PARCEL ONE A:

The North one-half of the Alley lying between the Northwesterly line of Lot Thirteen, extended Southerly, and the Southeasterly line of Lot Sixteen, extended Southerly, in Block 54 of the CITY OF MODESTO according to the Official Map thereof, filed in the Office of the Recorder of Stanislaus County, California, on December 21, 1942 in Volume 15 of Maps.

APN: 106-042-007
EXHIBIT B
PRELIMINARY TITLE REPORT
EXHIBIT C
FORM OF TENANT ESTOPPEL LETTER

_____________ 2013

City of Modesto

_____________

Re:  Lease at ______________, Modesto, California

Ladies and Gentlemen:

The undersigned ("Tenant") hereby acknowledges the following information with respect to the premises leased by Tenant at ______________ under the lease (the "Lease") described below:

1. Name and mailing address of Tenant:

________________________

________________________

2. The undersigned is the Tenant under the following described Lease:


3. The Lease, as identified below, is in full force and effect and, except as set forth below, the Lease has not been amended, altered, supplemented, or otherwise modified: 


4. Landlord currently holds no security deposit and no advance payments, and Tenant has no other claims for security deposits or advance payments except: ____________________________


5. Tenant is currently paying a monthly rent of $__________. Tenant is currently paying monthly operating expense charges, taxes, insurance, and/or other charges of $__________. Monthly rent, monthly operating expense, monthly taxes, insurance, and/or other charges are hereafter referred to as "rentals."

6. Rentals accruing under the Lease have been paid through __________, 2013. There are no offsets or credits against rentals payable by Tenant under the Lease nor are there any defenses or counterclaims against rentals payable by Tenant under the Lease. No rental payable under the Lease is in arrears or has been prepaid more than thirty (30) days in advance.
7. Under the Lease and/or pursuant to law, Tenant has the right to cause an audit and/or an accounting to be performed of Landlord's operations and/or books and records pertaining to rent, operating expenses, taxes, insurance, and/or other charges. Such an audit and/or accounting could result in a claim or an offset for rents paid under the Lease. Tenant's execution of an Estoppel Certificate notwithstanding, Tenant reserves its right to perform such an audit and/or accounting and to assert any claims arising therefrom ("Claims") against Landlord. Tenant waives the right of offset against future rentals for any Claims against Landlord arising from acts or omissions that occurred prior to the date hereof, and releases Landlord's successors in interest from any such Claims. Notwithstanding the foregoing, nothing contained herein shall be deemed to constitute a waiver of Tenant's right of offset against Landlord's successors in interest arising from acts or omissions that occur after the date such successors in interest take title to the property of which the demised premises are a part.

8. The expiration of the term of the Lease is ____________________.

9. There are no renewals or extension options with respect to the Lease except as follows: ____________________________________________

10. There are no expansion or first refusal rights with respect to additional space except as follows: __________________________________

11. Tenant has accepted possession of the premises demised under the Lease, and Landlord has completed or provided in all respects all tenant incentives (e.g. free or reduced rent) and all improvements required to be furnished by Landlord under the Lease. Subject to any audit currently underway or any future audits, Landlord is not in default in the performance of any of Landlord's obligations under the Lease.

12. There are no purchase options under the Lease or other agreements giving Tenant any rights or options to purchase the real property and/or improvements, or any part thereof, on which the space covered by the Lease is located except as follows: ________________________________

It is understood that this letter is being given in contemplation of a sale of the property located at ________________________________, and it is intended that this letter may be relied upon by any purchaser of such property in connection therewith. If there are any conflicts between the terms of this Estoppel Certificate and the Lease, the terms of the Lease will prevail.

TENANT NAME:

______________________________

By: __________________________
Name: _________________________
Title: _________________________
Date: _________________________
EXHIBIT D
FORM OF GRANT DEED
RESOLUTION APPROVING A CONDITIONAL PROPERTY ACQUISITION AGREEMENT (AGREEMENT) WITH G & K ENTERPRISES, LLC., FOR THE ACQUISITION OF REAL PROPERTY AT 711 10TH STREET MODESTO, CA., BEING APN 106-042-006, IN THE AMOUNT OF $625,000, FOR THE PURPOSE OF SALE TO THE STATE OF CALIFORNIA, ACTING BY AND THROUGH THE JUDICIAL COUNCIL OF CALIFORNIA, ADMINISTRATIVE OFFICE OF THE COURTS FOR THE NEW MODESTO COURTHOUSE PROJECT, AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE (1) THE AGREEMENT, (2) CERTIFICATE OF ACCEPTANCE, AND (3) ALL NECESSARY AND RELATED DOCUMENTS REQUIRED TO COMPLETE THE TRANSACTION, TRANSFER TITLE, AND CLOSE ESCROW

WHEREAS, in 2010 the State Public Works Board (SPWB) approved the new Modesto Courthouse Project for initial funding, and

WHEREAS, in 2011 the Administrative Office of Courts (AOC) named a project advisory group to identify and advise on the site selection and design for the new courthouse, and

WHEREAS, in 2011 the SPWB approved the city block bounded by H and G Streets and 9th and 10th Streets (10th Street Site) as a potential site for the new Modesto Courthouse, and in 2012 the SPWB approved the city block bounded by H and I Streets and 13th and 14th Streets as a potential site for the new courthouse, and

WHEREAS, in 2012 the AOC had all parcels within the 10th Street Site appraised to determine fair market value, and

WHEREAS, the City Council directed staff to assist the AOC project team in negotiations with property owners for the acquisition and sale of real property within the 10th Street Site for the new Modesto Courthouse Project, and

WHEREAS, in 2013 the AOC had the privately owned parcels re-appraised to
determine fair market value, and

WHEREAS, in 2013 the Courthouse Cost Reduction Subcommittee directed the AOC project team to negotiate for the acquisition of the 10th Street Site and the AOC notified the City of its interest in acquiring the 10th Street Site property, and

WHEREAS, in 2013 the AOC concluded site selection for the new Modesto Courthouse Project was proper and reaffirmed the 10th Street Site as the preferred site for the new courthouse, and

WHEREAS, in 2014 the Court Facilities Advisory Committee endorsed a directive from the Courthouse Cost Reduction Subcommittee to continue negotiations for the acquisition of the 10th Street Site, and

WHEREAS, the City of Modesto (City) and G & K ENTERPRISES, LLC. (OWNER) have successfully negotiated a Conditional Property Acquisition Agreement (Exhibit A) containing price, terms and conditions for City’s purchase of OWNER’s property at 711 10th Street, Modesto, CA., being APN 106-042-006, for the new Modesto Courthouse Project, including a purchase price of Six Hundred Twenty-Five Thousand Dollars ($625,000) so long as multiple conditions are satisfied, including the requirement that the City Council approves acquisition agreements for all privately owned parcels of the 10th Street Site, and the SPWB approves the Property Acquisition Agreement for the acquisition of all property of the 10th Street Site, and

WHEREAS, the proposed project, that includes the acquisition and sale of real property and conditional vacation of the public alley, has been determined to be Categorically Exempt under Section 15332 of the California Environmental Quality Act guidelines for in-fill development projects,
NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby finds that the proposed project that includes the acquisition and sale of real property and conditional vacation of the public alley are necessary steps for the new courthouse and has been determined to be Categorically Exempt under Section 15332 of the California Environmental Quality Act guidelines for in-fill development projects, because (a) it is consistent with the applicable general plan designation and policies, and all applicable zoning designations and regulations; (b) it is located within City limits on a project site of no more than five acres substantially surrounded by urban uses; (c) the project site has no value as habitat for endangered, rare, or threatened species; (d) approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality; and (e) the site can be adequately served by all required utilities and public services.

BE IT FURTHER RESOLVED that the Council hereby approves the Conditional Property Acquisition Agreement with G & K Enterprises, LLC. for acquisition of real property at 711 10Th Street, Modesto, CA., being APN 106-042-006, for the sum of Six Hundred Twenty-Five Thousand Dollars ($625,000) for sale to the State of California, acting by and through the Judicial Council of the Courts, Administrative Office of the Courts for the purpose of the new Modesto Courthouse Project.

BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to execute (1) the Agreement, (2) a Certificate of Acceptance, and (3) all necessary and related documents required to complete the transaction, transfer title, and close escrow.
The foregoing resolution was introduced at a special meeting of the Council of the City of Modesto held on the 15\textsuperscript{th} day of April, 2014, by Councilmember Madrigal, who moved its adoption, which motion being duly seconded by Councilmember Cogdill, was upon roll call carried and the resolution adopted by the following vote:

<table>
<thead>
<tr>
<th>AYES</th>
<th>Councilmembers:</th>
<th>Cogdill, Gunderson, Kenoyer, Lopez, Madrigal, Zoslocki, Mayor Marsh</th>
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<tr>
<td>NOES:</td>
<td>Councilmembers:</td>
<td>None</td>
</tr>
<tr>
<td>ABSENT:</td>
<td>Councilmembers:</td>
<td>None</td>
</tr>
</tbody>
</table>

ATTEST: [Signature]

(SEAL)

APPROVED AS TO FORM:

By: [Signature]

ADAM LINDGREN, Interim City Attorney
CONDITIONAL PROPERTY ACQUISITION AGREEMENT

This Conditional Property Acquisition Agreement (the "Agreement") is made this ___ day of ____, 2014, for reference purposes and is entered into by and between G&K Enterprises, LLC, a California limited liability company (hereafter referred to as "Seller"), and the City of Modesto, a charter city and municipal corporation of the State of California (hereafter referred to as "Buyer" or "City"). Seller and Buyer or City are hereafter collectively referred to as a Party or the Parties. This Agreement shall also constitute Escrow Instructions directed to Escrow Holder to consummate the acquisition of real property in accordance with the terms and conditions set forth herein. This Agreement is made with reference to the following recitals.

RECITALS

A. The State of California, acting by and through the Judicial Council of California, Administrative Office of the Courts (hereafter "State") has tentatively approved a site for construction of new court facilities in the City of Modesto, County of Stanislaus being that property located within the city block bounded by H Street on the north, 10th Street on the east, G Street on the south, and 9th Street on the west, Modesto, Stanislaus County, California (hereafter "Court Facilities Site"). Final site approval for new court facilities is vested in the State Public Works Board (the "SPWB") and is contingent on the acquisition of all real property located in the Court Facilities Site. The Court Facilities Site is comprised of eleven (11) legal parcels. Five (5) of the parcels are owned by City or its former redevelopment agency (hereafter the "City Parcels") and City has agreed in principle to transfer title of the City Parcels to State for purposes of construction of the new court facilities so long as the remaining six (6) parcels are acquired for the same purpose. The Assessor Parcel Number and owner(s) of each of remaining six (6) parcels (hereafter the "Private Parcels") are identified as follows:

APN 106-042-005 Gina Rugani, Michael Gene Rugani and Sandra Ann Heffernan, Trustees, or any Successor Trustee(s) thereto of the Gina Rugani Survivor's Trust Agreement dated July 17, 1978, as amended

APN 106-042-006 G & K Enterprises, LLC, a California limited liability company

APN 106-042-007 Charles W. Noble and Dorothy M. Noble, Trustees of the Noble 1995 Trust, as to an undivided ½ interest; Von Deen Bubeck, Trustee of the Von Deen Bubeck Trust as set forth in the Bubeck Revocable Trust dated March 19, 1997, as to an undivided ¼ interest, and Jerry R. Bubeck and Von Deen Bubeck, Trustees of the Bubeck Revocable Trust dated March 19, 1997, as to an undivided ¼ interest

APN 106-042-010 Gary C. Gervasoni and Myrna Gervasoni, husband and wife, as community property

APN 106-042-011 Curtis Wayne More
B. Seller and City acknowledge and agree that the Private Parcels and the City Parcels constitute and collectively shall be referred to as the Court Facilities Site Property.

C. Seller acknowledges and understands that City has been authorized by State to negotiate the purchase of the Private Parcels along with the sale of the City Parcels to State for construction of new court facilities and that the final approval of the Court Facilities Site by SPWB is contingent on City obtaining executed purchase acquisition agreements for the Private Parcels and entering into an acquisition agreement to transfer the City Parcels and Private Parcels to State.

D. Seller owns that real property located in the City of Modesto, County of Stanislaus commonly described as 711 - 10th Street having APN 106-042-006 and more particularly described in Exhibit "A" attached and made a part hereof (hereafter the "Property").

E. Seller desires to sell to City, and City desires to purchase from Seller the Property on terms and conditions specified in this Agreement.

F. Seller acknowledges, understands and agrees that the agreement by City to purchase the Property is a conditional one and is contingent on multiple conditions, specified below, each of which must be satisfied.

G. Seller understands and agrees that should all conditions of purchase be satisfied that immediately following the transfer of title of Property to City, the Property shall be sold and conveyed by City to State.

The Parties agree that the foregoing recitals are true and correct and are part of this Agreement.

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, the Parties agree as follows:

Section 1. Sale of Property. Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller on the terms hereinafter stated, the Property. The term "Property" as used in this Agreement shall mean and refer to the real property described above; all improvements located thereon; all privileges, rights, easements, hereditaments and appurtenances to the real property, including, without limitation, all minerals, oil, gas, and other hydrocarbon substances on and under the real property; all air rights, water, and water rights relating to the real property; and all rights, title and interest of Seller in and to any roads, easements and other rights-of-way or appurtenances included on or adjacent to the real property used in connection with the beneficial use and enjoyment of the real property, but excluding any removable equipment,
personal property, and any fixtures that are removed prior to Close of Escrow in compliance with the terms of Section 13G(7) below.

Section 2. Purchase Price of Sale Property. The purchase price for the Property shall be Six Hundred Twenty Five Thousand Dollars ($625,000) (the "Purchase Price").

Section 3. Payment of Purchase Price. Prior to the Close of Escrow (as such term is defined in Section 4, below) the Purchase Price and any sums due from Buyer to the Escrow Holder and Seller as a consequence of the purchase and sale of the Property shall be deposited into Escrow, in cash or other immediately available funds.

Section 4. Escrow.

A. Opening of Escrow. The Parties shall deliver a copy of the executed Agreement to Chicago Title Company, located at 1700 Standiford Avenue, Modesto, California 95350, Telephone Number (209) 571-6300, Attention: Karla Haney ("Escrow Holder") no later than three (3) business days after execution of the Agreement by the Parties hereto. For purposes of this Agreement, as between the Parties, the escrow ("Escrow") shall be deemed opened on the date Escrow Holder shall have received a fully executed copy or copies of executed counterparts of this Agreement from Seller and Buyer (the "Opening of Escrow"), and Escrow Holder shall notify Buyer and Seller, in writing, of the date Escrow is opened. Buyer and Seller agree to execute, deliver and be bound by any reasonable or customary supplemental escrow instructions ("Escrow Instructions") of Escrow Holder or other instruments as may reasonably be required by Escrow Holder in order to consummate the transaction contemplated by this Agreement. Any such supplemental instructions shall not conflict with, amend or supersede any portions of this Agreement. In the event of any inconsistency between the provisions of such supplemental instructions with the provisions of this Agreement, the provisions of this Agreement shall control.

B. Close of Escrow. For purposes of this Agreement, the "Close of Escrow" shall be defined as the date that the grant deed conveying fee simple title to the Property to Buyer, is recorded in the Official Records of Stanislaus County, California. The period commencing with the Opening of Escrow and continuing through the Close of Escrow shall hereinafter be referred to as the "Escrow Period." Escrow shall close on the date which is on or before sixty (60) days after the latter of (i) State's authorization of the acquisition of the Court Facilities Site Property, by the SPWB at a duly noticed public meeting, or (ii) the Modesto City Council's approval of the acquisition of the Private Parcels and the sale of the City Parcels to the State (the "Closing Date"). If Close of Escrow is delayed by any cause beyond the reasonable control of Buyer or State, Buyer shall be entitled to an equitable extension of the Escrow Period, for a reasonable time agreed to and negotiated in good faith by the Parties, at no cost to Buyer or Seller. Notwithstanding the foregoing, if the Close of Escrow has not occurred by December 31, 2014, either Party may terminate this Agreement on written notice to the other. Termination by Seller will not be effective until ten (10) business days of receipt of such notice by Buyer.
C. **Extension of Close of Escrow.** No extensions shall occur unless agreed to in writing by Buyer and Seller.

D. **Failure to Timely Close.** If the conditions precedent to Close of Escrow as provided herein have not been satisfied by the Closing Date, this Agreement may be terminated upon written notice by Buyer and thereupon this Agreement shall become null and void, except that Buyer's restoration and indemnity obligations under Section 7A(1)(i) below shall survive such termination.

E. **Cooperation for Tax Deferred Exchange.** Buyer agrees to cooperate with Seller in the event that Seller desires to qualify the transaction as a tax-deferred exchange under Section 1031 of the Internal Revenue Code. Buyer shall not be liable for any additional costs or expenses as a result of such an exchange. Buyer shall not be responsible or liable for qualifications of the exchange. Seller shall hold Buyer harmless for any expense or liability incurred by Buyer as a result of such exchange. Seller shall be authorized to assign all or any part of this Agreement to an accommodator who will assume the obligations of Seller but not Seller's representations, warranties, and covenants.

**Section 5. Condition of Title.** It shall be a condition to the Close of Escrow for Buyer's benefit that title to the Property be conveyed immediately to Buyer upon Close of Escrow by Grant Deed, and that title to the Court Facilities Site Property be delivered free and clear of all liens, reservations, encumbrances, assessments, easements, of record or otherwise, except for existing Leases (as that term is defined in Section 7A(2) below) and those approved by State and City, in writing, prior to the Close of Escrow. Subject to State's approval, and the City's review and approval of any further amendments to that certain Amended Preliminary Report, Title No. 11-50910332-MML dated June 13, 2013, issued by Chicago Title Company, a copy of which is attached hereto as Exhibit B ("Preliminary Report"), City tentatively approves exceptions numbered 3, 5-14, 16, and 21 of the Preliminary Report.

To that end, Escrow Holder may expend any and all monies payable to Seller under this Agreement to discharge any monetary obligations that are liens upon the Property, and shown as exceptions in the Preliminary Report, and any exceptions shown in any subsequent amendment to it, including but not limited to those arising from judgments, assessments, taxes, or debts secured by deeds of trust or mortgages. Property taxes for the fiscal year in which Escrow closes, if unpaid, shall be paid by Seller in Escrow to and including the date of Close of Escrow as set forth in Section 11 hereof.

**Section 6. Title Policy.** Title shall be evidenced by the willingness of Chicago Title Company ("Title Company") to issue a CLTA Owner's Standard Coverage Form Policy of Title Insurance ("Title Policy") in the amount of the Purchase Price showing title to the Property vested subject only to the exceptions described above.
Section 7. Conditions to Close of Escrow.

A. Conditions to Buyer's Obligations. Buyer's obligation to consummate the transaction contemplated by this Agreement is subject to the satisfaction of the following conditions for Buyer's benefit (or Buyer's waiver thereof, it being agreed that Buyer may waive any or all of such conditions) on or prior to the dates designated below for the satisfaction of such conditions. Notwithstanding any other provision of this Agreement, City shall have no obligation to purchase the Property, and no transfer of title to City or State may occur, unless each of the following conditions has been satisfied or waived by City in writing:

1) Buyer's Review of the Court Facilities Site Property. Buyer shall have until 5:00 p.m. Pacific Time on Friday, May 16, 2014 (such period of time between the execution of this Agreement by Seller and May 16, 2014 shall be referred to herein as the "Due Diligence Period") to satisfy itself, in Buyer's sole and absolute discretion, as to the following described matters concerning the Court Facilities Site Property, including the Property. If, during the Due Diligence Period, Buyer determines that it is dissatisfied with any aspect of the Court Facilities Site Property or its condition or suitability for Buyer's intended use, then Buyer may terminate this Agreement and the Escrow created pursuant hereto, by delivering written notice to Seller and Escrow Holder on or before the expiration of the Due Diligence Period of Buyer's election to terminate. If Buyer fails to deliver any such termination notice to Seller and Escrow Holder on or before the expiration of the Due Diligence Period, then, Buyer shall be deemed to be satisfied with all aspects of the Court Facilities Site Property including, without limitation, the condition and suitability of the Property for Buyer's intended use.

(i) Buyer's Review of the Court Facilities Site Property and Related Matters. Buyer shall be satisfied with all aspects of the Court Facilities Site Property, and its condition and suitability for the intended use thereof, including, without limitation, the physical condition of the Court Facilities Site Property, the net acreage of the Court Facilities Site Property, the condition of the access to public roads and condition and availability of water, electricity, natural gas, and other utilities, to the Court Facilities Site Property in adequate capacities and appropriate locations. After the execution of this Agreement by Seller and during the Due Diligence Period, Buyer, Buyer's agents, employees, contractors and subcontractors and State's agents, employees, contractors and subcontractors shall have the right to enter upon the Property at reasonable times during ordinary business hours, to make such inspections, surveys and tests as may be necessary in Buyer's discretion, including, without limitation, soils tests, environmental surveys, biological resources analysis, archaeological surveys, toxic waste analysis, geological and/or engineering studies and related studies. Buyer shall use care and consideration in connection with any of its inspections, surveys, studies or tests and Seller, or Seller's agent, shall have the right to be present during any inspection of the Property by Buyer or its agents. Buyer shall restore the Property to its original condition after any and all tests and/or inspections. Buyer, and its respective employees, agents and contractors shall make reasonable efforts to avoid interfering with Seller's or Seller's tenants' ongoing use, if any, of the Property. Buyer hereby indemnifies, protects, defends and holds Seller, its officers, directors, members, managers, trustees, employees, agents, representatives, immediate family members, successors and assigns (collectively "Seller Parties") and the Property free and harmless from
and against any and all costs, losses, liabilities, damages, lawsuits, judgments, actions, proceedings, penalties, demands, attorneys' fees, mechanic's or other liens, or expenses of any kind or nature whatsoever, arising out of or resulting from any entry and/or activities upon the Property by Buyer, and its respective agents, employees, contractors and subcontractors pursuant to this subsection (i). If Buyer does not purchase the Property, it shall furnish complete copies of all such investigations, inspections and tests described above to Seller without charge and without warranty as to their accuracy or reliability within ten (10) days of Buyer's exercise of its right to terminate this Agreement or of Buyer otherwise failing to close hereunder.

(ii) Environmental Condition of Court Facilities Site Property. Buyer shall be satisfied, in Buyer's sole and absolute discretion that the Court Facilities Site Property, including its soil and ground water under the land, is free from all Hazardous Substances, as defined in Section 13F, below, and is in full and complete compliance with the law with respect to same.

(iii) Changes to Condition of Property. If the condition of the Property materially changes after the expiration of the Due Diligence Period (except due to Seller's removal of fixtures as provided in Section 13G(7) below or due to Buyer's or its agent's activities on or about the Property), Buyer shall have the right, but not the obligation, to deliver to Seller a written notice objecting to the condition of the Property up to the Close of Escrow ("Final Due Diligence Notice"). If Buyer does not deliver the Final Due Diligence Notice on or prior to the Close of Escrow, Buyer shall be deemed to have given its final approval of the condition of the Property. However, if Buyer does provide a Final Due Diligence Notice, Buyer shall have the right to terminate this Agreement unless the condition of the Property is restored to a condition that is acceptable to Buyer.

(2) Existing Leases and Estoppel Certificates. No later than three (3) business days after the Opening of Escrow, Seller shall deliver to Buyer a copy of all existing leases, licenses or other agreements that would grant any person or entity the right to use or occupy any portion of the Property ("Leases" or individually "Lease"). In the event any of the existing Leases are oral, Seller shall deliver to Buyer a written summary of all terms of all such Leases including, without limitation, the name and telephone number of the occupants, the expiration date of the Leases, the current rent and whether occupants have any option(s) to extend the term of the Leases, and/or an option or a right of first refusal to purchase the Property. Buyer shall be satisfied, in Buyer's sole and absolute discretion, with the terms of the Leases, in which event Buyer shall take title to the Property subject to the terms of such Leases. Buyer shall indicate its satisfaction or objections by expiration of the Due Diligence Period to any and all Leases in existence as of the full execution date of this Agreement.

Seller shall have delivered to Buyer no more than ten (10) days prior to Close of Escrow an estoppel certificate relative to each Lease, executed and acknowledged by Seller's tenants, if any, in the form set forth in Exhibit C.

(3) Agreement with Tenants. Buyer shall have entered into agreements with Seller's existing tenants, if any, regarding early termination of tenants' Leases,
and/or the termination of tenants’ option, right of first refusal, and any other rights to extend the
term of the Leases or to purchase the Property, to the extent such agreements are necessary for
City or State to take possession of the Property by January 1, 2016.

(4) **Approval by State Department of Finance.** The California
Department of Finance shall have approved the transfer to City of those parcels to which title
was formerly held by the Redevelopment Agency to the City of Modesto, a dissolved public
entity.

(5) **Authorization by SPWB.** Authorization of the acquisition of the
Court Facilities Site Property by the SPWB at a duly noticed public meeting.

(6) **Approved Property Acquisition Agreements for the Private
Parcels.** Each of the owners of the Private Parcels shall have executed a Conditional Property
Acquisition Agreement substantially in the form of this Agreement, and the City Council of the
City of Modesto shall have approved such a Conditional Property Acquisition Agreement for
each of the Private Parcels, including the Property.

(7) **Approved Property Acquisition Agreements for the City Parcels.**
Approval by the City Council of the City of Modesto, State and SPWB of a Property Acquisition
Agreement for each of the City Parcels.

(8) **Agreement between City and State.** City and State shall have
executed agreements, approved by the governing bodies of each entity, specifying the rights,
duties, and obligations of City and State following the transfer of title to State of the Court
Facilities Site Property, including the control, management, and use of the Court Facilities Site
Property.

(9) **Deposit of all Documents.** The timely deposit by Seller with
Escrow Holder of all documents required to be deposited by Seller under this Agreement.

(10) **Seller's Performance of Obligations.** Performance by Seller of all
obligations, covenants and agreements on Seller's part to be performed under this Agreement
within the time provided in this Agreement for such performance.

(11) **No Breach by Seller.** Seller shall not be in breach of this
Agreement.

(12) **Accuracy of Representations and Warranties.** As of the Close of
Escrow, all of Seller's representations and warranties set forth herein shall be true and accurate
with the same force and effect as if remade by Seller in a separate certificate at the Close of
Escrow.

(13) **Title Insurance Policy.** On the date of the Close of Escrow, Title
Company shall be irrevocably and unconditionally committed to issue to State the Title Policy,
with liability coverage in the amount of the Purchase Price, and showing fee title to the Property vested in State free and clear of all liens, taxes, assessments, reservations, encumbrances, easements of record or otherwise, except as set forth in Section 5 of this Agreement.

(14) **No Modification of Existing Leases.** After the date of execution of the Agreement and as of the Close of Escrow, Seller shall not have modified any material term of any existing Lease affecting the Property or entered into any new Lease containing any material term, without City's prior written consent, which consent City may withhold or grant in its absolute discretion. For purposes of this subsection "material term" shall mean any lease term that would adversely affect the ability of City to take possession of the Property on January 1, 2016, including, but not limited to, extending the term of an existing Lease or entering into a new Lease that expires after December 31, 2015, increases landlord's responsibilities under the Lease, decreases the rent or other charges payable by tenant under the Lease, converts a triple net Lease into a full service, gross, or modified full service Lease, or imposes on landlord any obligation that adversely affects landlord's anticipated income from any Lease (including, but not limited to, providing for any tenant incentives [e.g. free rent, reduced rent, tenant improvements, and matters of a similar nature] to be given, made, or realized after Close of Escrow).

(15) **Simultaneous Close of Escrow.** Simultaneous Close of Escrow on the acquisition of the Private Parcels.

(16) **Buyer's Objections.** Nothing in this Agreement shall be interpreted to require Seller to remediate the Property, or make repairs or improvements to the Property not otherwise required to be made by Seller pursuant to the terms of the Leases, prior to Close of Escrow.

(17) **Survival of Provisions.** If this Agreement is terminated by Buyer due to the failure of any of the conditions described herein, Buyer's restoration and indemnity obligations under Section 7A(1)(i) shall survive such termination.

B. **Conditions to Seller's Obligations.** Seller's obligation to consummate the transaction contemplated by this Agreement is subject to the satisfaction of the following conditions for Seller's benefit (or Seller's waiver thereof, it being agreed that Seller may waive any or all such conditions):

1. **Deposit of All Documents and Funds.** The timely deposit by City with Escrow Holder of all the documents, and the timely deposit by State, of all funds required to be deposited under this Agreement.

2. **Performance of Buyer's Obligations.** Performance by City of all obligations, covenants and agreements on City's part to be performed under this Agreement within the time provided in the Agreement for such performance.
(3) **No Breach by Buyer.** Buyer shall not be in breach of this Agreement.

(4) **Accuracy of Representations and Warranties.** As of the Close of Escrow, all of Buyer’s representations and warranties set forth herein shall be true and accurate with the same force and effect as if remade by Buyer in a separate certificate at the Close of Escrow.

**Section 8. Deposits by Seller.** At least three (3) business days prior to the Close of Escrow, Seller shall deposit or cause to be deposited with Escrow Holder the following documents or instruments:

- **A. Grant Deed.** A grant deed (“Grant Deed”) in substantially the form attached hereto as Exhibit D, duly executed by Seller and properly acknowledged;

- **B. FIRPTA Certificate.** A certificate of non-foreign status (the “FIRPTA Certificate”), duly executed by Seller;

- **C. California Real Estate Withholding Certificate.** A Real Estate Withholding Certificate (California Franchise Tax Board Form 593-C).

**Section 9. Deposits by State.** Pursuant to and conditioned upon the terms of this Agreement, prior to the Close of Escrow, Buyer shall cause State to deposit with Escrow Holder, in immediately available funds, the Purchase Price and other sums due from Buyer hereunder in the amounts set forth herein, along with any documents or instruments required of Buyer by Escrow Holder for Close of Escrow.

**Section 10. Escrow Charges and Closing Costs.** State shall bear the cost of the Title Policy, any endorsements thereto, and any extended coverage ALTA, or other title policy or accompanying survey. Buyer shall be responsible for the payment of documentary transfer taxes and recording the Grant Deed, if any. Seller shall be responsible for the cost of recording documents necessary to deliver clear title to Buyer, if any. Buyer shall pay the escrow fees. Buyer and Seller shall each bear their own respective legal and accounting costs, if any, outside of Escrow except as expressly provided in Section 18 herein or elsewhere in this Agreement. All other costs or expenses not otherwise provided for in this Agreement shall be apportioned or allocated between Buyer and Seller in the manner customary in Stanislaus County, California. Notwithstanding the foregoing, Buyer shall not be obligated to pay for its share of closing costs unless and until it receives Buyer’s Estimated Closing Costs from Escrow Holder (the preceding portion of this sentence is not intended to obligate Seller to pay Buyer’s share of closing costs).

**Section 11. Prorations.** The following prorations shall be made between Seller and Buyer on the Close of Escrow, computed as of the Close of Escrow:

- **A. Taxes and Assessments.** Real and personal property taxes and assessments on the Property shall be prorated on the basis that Seller is responsible for (i) all
such taxes for the fiscal year of the applicable taxing authorities occurring prior to the "Current Tax Period" (as hereinafter defined) and (ii) that portion of such taxes for the Current Tax Period determined on the basis of the number of days which have elapsed from the first day of the Current Tax Period to the Close of Escrow, inclusive, whether or not the same shall be payable prior to the Close of Escrow. The phrase "Current Tax Period" refers to the fiscal year of the applicable taxing authority in which the Close of Escrow occurs. In the event that as of the Close of Escrow the actual tax bills for the year or years in question are not available and the amount of taxes to be prorated as aforesaid cannot be ascertained, then rates and assessed valuation of the previous year, with known changes, shall be used, and when the actual amount of taxes and assessments for the year or years in question shall be determinable, then Seller shall be responsible for any unpaid taxes and assessments. Buyer shall not be responsible for any tax refund.

B. Other Proratable Expenses. Escrow Holder shall prorate other proratable expenses, based on a thirty (30)-day month through the Close of Escrow, including rent paid pursuant to existing Leases on the Property, if any. All rent and other payments due after the Close of Escrow pursuant to any Lease on the Property shall be paid to Buyer. If any rent or other payments due pursuant to any Lease on the Property are collected by Seller for any period beyond the last day of the month in which Escrow closes, Seller shall pay such amounts to Buyer. If any rent or other payments due pursuant to any Lease on the Property are collected by Buyer for any period prior to Close of Escrow, Buyer shall pay such amounts to Seller. Seller shall return to tenants under any Lease on the Property any security, cleaning, key or other deposits and indemnify and hold Buyer harmless from any claim therefor.

C. Proration Statement. At least two (2) business days prior to the Close of Escrow the Parties hereto shall approve an estimated proration statement prepared by Escrow Holder setting forth all of the prorations to be made.

Section 12. Disbursements and Other Actions by Escrow Holder. Upon the Close of Escrow, Escrow Holder shall promptly undertake all of the following in the manner indicated:

A. Prorations. Prorate all matters referenced in Section 11 based upon the statement delivered into Escrow signed by the Parties.

B. Recording. Cause the Grant Deed and any other documents which the Parties hereto may mutually direct, including reconveyance of any deeds of trust and releases of any liens recorded on the Property, to be recorded in the Official Records.

C. Disbursements. Disburse funds in payment of all items chargeable to Buyer and Seller with the balance paid to Seller in payment of the Purchase Price.

D. Title Policy. Direct the Title Company to issue the Title Policy.
E. **Documents to Seller.** Deliver to Seller a conformed copy of the recorded Grant Deed and conformed copies of any reconveyances of deeds of trust and releases of any liens on the Property.

F. **Documents to Buyer.** Deliver to Buyer the FIRPTA Certificate, the California Real Estate Withholding Certificate, and a conformed copy of the recorded Grant Deed, and conformed copies of reconveyances of deeds of trust and releases of liens on the Property, if any.

Section 13. **Seller’s Representations, Warranties and Covenants.** In consideration of Buyer entering into this Agreement and as an inducement to Buyer to purchase the Property from Seller, Seller makes the following representations, warranties, and covenants, each of which is material and is being relied upon by Buyer:

A. **Authority.**

(1) Seller has full right, power and legal authority to enter into this Agreement, sell, transfer and convey the Property to Buyer under this Agreement and to carry out Seller’s obligations under this Agreement. Upon the Close of Escrow, Buyer will have good, marketable and insurable title to the Property.

(2) The individuals executing this Agreement and the instruments referenced herein on behalf of Seller have the legal power, right and actual authority to bind Seller to the terms hereof and thereof.

(3) This Agreement is, and all other instruments, documents and agreements required to be executed and delivered by Seller in connection with this Agreement are and shall be, duly authorized, executed and delivered by Seller and shall be valid, legally binding obligations of and enforceable against Seller in accordance with their terms, subject only to enforcement that may be limited by applicable bankruptcy, insolvency or similar laws, and do not, and as of the Close of Escrow will not, to the best of Seller’s knowledge, violate any provisions of any agreement, law, rule, regulation or judicial order to which Seller or the Property is subject.

(4) All requisite action (corporate, trust, partnership, limited liability company or otherwise) has been taken by Seller in connection with entering into this Agreement, the instruments referenced herein, and the consummation of the transactions contemplated hereby. No consent of any partner, shareholder, member, beneficiary, creditor, investor, judicial or administrative body, authority, or other party is required.

B. **No Conflicts.** Neither the execution and delivery of this Agreement and documents referenced herein, nor the incurrence of the obligations set forth herein, nor the consummation of the transactions herein contemplated, nor compliance with the terms of this Agreement and the documents referenced herein conflict with or result in the material breach of any terms, conditions or provisions of, or constitute a default under, the terms of Seller trusts, the
Articles of Organization or Operating Agreement of Seller, any bond, note, or other evidence of indebtedness or any contract, indenture, mortgage, deed of trust, loan, partnership agreement, lease or other agreements or instruments to which Seller is a party or which affect the Property.

C. **Consents.** No consent, approval, license, permit, order, qualification or authorization of, or registration, declaration, notice or filing with, any governmental entity or any other person or entity is required for or in connection with the execution and delivery by Seller of this Agreement, and the consummation by Seller of the transactions contemplated by this Agreement, other than as set forth in Section 7.A hereof.

D. **Legal Matters.** To the actual knowledge of the individuals executing this Agreement, without further inquiry or investigation, Seller represents and warrants that:

1. There is no suit, action, arbitration, legal, administrative, or other proceeding or inquiry pending against the Property or pending against Seller which could affect Seller's title to the Property.

2. There are no attachments, execution proceedings, or assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other proceedings pending against Seller.

3. There are no: (a) agreements, written or oral, under which Seller is or could become obligated to convey all or part of the Property or any interest in the Property to a third party; (b) rights of first refusal, reversions, or options to purchase the Property or any portion thereof (other than as set forth in the Leases disclosed pursuant to Section 7A(1)(2) hereof); (c) Leases (other than those disclosed pursuant to Section 7A(1)(2) hereof), liens, easements, encumbrances, prescriptive rights, contracts or other agreements for services, supplies, or materials which may affect title to or use of the Property after the Close of Escrow or impose an obligation on Buyer after the Close of Escrow; (d) adverse or other parties in possession or use of any part of the Property (other than as set forth in the Leases); or (e) to the best of Seller's knowledge, special assessments, condemnation actions, moratoriums, initiatives or legislation affecting the Property (and Seller has not received any notice of any being contemplated).

4. Except for Leases disclosed by Seller to Buyer in writing, pursuant to Section 7A(1)(2) hereof, as of the Close of Escrow, there shall be no unrecorded leases, licenses or other agreements which would grant any person or entity the right to use or occupy any portion of the Property, including any improvements thereon.

5. To the best of Seller's knowledge, there are no and have been no: (a) actual or pending public improvements which will result in the creation of any liens upon the Property, including public assessments or mechanic's liens and Seller agrees to indemnify, defend and hold Buyer free and harmless from and against any claims, liabilities, losses, costs, damages, expenses and attorneys' fees arising from any liens, encumbrances or assessments that have been, or may be, incurred by Seller or imposed upon the Property prior to the Close of
Escrow, but only to the extent any obligations to pay a fee or assessment for infrastructure is due and payable prior to the Close of Escrow, and Buyer agrees to cooperate with Seller, at Seller's costs and to the extent permitted by law, with respect to Seller's efforts prior to Close of Escrow to remove any such liens, fees, assessments, or encumbrances; or (b) uncured notices from any governmental agency notifying Seller of any violations of law, ordinance, rule, or regulation, occurring on the Property. Other than as provided above, Buyer shall assume responsibility for assessments arising from any actual or impending public improvements as of the Close of Escrow.

E. No Works of Improvement. No works of improvement or other activities have occurred with respect to the Property which could give rise to any liens against the Property.

F. Environmental. Except as otherwise disclosed by Seller to Buyer in writing, Seller has not: (a) conducted or authorized the presence, placement, generation, transportation, storage, release, treatment, or disposal at the Property of any Hazardous Substance; or (b) received from or given to any governmental authority or other party any notice or other communication or agreement relating in any way to the presence, placement, generation, transportation, storage, release, treatment or disposal of any Hazardous Substance on the Property. Except as otherwise disclosed by Seller to Buyer in writing, (a) there presently are not, and to the best of Seller's knowledge there have never been any Hazardous Substances or storage tanks containing or having contained petrochemicals in, on, under, or about the Property; and (b) to the best of Seller’s knowledge, there is no pending or threatened litigation, proceedings or investigation before any governmental entity or agency in which the presence, release, threat of release, placement, generation, transportation, storage, treatment or disposal in, on, under, or about the Property of any Hazardous Substance has been alleged; and (c) to the best of Seller’s knowledge, there is no defect or condition with respect to the Property which would prevent the use of the Property by State for its intended use as a public courthouse, including, but not limited to, the condition of the soil, the existence of geologic hazards or groundwater contamination, the existence of ecological or environmental impediments or the existence of any hazardous or toxic materials on or beneath the surface of the Property at levels requiring remediation or removal under existing applicable laws and regulations. For purposes of this Agreement, the term "Hazardous Substance" means any matter which has been or is determined by any current or proposed federal, state, or local statute, law, enactment, ordinance, regulation, order, rule or judicial decision to constitute a hazardous or toxic waste, substance or material, but excluding normal commercial and office products such as cleaners and copy fluids and normal petroleum product residue from parked and moving vehicles.

G. Pending Close of Escrow.

1. New Leases. Seller will not hereafter enter into new Leases or any other obligations or agreements affecting the Property after Seller's execution of this Agreement, except for obligations or agreements that comply with Section 7A(14) and that are fully disclosed to Buyer, without the prior written consent of Buyer, which consent the Buyer may withhold or grant in its absolute discretion.
(2) **Additional Liens.** Seller will not subject the Property to any additional liens, encumbrances, covenants, conditions, easements, rights of way or similar matters after Seller’s execution of this Agreement that will not be eliminated prior to the Close of Escrow.

(3) **Violations of Law.** After the execution of this Agreement by Seller, Seller shall not knowingly violate nor allow violation of, any law, ordinance, rule, or regulation affecting the Property.

(4) **Preservation of Easements and Other Rights.** Prior to the Close of Escrow, Seller shall do or cause to be done, all things within its reasonable control to preserve intact and unimpaired any and all rights of way, easements, grants, appurtenances, privileges, and licenses in favor or consisting of any portion of the Property.

(5) **Taxes and Assessments.** Seller shall pay, if and when the same are due, all payments on any encumbrances or assessments presently affecting the Property and any and all taxes, assessments, and levies in respect of the Property through the Close of Escrow.

(6) **Zoning.** Prior to the Close of Escrow, Seller shall not take any action, or fail to take any action, that would result in any change, alteration, modification, addition to, or termination of any of the presently-existing general plan or zoning designation of the Property, without Buyer’s prior written approval, and Seller shall immediately provide Buyer with a copy of any written materials received by Seller evidencing or relating to any proposal or attempt to effect any such change, alteration, modification, addition to, or termination other than those sought by Buyer.

(7) **No Modification to Condition of Property.** Seller shall (i) not alter the physical condition of the Property; (ii) maintain the Property in substantially the same condition as that which existed as of the date that Buyer executed this Agreement; and (iii) deliver possession of the Property to Buyer at the Close of Escrow in substantially the same condition that existed as of the date that Seller executed this Agreement except for any remediation that Seller agrees to do in response to Buyer’s due diligence.

Notwithstanding the foregoing, Seller may remove any fixture or fixtures (as that term is defined in Civil Code Section 660) from the Property if (i) at least sixty (60) days prior to the Close of Escrow, Seller submits a list of the fixture(s) Seller wishes to remove from the Property to Buyer, identifying such fixture(s) with reasonable particularity; (ii) Buyer consents to such removal in writing (which consent may be granted or withheld in Buyer’s sole discretion); (iii) the removal of such fixture(s) is completed on or before December 31, 2015; (iv) the removal of such fixture(s) does not violate the terms of any lease to which the Property is subject; and (v) the removal of such fixture(s) does not interfere with the use of the Property by any tenant occupying the Property or any part thereof.
(8) Notification to Buyer. Seller shall promptly notify Buyer of any event or circumstance that could or would render any representation or warranty of Seller under this Agreement untrue or misleading, or of any covenant of Seller under this Agreement incapable or less likely of being performed; provided, however, that Seller's foregoing obligation to provide notice to Buyer shall in no way relieve Seller of any liability for a breach by Seller of any of its representations, warranties or covenants under this Agreement.

(9) No Recordation of CCRs. Seller shall not record any covenants, conditions or restrictions against the Property, including without limitation any design restrictions with respect to the development of the Property.

(10) No Assessment Districts or Special Tax Districts. Seller shall not assist with the formation, vote for, or agree to any assessment districts or special tax districts which results in a special tax or assessment upon the Property.

(11) Confidentiality. Seller shall keep strictly confidential and agrees not to disclose or permit the disclosure of the terms of this Agreement to any third parties other than Seller's tax advisors, counsel, and real estate agents (“Seller's Representatives”) until after the Close of Escrow. Prior to the disclosure of the terms of this Agreement to Seller's Representatives, Seller shall inform Seller’s Representatives of the confidential nature of the terms of this Agreement and shall agree to act in accordance with the provisions of this Section 13G(11). Notwithstanding the foregoing, Seller and Seller's Representatives may disclose the terms of this Agreement pursuant to the order or requirement of a court, administrative agency, or other governmental agency provided, however, that Seller shall provide prompt notice of such court order or requirement to Buyer in order to enable Buyer to seek a protective order or otherwise prevent or restrict such disclosure, and shall cooperate with Buyer in connection with such efforts. Seller hereby acknowledges and agrees that any remedy at law, including, without limitation, monetary damages, for any breach or threatened breach of the provisions of this Section 13G(11) would be inadequate and impossible to ascertain, and each party hereby consents to the granting by any court of an injunction or other equitable relief, without the inadequacy of monetary damages being proved or any bond or similar security being posted, in order that the breach or threatened breach of such provisions may be effectively restrained.

(12) Accurate Through Close of Escrow. As of the Close of Escrow, all of Seller's representations and warranties set forth herein shall be true and accurate with the same force and effect as if remade, by Seller in a separate certificate at the Close of Escrow.

H. General Representation. No representation, warranty or statement of Seller in this Agreement or in any document, instrument, certificate or schedule furnished or to be furnished to Buyer pursuant hereto, to the best of Seller’s knowledge, contains or will contain any untrue statement of a material fact or omits or will omit any material fact the omission of which would be misleading. Notwithstanding any terms to the contrary contained herein, Seller makes no representations or warranties about the truth, accuracy or completeness of any reports or analyses prepared by third parties that Seller furnishes to Buyer hereunder.
Seller's representations and warranties made in this Agreement shall be continuing and shall be true and correct as of the date of the Close of Escrow with the same force and effect as if remade by Seller in a separate certificate at that time. The truth and accuracy of Seller's representations and warranties made herein shall constitute a condition for the benefit of Buyer to the Close of Escrow (as elsewhere provided herein) and shall not merge into the Close of Escrow or the recordation of the Grant Deed in the Official Records, and shall survive the Close of Escrow.

Section 14. Buyer's Representations, Warranties and Covenants. In consideration of Seller entering into this Agreement and as an inducement to Seller to sell the Property to Buyer, Buyer makes the following representations, warranties, and covenants, each of which is material and is being relied upon by Seller, and which are true and correct as of execution hereof, and shall be true and correct as of the Close of Escrow:

A. Authority. Buyer has the legal right, power and authority to enter into this Agreement and to consummate the transaction contemplated hereby, and the execution, delivery and performance of this Agreement have been duly authorized and no other action by Buyer is requisite to the valid and binding execution, delivery and performance of this Agreement, except as otherwise expressly set forth herein.

B. Binding. This Agreement is, and all other instruments, documents and agreements required to be executed and delivered by Buyer in connection with this Agreement are and shall be, duly authorized, executed and delivered by Buyer and shall be valid, legally binding obligations of and enforceable against Buyer in accordance with their terms, subject only to enforcement that may be limited by applicable bankruptcy, insolvency or similar laws, and do not, and as of the Close of Escrow will not, to the best of Buyer's knowledge, violate any provisions of any agreement, law, rule, regulation or judicial order to which Buyer is subject.

C. Conflicts. To the best of Buyer's knowledge, neither the execution or delivery of this Agreement nor the consummation of the transaction herein will conflict with, violate, result in a breach by, constitute a default under or accelerate the performance provided by the terms of any law, rule, regulation or agreement to which Buyer may be subject.

D. As-Is Sale. Except as explicitly warranted or represented in this Agreement, Seller makes no warranties, representations or assurances relating to the Property or any easements, rights of way, privileges, appurtenances or other rights pertaining thereto, or any surveys, tests, investigations or other reports concerning the Property (collectively "related interests"). Subject to the satisfaction or waiver of the conditions set forth in Section 7(A), and Seller's representations, warranties, and covenants set forth in Section 13 of this Agreement, Seller is transferring the Property and related interests "AS IS", "WITH ALL DEFECTS" and Buyer is relying on the explicit warranties and representations made by Seller in this Agreement as well as its own due diligence inspection, investigation and testing in purchasing the same. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, SELLER IS MAKING NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY MATTER, INCLUDING WARRANTIES OF MERCHANTABILITY, SUITABILITY,

E. **Survival.** The provisions of this Section 14 shall survive the Close of Escrow or any termination of this Agreement and shall not merge with the Grant Deed to be delivered at the Close of Escrow.

Section 15. **Brokers.** Buyer and Seller each represents and warrants to the other that it has had no dealings with any real estate broker or agent in connection with the sale contemplated by this Agreement and that they have not engaged any other real estate broker or agent who is entitled to a commission or finder's fee in connection with this transaction. Each Party shall indemnify, protect, defend, and hold harmless the other Party against all claims, demands, losses, liabilities, lawsuits, judgments, and costs and expenses (including reasonable attorney fees) for any commission, finder's fee, or equivalent compensation alleged to be owing on account of the indemnifying Party's dealings with any real estate broker or agent.

Section 16. **Damage or Condemnation Prior to Closing.** Seller shall promptly notify Buyer of any casualty to the Property or any condemnation proceeding commenced prior to the Close of Escrow. If any such damage or proceeding (other than such damage or proceeding caused or commenced by City or State) relates to or may result in the loss of any material portion of the Property, Buyer may, at Buyer's option, elect either to: (a) terminate this Agreement, in which event neither party shall have any further rights or obligations hereunder, except for Buyer's restoration and indemnity obligations under Section 7A(1)(i), or (b) proceed
to close as provided herein without reduction of the Purchase Price for destruction of the Property or any portion thereof, or in the case of any eminent domain proceedings, (i) proceed to close as provided herein, with the Purchase Price being reduced by the total of any awards or other proceeds received or assured to be received by Seller as a result of such proceedings or (ii) proceed to close as provided herein with an assignment by Seller to Buyer, or if directed by Buyer, to State, of all of Seller’s rights, title, and interest in and to all such eminent domain awards and proceeds.

Section 17. Notices. All notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered or sent by registered or certified mail, postage prepaid, return receipt requested, or sent by facsimile, and shall be deemed received upon the earlier of (a) if personally delivered, the date of delivery to the address of the person to receive such notice, (b) if mailed, three (3) business days after the date of posting by the United States post office, (c) if delivered by Federal Express or other overnight courier, the next business day, or (iv) if given by facsimile or electronic transmission, when sent with confirmation of receipt. Any notice, request, demand, direction or other communication sent by facsimile or electronic transmission must be confirmed within twenty-four (24) hours by letter mailed or delivered in accordance with the foregoing.

To Seller: G&K Enterprises, LLC
1012 11th Street, Suite 1000
Modesto, CA 95354
Facsimile: N/A
Email: N/A

With a copy to: Michael A. Rein, Esq.
520 13th Street
Modesto, CA 95354
Facsimile: (209) 544-3695
Email: mike@reinlaw.net

To Buyer: City of Modesto
Attn: Brent Sinclair
1010 – 10th Street
Modesto, CA 95354
Facsimile: 
Email: bsinclair@modestogov.com

With a copy to: City of Modesto
Office of the City Attorney
P.O. Box 642
Modesto, CA 95353
Attn: Richard Evans
Facsimile: (209) 544-8260
Email: revans@modestogov.com
Notice of change of address shall be given by written notice in the manner detailed in this Section 17. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to constitute receipt of the notice, demand, request or communication sent.

Section 18. Legal Fees. In the event of bringing any action or suit by a Party hereto against another Party or Parties hereunder by reason of any breach of any of the covenants or agreements herein or any inaccuracies in any of the representations and warranties on the part of the other Party or Parties arising out of this Agreement, then in that event, the prevailing Party or Parties in such action or dispute, whether by final judgment, or out of court settlement shall be entitled to have and recover of and from the other Party or Parties all costs and expenses of suit, including reasonable attorneys' fees. Any judgment or order entered in any final judgment shall contain a specific provision providing for the recovery of all costs and expenses of suit, including actual attorneys' fees (collectively "Costs") incurred in enforcing, perfecting and executing such judgment. For the purposes of this Section, Costs shall include, without limitation, attorneys' fees, costs and expenses incurred in the following (a) arbitration and petitions to enter judgment on arbitration awards; (b) post-judgment motions; (c) garnishment, levy, and debtor and third party examination; (d) discovery; (e) bankruptcy litigation; and (f) obtaining release of funds from Escrow.

Section 19. Miscellaneous.

A. Required Actions of Buyer and Seller. Buyer and Seller agree to execute such instruments and documents and to diligently undertake such actions as may be required in order to consummate the purchase and sale herein contemplated and shall use good faith efforts to accomplish the Close of Escrow in accordance with the provisions hereof.

B. Time of Essence. Time is of the essence of each and every term, condition, obligation and provision hereof. All references herein to a particular time of day shall be deemed to refer to California time.
C. Facsimile Signatures. Facsimile signatures shall not be accepted unless prior agreement is obtained in writing by the Parties. If agreed that facsimile signatures are acceptable, they will be treated as original signatures; however, in no instance shall facsimile signatures be accepted on any document to be recorded. Such documents must bear original signatures.

D. Captions Interpretation. Any captions to, or headings of, the sections or subsections of this Agreement are solely for the convenience of the Parties hereto, are not a part of this Agreement, and shall not be used for the interpretation or determination of the validity of this Agreement or any provision hereof. The use of the terms “hereof”, “herein” and “hereunder” shall mean and refer to this Agreement as a whole, unless the context expressly requires otherwise. This Agreement shall be construed without regard to any presumption or other rule requiring construction against the Party or Parties causing this Agreement to be drafted.

E. No Obligations to Third Parties. Except as otherwise expressly provided herein, the execution and delivery of this Agreement shall not be deemed to confer any rights upon, nor obligate any of the Parties hereto, to any person or entity other than the Parties hereto.

F. Exhibits. The Exhibits attached hereto, if any, are hereby incorporated herein by this reference for all purposes.

G. Amendment to this Agreement. The terms of this Agreement may not be modified or amended except by an instrument in writing executed by each of the Parties hereto.

H. Waiver. The waiver or failure to enforce any provision of this Agreement shall not operate as a waiver of any future breach of any such provision or any other provision hereof.

I. Applicable Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of California.

J. Fees and Other Expenses. Except as otherwise provided herein, each of the Parties shall pay its own fees and expenses in connection with this Agreement.

K. Entire Agreement. This Agreement supersedes any prior agreements, negotiations and communications, oral or written, and contains the entire agreement between Buyer and Seller as to the subject matter hereof. No subsequent agreement, representation, or promise made by either Party hereto, or by or to an employee, officer, agent or representative of either Party shall be of any effect unless it is in writing and executed by the Party to be bound thereby.

L. Partial Invalidity. If any portion of this Agreement as applied to either Party or to any circumstances shall be adjudged by a court to be void or unenforceable, such
portion shall be deemed severed from this Agreement and shall in no way affect the validity or enforceability of the remaining portions of this Agreement.

M. Assignment; Successor and Assigns. Seller shall not assign any interest under this Agreement or in the Property at any time prior to the Close of Escrow other than to an accommodator under the terms of Section 4.E above, or to a principal in Seller or his or her trust or other entity in which the principal has a controlling interest, or to an affiliate controlled by or controlling Seller, without the express written consent of Buyer, which will not unreasonably be withheld, conditioned or delayed, and providing any such assignee is fully bound by the provisions of this Agreement. This Agreement shall be binding upon and shall inure to the benefit of the executors, administrators, heirs, successors and assigns of the Parties hereto. Notwithstanding the foregoing, Seller may still enter into new or modify existing Leases subject to the terms of Section 7A(14) above.

N. Business Days. In the event any date described in this Agreement relative to the performance of actions hereunder by Buyer, Seller and/or Escrow Holder falls on a Saturday, Sunday or legal holiday, such date shall be deemed postponed until the next business day thereafter. The term “legal holiday” shall mean all and only those State holidays specified in Sections 6700 and 7701 of the California Government Code.

O. Severability. Nothing contained herein shall be construed as to require the commission of any act contrary to law, and wherever there is any conflict between any provision contained herein and any present statute, law, ordinance or regulation as to which the Parties have no legal right to contradict, the latter shall prevail, but the affected provisions of this Agreement shall be limited only to the extent necessary to bring them within the requirements of such law.

P. Foreign Person. Seller represents that it, he or she is not a “foreign person” as defined in Section 1445 of the Internal Revenue Code of 1986, as amended (the “Code”), or under any corresponding provisions of applicable California law.

Q. Gender. As used herein, the masculine, feminine or neuter gender, and the singular and plural numbers, shall each be deemed to include the others whenever and wherever the context so indicates.

R. Waivers. No delay or omission by any Party hereto in exercising any right or power hereunder shall impair any such right or power or be construed to be a waiver thereof, unless this Agreement specifies a time limit for the exercise of such right or power or unless such waiver is set forth in a written instrument duly executed by the party granting such waiver. A waiver by any Party hereto of any of the covenants, conditions, or agreements hereof to be performed by any other Party shall not be construed as a waiver of any succeeding breach of the same or any other covenants, agreements, restrictions or conditions hereof.
S. **Authorization, Approvals, Binding Nature.** This Agreement has no force and effect and is not binding on City until and unless it is authorized by the City Council of the City of Modesto at a duly noticed public meeting.

T. **Survival.** All terms and conditions in this Agreement, which represent continuing obligations and duties of the Parties, that have not been satisfied prior to Close of Escrow shall survive Close of Escrow and transfer of title by Seller and shall continue to be binding on the respective obligated Party in accordance with their terms, unless otherwise provided herein. All representations and warranties and statements made by the respective Parties contained herein or made in writing pursuant to this Agreement are intended to be, and shall remain, true and correct as of the Close of Escrow, shall be deemed to be material, and, together with all conditions, covenants and indemnities made by the respective Parties contained herein or made in writing pursuant to this Agreement (except as otherwise expressly limited or expanded by the terms of this Agreement), shall survive the execution and delivery of this Agreement and the Close of Escrow, or, to the extent the context requires, beyond any termination of this Agreement.

U. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which, when so executed, shall be deemed to be an original, and such counterparts shall, together, constitute and be one and the same instrument. A signature on a counterpart may be made by facsimile (if agreed in advance by the Parties) or otherwise electronically transmitted, and such signature shall have the same force and effect as an original signature.

IN WITNESS WHEREOF, the City of Modesto, a municipal corporation, has authorized the execution of this Agreement by its City Manager and attestation by its City Clerk by Resolution No. 2014-__ adopted by the Council on the ___ day of ____________, 2014, and Seller has caused this Agreement to be duly executed. The Parties hereto have caused this Agreement to be executed as of the date first written above.
BUYER

CITY OF MODESTO, a charter city and municipal corporation

By: ____________________________
    Greg Nyhoff,
    City Manager

APPROVED AS TO LEGAL FORM

ADAM LINDGREN,
Interim City Attorney

By: ____________________________
    RICHARD B. EVANS,
    Senior Deputy City Attorney

Dated: ________________

SELLER

G&K ENTERPRISES, LLC, a California limited liability company

Gregory Reed,
Manager
EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY

PARCEL ONE:

Lots 11 and 12 in Block 54 of the CITY OF MODESTO according to the Official Map thereof, filed in the Office of the Recorder of Stanislaus County, California, on December 21, 1942 in Volume 15 of Maps.

PARCEL ONE A:

The North one-half of the Alley lying between the Northwesterly line of Lot Eleven, extended Southerly, and the Southeasterly line of Lot Twelve, extended Southerly, in Block 54 of the CITY OF MODESTO according to the Official Map thereof, filed in the Office of the Recorder of Stanislaus County, California, on December 21, 1942 in Volume 15 of Maps.

APN: 106-042-006
EXHIBIT C
FORM OF TENANT ESTOPPEL LETTER

_________________________, 2014

City of Modesto
_________________________

Re: Lease at ________________, Modesto, California

Ladies and Gentlemen:

The undersigned ("Tenant") hereby acknowledges the following information with respect to the premises leased by Tenant at ________________ under the lease (the "Lease") described below:

1. Name and mailing address of Tenant:

_________________________
_________________________
_________________________

2. The undersigned is the Tenant under the following described Lease:

_________________________
_________________________
_________________________

3. The Lease, as identified below, is in full force and effect and, except as set forth below, the Lease has not been amended, altered, supplemented, or otherwise modified:

_________________________

4. Landlord currently holds no security deposit and no advance payments, and Tenant has no other claims for security deposits or advance payments except:

_________________________

5. Tenant is currently paying a monthly rent of $__________. Tenant is currently paying monthly operating expense charges, taxes, insurance, and/or other charges of $_______. Monthly rent, monthly operating expense, monthly taxes, insurance, and/or other charges are hereafter referred to as “rentals.”

6. Rentals accruing under the Lease have been paid through ____, 2014. There are no offsets or credits against rentals payable by Tenant under the Lease nor are there any defenses or counterclaims against rentals payable by Tenant under the Lease. No rental payable under the Lease is in arrears or has been prepaid more than thirty (30) days in advance.
7. Tenant's execution of an Estoppel Certificate notwithstanding, Tenant reserves the right to bring a legal action to require an audit and/or accounting of Landlord's books and records pertaining to rent, operating expenses, taxes, insurance and/or other charges, and to assert any claims arising therefrom ("Claims") against Landlord. Tenant waives the right of offset against future rentals for any Claims against Landlord arising from acts or omissions that occurred prior to the date hereof, and releases Landlord's successors in interest from any such Claims. Notwithstanding the foregoing, nothing contained herein shall be deemed to constitute a waiver of Tenant's right of offset against Landlord's successors in interest arising from acts or omissions that occur after the date such successors in interest take title to the property of which the demised premises are a part.

8. The expiration of the term of the Lease is ________________.

9. There are no renewals or extension options with respect to the Lease except as follows:______________________________

10. There are no expansion or first refusal rights with respect to additional space except as follows: ____________________

11. Tenant has accepted possession of the premises demised under the Lease, and Landlord has completed or provided in all respects all tenant incentives (e.g. free or reduced rent) and all improvements required to be furnished by Landlord under the Lease. Subject to any audit currently underway or any future audits, Landlord is not in default in the performance of any of Landlord's obligations under the Lease.

12. There are no purchase options under the Lease or other agreements giving Tenant any rights or options to purchase the real property and/or improvements, or any part thereof, on which the space covered by the Lease is located except as follows: ____________________

It is understood that this letter is being given in contemplation of a sale of the property located at ________________________, and it is intended that this letter may be relied upon by any purchaser of such property in connection therewith. If there are any conflicts between the terms of this Estoppel Certificate and the Lease, the terms of the Lease will prevail.

TENANT NAME:

__________________________

By: _______________________
Name: _____________________
Title: _____________________
Date: _____________________
EXHIBIT D
FORM OF GRANT DEED
RESOLUTION APPROVING A CONDITIONAL PROPERTY ACQUISITION AGREEMENT (AGREEMENT) WITH GINA RUGANI, MICHAEL GENE RUGANI AND SANDRA ANN HEFFERNAN, TRUSTEES, OR ANY SUCCESSOR TRUSTEE(S) THEREOF OF THE GINA RUGANI SURVIVOR’S TRUST AGREEMENT DATED JULY 17, 1978, AS AMENDED, FOR THE ACQUISITION OF REAL PROPERTY AT 713 10TH STREET MODESTO, CA., BEING APN 106-042-005, IN THE AMOUNT OF $341,000 FOR THE PURPOSE OF SALE TO THE STATE OF CALIFORNIA, ACTING BY AND THROUGH THE JUDICIAL COUNCIL OF CALIFORNIA, ADMINISTRATIVE OFFICE OF THE COURTS FOR THE NEW MODESTO COURTHOUSE PROJECT, AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE (1) THE AGREEMENT, (2) CERTIFICATE OF ACCEPTANCE, AND (3) ALL NECESSARY AND RELATED DOCUMENTS REQUIRED TO COMPLETE THE TRANSACTION, TRANSFER TITLE, AND CLOSE ESCROW

WHEREAS, in 2010 the State Public Works Board (SPWB) approved the new Modesto Courthouse Project for initial funding, and

WHEREAS, in 2011 the Administrative Office of Courts (AOC) named a project advisory group to identify and advise on the site selection and design for the new courthouse, and

WHEREAS, in 2011 the SPWB approved the city block bounded by H and G Streets and 9th and 10th Streets (10th Street Site) as a potential site for the new Modesto Courthouse, and in 2012 the SPWB approved the city block bounded by H and I Streets and 13th and 14th Streets as a potential site for the new courthouse, and

WHEREAS, in 2012 the AOC had all parcels within the 10th Street Site appraised to determine fair market value, and

WHEREAS, the City Council directed staff to assist the AOC project team in negotiations with property owners for the acquisition and sale of real property within the 10th Street Site for the new Modesto Courthouse Project, and
WHEREAS, in 2013 the AOC had the privately owned parcels re-appraised to determine fair market value, and

WHEREAS, in 2013 the Courthouse Cost Reduction Subcommittee directed the AOC project team to negotiate for the acquisition of the 10th Street Site and the AOC notified the City of its interest in acquiring the 10th Street Site property, and

WHEREAS, in 2013 the AOC concluded site selection for the new Modesto Courthouse Project was proper and reaffirmed the 10th Street Site as the preferred site for the new courthouse, and

WHEREAS, in 2014 the Court Facilities Advisory Committee endorsed a directive from the Courthouse Cost Reduction Subcommittee to continue negotiations for the acquisition of the 10th Street Site, and

WHEREAS, City of Modesto (City) and Gina Rugani, Michael Gene Rugani, and Sandra Ann Hefferman, Trustees, or any successor trustees(s) thereto of the Gina Rugani Survivor’s Trust Agreement dated July 17, 1978 (OWNER) have successfully negotiated a Conditional Property Acquisition Agreement (Exhibit A) containing price, terms and conditions for City’s purchase of OWNER’s property at 713 10th Street, Modesto, CA., being APN 106-042-005, for the new Modesto Courthouse Project, including a purchase price of Three Hundred Forty-One Thousand Dollars ($341,000) so long as multiple conditions are satisfied, including the requirement that the City Council approves acquisition agreements for all privately owned parcels of the 10th Street Site, and the SPWB approves the Property Acquisition Agreement for the acquisition of all property of the 10th Street Site, and

WHEREAS, the proposed project, that includes the acquisition and sale of real
property and conditional vacation of the public alley, has been determined to be
Categorically Exempt under Section 15332 of the California Environmental Quality Act
guidelines for in-fill development projects,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto
that it hereby finds that the proposed project that includes the acquisition and sale of real
property and conditional vacation of the public alley are necessary steps for the new
courthouse and has been determined to be Categorically Exempt under Section 15332 of
the California Environmental Quality Act guidelines for in-fill development projects,
because (a) it is consistent with the applicable general plan designation and policies, and
all applicable zoning designations and regulations; (b) it is located within City limits on a
project site of no more than five acres substantially surrounded by urban uses; (c) the
project site has no value as habitat for endangered, rare, or threatened species; (d)
approval of the project would not result in any significant effects relating to traffic, noise,
air quality, or water quality; and (e) the site can be adequately served by all required
utilities and public services.

BE IT FURTHER RESOLVED that the Council hereby approves the Conditional
Property Acquisition Agreement with Gina Rugani, Michael Gene Rugani and Sandra
Ann Heffernan, Trustees, or any Successor Trustee(s) thereto of the Gina Rugani
Survivor’s Trust Agreement dated July 17, 1978, as amended, for acquisition of real
property at 713 10th Street, Modesto, CA., being APN 106-042-005 for the sum of Three
Hundred Forty-One Thousand Dollars ($341,000) for sale to the State of California,
acting by and through the Judicial Council of the Courts, Administrative Office of the
Courts for the purpose of the new Modesto Courthouse Project.
BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to execute (1) the Agreement, (2) a Certificate of Acceptance, and (3) all necessary and related documents required to complete the transaction, transfer title, and close escrow.

The foregoing resolution was introduced at a special meeting of the Council of the City of Modesto held on the 15th day of April, 2014, by Councilmember Madrigal, who moved its adoption, which motion being duly seconded by Councilmember Cogdill, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Cogdill, Gunderson, Kenoyer, Lopez, Madrigal, Zoslocki, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: [Signature]

STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: [Signature]

ADAM LINDGREN, Interim City Attorney
CONDITIONAL PROPERTY ACQUISITION AGREEMENT

This Conditional Property Acquisition Agreement (the "Agreement") is made this day of April, 2014, for reference purposes and is entered into by and between Gina Rugani, Michael Gene Rugani, and Sandra Ann Hefferman, Trustees, or any Successor Trustee(s) thereto of the Gina Rugani Survivor's Trust Agreement dated July 17, 1978, as Amended (hereafter collectively referred to as "Seller"). and the City of Modesto, a charter city and municipal corporation of the State of California (hereafter referred to as "Buyer" or "City"). Seller and Buyer or City are hereafter collectively referred to as a Party or the Parties. This Agreement shall also constitute Escrow Instructions directed to Escrow Holder to consummate the acquisition of real property in accordance with the terms and conditions set forth herein. This Agreement is made with reference to the following recitals.

RECITALS

A. The State of California, acting by and through the Judicial Council of California, Administrative Office of the Courts (hereafter "State") has tentatively approved a site for construction of new court facilities in the City of Modesto, County of Stanislaus being that property located within the city block bounded by H Street on the north, 10th Street on the east, G Street on the south, and 9th Street on the west, Modesto, Stanislaus County, California (hereafter "Court Facilities Site"). Final site approval for new court facilities is vested in the State Public Works Board (the "SPWB") and is contingent on the acquisition of all real property located in the Court Facilities Site. The Court Facilities Site is comprised of eleven (11) legal parcels. Five (5) of the parcels are owned by City or its former redevelopment agency (hereafter the "City Parcels") and City has agreed in principle to transfer title of the City Parcels to State for purposes of construction of the new court facilities so long as the remaining six (6) parcels are acquired for the same purpose. The Assessor Parcel Number and owner(s) of each of remaining six (6) parcels (hereafter the "Private Parcels") are identified as follows:

<table>
<thead>
<tr>
<th>APN 106-042-005</th>
<th>Gina Rugani, Michael Gene Rugani, and Sandra Ann Hefferman, Trustees, or any Successor Trustee(s) thereto of the Gina Rugani Survivor's Trust Agreement dated July 17, 1978, as amended</th>
</tr>
</thead>
<tbody>
<tr>
<td>APN 106-042-006</td>
<td>G &amp; K Enterprises, LLC, a California limited liability company</td>
</tr>
<tr>
<td>APN 106-042-007</td>
<td>Charles W. Noble and Dorothy M. Noble, Trustees of the Noble 1995 Trust, as to an undivided ¼ interest; Von Deen Bubeck, Trustee of the Von Deen Bubeck Trust as set forth in the Bubeck Revocable Trust dated March 19, 1997, as to an undivided ¼ interest, and Jerry R. Bubeck and Von Deen Bubeck, Trustees of the Bubeck Revocable Trust dated March 19, 1997, as to an undivided ¼ interest</td>
</tr>
<tr>
<td>APN 106-042-010</td>
<td>Gary C. Gervasoni and Myrna Gervasoni, husband and wife, as community property</td>
</tr>
</tbody>
</table>
B. Seller and City acknowledge and agree that the Private Parcels and the City Parcels constitute and collectively shall be referred to as the Court Facilities Site Property.

C. Seller acknowledges and understands that City has been authorized by State to negotiate the purchase of the Private Parcels along with the sale of the City Parcels to State for construction of new court facilities and that the final approval of the Court Facilities Site by SPWB is contingent on City obtaining executed purchase acquisition agreements for the Private Parcels and entering into an acquisition agreement to transfer the City Parcels and Private Parcels to State.

D. Seller owns that real property located in the City of Modesto, County of Stanislaus commonly described as 713 10th Street, having APN 106-042-005 and more particularly described in Exhibit "A" attached and made a part hereof (hereafter the "Property").

E. Seller desires to sell to City, and City desires to purchase from Seller the Property on terms and conditions specified in this Agreement.

F. Seller acknowledges, understands and agrees that the agreement by City to purchase the Property is a conditional one and is contingent on multiple conditions, specified below, each of which must be satisfied.

G. Seller understands and agrees that should all conditions of purchase be satisfied that immediately following the transfer of title of Property to City, the Property shall be sold and conveyed by City to State.

The Parties agree that the foregoing recitals are true and correct and are part of this Agreement.

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, the Parties agree as follows:

**Section 1. Sale of Property.** Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller on the terms hereinafter stated, the Property. The term "Property" as used in this Agreement shall mean and refer to the real property described above; all improvements located thereon; all privileges, rights, easements, hereditaments and appurtenances to the real property, including, without limitation, all minerals, oil, gas, and other hydrocarbon substances on and under the real property; all air rights, water, and water rights relating to the real property; and all rights, title and interest of Seller in and to any roads, easements and other rights-of-way or appurtenances included on or adjacent to the real property used in connection with the
beneficial use and enjoyment of the real property, but excluding any removable equipment and personal property.

Section 2. Purchase Price of Sale Property. The purchase price for the Property shall be THREE HUNDRED FORTY ONE THOUSAND and No/100ths Dollars ($341,000.00) (the "Purchase Price").

Section 3. Payment of Purchase Price. Prior to the Close of Escrow (as such term is defined in Section 4, below) the Purchase Price and any sums due from Buyer to the Escrow Holder and Seller as a consequence of the purchase and sale of the Property shall be deposited into Escrow, in cash or other immediately available funds.

Section 4. Escrow.

A. Opening of Escrow. The Parties shall deliver a copy of the executed Agreement to Chicago Title Company, located at 1700 Standiford Avenue, Modesto, California 95350, Telephone Number (209) 571-6300, Attention: Karla Haney ("Escrow Holder") no later than three (3) business days after execution of the Agreement by the Parties hereto. For purposes of this Agreement, as between the Parties, the escrow ("Escrow") shall be deemed opened on the date Escrow Holder shall have received a fully executed copy or copies of executed counterparts of this Agreement from Seller and Buyer (the "Opening of Escrow"), and Escrow Holder shall notify Buyer and Seller, in writing, of the date Escrow is opened. Buyer and Seller agree to execute, deliver and be bound by any reasonable or customary supplemental escrow instructions ("Escrow Instructions") of Escrow Holder or other instruments as may reasonably be required by Escrow Holder in order to consummate the transaction contemplated by this Agreement. Any such supplemental instructions shall not conflict with, amend or supersede any portions of this Agreement. In the event of any inconsistency between the provisions of such supplemental instructions with the provisions of this Agreement, the provisions of this Agreement shall control.

B. Close of Escrow. For purposes of this Agreement, the "Close of Escrow" shall be defined as the date that the grant deed conveying fee simple title to the Property to Buyer, is recorded in the Official Records of Stanislaus County, California. The period commencing with the Opening of Escrow and continuing through the Close of Escrow shall hereinafter be referred to as the "Escrow Period." Escrow shall close on the date which is on or before sixty (60) days after the latter of (i) State's authorization of the acquisition of the Court Facilities Site Property, by the SPWB at a duly noticed public meeting, or (ii) the Modesto City Council's approval of the acquisition of the Private Parcels and the sale of the City Parcels to the State (the "Closing Date"). If Close of Escrow is delayed by any cause beyond the reasonable control of Buyer or State, Buyer shall be entitled to an equitable extension of the Escrow Period, for a reasonable time agreed to and negotiated in good faith by the Parties, at no cost to Buyer or Seller. Notwithstanding the foregoing, if the Close of Escrow has not occurred by December 31, 2014, either Party may terminate this Agreement on written notice to the other. Termination by Seller will not be effective until ten (10) business days of receipt of such notice by Buyer.
C. **Extension of Close of Escrow.** No extensions shall occur unless agreed to in writing by Buyer and Seller.

D. **Failure to Timely Close.** If the conditions precedent to Close of Escrow as provided herein have not been satisfied by the Closing Date, this Agreement may be terminated upon written notice by Buyer and thereupon this Agreement shall become null and void, except that Buyer's restoration and indemnity obligations under Section 7A(1)(i) below shall survive such termination.

E. **Cooperation for Tax Deferred Exchange.** Buyer agrees to cooperate with Seller in the event that Seller desires to qualify the transaction as a tax-deferred exchange under Section 1031 of the Internal Revenue Code. Buyer shall not be liable for any additional costs or expenses as a result of such an exchange. Buyer shall not be responsible or liable for qualifications of the exchange. Seller shall hold Buyer harmless for any expense or liability incurred by Buyer as a result of such exchange. Seller shall be authorized to assign all or any part of this Agreement to an accommodator who will assume the obligations of Seller but not Seller's representations, warranties, and covenants.

**Section 5. Condition of Title.** It shall be a condition to the Close of Escrow for Buyer's benefit that title to the Property be conveyed immediately to Buyer upon Close of Escrow by Grant Deed, and that title to the Court Facilities Site Property be delivered free and clear of all liens, reservations, encumbrances, assessments, easements, of record or otherwise, except for existing Leases (as that term is defined in Section 7A(2) below) and those approved by State and City, in writing, prior to the Close of Escrow. Subject to State's approval, and City's review and approval of any further amendments to that certain Amended Preliminary Report, Title No. 11-50910332-I-ML dated June 13, 2013, a copy of which is attached hereto as Exhibit B ("Preliminary Report"), City tentatively approves exceptions numbered 3, 5-14, 16, and 21 of the Preliminary Report.

To that end, Escrow Holder may expend any and all monies payable to Seller under this Agreement to discharge any monetary obligations that are liens upon the Property, and shown as exceptions in the Preliminary Report, and any exceptions shown in any subsequent amendment to it, including but not limited to those arising from judgments, assessments, taxes, or debts secured by deeds of trust or mortgages. Property taxes for the fiscal year in which escrow closes, if unpaid, shall be paid by Seller in escrow to and including the date of Close of Escrow as set forth in Section 11 hereof.

**Section 6. Title Policy.** Title shall be evidenced by the willingness of Chicago Title Company ("Title Company") to issue a CLTA Owner's Standard Coverage Form Policy of Title Insurance ("Title Policy") in the amount of the Purchase Price showing title to the Property vested subject only to the exceptions described above.
Section 7. Conditions to Close of Escrow.

A. Conditions to Buyer’s Obligations. Buyer’s obligation to consummate the transaction contemplated by this Agreement is subject to the satisfaction of the following conditions for Buyer’s benefit (or Buyer’s waiver thereof, it being agreed that Buyer may waive any or all of such conditions) on or prior to the dates designated below for the satisfaction of such conditions. Notwithstanding any other provision of this Agreement, City shall have no obligation to purchase the Property, and no transfer of title to City or State may occur, unless each of the following conditions has been satisfied or waived by City in writing:

(1) Buyer’s Review of the Court Facilities Site Property. Buyer shall have until 5:00 p.m. Pacific Time on Friday, May 16, 2014 (such period of time between the execution of this Agreement by Seller and May 16, 2014 shall be referred to herein as the “Due Diligence Period”) to satisfy itself, in Buyer’s sole and absolute discretion, as to the following described matters concerning the Court Facilities Site Property, including the Property. If, during the Due Diligence Period, Buyer determines that it is dissatisfied with any aspect of the Court Facilities Site Property or its condition or suitability for Buyer’s intended use, then Buyer may terminate this Agreement and the Escrow created pursuant hereto, by delivering written notice to Seller and Escrow Holder on or before the expiration of the Due Diligence Period of Buyer’s election to terminate. If Buyer fails to deliver any such termination notice to Seller and Escrow Holder on or before the expiration of the Due Diligence Period, then, Buyer shall be deemed to be satisfied with all aspects of the Court Facilities Site Property including, without limitation, the condition and suitability of the Property for Buyer’s intended use.

(i) Buyer’s Review of the Court Facilities Site Property and Related Matters. Buyer shall be satisfied with all aspects of the Court Facilities Site Property, and its condition and suitability for the intended use thereof, including, without limitation, the physical condition of the Court Facilities Site Property, the net acreage of the Court Facilities Site Property, the condition of the access to public roads and condition and availability of water, electricity, natural gas, and other utilities, to the Court Facilities Site Property in adequate capacities and appropriate locations. After the execution of this Agreement by Seller and during the Due Diligence Period, Buyer, Buyer’s agents, employees, contractors and subcontractors and State’s agents, employees, contractors and subcontractors shall have the right to enter upon the Property at reasonable times during ordinary business hours, to make such inspections, surveys and tests as may be necessary in Buyer’s discretion, including, without limitation, soils tests, environmental surveys, biological resources analysis, archeological surveys, toxic waste analysis, geological and/or engineering studies and related studies. Buyer shall use care and consideration in connection with any of its inspections, surveys, studies or tests and Seller, or Seller’s agent, shall have the right to be present during any inspection of the Property by Buyer or its agents. Buyer shall restore the Property to its original condition after any and all tests and/or inspections. Buyer, State, and their respective employees, agents and contractors shall make reasonable efforts to avoid interfering with Seller’s or Seller’s tenants’ ongoing use, if any, of the Property. Buyer hereby indemnifies, protects, defends and holds Seller, its officers, directors, members, managers, trustees, employees, agents, representatives, immediate family members, successors and assigns (collectively “Seller Parties”), and the Property free and
harmless from and against any and all costs, losses, liabilities, damages, lawsuits, judgments, actions, proceedings, penalties, demands, attorneys’ fees, mechanic’s or other liens, or expenses of any kind or nature whatsoever, arising out of or resulting from any entry and/or activities upon the Property by Buyer, and its respective agents, employees, contractors, and subcontractors pursuant to this subsection (i). If Buyer does not purchase the Property, it shall furnish complete copies of all such investigations, inspections and tests described above to Seller without charge and without warranty as to their accuracy or reliability within ten (10) days of Buyer’s exercise of its right to terminate this Agreement or of Buyer otherwise failing to close hereunder.

(ii) Environmental Condition of Court Facilities Site Property.
Buyer shall be satisfied, in Buyer’s sole and absolute discretion that the Court Facilities Site Property, including its soil and ground water under the land, is free from all Hazardous Substances, as defined in Section 13F, below, and is in full and complete compliance with the law with respect to same.

(iii) Changes to Condition of Property. If the condition of the Property materially changes after the expiration of the Due Diligence Period, Buyer shall have the right, but not the obligation, to deliver to Seller a written notice objecting to the condition of the Property up to the Close of Escrow ("Final Due Diligence Notice"). If Buyer does not deliver the Final Due Diligence Notice on or prior to the Close of Escrow, Buyer shall be deemed to have given its final approval of the condition of the Property, however, if Buyer does provide a Final Due Diligence Notice, Buyer shall have the right to terminate this Agreement unless the condition of the Property is restored to a condition that is acceptable to Buyer.

(2) Existing Leases and Estoppel Certificates. No later than three (3) business days after the Opening of Escrow, Seller shall deliver to Buyer a copy of all existing leases, licenses or other agreements that would grant any person or entity the right to use or occupy any portion of the Property ("Leases" or individually "Lease"). In the event any of the existing Leases are oral, Seller shall deliver to Buyer a written summary of all terms of all such Leases including, without limitation, the name and telephone number of the occupants, the expiration date of the Leases, the current rent and whether occupants have any option(s) to extend the term of the Leases, and/or an option or a right of first refusal to purchase the Property. Buyer shall be satisfied, in Buyer’s sole and absolute discretion, with the terms of the Leases, in which event Buyer shall take title to the Property subject to the terms of such Leases. Buyer shall indicate its satisfaction or objections be the expiration of the Due Diligence Period to any and all Leases in existence as of the full execution date of this Agreement.

Seller shall have delivered to Buyer no more than ten (10) days prior to Close of Escrow an estoppel certificate relative to each Lease, executed and acknowledged by Seller’s tenants, if any, in the form set forth in Exhibit C.

(3) Agreement with Tenants. Buyer shall have entered into agreements with Seller’s existing tenants, if any, regarding early termination of tenants’ Leases, and/or the termination of tenants’ option, right of first refusal, and any other rights to extend the
term of the Leases or to purchase the Property, to the extent such agreements are necessary for City or State to take possession of the Property by January 1, 2016.

(4) Approval by State Department of Finance. The California Department of Finance shall have approved the transfer to City of those parcels to which title was formerly held by the Redevelopment Agency to the City of Modesto, a dissolved public entity.

(5) Authorization by SPWB. Authorization of the acquisition of the Court Facilities Site Property by the SPWB at a duly noticed public meeting.

(6) Approved Property Acquisition Agreements for the Private Parcels. Each of the owners of the Private Parcels shall have executed a Conditional Property Acquisition Agreement substantially in the form of this Agreement, and the City Council of the City of Modesto shall have approved such a Conditional Property Acquisition Agreement for each of the Private Parcels, including the Property.

(7) Approved Property Acquisition Agreements for the City Parcels. Approval by the City Council of the City of Modesto, State and SPWB of a Property Acquisition Agreement for each of the City Parcels.

(8) Agreement between City and State. City and State shall have executed agreements, approved by the governing bodies of each entity, specifying the rights, duties, and obligations of City and State following the transfer of title to State of the Court Facilities Site Property, including the control, management, and use of the Court Facilities Site Property.

(9) Deposit of all Documents. The timely deposit by Seller with Escrow Holder of all documents required to be deposited by Seller under this Agreement.

(10) Seller’s Performance of Obligations. Performance by Seller of all obligations, covenants and agreements on Seller’s part to be performed under this Agreement within the time provided in this Agreement for such performance.

(11) No Breach by Seller. Seller shall not be in breach of this Agreement.

(12) Accuracy of Representations and Warranties. As of the Close of Escrow, all of Seller’s representations and warranties set forth herein shall be true and accurate with the same force and effect as if remade by Seller in a separate certificate at the Close of Escrow.

(13) Title Insurance Policy. On the date of the Close of Escrow, Title Company shall be irrevocably and unconditionally committed to issue to State the Title Policy, with liability coverage in the amount of the Purchase Price, and showing fee title to the Property
vested in State free and clear of all liens, taxes, assessments, reservations, encumbrances, easements of record or otherwise, except as set forth in Section 5 of this Agreement.

(14) No Modification of Existing Leases. After the date of execution of the Agreement and as of the Close of Escrow, Seller shall not have modified any material term of any existing Lease affecting the Property or entered into any new Lease containing any material term, without City’s prior written consent, which consent City may withhold or grant in its absolute discretion. For purposes of this subsection “material term” shall mean any lease term that would adversely affect the ability of City to take possession of the Property on January 1, 2016, including, but not limited to, extending the term of an existing Lease or entering into a new Lease that expires after December 31, 2015, increases landlord’s responsibilities under the Lease, decreases the rent or other charges payable by tenant under the Lease, converts a triple net Lease into a full service, gross, or modified full service Lease, or imposes on landlord any obligation that adversely affects landlord’s anticipated income from any Lease (including, but not limited to, providing for any tenant incentives [e.g. free rent, reduced rent, tenant improvements, and matters of a similar nature] to be given, made, or realized after Close of Escrow.

(15) Simultaneous Close of Escrow. Simultaneous Close of Escrow on the acquisition of the Private Parcels.

(16) Buyer’s Objections. Nothing in this Agreement shall be interpreted to require Seller to remediate the Property, or make repairs or improvements to the Property not otherwise required to be made by Seller pursuant to the terms of the Leases, prior to Close of Escrow.

B. Conditions to Seller’s Obligations. Seller’s obligation to consummate the transaction contemplated by this Agreement is subject to the satisfaction of the following conditions for Seller’s benefit (or Seller’s waiver thereof, it being agreed that Seller may waive any or all such conditions):

(1) Deposit of All Documents and Funds. The timely deposit by City with Escrow Holder of all the documents, and the timely deposit by State, of all funds required to be deposited under this Agreement.

(2) Performance of Buyer’s Obligations. Performance by City of all obligations, covenants and agreements on City’s part to be performed under this Agreement within the time provided in the Agreement for such performance.

(3) No Breach by Buyer. Buyer shall not be in breach of this Agreement.

(4) Accuracy of Representations and Warranties. As of the Close of Escrow, all of Buyer’s representations and warranties set forth herein shall be true and accurate.
with the same force and effect as if remade by Buyer in a separate certificate at the Close of
Escrow.

Section 8. Deposits by Seller. At least three (3) business days prior to the Close
of Escrow, Seller shall deposit or cause to be deposited with Escrow Holder the following
documents or instruments:

A. Grant Deed. A grant deed ("Grant Deed") in substantially the form
attached hereto as Exhibit D, duly executed by Seller and properly acknowledged;

B. FIRPTA Certificate. A certificate of non-foreign status (the "FIRPTA
Certificate"), duly executed by Seller;

C. California Real Estate Withholding Certificate. A Real Estate
Withholding Certificate (California Franchise Tax Board Form 593-C).

Section 9. Deposits by State. Pursuant to and conditioned upon the terms of
this Agreement, State shall deposit or cause to be deposited with Escrow Holder prior to the
Close of Escrow, in immediately available funds, the Purchase Price and other
sums due from
Buyer hereunder in the amounts set forth herein, along with any documents or instruments
required of Buyer by Escrow Holder for Close of Escrow.

Section 10. Escrow Charges and Closing Costs. State shall bear the cost of the
Title Policy, any endorsements thereto, and any extended coverage ALTA, or other title policy or
accompanying survey. Buyer shall be responsible for the payment of documentary transfer taxes
and recording the Grant Deed, if any. Seller shall be responsible for the cost of recording
documents necessary to deliver clear title to Buyer, if any. Buyer and Seller shall each pay one-
half (1/2) of the escrow fees. Buyer and Seller shall each bear their own respective legal and
accounting costs, if any, outside of Escrow except as expressly provided in Section 18 herein or
elsewhere in this Agreement. All other costs or expenses not otherwise provided for in this
Agreement shall be apportioned or allocated between Buyer and Seller in the manner customary
in Stanislaus County, California. Notwithstanding the foregoing, Buyer shall not be obligated to
pay for its share of closing costs unless and until it receives Buyer's Estimated Closing Costs
from Escrow Holder (the preceding portion of this sentence is not intended to obligate Seller to
pay Buyer's share of closing costs).

Section 11. Prorations. The following prorations shall be made between Seller
and Buyer on the Close of Escrow, computed as of the Close of Escrow:

A. Taxes and Assessments. Real and personal property taxes and
assessments on the Property shall be prorated on the basis that Seller is responsible for (i) all
such taxes for the fiscal year of the applicable taxing authorities occurring prior to the "Current
Tax Period" (as hereinafter defined) and (ii) that portion of such taxes for the Current Tax Period
determined on the basis of the number of days which have elapsed from the first day of the
Current Tax Period to the Close of Escrow, inclusive, whether or not the same shall be payable
prior to the Close of Escrow. The phrase “Current Tax Period” refers to the fiscal year of the applicable taxing authority in which the Close of Escrow occurs. In the event that as of the Close of Escrow the actual tax bills for the year or years in question are not available and the amount of taxes to be prorated as aforesaid cannot be ascertained, then rates and assessed valuation of the previous year, with known changes, shall be used, and when the actual amount of taxes and assessments for the year or years in question shall be determinable, then Seller shall be responsible for any unpaid taxes and assessments. Buyer shall not be responsible for any tax refund.

B. Other Proratable Expenses. Escrow Holder shall prorate other proratable expenses, based on a thirty (30)-day month through the Close of Escrow, including rent paid pursuant to existing Leases on the Property, if any. All rent and other payments due after the Close of Escrow pursuant to any Lease on the Property shall be paid to Buyer. If any rent or other payments due pursuant to any Lease on the Property are collected by Seller for any period beyond the last day of the month in which Escrow closes, Seller shall pay such amounts to Buyer. If any rent or other payments due pursuant to any Lease on the Property are collected by Buyer for any period prior to Close of Escrow, Buyer shall pay such amounts to Seller. Seller shall return to tenants under any Lease on the Property any security, cleaning, key or other deposits and indemnify and hold Buyer harmless from any claim therefor.

C. Proration Statement. At least two (2) business days prior to the Close of Escrow the Parties hereto shall approve an estimated proration statement prepared by Escrow Holder setting forth all of the prorations to be made.

Section 12. Disbursements and Other Actions by Escrow Holder. Upon the Close of Escrow, Escrow Holder shall promptly undertake all of the following in the manner indicated:

A. Prorations. Prorate all matters referenced in Section 11 based upon the statement delivered into Escrow signed by the Parties.

B. Recording. Cause the Grant Deed and any other documents which the Parties hereto may mutually direct, including reconveyance of any deeds of trust and releases of any liens recorded on the Property, to be recorded in the Official Records.

C. Disbursements. Disburse funds in payment of all items chargeable to Buyer and Seller with the balance paid to Seller in payment of the Purchase Price.

D. Title Policy. Direct the Title Company to issue the Title Policy.

E. Documents to Seller. Deliver to Seller a conformed copy of the recorded Grant Deed and conformed copies of any reconveyances of deeds of trust and releases of any liens on the Property.
F. Documents to Buyer. Deliver to Buyer the FIRPTA Certificate, the California Real Estate Withholding Certificate, and a conformed copy of the recorded Grant Deed, and conformed copies of reconveyances of deeds of trust and releases of liens on the Property, if any.

Section 13. Seller's Representations, Warranties and Covenants. In consideration of Buyer entering into this Agreement and as an inducement to Buyer to purchase the Property from Seller, Seller makes the following representations, warranties, and covenants, each of which is material and is being relied upon by Buyer.

A. Authority.

(1) Seller has full right, power and legal authority to enter into this Agreement, sell, transfer and convey the Property to Buyer under this Agreement and to carry out Seller's obligations under this Agreement. Upon the Close of Escrow, Buyer will have good, marketable and insurable title to the Property.

(2) The individuals executing this Agreement and the instruments referenced herein on behalf of Seller have the legal power, right and actual authority to bind Seller to the terms hereof and thereof.

(3) This Agreement is, and all other instruments, documents and agreements required to be executed and delivered by Seller in connection with this Agreement are and shall be, duly authorized, executed and delivered by Seller and shall be valid, legally binding obligations of and enforceable against Seller in accordance with their terms, subject only to enforcement that may be limited by applicable bankruptcy, insolvency or similar laws, and do not, and as of the Close of Escrow will not, to the best of Seller's knowledge, violate any provisions of any agreement, law, rule, regulation or judicial order to which Seller or the Property is subject.

(4) All requisite action (corporate, trust, partnership, limited liability company or otherwise) has been taken by Seller in connection with entering into this Agreement, the instruments referenced herein, and the consummation of the transactions contemplated hereby. No consent of any partner, shareholder, member, beneficiary, creditor, investor, judicial or administrative body, authority, or other party is required.

B. No Conflicts. Neither the execution and delivery of this Agreement and documents referenced herein, nor the incurrence of the obligations set forth herein, nor the consummation of the transactions herein contemplated, nor compliance with the terms of this Agreement and the documents referenced herein conflict with or result in the material breach of any terms, conditions or provisions of, or constitute a default under, the terms of Seller trusts, the Articles of Organization or Operating Agreement of Seller, any bond, note, or other evidence of indebtedness or any contract, indenture, mortgage, deed of trust, loan, partnership agreement, lease or other agreements or instruments to which Seller is a party or which affect the Property.
C. **Consents.** No consent, approval, license, permit, order, qualification or authorization of, or registration, declaration, notice or filing with, any governmental entity or any other person or entity is required for or in connection with the execution and delivery by Seller of this Agreement, and the consummation by Seller of the transactions contemplated by this Agreement, other than as set forth in Section 7.A hereof.

D. **Legal Matters.** To the actual knowledge of the individuals executing this Agreement, without further inquiry or investigation, Seller represents and warrants that:

1. There is no suit, action, arbitration, legal, administrative, or other proceeding or inquiry pending against the Property or pending against Seller which could affect Seller's title to the Property.

2. There are no attachments, execution proceedings, or assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other proceedings pending against Seller.

3. There are no: (a) agreements, written or oral, under which Seller is or could become obligated to convey all or part of the Property or any interest in the Property to a third party; (b) rights of first refusal, reversions, or options to purchase the Property or any portion thereof (other than as set forth in the Leases disclosed pursuant to Section 7A(1)(iii) hereof; (c) Leases (other than those disclosed pursuant to Section 7A(1)(iii) hereof), liens, easements, prescriptive rights, contracts or other agreements for services, supplies, or materials which may affect title to or use of the Property (other than as set forth on the Leases) after the Close of Escrow or impose an obligation on Buyer after the Close of Escrow; (d) adverse or other parties in possession or use of any part of the Property; or (e) to the best of Seller's knowledge, special assessments, condemnation actions, moratoriums, initiatives or legislation affecting the Property (and Seller has not received any notice of any being contemplated).

4. Except for Leases disclosed by Seller to Buyer in writing, pursuant to Section 7A(1)(iii) hereof, as of the Close of Escrow, there shall be no unrecorded leases, licenses or other agreements which would grant any person or entity the right to use or occupy any portion of the Property, including any improvements thereon.

5. To the best of Seller's knowledge, there are no and have been no: (a) actual or pending public improvements which will result in the creation of any liens upon the Property, including public assessments or mechanic's liens and Seller agrees to indemnify, defend and hold Buyer free and harmless from and against any claims, liabilities, losses, costs, damages, expenses and attorneys' fees arising from any liens, encumbrances or assessments that have been, or may be, incurred by Seller or imposed upon the Property prior to the Close of Escrow, but only to the extent any obligations to pay a fee or assessment for infrastructure is due and payable prior to the Close of Escrow, and Buyer agrees to cooperate with Seller, at Seller's costs and to the extent permitted by law, with respect to Seller's efforts prior to Close of Escrow to remove any such liens, fees, assessments, or encumbrances; or (b) uncured notices from any
governmental agency notifying Seller of any violations of law, ordinance, rule, or regulation, occurring on the Property. Other than as provided above, Buyer shall assume responsibility for assessments arising from any actual or impending public improvements as of the Close of Escrow.

E. No Works of Improvement. No works of improvement or other activities have occurred with respect to the Property which could give rise to any liens against the Property.

F. Environmental. Except as otherwise disclosed by Seller to Buyer in writing, Seller has not: (a) conducted or authorized the presence, placement, generation, transportation, storage, release, treatment, or disposal at the Property of any Hazardous Substance; or (b) received from or given to any governmental authority or other party any notice or other communication or agreement relating in any way to the presence, placement, generation, transportation, storage, release, treatment or disposal of any Hazardous Substance on the Property. Except as otherwise disclosed by Seller to Buyer in writing, (a) there presently are not, and to the best of Seller's knowledge there have never been any Hazardous Substances or storage tanks containing or having contained petrochemicals in, on, under, or about the Property; and (b) to the best of Seller's knowledge, there is no pending or threatened litigation, proceedings or investigation before any governmental entity or agency in which the presence, release, threat of release, placement, generation, transportation, storage, treatment or disposal in, on, under, or about the Property of any Hazardous Substance has been alleged; and (c) to the best of Seller's knowledge, there is no defect or condition with respect to the Property which would prevent the use of the Property by Buyer and State for its intended use as a public courthouse, including, but not limited to, the condition of the soil, the existence of geologic hazards or groundwater contamination, the existence of ecological or environmental impediments or the existence of any hazardous or toxic materials on or beneath the surface of the Property at levels requiring remediation or removal under existing applicable laws and regulations. For purposes of this Agreement, the term "Hazardous Substance" means any matter which has been or is determined by any current or proposed federal, state, or local statute, law, enactment, ordinance, regulation, order, rule or judicial decision to constitute a hazardous or toxic waste, substance or material, but excepting normal commercial and office products such as cleaners and copy fluids and normal petroleum product residue from parked and moving vehicles.

G. Pending Close of Escrow.

(1) New Leases. Seller will not hereafter enter into new Leases or any other obligations or agreements affecting the Property after Seller's execution of this Agreement, except for obligations or agreements that terminate at or before Close of Escrow and that are fully disclosed to Buyer, without the prior written consent of Buyer, which consent the Buyer may withhold or grant in its absolute discretion.

(2) Additional Liens. Seller will not subject the Property to any additional liens, encumbrances, covenants, conditions, easements, rights of way or similar
matters after Seller's execution of this Agreement that will not be eliminated prior to the Close of Escrow.

(3) **Violations of Law.** After the execution of this Agreement by Seller, Seller shall not knowingly violate nor allow violation of, any law, ordinance, rule, or regulation affecting the Property.

(4) **Preservation of Easements and Other Rights.** Prior to the Close of Escrow, Seller shall do or cause to be done, all things within its reasonable control to preserve intact and unimpaired any and all rights of way, easements, grants, appurtenances, privileges, and licenses in favor or consisting of any portion of the Property.

(5) **Taxes and Assessments.** Seller shall, if and when the same are due, all payments on any encumbrances or assessments presently affecting the Property and any and all taxes, assessments, and levies in respect of the Property through the Close of Escrow.

(6) **Zoning.** Prior to the Close of Escrow, Seller shall not take any action, or fail to take any action, that would result in any change, alteration, modification, addition to, or termination of any of the presently-existing general plan or zoning designation of the Property, without Buyer's prior written approval, and Seller shall immediately provide Buyer with a copy of any written materials received by Seller evidencing or relating to any proposal or attempt to effect any such change, alteration, modification, addition to, or termination other than those sought by Buyer.

(7) **No Modification to Condition of Property.** Seller shall (i) not alter the physical condition of the Property; (ii) maintain the Property in substantially the same condition as that which existed as of the date that Buyer executed this Agreement; and (iii) deliver possession of the Property to Buyer at the Close of Escrow in substantially the same condition that existed as of the date that Seller executed this Agreement except for any remediation that Seller agrees to do in response to Buyer's due diligence.

Notwithstanding the foregoing, Seller may remove any fixture or fixtures (as that term is defined in Civil Code Section 660) from the Property if (i) at least sixty (60) days prior to the Close of Escrow, Seller submits a list of the fixture(s) Seller wishes to remove from the Property to Buyer, identifying such fixture(s) with reasonable particularity; (ii) Buyer consents to such removal in writing (which consent may be granted or withheld in Buyer's sole discretion); (iii) the removal of such fixture(s) is completed on or before December 31, 2015; and (iv) the removal of such fixture(s) does not interfere with the use of the Property by any tenant occupying the Property or any part thereof.

(8) **Notification to Buyer.** Seller shall promptly notify Buyer of any event or circumstance that could or would render any representation or warranty of Seller under this Agreement untrue or misleading, or of any covenant of Seller under this Agreement incapable or less likely of being performed; provided, however, that Seller's foregoing obligation
to provide notice to Buyer shall in no way relieve Seller of any liability for a breach by Seller of any of its representations, warranties or covenants under this Agreement.

(9) No Recordation of CCRs. Seller shall not record any covenants, conditions or restrictions against the Property, including without limitation any design restrictions with respect to the development of the Property.

(10) No Assessment Districts or Special Tax Districts. Seller shall not assist with the formation, vote for, or agree to any assessment districts or special tax districts which results in a special tax or assessment upon the Property.

(11) Confidentiality. Seller shall keep strictly confidential and agrees not to disclose or permit the disclosure of the terms of this Agreement to any third parties other than Seller’s tax advisors, counsel, and real estate agents (“Seller’s Representatives”) until after the Close of Escrow. Prior to the disclosure of the terms of this Agreement to Seller’s Representatives, Seller shall inform Seller’s Representatives of the confidential nature of the terms of this Agreement and shall agree to act in accordance with the provisions of this Section 13G(11). Notwithstanding the foregoing, Seller and Seller’s Representatives may disclose the terms of this Agreement pursuant to the order or requirement of a court, administrative agency, or other governmental agency provided, however, that Seller shall provide prompt notice of such court order or requirement to Buyer in order to enable Buyer to seek a protective order or otherwise prevent or restrict such disclosure, and shall cooperate with Buyer in connection with such efforts. Seller hereby acknowledges and agrees that any remedy at law, including, without limitation, monetary damages, for any breach or threatened breach of the provisions of this Section 13G(11) would be inadequate and impossible to ascertain, and each party hereby consents to the granting by any court of an injunction or other equitable relief, without the inadequacy of monetary damages being proved or any bond or similar security being posted, in order that the breach or threatened breach of such provisions may be effectively restrained.

(12) Accurate Through Close of Escrow. As of the Close of Escrow, all of Seller’s representations and warranties set forth herein shall be true and accurate with the same force and effect as if remade, by Seller in a separate certificate at the Close of Escrow.

H. General Representation. No representation, warranty or statement of Seller in this Agreement or in any document, instrument, certificate or schedule furnished or to be furnished to Buyer pursuant hereto, to the best of Seller’s knowledge, contains or will contain any untrue statement of a material fact or omits or will omit any material fact the omission of which would be misleading. Notwithstanding any terms to the contrary contained herein, Seller makes no representations or warranties about the truth, accuracy or completeness of any reports or analyses prepared by third parties that Seller furnishes to Buyer hereunder.

Seller’s representations and warranties made in this Agreement shall be continuing and shall be true and correct as of the date of the Close of Escrow with the same force and effect as if remade by Seller in a separate certificate at that time. The truth and accuracy of Seller’s representations and warranties made herein shall constitute a condition for the benefit of Buyer.
to the Close of Escrow (as elsewhere provided herein) and shall not merge into the Close of Escrow or the recordation of the Grant Deed in the Official Records, and shall survive the Close of Escrow.

Section 14. Buyer's Representations, Warranties and Covenants. In consideration of Seller entering into this Agreement and as an inducement to Seller to sell the Property to Buyer, Buyer makes the following representations, warranties, and covenants, each of which is material and is being relied upon by Seller, and which are true and correct as of execution hereof, and shall be true and correct as of the Close of Escrow:

A. Authority. Buyer has the legal right, power and authority to enter into this Agreement and to consummate the transaction contemplated hereby, and the execution, delivery and performance of this Agreement have been duly authorized and no other action by Buyer is requisite to the valid and binding execution, delivery and performance of this Agreement, except as otherwise expressly set forth herein.

B. Binding. This Agreement is, and all other instruments, documents and agreements required to be executed and delivered by Buyer in connection with this Agreement are and shall be, duly authorized, executed and delivered by Buyer and shall be valid, legally binding obligations of and enforceable against Buyer in accordance with their terms, subject only to enforcement that may be limited by applicable bankruptcy, insolvency or similar laws, and do not, and as of the Close of Escrow will not, to the best of Buyer's knowledge, violate any provisions of any agreement, law, rule, regulation or judicial order to which Buyer is subject.

C. Conflicts. To the best of Buyer's knowledge, neither the execution or delivery of this Agreement nor the consummation of the transaction herein will conflict with, violate, result in a breach by, constitute a default under or accelerate the performance provided by the terms of any law, rule, regulation or agreement to which Buyer may be subject.

D. As-Is Sale. Except as explicitly warranted or represented in this Agreement, Seller makes no warranties, representations or assurances relating to the Property or any easements, rights of way, privileges, appurtenances or other rights pertaining thereto, or any surveys, tests, investigations or other reports concerning the Property (collectively "related interests"). Subject to the satisfaction or waiver of the conditions set forth in Section 7(A), and Seller's representations, warranties, and covenants set forth in Section 13 of this Agreement, Seller is transferring the Property and related interests "AS IS", "WITH ALL DEFECTS" and Buyer is relying on the explicit warranties and representations made by Seller in this Agreement as well as its own due diligence inspection, investigation and testing in purchasing the same. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, SELLER IS MAKING NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY MATTER, INCLUDING WARRANTIES OF MERCHANTABILITY, SUITABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR OTHERWISE INCLUDING ANY WARRANTIES WITH REGARD TO THE CONDITION OF THE PROPERTY AND RELATED INTERESTS OR ITS FITNESS FOR ANY INTENDED USE. UPON THE CLOSE OF ESCROW, BUYER SHALL BE DEEMED TO HAVE BEEN AFFORDED THE

E. Survival. The provisions of this Section 14 shall survive the Close of Escrow or any termination of this Agreement and shall not merge with the Grant Deed to be delivered at the Close of Escrow.

Section 15. Brokers. Buyer and Seller each represents and warrants to the other that it has had no dealings with any real estate broker or agent in connection with the sale contemplated by this Agreement and that they have not engaged any other real estate broker or agent who is entitled to a commission or finder's fee in connection with this transaction. Each Party shall indemnify, protect, defend, and hold harmless the other Party against all claims, demands, losses, liabilities, lawsuits, judgments, and costs and expenses (including reasonable attorney fees) for any commission, finder's fee, or equivalent compensation alleged to be owing on account of the indemnifying Party's dealings with any real estate broker or agent.

Section 16. Damage or Condemnation Prior to Closing. Seller shall promptly notify Buyer of any casualty to the Property or any condemnation proceeding commenced prior to the Close of Escrow. If any such damage or proceeding (other than such a proceeding commenced by City or State) relates to or may result in the loss of any material portion of the Property, Buyer may, at Buyer's option, elect either to: (a) terminate this Agreement, in which event neither party shall have any further rights or obligations hereunder, except for Buyer's indemnity obligations under Section 7(A)(i), or (b) proceed to close as provided herein without reduction of the Purchase Price for destruction of the Property or any portion thereof, or in the case of any eminent domain proceedings, (i) proceed to close as provided herein, with the Purchase Price being reduced by the total of any awards or other proceeds received or assured to be received by Seller as a result of such proceedings or (ii) proceed to close as provided herein.
with an assignment by Seller to Buyer, or if directed by Buyer, to State, of all of Seller’s rights, title, and interest in and to all such eminent domain awards and proceeds.

Section 17. Notices. All notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered or sent by registered or certified mail, postage prepaid, return receipt requested, or sent by facsimile, and shall be deemed received upon the earlier of (a) if personally delivered, the date of delivery to the address of the person to receive such notice, (b) if mailed, three (3) business days after the date of posting by the United States post office, (c) if delivered by Federal Express or other overnight courier, the next business day, or (iv) if given by facsimile or electronic transmission, when sent with confirmation of receipt. Any notice, request, demand, direction or other communication sent by facsimile or electronic transmission must be confirmed within twenty-four (24) hours by letter mailed or delivered in accordance with the foregoing.

To Seller: The Gina Rugani Survivor's Trust
c/o Michael Gene Rugani
750 University Avenue, Suite 150
Los Gatos, CA 95032
Facsimile: 408-358-1149
Email: m.rugani@apr.com

To Buyer: City of Modesto
Attn: Brent Sinclair
1010 - 10th Street
Modesto, CA 95354
Facsimile: __________________
Email: HBSinclair@modestogov.com

With a copy to: City of Modesto
Office of the City Attorney
P.O. Box 642
Modesto, CA 95353
Attn: Richard Evans
Facsimile: __________________
Email: REvans@modestogov.com

With a copy to: Matthew Pacher
Damrell, Nelson, Schrimp, Pallios, Pacher & Silva
1601 T Street, 5th Floor
Modesto, CA 95354
Facsimile: (209) 526-3534
Email: mpacher@damrell.com
To Escrow Holder: Chicago Title Company
1700 Standiford Avenue
Modesto, CA 95350
Facsimile: (209)569-7257
Email: haneyk@ctt.com
Attention: Karla Haney

Notice of change of address shall be given by written notice in the manner detailed in this Section 17. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to constitute receipt of the notice, demand, request or communication sent.

Section 18. Legal Fees. In the event of bringing any action or suit by a party hereto against another party or parties hereunder by reason of any breach of any of the covenants or agreements herein or any inaccuracies in any of the representations and warranties on the part of the other party or parties arising out of this Agreement, then in that event, the prevailing party or parties in such action or dispute, whether by final judgment, or out of court settlement shall be entitled to have and recover of and from the other party or parties all costs and expenses of suit, including reasonable attorneys' fees. Any judgment or order entered in any final judgment shall contain a specific provision providing for the recovery of all costs and expenses of suit, including actual attorneys' fees (collectively "Costs") incurred in enforcing, perfecting and executing such judgment. For the purposes of this Section, Costs shall include, without limitation, attorneys' fees, costs and expenses incurred in the following (a) arbitration and petitions to enter judgment on arbitration awards; (b) post-judgment motions; (c) garnishment, levy, and debtor and third party examination; (d) discovery; (e) bankruptcy litigation; and (f) obtaining release of funds from Escrow.

Section 19. Miscellaneous.

A. Required Actions of Buyer and Seller. Buyer and Seller agree to execute such instruments and documents and to diligently undertake such actions as may be required in order to consummate the purchase and sale herein contemplated and shall use good faith efforts to accomplish the Close of Escrow in accordance with the provisions hereof.

B. Time of Essence. Time is of the essence of each and every term, condition, obligation and provision hereof. All references herein to a particular time of day shall be deemed to refer to California time.

C. Facsimile Signatures. Facsimile signatures shall not be accepted unless prior agreement is obtained in writing by the Parties. If agreed that facsimile signatures are acceptable, they will be treated as original signatures; however, in no instance shall facsimile signatures be accepted on any document to be recorded. Such documents must bear original signatures.
D. Captions Interpretation. Any captions to, or headings of, the sections or subsections of this Agreement are solely for the convenience of the Parties hereto, are not a part of this Agreement, and shall not be used for the interpretation or determination of the validity of this Agreement or any provision hereof. The use of the terms “hereof”, “herein” and “hereunder” shall mean and refer to this Agreement as a whole, unless the context expressly requires otherwise. This Agreement shall be construed without regard to any presumption or other rule requiring construction against the Party or Parties causing this Agreement to be drafted.

E. No Obligations to Third Parties. Except as otherwise expressly provided herein, the execution and delivery of this Agreement shall not be deemed to confer any rights upon, nor obligate any of the Parties hereto, to any person or entity other than the Parties hereto.

F. Exhibits. The Exhibits attached hereto, if any, are hereby incorporated herein by this reference for all purposes.

G. Amendment to this Agreement. The terms of this Agreement may not be modified or amended except by an instrument in writing executed by each of the Parties hereto.

H. Waiver. The waiver or failure to enforce any provision of this Agreement shall not operate as a waiver of any future breach of any such provision or any other provision hereof.

I. Applicable Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of California.

J. Fees and Other Expenses. Except as otherwise provided herein, each of the Parties shall pay its own fees and expenses in connection with this Agreement.

K. Entire Agreement. This Agreement supersedes any prior agreements, negotiations and communications, oral or written, and contains the entire agreement between Buyer and Seller as to the subject matter hereof. No subsequent agreement, representation, or promise made by either Party hereto, or by or to an employee, officer, agent or representative of either Party shall be of any effect unless it is in writing and executed by the Party to be bound thereby.

L. Partial Invalidity. If any portion of this Agreement as applied to either Party or to any circumstances shall be adjudged by a court to be void or unenforceable, such portion shall be deemed severed from this Agreement and shall in no way affect the validity or enforceability of the remaining portions of this Agreement.

M. Assignment; Successor and Assigns. Seller shall not assign any interest under this Agreement or in the Property at any time prior to the Close of Escrow other than to an accommodator under the terms of Section 4.E above, or to a principal in Seller or his or her trust or other entity in which the principal has a controlling interest, or to an affiliate controlled by or
controlling Seller, without the express written consent of Buyer, which will not unreasonably be withheld, conditioned or delayed, and providing any such assignee is fully bound by the provisions of this Agreement. This Agreement shall be binding upon and shall inure to the benefit of the executors, administrators, heirs, successors and assigns of the Parties hereto. Notwithstanding the foregoing, Seller may still enter into new or modify existing Leases subject to the terms of Section 7A(14) above.

N. Business Days. In the event any date described in this Agreement relative to the performance of actions hereunder by Buyer, Seller and/or Escrow Holder falls on a Saturday, Sunday or legal holiday, such date shall be deemed postponed until the next business day thereafter. The term "legal holiday" shall mean all and only those State holidays specified in Sections 6700 and 7701 of the California Government Code.

O. Severability. Nothing contained herein shall be construed as to require the commission of any act contrary to law, and wherever there is any conflict between any provision contained herein and any present statute, law, ordinance or regulation as to which the Parties have no legal right to contradict, the latter shall prevail, but the affected provisions of this Agreement shall be limited only to the extent necessary to bring them within the requirements of such law.

P. Foreign Person. Seller represents that it, he or she is not a "foreign person" as defined in Section 1445 of the Internal Revenue Code of 1986, as amended (the "Code"), or under any corresponding provisions of applicable California law.

Q. Gender. As used herein, the masculine, feminine or neuter gender, and the singular and plural numbers, shall each be deemed to include the others whenever and wherever the context so indicates.

R. Waivers. No delay or omission by any Party hereto in exercising any right or power hereunder shall impair any such right or power or be construed to be a waiver thereof, unless this Agreement specifies a time limit for the exercise of such right or power or unless such waiver is set forth in a written instrument duly executed by the party granting such waiver. A waiver by any Party hereto of any of the covenants, conditions, or agreements hereof to be performed by any other Party shall not be construed as a waiver of any succeeding breach of the same or any other covenants, agreements, restrictions or conditions hereof.

S. Authorization, Approvals, Binding Nature. This Agreement has no force and effect and is not binding on City until and unless it is authorized by the City Council of the City of Modesto at a duly noticed public meeting.

T. Survival. All terms and conditions in this Agreement, which represent continuing obligations and duties of the Parties, that have not been satisfied prior to Close of Escrow shall survive Close of Escrow and transfer of title by Seller and shall continue to be binding on the respective obligated Party in accordance with their terms, unless otherwise provided herein. All representations and warranties and statements made by the respective
Parties contained herein or made in writing pursuant to this Agreement are intended to be, and shall remain, true and correct as of the Close of Escrow, shall be deemed to be material, and, together with all conditions, covenants and indemnities made by the respective Parties contained herein or made in writing pursuant to this Agreement (except as otherwise expressly limited or expanded by the terms of this Agreement), shall survive the execution and delivery of this Agreement and the Close of Escrow, or, to the extent the context requires, beyond any termination of this Agreement.

U. Counterparts. This Agreement may be executed in any number of counterparts, each of which, when so executed, shall be deemed to be an original, and such counterparts shall, together, constitute and be one and the same instrument. A signature on a counterpart may be made by facsimile (if agreed in advance by the Parties) or otherwise electronically transmitted, and such signature shall have the same force and effect as an original signature.

IN WITNESS WHEREOF, the City of Modesto, a municipal corporation, has authorized the execution of this Agreement by its City Manager and attestation by its City Clerk by Resolution No. 2014-___ adopted by the Council on the ___ day of __________, 2014, and Seller has caused this Agreement to be duly executed. Parties hereto have caused this Agreement to be executed as of the date first written above.

BUYER

CITY OF MODESTO, a charter city and municipal corporation

By: Greg Nyhoff,
    City Manager

SELLER

GINA RUGANI, MICHAEL GENE RUGANI
and SANDRA ANN HEFFERNAN, Trustees,
or any Successor Trustee(s) thereto of the Gina Rugani Survivor’s Trust dated July 17, 1978, as Amended

By: GINA RUGANI, Trustee

APPROVED AS TO LEGAL FORM

ADAM LINDGREN,
Interim City Attorney

By: RICHARD B. EVANS,
Senior Deputy City Attorney

Dated: ________________

By: SANDRA ANN HEFFERNAN, Trustee

Dated: ________________
EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY

PARCEL ONE:

Lot 10 in Block 54 of the CITY OF MODESTO according to the Official Map thereof, filed in the Office of the Recorder of Stanislaus County, California, on December 21, 1942 in Volume 15 of Maps.

PARCEL ONE A:

The North one-half of the Alley lying between the Northwesterly line of Lot Ten, extended Southerly, and the Southeasterly line of Lot Ten, extended Southerly, in Block 54 of the CITY OF MODESTO according to the Official Map thereof, filed in the Office of the Recorder of Stanislaus County, California, on December 21, 1942 in Volume 15 of Maps.

APN: 106-042-005
EXHIBIT C
FORM OF TENANT ESTOPPEL LETTER

City of Modesto

____________, 2014

Re: Lease at ________________, Modesto, California

Ladies and Gentlemen:

The undersigned ("Tenant") hereby acknowledges the following information with respect to the premises leased by Tenant at ________________ under the lease (the "Lease") described below:

1. Name and mailing address of Tenant:

__________________________________________

__________________________________________

2. The undersigned is the Tenant under the following described Lease:

__________________________________________

__________________________________________

3. The Lease, as identified below, is in full force and effect and, except as set forth below, the Lease has not been amended, altered, supplemented, or otherwise modified:

__________________________________________

__________________________________________

4. Landlord currently holds no security deposit and no advance payments, and Tenant has no other claims for security deposits or advance payments except:

__________________________________________

__________________________________________

5. Tenant is currently paying a monthly rent of $_________. Tenant is currently paying monthly operating expense charges, taxes, insurance, and/or other charges of $___ _______. Monthly rent, monthly operating expense, monthly taxes, insurance, and/or other charges are hereafter referred to as "rentals."

6. Rentals accruing under the Lease have been paid through __________, 2013. There are no offsets or credits against rentals payable by Tenant under the Lease nor are there any defenses or counterclaims against rentals payable by Tenant under the Lease. No rental payable under the Lease is in arrears or has been prepaid more than thirty (30) days in advance.
7. Under the Lease and/or pursuant to law, Tenant has the right to cause an audit and/or an accounting to be performed of Landlord's operations and/or books and records pertaining to rent, operating expenses, taxes, insurance, and/or other charges. Such an audit and/or accounting could result in a claim or an offset for rents paid under the Lease. Tenant's execution of an Estoppel Certificate notwithstanding, Tenant reserves its right to perform such an audit and/or accounting and to assert any claims arising therefrom ("Claims") against Landlord. Tenant waives the right of offset against future rentals for any Claims against Landlord arising from acts or omissions that occurred prior to the date hereof, and releases Landlord's successors in interest from any such Claims. Notwithstanding the foregoing, nothing contained herein shall be deemed to constitute a waiver of Tenant's right of offset against Landlord's successors in interest arising from acts or omissions that occur after the date such successors in interest take title to the property of which the demised premises are a part.

8. The expiration of the term of the Lease is _________________.

9. There are no renewals or extension options with respect to the Lease except as follows: _________________.

10. There are no expansion or first refusal rights with respect to additional space except as follows: _________________.

11. Tenant has accepted possession of the premises demised under the Lease, and Landlord has completed or provided in all respects all tenant incentives (e.g. free or reduced rent) and all improvements required to be furnished by Landlord under the Lease. Subject to any audit currently underway or any future audits, Landlord is not in default in the performance of any of Landlord's obligations under the Lease.

12. There are no purchase options under the Lease or other agreements giving Tenant any rights or options to purchase the real property and/or improvements, or any part thereof, on which the space covered by the Lease is located except as follows: _________________.

It is understood that this letter is being given in contemplation of a sale of the property located at _____________________________, and it is intended that this letter may be relied upon by any purchaser of such property in connection therewith. If there are any conflicts between the terms of this Estoppel Certificate and the Lease, the terms of the Lease will prevail.

TENANT NAME:

______________________________
By: ____________________________
Name: __________________________
Title: ___________________________
Date: ___________________________
EXHIBIT D
FORM OF GRANT DEED

WHEREAS, in 2010 the State Public Works Board (SPWB) approved the new Modesto Courthouse Project for initial funding, and

WHEREAS, in 2011 the Administrative Office of Courts (AOC) named a project advisory group to identify and advise on site selection and design for the new courthouse, and

WHEREAS, in 2011 the SPWB approved the city block bounded by H and G Street and 9th and 10th Streets (10th Street Site) as a potential site for the new Modesto Courthouse, and in 2012 the SPWB approved the city block bounded by H and I Streets and 13th and 14th Streets as a potential site for the courthouse, and

WHEREAS, in 2012 the AOC had all parcels within the 10th Street Site appraised to determine fair market value, and

WHEREAS, the City Council directed staff to assist the AOC project team in negotiations with property owners for the acquisition and sale of real property within the
10th Street Site for the new Modesto Courthouse Project, and

WHEREAS, in 2013 the Courthouse Cost Reduction Subcommittee directed the AOC project team to negotiate for the acquisition of the 10th Street Site and the AOC notified the City Modesto (City) of its interest in acquiring the 10th Street Site property, and

WHEREAS, in 2013 the AOC concluded that the site selection for the new Modesto Courthouse Project was proper and reaffirmed the 10th Street Site as the preferred site for the new courthouse, and

WHEREAS, in 2014 the Court Facilities Advisory Committee endorsed a directive from the Courthouse Cost Reduction Subcommittee to continue negotiations for the acquisition of the 10th Street Site, and

WHEREAS, the City and the State/AOC have successfully negotiated a Property Acquisition Agreement (Exhibit A) containing price, terms and conditions for the State/AOC’s purchase from the City of the 10th Street Site property for the new Modesto Courthouse Project, including a purchase price of Five Million, Four Hundred Fifty Thousand Dollars ($5,450,000) so long as multiple conditions are satisfied, including the requirements that the City Council approves acquisition agreements for all privately owned parcels of the 10th Street Site, the SPWB approves the Property Acquisition Agreement for the acquisition of the 10th Street Site Property, the City and the State/AOC execute a Master Lease assigning control and management of the 10th Street Site property to the City through April 1, 2016, and the City conditionally vacates the public alley, and

WHEREAS, the proposed project that includes the acquisition and sale of real property and the conditional vacation of the public alley are necessary steps for the new
courthouse has been determined to be Categorically Exempt under Section 15332 of the California Environmental Quality Act guidelines for in-fill development projects,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby finds that the proposed project that includes the acquisition and sale of real property and conditional vacation of the public alley are necessary steps for the new courthouse and has been determined to be Categorically Exempt under Section 15332 of the California Environmental Quality Act guidelines for in-fill development projects, because (a) it is consistent with the applicable general plan designation and policies, and all applicable zoning designations and regulations; (b) it is located within City limits on a project site of no more than five acres substantially surrounded by urban uses; (c) the project site has no value as habitat for endangered, rare, or threatened species; (d) approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality; and (e) the site can be adequately served by all required utilities and public services.

BE IT FURTHER RESOLVED that the Council hereby approves the Property Acquisition Agreement with the State of California, acting by and through the Judicial Council of the Courts, Administrative Office of the Courts for sale of the 10th Street Site property being APNs 106-042-001, 106-042-002, 106-042-003, 106-042-004, 106-042-005, 106-042-006, 106-042-007, 106-042-010, 106-042-011, 106-042-012, and 106-042-013 for the sum of Five Million, Four Hundred Fifty Thousand Dollars ($5,450,000) for the purpose of the new Modesto Courthouse Project, and

BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to execute (1) the Agreement, (2) a Grant Deed conveying said real property to
the State of California, acting by and through the Judicial Council of the Courts, Administrative Office of the Courts, and (3) all necessary and related documents required to complete the transaction, transfer title, and close escrow.

The foregoing resolution was introduced at a special meeting of the Council of the City of Modesto held on the 15th day of April, 2014, by Councilmember Madrigal, who moved its adoption, which motion being duly seconded by Councilmember Cogdill, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Cogdill, Gunderson, Kenoyer, Lopez, Madrigal, Zoslocki, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: [Signature]

(SEAL)

APPROVED AS TO FORM:

By: [Signature]

ADAM LINDGREN, Interim City Attorney
PROPERTY ACQUISITION AGREEMENT

The parties to this agreement are the CITY OF MODESTO, hereinafter referred to as SELLER, CITY, or GRANTOR, and the STATE OF CALIFORNIA, acting by and through the JUDICIAL COUNCIL OF CALIFORNIA, ADMINISTRATIVE OFFICE OF THE COURTS, with the authorization of the State Public Works Board (SPWB), hereinafter referred to as STATE or BUYER. The SELLER or GRANTOR and STATE or BUYER are hereafter collectively referred to as the PARTIES. The PARTIES agree as follows:

RECITALS

A. SELLER currently owns certain real property having assessor’s parcel number 106-042-013 and SELLER is in the process of acquiring certain real property owned by the Redevelopment Agency of the City of Modesto, a dissolved public body subject to California Health and Safety Code Section 34173 namely, that real property having assessor’s parcel numbers 106-042-001, 106-042-002, 106-042-003, 106-042-004, 106-042-005, 106-042-006, 106-042-007, 106-042-010, 106-042-011, 106-042-012, 106-042-013 (plus the alley way) in the City of Modesto, County of Stanislaus, State of California (“City Parcels”).

B. BUYER desires to acquire certain real property having assessor’s parcel numbers 106-042-005, 106-042-006, 106-042-007, 106-042-010, 106-042-011, and 106-042-012 in the City of Modesto, County of Stanislaus, State of California (“Private Parcels”) and the City Parcels (collectively, the “Property”).

C. Pursuant to Civil Code sections 831 and 1112, each of the owners of the City Parcels and the Private Parcels also owns the real property in the alley adjacent to such owners’ parcel up to the center line thereof (collectively the “Alley”). The location of the Alley is further identified on Exhibit D.

D. SELLER desires to sell to STATE, and STATE desires to purchase from SELLER the Property. The Property includes the real property having assessor’s parcel numbers 106-042-001, 106-042-002, 106-042-003, 106-042-004, 106-042-005, 106-042-006, 106-042-007, 106-042-010, 106-042-011, 106-042-012, and 106-042-013 including the Alley, located in the City of Modesto, County of Stanislaus, State of California, as the Property is more particularly described in Exhibit A, attached hereto and made a part hereof.

E. In accordance with Government Code 15853 and Government Code 70371.6 or 70371.7 or 70374, the State is authorized to acquire the Property.
F. Site Selection for this property was authorized by the State Public Works Board (SPWB) on December 9, 2011.

AGREEMENT

In consideration of the foregoing Recitals and for other good and valuable consideration, the PARTIES agree as follows:

1. **Transaction Summary.** SELLER agrees to sell and cause to be granted to STATE fee title to the Property described in Exhibit A and conveyed by a grant deed substantially in the form of Exhibit B, attached, subject to the terms and conditions hereof.

2. **Purchase Price.** Prior to Close of Escrow for Title (as that term is defined in Section 6 below) the STATE agrees to pay Five Million Four Hundred Fifty Thousand Dollars ($5,450,000) (the "Purchase Price") into escrow with Chicago Title Company, as further described in Paragraph 5 below, for the account of SELLER, subject to the conditions outlined in this Agreement.

   The Purchase Price shall be apportioned as follows: (i) Five Million Eighty Three Thousand Dollars ($5,083,000) for the value of the Property prior to the Removal of Utilities (as defined in Paragraph 11.a below) which shall be payable at the Close of Escrow for Title, defined in Paragraph 6 ("Initial Purchase Amount"); and (ii) Three Hundred Sixty Seven Thousand Dollars ($367,000) which is the balance of the Purchase Price that is apportioned to the increase in value of the Property as a result of completion of the Removal of Utilities which shall be payable through the Escrow Holder with interest as provided in Paragraph 6 to SELLER within forty-five (45) days after the Removal of Utilities are completed pursuant to Paragraph 11.a.

3. **Other Liens.** Said title company may expend any or all monies payable under this Agreement to discharge any obligations which are liens upon the Property, including but not limited to those arising from judgments, assessments, taxes, or debts secured by deeds of trust or mortgages. Property taxes for the fiscal year in which this escrow closes, if unpaid, shall be paid by SELLER in escrow to and including the date of Close of Escrow for Title. The payment shall be based on the most recent information applicable to the fiscal year and obtainable through the taxing agencies. STATE shall not be responsible for any tax refund.

4. **Escrow and Recording Fees.** STATE and SELLER shall each pay one-half of the escrow fees and recording fees, if any. In addition, STATE shall pay any costs related to premiums and endorsements with respect to title insurance. The parties acknowledge that STATE, as a governmental entity, is exempt from the payment of documentary transfer taxes and recording fees. Notwithstanding the foregoing, STATE shall not be obligated to pay for STATE’s share of these closing costs unless and until STATE receives an acceptable title insurance policy issued to STATE, along with an invoice itemizing STATE’s share of the closing costs.

5. **Title and Escrow.** Title to said Property shall pass immediately upon Close of Escrow for Title, free and clear of all liens, leases, reservations, encumbrances, assessments,
easements, of record or otherwise, and of taxes except those described in Paragraph 12.b. The issuance of any escrow instructions shall be the sole responsibility of the BUYER and shall govern the escrow. BUYER will open an escrow account with Chicago Title Company (Escrow Holder), 700 S. Flower Street, Suite 800, Los Angeles, California, 90017, Attention: Kelly McDole; telephone number: 213-488-4303. Kelly McDole will be directed by BUYER to coordinate with Karla Haney at Escrow Holder’s office located at 1700 Standiford Avenue, Modesto, California 95350, telephone number (209) 571-6300.

6. Close of Escrow. Escrow with respect to title shall be scheduled to close on or before sixty (60) days after the latter of (a) the authorization of the acquisition by the State Public Works Board at a duly noticed public meeting, or (b) the Modesto City Council’s approval of the sale of the Property to BUYER subject to reasonable extension upon mutual agreement by the PARTIES, including reasonable extensions for the purposes of satisfying any of the conditions set forth in Paragraphs 7 and 8 ("Close of Escrow for Title").

Notwithstanding the preceding paragraph, after the Close of Escrow for Title, escrow shall remain open and the remaining balance of funds (i.e. $367,000) shall be released to SELLER by Escrow Holder in accordance with Paragraphs 2, and 11.a. During the period of time after the Close of Escrow for Title, Escrow Holder shall place the remaining balance of funds (i.e. $367,000) in an interest bearing account to the extent practical until the funds are released in accordance with this Agreement and the interest shall belong to the party the funds are released to in accordance with this Agreement.

7. Seller’s Conditions Precedent. SELLER’s obligation to perform under this Agreement and the Close of the Escrow shall be subject to and contingent upon satisfaction of each of the following conditions precedent prior to the Close of Escrow for Title:

   a. Deposit of all Documents. The timely deposit by BUYER with Escrow Holder of all documents and funds required to be deposited by BUYER under this Agreement.

   b. Buyer’s Performance of Obligations. Performance by BUYER of all obligations, covenants and agreements on BUYER’s part to be performed under this Agreement within the time provided in this Agreement for such performance.

   c. Approval by State Department of Finance. The California Department of Finance shall have approved the transfer to the City of Modesto of those parcels to which title is currently held by the Redevelopment Agency of the City of Modesto, a dissolved public entity (i.e., assessor’s parcel numbers 106-042-001, 106-042-002, 106-042-003, and 106-042-004).

   d. Approved Property Acquisition Agreements for the Private Parcels. Each of the owners of the Private Parcels shall have entered into a Property Acquisition Agreement with the City of Modesto, and the City Council of the City of Modesto shall have approved a Property Acquisition Agreement for each of the Private Parcels.

   e. Approved Property Acquisition Agreement for the Property by the City. The City Council of the City of Modesto shall have approved this Agreement with respect
to the transfer of the Private Parcels and the City Parcels at a duly noticed public meeting.

f. **Authorization by SPWB.** The SPWB shall have authorized the acquisition of the Property by BUYER at a duly noticed public meeting.

g. **No Breach by Buyer.** Buyer shall not be in breach of this Agreement.

h. **Timing of Close of Escrow.** The escrow between BUYER and SELLER with respect to the title of the Property shall close immediately after the escrows between SELLER and the owners of the Private Parcels close.

i. **Pollution Liability Policy.** SELLER shall have obtained the Pollution Liability Policy required under Paragraph 15 of this Agreement at a cost not to exceed Two Hundred Thousand Dollars ($200,000). The policy shall be in a form approved by the BUYER and evidenced by a certified copy of the policy.

j. **Acquisition of Waiver of Right to Purchase.** SELLER shall have obtained a waiver from the tenants of Gervasoni Restaurant of their right to purchase APN 106-042-010 and the buildings thereon in a form and substance approved by BUYER.

8. **Buyer’s Conditions Precedent.** BUYER’s obligation to perform under this Agreement and the Close of Escrow for Title shall be subject to and contingent upon satisfaction of each of the following conditions precedent prior to the Close of Escrow for Title:

a. **Deposit of all Documents.** The timely deposit by SELLER with Escrow Holder of all documents required to be deposited by SELLER under this Agreement.

b. **Seller’s Performance of Obligations.** Performance by SELLER of all obligations, covenants and agreements on SELLER’s part to be performed under this Agreement within the time provided in this Agreement for such performance.

c. **Authorization by SPWB.** The SPWB shall have authorized the acquisition of the Property by BUYER at a duly noticed public meeting.

d. **No Breach by Seller.** SELLER shall not be in breach of this Agreement.

e. **Condition of Property.** Prior to the Close of Escrow, after all of BUYER’s investigations are complete, BUYER will provide notice to SELLER that BUYER is satisfied with the condition of the Property ("Initial Due Diligence Notice"). Notwithstanding the Initial Due Diligence Notice, if, and only if, the condition of the Property changes after the date that BUYER provided the Initial Due Diligence Notice, BUYER shall have the right, but not the obligation, to deliver to SELLER a written notice objecting to the condition of the Property up to the Close of Escrow for Title, ("Final Due Diligence Notice"). If BUYER does not deliver the Final Due Diligence Notice on or prior to the Close of Escrow for Title, BUYER shall be deemed to have given its final approval of the condition of the Property, however, if BUYER does provide a Final Due Diligence Notice, BUYER shall have the right, but not the obligation, to terminate this Agreement unless the condition of the Property is restored to a condition that is acceptable to BUYER.
f. **Accuracy of Representations and Warranties.** As of the Close of Escrow for Title, all of SELLER's representations and warranties set forth herein shall be true and accurate with the same force and effect as if remade by SELLER in a separate certificate at the Close of Escrow for Title.

g. **Title Insurance Policy.** On the date of the Close of Escrow for Title, Title Company shall be irrevocably and unconditionally committed to issue to BUYER a CLTA Owner's Policy of Title Insurance — Extended Coverage ("Owner's Policy"), with liability coverage in either (at BUYER's sole discretion) the amount of the Purchase Price or appraised value of the Property, and showing fee title to the Property vested in BUYER, free and clear of all liens, leases, taxes, assessments, reservations, easements of record or otherwise, and encumbrances, except for any exceptions shown on the Title Report which BUYER has specifically approved in writing, and the Existing Leases (as that term is defined in Section 9d, below).

h. **Acquisition of Private Parcels.** SELLER shall have acquired the Private Parcels pursuant to property acquisition agreements with each owner of the Private Parcels.

i. **Master Lease.** SELLER and BUYER shall have executed the Master Lease substantially in the form attached hereto as Exhibit C ("Master Lease").

j. **Pollution Liability Policy.** SELLER shall have obtained the Pollution Liability Policy required under Paragraph 15 of this Agreement. The policy shall be in a form approved by the BUYER and evidenced by a certified copy of the policy.

k. **Acquisition of Waiver of Right to Purchase.** SELLER shall have obtained a waiver from the tenants of Gervasoni Restaurant of their right to purchase APN 106-042-010 and the buildings thereon in a form and substance approved by BUYER.

9. **Seller's Representations and Warranties.** In addition to any express agreements of SELLER contained herein, the following constitute representations and warranties of SELLER to BUYER:

a. **Representations Regarding Seller's Authority.**

   (1) Subject to Paragraph 27 of this Agreement, SELLER has full right, power and legal authority to enter into this Agreement, sell, transfer and convey, the City Parcels and cause the sale, transfer and conveyance of the Private Parcels to BUYER under this Agreement and to carry out SELLER's obligations under this Agreement. Upon the Close of Escrow for Title, BUYER will have good, marketable and insurable title to the Property.

   (2) Subject to Paragraph 27 of this Agreement, the individuals executing this Agreement and the instruments referenced herein on behalf of SELLER
have the legal power, right and actual authority to bind SELLER to the terms hereof and thereof.

(3) Subject to Paragraph 27 of this Agreement, this Agreement is, and all other instruments, documents and agreements required to be executed and delivered by SELLER in connection with this Agreement are and shall be, duly authorized, executed and delivered by SELLER and shall be valid, legally binding obligations of and enforceable against SELLER in accordance with their terms, subject only to enforcement that may be limited by applicable bankruptcy, insolvency or similar laws, and do not, and as of the Close of Escrow for Title will not, violate any provisions of any agreement, law, rule, regulation or judicial order to which SELLER or the Property is subject.

b. **Warranties and Representations Pertaining to Real Estate and Legal Matters.** Based on the actual knowledge of the people most knowledgeable at the CITY, who would reasonably be expected to have knowledge as to the matters set forth below, SELLER makes the following representations and warranties:

(1) There is no suit, action, arbitration, legal, administrative, or other proceeding or inquiry pending against the Property or pending against SELLER which could affect SELLER's title to the Property, affect the value of the Property, or subject the owner of the Property to liability.

(2) There are no attachments, execution proceedings, or assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other proceedings pending against SELLER.

(3) Except for acquisition agreements in which the SELLER is the buyer of the Private Parcels, SELLER has not entered into any other contracts for the sale of the Property, nor does there exist any rights of first refusal, reversions, or options to purchase the Property or any portion of the Property, other than the right to purchase APN 106-042-010 and the buildings thereon held by the tenants of Gervasoni Restaurant. Other than the Master Lease, SELLER is not party to nor subject or bound by any agreement, contract, or lease of any kind relating to the Property which would impose an obligation on STATE (other than obligations relating to relocation assistance as set forth in Paragraph 13 below) or otherwise affect marketability of title to the Property.

(4) Except for the Master Lease and the Leases set out in section 9.d, as of the Close of Escrow for Title, there shall be no leases, licenses or other agreements which would grant any person or entity the right to use or occupy any portion of the Property, including any improvements thereon, and no improvements on the Property that encroach upon the property of a third party.

(5) There are no and have been no:
actual or pending public improvements which will result in the creation of any liens upon the Property, including public assessments or mechanics liens and SELLER agrees to indemnify, defend and hold BUYER free and harmless from and against any claims, liabilities, losses, costs, damages, expenses and attorneys’ fees arising from any liens, encumbrances or assessments that have been, or may be, imposed upon the Property as a consequence of actual or impending public improvements as of the Close of Escrow for Title, including any obligations to pay a fee or assessment for infrastructure to the extent such liability survives or continues after the Close of Escrow for Title, and BUYER agrees to cooperate with SELLER, at SELLER’s costs and to the extent permitted by law, with respect to SELLER’s efforts to remove any such liens, fees, assessments, or encumbrances.

(ii) uncured notices from any governmental agency notifying SELLER of any violations of law, ordinance, rule, or regulation, including Environmental Laws, occurring on the Property.

(6) There is no defect or condition with respect to the Property which would prevent the use of the Property by BUYER for its intended use as a public courthouse, including, but not limited to, the condition of the soil, the existence of geologic hazards or groundwater contamination, the existence of ecological or environmental impediments or the existence of any hazardous or toxic materials on, beneath the surface of the Property at levels requiring remediation or removal under existing applicable laws and regulations.

c. Warranties, Representations and Covenants Regarding Operation of the Property through Close of Escrow for Title.

(1) SELLER hereby agrees that SELLER will not hereafter enter into new leases or any other obligations or agreements affecting the Property ("New Lease") without the prior written consent of BUYER, which consent shall not be unreasonably withheld, conditioned or delayed. In no event shall BUYER be required to consent to any New Lease that (i) provides for a term beyond December 31, 2015, and/or (ii) does not require the proposed subtenant to acknowledge their ineligibility to relocation assistance from BUYER and SELLER.

(2) SELLER will not subject the Property to any additional liens, encumbrances, covenants, conditions, easements, rights of way or similar matters after the date of this Agreement that will not be eliminated prior to the Close of Escrow for Title.

(3) SELLER shall promptly notify BUYER of any event or circumstance that makes any representation or warranty of SELLER under this Agreement untrue or misleading, or of any covenant of SELLER under this Agreement incapable or less likely of being performed. It is understood
that the SELLER’s obligation to provide notice to BUYER shall in no way relieve SELLER of any liability for a breach by SELLER of any of its representations, warranties or covenants under this Agreement.

(4) As of the Close of Escrow for Title, all of SELLER’s representations and warranties set forth herein shall be true and accurate with the same force and effect as if remade by SELLER in a separate certificate at the Close of Escrow for Title. In the event that prior to the Close of Escrow for Title, SELLER becomes aware of any fact or change in circumstance which renders any of SELLER’s representations and warranties set forth herein no longer true or accurate, SELLER shall promptly disclose such to BUYER along with the detail relating to the fact or change in circumstance which renders any of SELLER’s representations and warranties no longer true or accurate.

d. Representations Pertaining to Additional Documents. There are no leases, subleases or tenancies in effect pertaining to the Property excluding and excepting:

(1) One written lease (i.e. Gervasoni’s Restaurant) and one verbal lease on a month to month tenancy (i.e. the e-cigarette shop) relating to the property located at 706 9th Street, Modesto, CA (multiple tenants)

(2) 26 leases relating to the property located at 900 H Street (7 written office leases; 19 storage units leases), Modesto, CA

The above written and verbal leases are collectively referred to as “Existing Leases.” Copies of all of the written leases referenced in this Paragraph are attached to this Agreement as Exhibit F.

e. General Representation. No representation, warranty or statement of SELLER in this Agreement or in any document, certificate or schedule furnished or to be furnished to BUYER pursuant hereto contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary to make the statements or facts contained therein not misleading. SELLER’s representations and warranties made in this Agreement shall be continuing and shall be true and correct as of the date of the Close of Escrow for Title with the same force and effect as if remade by SELLER in a separate certificate at that time. The truth and accuracy of SELLER’s representations and warranties made herein shall constitute a condition for the benefit of BUYER to the Close of Escrow for Title (as elsewhere provided herein) and shall not merge into the Close of Escrow for Title or the recordation of the grant deed in the Official Records, and shall survive the Close of Escrow for Title.

10. Buyer’s Representations and Warranties. In addition to any express agreements of BUYER contained herein, the following constitute representations and warranties of
BUYER to SELLER, subject to Paragraph 27 of this Agreement:

a. *Representations Regarding Buyer's Authority.*

(1) BUYER has the legal power, right and authority to enter into this Agreement and the instruments referenced herein, and to consummate the transactions contemplated hereby.

(2) The individuals executing this Agreement and the instruments referenced herein on behalf of BUYER have the legal power, right, and actual authority to bind BUYER to the terms and conditions hereof and thereof, subject to the conditions in Paragraph 27 below.

(3) This Agreement is, and all other instruments, documents and agreements required to be executed and delivered by BUYER in connection with this Agreement are and shall be, duly authorized, executed and delivered by BUYER and shall be valid, legally binding obligations of and enforceable against BUYER in accordance with their terms.

b. *Representations and Covenants Regarding Environmental Review.* BUYER acknowledges that (i) SELLER has not done its own investigation of the environmental condition of the Private Parcels or the City Parcels in connection with the sale of the Property, and (ii) BUYER has completed a Phase II environmental site assessment ("ESA") of the Private Parcels and City Parcels in connection with the purchase of the Property.

c. *General Representation.* No representation, warranty or statement of BUYER in this Agreement or in any document, certificate or schedule furnished or to be furnished to SELLER pursuant hereto contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary to make the statements or facts contained therein not misleading. BUYER's representations and warranties made in this Agreement shall be continuing and shall be true and correct as of the date of the Close of Escrow for Title with the same force and effect as if remade by BUYER in a separate certificate at that time. The truth and accuracy of BUYER's representations and warranties made herein shall constitute a condition for the benefit of SELLER to the Close of Escrow for Title (as elsewhere provided herein) and shall not merge into the Close of Escrow or the recordation of the grant deed in the Official Records, and shall survive the Close of Escrow for Title.

d. *Representation Regarding Changes in Circumstances.* As of the Close of Escrow for Title, all of BUYER's representations and warranties set forth herein shall be true and accurate with the same force and effect as if remade by BUYER in a separate certificate at the Close of Escrow for Title. In the event that prior to the Close of Escrow for Title, BUYER becomes aware of any fact or change in circumstance which renders any of BUYER's representations and warranties set forth herein no longer true and accurate, BUYER shall promptly disclose such to SELLER along with the detail relating to the fact or change in circumstance which renders any of BUYER's representations and warranties no longer true or accurate.

11. *Seller's Obligations.* SELLER shall comply with the following requirements prior to the
Close of Escrow for Title with the exception of the obligations in Paragraphs 11.a and 11.b which shall be performed within the time periods set forth in those paragraphs notwithstanding the Close of Escrow for Title:

a. **Removal of Utilities.**

SELLER shall: (A) cap within the adjacent public rights of way (i.e. 9th Street, 10th Street, Q Street and H Street) and abandon in place the City of Modesto's water, sewer, and storm drain utilities and the Pacific Gas and Electric Company's gas utilities situated upon or under the Alley; (B) keep in place and active the existing Modesto Irrigation District's lighting in Alley; (C) disconnect Modesto Irrigation District's electrical service to properties beyond the Property that are served through the Alley and reconnect electrical services at location(s) off-site to those properties; and (D) remove and relocate, to an off-site location to be determined by the utility providers, all other utilities located above-ground in the Alley as well as removing above-ground laterals to the buildings located on the Property including without limitation AT&T's telecommunication utilities and Comcast's cable/telecommunication utilities ("Removal of Utilities"). Attached to this Agreement as Exhibit E is a site plan ("Site Plan") which identifies the known locations of the utilities that are located in the Alley (collectively "Utilities"), however, the Site Plan shall not be construed as a warranty as to the location of the Utilities and SELLER shall be completely responsible for identifying the location of all of the Utilities located above, upon, or under the Alley as well as identifying the above-ground laterals to the buildings located on the Property. As BUYER develops its plans for the New Modesto Courthouse which BUYER will be constructing on the Property ("Buyer's Project"), BUYER will confer with SELLER about the precise locations for capping the City of Modesto's water, sewer, and storm drain utilities, and Pacific Gas and Electric Company's gas utilities and whether BUYER requires that electric utilities remain on-site for Buyer's Project. If BUYER determines that it prefers to have such utilities capped off on-site and/or that electric utilities remain on-site for Buyer's Project, BUYER shall request, in writing, that SELLER's Plans and Specifications (defined below) to be prepared by SELLER in accordance with Paragraph 11.a (i) below provide that such utilities be capped off on-site and/or that electric utilities remain on-site. SELLER's Plans and Specifications shall be prepared or revised to include the on-site location(s), and the Removal of Utilities will proceed accordingly.

Notwithstanding the foregoing, SELLER shall not be required to change the locations for capping of the City of Modesto's water, sewer, and storm drain utilities or Pacific Gas and Electric's gas utilities, or to leave electric utilities on-site unless BUYER has requested, in writing, by August 31, 2015, that SELLER change the locations for capping of the City of Modesto's water, sewer, and storm drain utilities or Pacific Gas and Electric's gas utilities, or to leave electric utilities on-site. To the extent that there are any easements associated with these Utilities ("Utility Easements"), Removal of Utilities shall include the extinguishment of the Utility Easements, and SELLER shall be responsible for obtaining any documents necessary to extinguish the Utility Easements from the Utilities (e.g. quitclaim deeds). The Removal of Utilities shall be completed by SELLER by April 1, 2016 pursuant to the plans and specifications prepared by SELLER in accordance with Paragraph 11.a (i) below. SELLER shall commence the work for the Removal of Utilities by January 1, 2016. The Removal of Utilities shall be completed as follows:
(i) SELLER, through its consultants, shall complete design, drawings, plans, specifications, and all other documents necessary for the Removal of Utilities (which, collectively shall be hereinafter referred to as the “Plans and Specifications”). SELLER shall distribute a draft of the Plans and Specification to BUYER for review and comment by BUYER in a reasonably timely manner, and SELLER agrees to incorporate BUYER's comments into the Plans and Specifications. Prior to commencement of the Removal of the Utilities, SELLER shall submit the Plans and Specifications to BUYER for the BUYER’s final written consent which consent shall not be unreasonably withheld, conditioned, or delayed. BUYER’s review, comments and consent of the Plans and Specifications shall not relieve SELLER from its responsibility or liability for the means, methods, techniques, sequences, or procedures relating to the Removal of Utilities, nor shall BUYER's review, comments, or consent of the Plans and Specifications be construed as a warranty of constructability nor shall it subject BUYER to any liability for any aspect of the Removal of the Utilities, SELLER shall obtain prior written consent from BUYER for all revisions to the Plans and Specifications, which consent shall not be unreasonably withheld, conditioned, or delayed. SELLER shall provide BUYER with a complete set of Plans and Specifications, including any revisions to the Plans and Specifications, along with any as-built drawings relating to the Removal of the Utilities.

(ii) SELLER and its contractor(s) shall comply with all applicable federal, state and local law regarding the completion of the Removal of Utilities, including without limitation, the payment of prevailing wages if required by law and obtaining payment bonds by SELLER's contractor(s), if any, in the statutorily required amount as well as obtaining any necessary permits and/or approvals from any applicable governmental entities and/or applicable utility owners.

(iii) SELLER shall be responsible for and pay for all costs relating to the Removal of Utilities including without limitation all design costs (e.g. engineering costs); construction costs for relocation, capping and removal of utilities; permit costs; fees; and all costs associated with coordination and negotiations with utility owners including any legal costs relating to documents which must be drafted and executed by any utility owners, Each construction contract associated with the Removal of Utilities (“Construction Contract(s)”) must include the following:

1. Contractor must obtain a payment and performance bond in amounts equal to 125% of the amount of the Construction Contract which names the STATE as dual obligee.

2. A provision which allows the Construction Contract to be assigned to STATE at no cost to STATE, without the consent or approval of Contractor.

3. The STATE shall be named as additional insured by the Contractor on the general liability insurance policies.

(iv) Prior to commencing work on the Removal of Utilities, SELLER shall provide STATE with a fully executed copy of the Construction Contract, as well as copies of the payment and performance bond with the STATE named as dual obligee and certificates of insurance which indicate that the STATE has been named as additional insured under such insurance.

(v) Any cost for the Removal of Utilities in excess of Three Hundred Sixty Seven Thousand Dollars ($367,000) shall be the sole responsibility of SELLER.
(vi) If SELLER either (a) fails to provide a notice to commence by January 1, 2016 with respect to any existing Construction Contract(s); (b) materially defaults under any Construction Contract (including not making any payments to any Contractor as required under a Construction Contract); or (c) declares voluntary or involuntary bankruptcy, then SELLER, if requested by the STATE and at the STATE’s sole discretion, shall assign the Construction Contract(s) to the STATE and Escrow Holder shall release any remaining funds in escrow to BUYER. If the STATE takes assignment of the Construction Contract(s), STATE’s obligation under such contracts shall not exceed, in the aggregate, Three Hundred Sixty Seven Thousand Dollars ($367,000). Any amounts due under such contracts in excess of $367,000 shall be the sole responsibility of SELLER payable after BUYER has exhausted the funds which were released from escrow. In the event that BUYER completes the Removal of Utilities pursuant to this subparagraph, BUYER shall invoice SELLER for any costs that BUYER expended on the Removal of Utilities that exceed $367,000 along with copies of the underlying invoices for goods and services paid for by BUYER that support BUYER’s assertion that the costs expended by BUYER for the Removal of Utilities exceeded $367,000. Unless SELLER disputes the assertion that costs expended by BUYER exceeded $367,000, or disputes the amount expended in excess of $367,000, SELLER shall pay the undisputed amount of that invoice within 45 days of receipt of such invoice. In addition, if BUYER takes assignment of the Construction Contract(s), BUYER shall be relieved as of the effective date of the assignment of the Construction Contract(s) of making any additional payments relating to the Removal of Utilities (i.e. $367,000) to SELLER with respect to the Purchase Price.

(vii) SELLER agrees, at its sole cost and expense, to indemnify, protect, defend and hold harmless STATE and its officers, employees and agents, from and against any and all claims (including, without limitation, personal injury and consequential damages claims), demands, damages, losses, liabilities, obligations, penalties, fines, actions, cause of action, judgments, suits, proceedings, costs and expenses (including, without limitation, attorneys’ fees, court costs, administrative procedural costs and experts’ fees) of any kind or nature whatsoever which may at any time be imposed upon, incurred or suffered by, or asserted or awarded against, STATE relating to or arising from the design and completion of the Removal of Utilities.

This indemnity by SELLER herein contained shall survive the transfer of title to STATE.

(viii) All work relating to the Removal of the Utilities must be done within the Alley and no portion of the work may be on any other portions of the Property unless either (a) SELLER has the authority under the Subleases (defined in section 11.c below) to enter those portions of the Property, (b) SELLER has obtained permission from the applicable subtenants under the Subleases, or (c) the Subleases have been terminated.

(ix) Throughout the Removal of Utilities, SELLER shall keep the State informed with respect to the progress of the Removal of Utilities (including weekly construction updates in writing) and provide the STATE an opportunity to attend all on-site pre-construction meetings and periodic on-site meetings during the
Removal of Utilities and provide the State with documentation confirming the work as it is completed.

(x) The Removal of Utilities shall be considered complete upon (a) the STATE's receipt of a certification from either the City's engineer or the City's architect, as applicable, that the Removal of Utilities has been completed in accordance with all applicable law including any City of Modesto requirements, (b) the recodardation of a Notice of Completion for the Removal of Utilities in the County Recorder's Office for the County of Stanislaus, and (c) the extinguishment of any Utility Easements.

(xi) SELLER's obligations under this Paragraph 11.a shall survive the transfer of title to the STATE and survive the Close of Escrow for Title.

(xii) Any references to the STATE in this Paragraph 11.a shall also include the Judicial Council of California and the Administrative Office of the Courts. Notwithstanding the foregoing, all comments and consents to the Plans and Specifications as described in Paragraph 11.a (i) shall be made and given solely by the Administration Office of the Courts.

b. Vacation of Alley.

Pursuant to the Public Streets, Highways, and Service Easements Vacation Law (Streets and Highways Sections 8300 et. seq.) and all other applicable law including without limitation any local ordinance or law of the City of Modesto, on April 15, 2014, SELLER's City Council adopted Resolution No. 2014-____ which conditionally vacates the Alley ("Alley Vacation Resolution"). Pursuant to the Alley Vacation Resolution, the vacation of the Alley ("Alley Vacation") will become effective upon the City's removal of all utilities in the alley as set forth in further detail in Paragraph 11.a above.

Pursuant to the Alley Vacation Resolution, the Vacation of the Alley shall be considered complete when the City records a Notice of Completion for the Removal of the Utilities in the County Recorder's Office for the County of Stanislaus.

SELLER covenants the following: (i) SELLER shall take no action to rescind, repeal, or materially amend or modify the Alley Vacation Resolution, and (ii) the Alley Vacation will be effective no later than April 1, 2016 notwithstanding the reference to the June 1, 2016 date in the Alley Vacation Resolution.

c. Master Lease and Subleases. Prior to the Close of Escrow for Title, the Parties will enter into the Master Lease whereby under the Master Lease: (i) the STATE will lease the Property to SELLER pursuant to the terms and conditions set forth in the Master Lease substantially in the form attached to this Agreement as Exhibit C; and (ii) the STATE will assign the Existing Leases to SELLER which following such assignments the Existing Leases will become subleases under the Master Lease Agreement ("Subleases) with the SELLER acting as the landlord under the Subleases (defined above as the Existing Leases).

Pursuant to the terms of the Master Lease, the PARTIES agree that: (i) the STATE will continue to make the Property available for the SELLER and the SELLER will
continue to occupy and use the Property pursuant to the Master Lease with the SELLER acting as the landlord under the Subleases; (ii) in exchange for SELLER's continuing occupancy and use of the Property, SELLER shall be responsible for all costs related to its continuing occupancy and use of the Property, including but not limited to maintenance, utilities, repair, risk management, insurance and security, and hold STATE harmless from such costs; (iii) SELLER shall collect and retain rents from the Subleases; (iv) SELLER shall remove all of its operations, including personnel, personal property, and equipment from the Property, and shall vacate the Property no later than April 1, 2016; (v) SELLER shall ensure that all Subleases are terminated by December 31, 2015 and that all Subleases require the subtenants under the Subleases to vacate the Property no later than December 31, 2015, however, the STATE will be solely responsible for providing relocation assistance and benefits to the subtenants under the Subleases (defined above as the Existing Leases) pursuant to Paragraph 13 below; and (vi) SELLER shall provide: (i) at least 90 days written notice to subtenants when providing notices to vacate (or termination notices) to subtenants ("Notices to Vacate"), and (ii) 30 days written notice of intent that SELLER will be providing Notices to Vacate to the subtenants ("Notices of Intent") which Notices of Intent shall be given to both (A) BUYER and (B) Buyer's Relocation Consultant prior to providing any Notices to Vacate (or termination notices) to subtenants. SELLER shall not provide any Notices to Vacate (or termination notices) to subtenants without first coordinating with Buyer's Relocation Consultant as to whether SELLER and/or Buyer's Relocation Consultant will individually or jointly provide any necessary notices to subtenants which are required under the Subleases and/or the Relocation Assistance Laws (defined in Paragraph 13 below). For purposes of this paragraph and Paragraph 13 of this Agreement, Buyer's Relocation Consultant is David Richman of Auto Temp at P.O. Box 459, Mammoth Lakes, CA 93546; (760) 934-4263; david@autotempservices.com. Notwithstanding the foregoing, in the event that SELLER has provided the Notices of Intent by September 1, 2015 and BUYER's Relocation Consultant has failed to timely coordinate with SELLER, SELLER may provide the 90 day Notices to Vacate to subtenants on October 1, 2015.

d. No Grants or Conveyances. Except as provided for in the Master Lease, SELLER shall not grant, convey, or enter into any easement, lease, license, agreement, lien, encumbrance, or any other legal or beneficial interest in or to the Property, without the prior written consent of BUYER, which consent is at BUYER's sole discretion.

e. No Violation of Laws. After execution of this Agreement by SELLER and up to the Close of Escrow for Title, SELLER shall not violate, nor allow (to the extent it is within the legal control of SELLER) the violation of, any law, ordinance, rule, or regulation affecting the Property.

f. Preservation of Easements and Other Rights. Prior to the Close of Escrow for Title, SELLER shall do or cause to be done, all things within its reasonable control to preserve intact and unimpaired any and all rights of way, easements, grants, appurtenances, privileges, and licenses in favor or consisting of any portion of the Property.

g. Taxes and Assessments. SELLER shall cause all payments on any encumbrances or assessments affecting the Property and any and all taxes, assessments, and levies in respect of the Property through the Closing Date, to be paid prior to the Close of Escrow for Title.

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h. **Zoning.** Prior to the Close of Escrow for Title, SELLER shall not take any action, or fail to take any action, that would result in any change, alteration, modification, addition to, or termination of any of the presently-existing general plan or zoning designation of the Property, without BUYER’s prior written approval, and SELLER shall immediately provide BUYER with a copy of any written materials received by SELLER evidencing or relating to any proposal or attempt to effect any change, alteration, modification, addition to, or termination of any of the presently existing general plan or zoning designations of the Property that are submitted to the CITY, other than those zoning changes, if any, sought by BUYER.

i. **No Modification to Condition of Property.** To the extent it is within the legal control of SELLER, SELLER shall (i) not alter the physical condition of the Property; (ii) maintain the Property in substantially the same condition as that which existed as of the date that BUYER executed this Agreement; and (iii) deliver possession of the Property to BUYER at the Close of Escrow for Title in substantially the same condition that existed as of the date that BUYER executed this Agreement except for any remediation that SELLER agrees to do as in response to BUYER’s due diligence.

j. **Notification to Buyer.** SELLER shall promptly notify BUYER of any event or circumstance that could or would render any representation or warranty of SELLER under this Agreement untrue or misleading, or of any covenant of SELLER under this Agreement incapable or less likely of being performed; provided, however, that SELLER’s foregoing obligation to provide notice to BUYER shall in no way relieve SELLER of any liability for a breach by SELLER of any of its representations, warranties or covenants under this Agreement.

k. **No Recordation of CCRs.** SELLER shall not record any covenants, conditions or restrictions against the Property, including without limitation any design restrictions with respect to the development of the Property.

l. **No Assessment Districts or Special Tax Districts.** SELLER shall not assist with the formation, vote for, or agree to any assessment districts or special tax districts which results in a special tax or assessment upon the Property.

12. **Additional Terms of Sale.**

a. **Loss, Destruction and Condemnation.** The PARTIES agree that the following provisions shall govern the risk of loss, destruction and condemnation:

(1) If, before legal title to the Property is transferred to BUYER, all or a material part of the Property is destroyed without fault of BUYER, or is taken by or threatened to be taken by eminent domain by any governmental entity, BUYER shall be entitled to terminate its obligations under this Agreement by written notice to SELLER and SELLER shall not have the right to enforce against BUYER this Agreement. If BUYER does not elect to terminate this Agreement, then BUYER shall proceed to close as provided herein, without reduction in the Purchase Price for destruction of the Property or any part thereof, however, any insurance proceeds resulting from such loss or destruction and any judgment amounts from any eminent domain action shall be assigned to the AOC. SELLER will promptly notify BUYER in writing of any eminent domain proceedings (including threats of eminent domain) affecting the Property.
If, after legal title of the Property is transferred to BUYER all or any part of the Property is destroyed without fault of SELLER, or is taken by eminent domain by any governmental entity, BUYER is not relieved from BUYER's obligation under this Agreement to pay the full Purchase Price for the Property, as long as SELLER complies with its obligations under Paragraphs 11.a and 11.b of this Agreement, unless BUYER agrees in writing that SELLER's compliance with Paragraphs 11.a and 11.b is not necessary under the circumstances. In such event BUYER will direct Escrow Holder to disburse all sums remaining in escrow to BUYER.

b. Any title evidence, which may be desired by the BUYER, will be procured by BUYER. The SELLER will cooperate with the BUYER or its authorized agent in this connection, and will permit examination and inspection of such deeds, abstracts, affidavits of title, judgments in condemnation proceedings, or other documents relating to the title to the Property involved, as it may have available. It is understood that the SELLER will not be obligated to pay for any expense incurred in connection with title matters or survey of the Property except with respect to removing any liens or encumbrances on the Property.

If this Agreement is accepted, the SELLER shall convey or cause to be conveyed to the BUYER by a grant deed, title to all of the real property described in Exhibit A. Subject to the provisions of the escrow instructions, yet to be prepared, the conveyance is subject to the Property vesting in STATE, free and clear of all liens, leases, reservations, encumbrances, assessments, easements, of record or otherwise, and of taxes except the Existing Leases and those encumbrances and easements of record approved by BUYER in writing.

c. Brokers. STATE and SELLER each represents and warrants to the other that it has engaged no real estate broker or agent in connection with the sale contemplated by this Agreement except for BUYER's broker, Duke Leffler of PMZ Realty ("Buyer's Broker") and that they know of no other real estate broker or agent who is entitled to a commission or finder's fee in connection with this transaction. Each party shall indemnify, protect, defend, and hold harmless the other party against all claims, demands, losses, liabilities, lawsuits, judgments, and costs and expenses (including reasonable attorney fees) for any commission, finder's fee, or equivalent compensation alleged to be owing on account of the indemnifying party's dealings with any real estate broker or agent other than Buyer's Broker.

In addition, BUYER represents and warrants to SELLER that BUYER will pay all brokerage fees which are due to Buyer's Broker in connection with this transaction, and BUYER shall indemnify, protect, defend, and hold harmless SELLER against all claims, demands, losses, liabilities, lawsuits, judgments, and costs and expenses (including reasonable attorney fees) from Buyer's Broker with respect to payment of any commission alleged to be owing to Buyer's Broker in connection with this transaction. Also, SELLER represents and warrants to BUYER that to SELLER's knowledge, the owners of the Private Parcels are not obligated to pay any brokerage fees in connection with the transactions between SELLER and the owners of the Private Parcels, and SELLER shall indemnify, protect, defend, and hold harmless BUYER against all claims, demands, losses,
liabilities, lawsuits, judgments, and costs and expenses (including reasonable attorney fees) with respect to payment of any commission alleged to be owing in connection with any of the transactions between SELLER and the owners of the Private Parcels.

13. **Relocation Assistance.** SELLER hereby warrants that said Property is owner occupied with respect to the City Parcels and tenant occupied with respect to the Private Parcels. STATE recognizes its responsibility for consideration of relocation assistance pursuant to Government Code Section 7260 et seq., and other implementing rules and regulations including the Judicial Council of California Rules and Regulations for Relocation Payments and Assistance for Judicial Branch Capital Outlay Projects (collectively, "Relocation Assistance Laws"). Notwithstanding that SELLER is responsible for causing subtenants to vacate the Private Parcels pursuant to Paragraph 11.c and the Master Lease, STATE acknowledges and agrees that it alone shall be the displacing agency under the Relocation Assistance Laws, however SELLER shall be required to coordinate the vacation of the subtenants with BUYER and Buyer's Relocation Consultant as set forth in Paragraph 11.c and the Master Lease.

With respect to the City Parcels, STATE shall pay SELLER, in addition to the Purchase Price, SELLER's relocation and reestablishment costs eligible for reimbursement under the Relocation Assistance Laws and the Department of General Services approved Relocation Benefit Study for the Property ("Relocation Benefit Study"), however, such amount shall not exceed $80,000 which is the maximum amount for the City Parcels set forth in the Relocation Benefit Study which is attached to this Agreement as Exhibit G. Any payments of relocation and reestablishment costs to SELLER, including timing of such payments, shall be consistent with the Relocation Benefit Study and the Relocation Assistance Laws.

With respect to the Private Parcels, STATE will be solely responsible for meeting with subtenants under the Subleases, determining eligibility for, providing and paying for, and all other matters relating to, any relocation benefits and assistance due to the subtenants under the Subleases (formerly known as the Existing Leases) under the Relocation Assistance Laws as set forth in the Relocation Benefit Study, however, SELLER shall be responsible for any additional relocation benefits in excess of the amounts set forth in the Relocation Benefit Study if, and only if, SELLER took any unilateral action(s) without the STATE's prior written consent which made such subtenant(s) eligible for such additional amounts.

BUYER shall indemnify, protect, defend, and hold harmless SELLER, its officers, employees and agents, from and against any and all claims, demands, damages, losses, liabilities, lawsuits, judgments, suits, proceedings, and costs and expenses (including, without limitation, attorney's fees, court costs, and administrative procedural costs) ("Claims") of any kind or nature which may at any time be imposed upon, incurred or suffered by, or asserted or awarded against, SELLER relating to or arising out of any Claims for relocation benefits made by any of the subtenants under the Subleases on the Private Parcels or any new subtenants of any portion of the Property after the Close of Escrow excluding any Claims for additional relocation benefits in excess of the amounts set forth in the Relocation Benefit Study to the extent that such Claims arose from any unilateral action(s) taken by the SELLER without the BUYER's prior written consent which made such subtenant(s) eligible for such additional amounts.
14. **Access to Property.** BUYER shall be provided with access to the Property and be entitled to undertake, at BUYER's sole expense, an inspection of the Property; a review of the physical condition of the Property, including but not limited to, inspection and examination of soils, environmental factors, hazardous substances, biological resources, archaeological information, and water resources, if any, relating to the Property; and a review and investigation of the effect of zoning, maps, permits, reports, engineering data, regulations, ordinances, and laws affecting the Property, if any.

15. **Pollution Liability Insurance.**

   a. As a material inducement to STATE to execute this Agreement, subject to Paragraph 7.i of this Agreement, SELLER shall purchase a policy of pollution liability insurance, with terms and conditions approved by the BUYER, which shall provide limits of liability of $10 million each Pollution Condition (defined below) and $20 million policy period aggregate, and shall be in force for a Policy Period of 10 years effective at the Close of Escrow for Title insuring the Insureds (defined below) with respect to any Pollution Condition on, at, under, or migrating from the Property in substantially the same form as one of the two policies attached hereto as Exhibits H-1 and H-2 subject to final approval by the STATE (the "Pollution Liability Policy"). SELLER's obligation to fund the Pollution Liability Policy includes all premiums and costs, including any deductibles or self-insured retention amounts associated with procurement and administration of the Pollution Liability Policy and any endorsements thereto.

   b. The Pollution Liability Policy shall remain in full force and effect until the end of the Policy Period and SELLER shall be solely responsible to pay, and shall pay, when due (i) all premiums and costs associated with procuring and maintaining the Pollution Liability Policy and any endorsements thereto during the Policy Period, and (ii) all deductibles or self-insured retention amounts that are required to be paid under the terms of the Pollution Liability Policy.

   c. **Reporting Obligations; Claims.** During the Policy Period, each Party shall notify the other Party, and the Pollution Liability Policy insurer, in writing, as soon as is practicable following the discovery of any: (i) actual, threatened, or suspected Pollution Condition on, at, under, or migrating from the Property; (ii) action taken or liability imposed by any federal, state, provincial, municipal, or other local government agency or body acting under the authority of Environmental Laws; (iii) claims, lawsuits or other actions alleging responsibility or liability on the party of anyone or more Insureds for any bodily injury, death, property damage, or remediation costs (including attorney fees and costs) arising from any Pollution Condition on, at, under, or migrating from the Property. The Party providing any such notice shall include therein such reasonably-detailed information as may be required by the Pollution Liability Policy to the extent that such information is actually known to the notifying Party.

   d. For the period beginning with the Close of Escrow for Title and until the termination of the Master Lease, the SELLER shall be responsible to submit all verbal and written notices and claims to, and to otherwise to engage in all
required communications directly with, the insurer under the Pollution Liability Policy.

e. For the period following the termination of the Master Lease until the termination of the Policy, the BUYER shall be responsible to submit all verbal and written notices and claims to, and to otherwise engage in all required communications directly with, the insurer under the Pollution Liability Policy. The Policy shall be so endorsed.

f. Liability After Policy Period or Exhaustion of Limits Under the Pollution Liability Policy. From and after the earliest to occur of (i) termination of the Policy Period or (ii) the exhaustion of the coverage limits of the Pollution Liability Policy, SELLER shall have no further obligation or responsibility to provide or maintain the Pollution Liability Policy for the benefit of any of the Insureds, and SELLER shall have no further indemnification obligations to STATE with respect to the environmental condition of the Property.

g. Survival. The provisions of this paragraph 15 will take effect on the Close of Escrow of Title, and will survive and remain in full force and effect after the Close of Escrow of Title and notwithstanding the Closing.

h. Definitions.

(i) The term “Insureds” means all persons and entities that are named as insureds on the Pollution Liability Policy, which shall be as follows:

the City of Modesto, the State of California, acting by and through the Judicial Council of California; the Judicial Council of California; the Administrative Office of the Courts; the Superior Court of California, County of Stanislaus, and any past and present director, officer, judicial officer, employee or agent of any of the foregoing while acting within the scope of his or her duties as additional insureds.

(ii) The term “Pollution Condition” has the same meaning as either “Pollution Condition,” Pollution Event” or any other similar term that is found in the Pollution Liability Policy(ies) attached hereto as Exhibits H-1 and H-2, as applicable.

(iii) The term “Policy Period” has the same meaning as found in the Pollution Liability Policy(ies) attached hereto as Exhibit H-1 and Exhibit H-2, as applicable, but in no event shall the Policy Period be for a term less than 10 years from the Close of Escrow of Title.

(iv) Notwithstanding the foregoing definitions, if there is any inconsistency between the definitions set forth above and those contained in the Pollution Liability Policy ultimately approved by the STATE, the definitions in such Pollution Liability Policy shall prevail.


a. Indemnification. SELLER, at its sole cost and expense, hereby irrevocably and unconditionally agrees to defend, indemnify, and hold STATE Parties (as described below) harmless from and against any and all Environmental Losses arising during
the Policy Period) to the extent covered by the Pollution Liability Policy relating to, resulting from or otherwise attributable to, directly or indirectly, (i) any Hazardous Substance (defined below) present or alleged to be present on, at, under, or migrating from or alleged to be migrating from the Property, whether or not such Hazardous Substances were produced, stored, used or transported in compliance with applicable Environmental Law, (ii) any activity (and the consequences thereof), including any release of Hazardous Substances, or claimed activity (and the consequences thereof) carried on or undertaken on or off the Property, in connection with the handling, treatment, removal, storage, decontamination, clean-up, transport or disposal of any Hazardous Substances at any time located or present on, under or incorporated in, or used in connection with, the Property, (iii) any violation (and the consequences thereof) or claimed violation (and the consequences thereof) of any applicable Environmental Law affecting the Property, (iv) any place or location used for the disposal of Hazardous Substances by STATE or any of its predecessors-in-interest, whether for its own behalf or on behalf of others, (v) any other Environmental Loss, and any action or inaction of STATE or any of its predecessors-in-interest with respect thereto, (vi) any discharge, release, emission or migration, or any alleged discharge, release, emission, emanation or migration, of any Hazardous Substance upon or from the Property into the environment, (vii) the use of the Property at any time as a permanent treatment or temporary treatment, storage or disposal site for any Hazardous Substance, or (viii) STATE or any of its predecessors-in-interest transporting or arranging for the transportation of any Hazardous Substance to any location which is listed or posed for listing under CERCLA or any similar state list or which is the subject of federal, state or local enforcement actions or other investigation, whether the Indemnified Losses that occur in connection with clauses (i) through (viii) above arise before, during or after enforcement of the remedies and rights available to SELLER (subject to the claim reporting requirements set forth in the Pollution Liability Policy). Excluded from this obligation by SELLER to indemnify, defend and hold STATE Parties harmless are Environmental Losses to the extent arising out of the negligent acts or omissions by one or more STATE Parties in violation of Environmental Laws, or willful violations of Environmental Laws by one or more STATE Parties. This section 16(a) shall survive the Close of Escrow and the recording of the grant deed conveying the Property from SELLER to STATE.

b. Definitions.

(i) The term "Corrective Work" means the removal, relocation, elimination, remediation, encapsulation or other treatment of Hazardous Substances of or from all or any portion of (A) the Property (necessary to maintain or bring the Property into compliance with Environmental Laws) and (B) surrounding areas of the Property necessary to bring the property into compliance with Environmental Laws) and, to the extent thereby required, the reconstruction and rehabilitation of the Property performed by any person or entity, including, without limitation, STATE, any of their respective agents, contractors, subcontractors, employees and any governmental entity for any reason, including, without limitation, pursuant to any Environmental Laws.

(ii) The term "Environmental Laws" means all federal, state, local or municipal laws, rules, orders, regulations, statues, ordinances, codes, decrees, or requirements of any government authority regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Substance, or pertaining to occupational health or industrial hygiene (and only to the extent that the occupational health or industrial hygiene laws, ordinances, or
regulations relate to Hazardous Substances on, in, at, under, or about the Property), occupational or environmental conditions on, in, at, under, or about the Property, as now in effect, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) and the Superfund Amendments and Reauthorization Act of 1986 (SARA) [42 U.S.C.A. section 9601 et seq.]; the Resource Conservation and Recovery Act of 1976 (RCRA) and the Solid Waste Disposal Act (42 U.S.C.A. sections 6901 et seq.; the Clean Water Act, also known as the Federal Water Pollution Control Act (FWPCA) [33 U.S.C.A. section 1251 et seq.]; the Toxic Substances Control Act (TSCA) [15 U.S.C.A. sections 2601 et seq.]; the Hazardous Materials Transportation Authorization Act (HMTA [49 U.S.C.A. sections 5101 et seq.]; the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) [7 U.S.C.A. sections 136 et seq.]; the Clean Air Act (CAA) [42 U.S.C.A. sections 7401 et seq.]; the Safe Drinking Water Act (SDWA) [42 U.S.C.A. sections 300f et seq.]; the Occupational Safety and Health Act of 1970 (OSHA) [29 U.S.C.A. sections 655, 657]; the California laws regarding the underground storage of hazardous substances (Health & Safety Code sections 25280 et seq.); the Hazardous Substance Account Act (Health & Safety Code sections 25300 et seq.); the California laws regarding hazardous waste control (Health and Safety Code section 25100 et seq.); the Safe Drinking Water and Toxic Enforcement Act of 1986 (Health & Safety Code sections 25249.5 et seq.); the Porter-Cologne Water Quality Control Act (Water Code sections 13000 et seq.); and any amendments of or regulations promulgated under the statutes cited above and any other federal, state, or local law, statute, ordinance, or regulation now in effect that pertains to occupational health or industrial hygiene, and only to the extent that the occupational health or industrial hygiene laws, ordinances, regulations relate to Hazardous Substances on, under, or about the Property, or the regulation or protection of the environment, including ambient air, soil, soil vapor, groundwater, surface water, or land use.

(iii) The term "Environmental Losses" means incurred and potential damages, losses, liability, costs and expenses of Corrective Work, any other clean-up or response costs (which, without limitation, shall include costs to cause the property to come into compliance with Environmental Laws), investigation costs (including fees of consultants, counsel and other experts in connection with any environmental investigation, testing, audits or suits), and any other incurred or potential obligations, penalties, fines, impositions, fees, levies, lien removal or bonding costs, claims, litigation, demands, causes of action (including, without limitation, any common law cause of action), liabilities, losses (including, without limitation any reduction in the value of the Property), damages (including any actual, punitive or consequential damages under any statutory or common law cause of action), defenses, judgments, suits, proceedings, costs, disbursements or expenses of any kind and nature whatsoever (including, without limitation, attorneys' and experts' or other consultants' fees and disbursements incurred in connection with any of the matters with respect to which STATE is indemnified hereunder), including interest thereon.


(v) The term "SELLER Parties" shall means, collectively, SELLER and its respective members, partners, affiliates, parent business organizations, subsidiary business
organizations, shareholders, officers, directors, beneficiaries, agents, employees, attorneys and representatives and their respective successors and assigns.

(vi) The term "STATE Parties" means, collectively, the State of California, the Judicial Council of California and the Administrative Office of the Courts, its staff agency, the Superior Court of California, County of Sacramento, and their respective elected officials, officers, judicial officers, directors, agents, employees, attorneys and representatives and their respective successors and assigns.

(vii) Notwithstanding the foregoing definitions, if there is any inconsistency between the definitions set forth above and those contained in the Pollution Liability Policy ultimately approved by the STATE, the definitions in such Pollution Liability Policy shall prevail.

17. Notices. Any notice, tender, delivery, or other communication pursuant to this Agreement shall be in writing and shall be deemed to be properly given if delivered, mailed or sent by wire or other telegraphic communication in the manner provided in this Agreement, to the following persons:

If to SELLER: City of Modesto
Attn: Brent Sinclair
1010 10th Street
Modesto, CA 95354
Telephone: 209-577-5228

With a copy to: City of Modesto
Office of the City Attorney
P.O. Box 642
Modesto, CA 95353
Attn: Richard Evans
Telephone: (209) 577-5282

With a copy to: Matthew O. Pacher
Damrell Nelson Schrimp Pallios Pacher & Silva
1601 I Street, Fifth Floor
Modesto, CA 95354
Telephone: (209) 526-3500

If to BUYER: Judicial Council of California
Administrative Office of the Courts
Office of Real Estate and Facilities Management
Attn: Assistant Director, Real Estate
455 Golden Gate Avenue, 8th Floor
San Francisco, CA 94102
Telephone: 415-865-4040

and

Judicial Council of California
Administrative Office of the Courts
Office of Real Estate and Facilities Management
Attn: Manager, Real Estate

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18. **Assignment.** SELLER shall not assign its interest under this Agreement at any time prior to the Close of Escrow for Title.

19. **Calculation of Time.** Under this Agreement, when the day upon which performance would otherwise be required or permitted is a Saturday, Sunday or holiday, then the time for performance shall be extended to the next day which is not a Saturday, Sunday or holiday. The term "holiday" shall mean all and only those State holidays specified in Sections 6700 and 7701 of the California Government Code.

20. **Time of Essence.** Time is of the essence of this Agreement and each and every provision hereof.

21. **Waiver.** The waiver by any party to this Agreement of a breach of any provision of this Agreement shall not be deemed a continuing waiver or a waiver of any subsequent breach of that or any provision of this Agreement.

22. **Entire Agreement.** This Agreement shall constitute the entire understanding and agreement of the Parties hereto regarding the purchase and sale of the Property and all prior agreements, understandings, representations or negotiations are hereby superseded, terminated and canceled in their entirety, and are of no further force or effect.

23. **Amendments.** This Agreement may not be modified or amended except in writing by the PARTIES.

24. **Applicable Law.** The PARTIES hereto acknowledge that this Agreement has been negotiated and entered into in the State of California. The PARTIES hereto expressly agree that this Agreement shall in all respects be governed by the laws of the State of California.

25. **Severability.** Nothing contained herein shall be construed as to require the commission of any act contrary to law, and wherever there is any conflict between any provision contained herein and any present statute, law, ordinance or regulation as to which the PARTIES have no legal right to contract, the latter shall prevail, but the affected provisions of this Agreement shall be limited only to the extent necessary to bring them within the requirements of such law.

26. **Legislative Approval.** Any obligation of the State created by or arising from this Agreement shall not impose a debt upon the State, but shall be payable solely out of funds duly authorized and appropriated by the California State Legislature.

27. **Authorization, Approvals, Binding Nature.** This Agreement has no force and effect and is not binding on the State of California until and unless it is authorized by the SPWB at a duly noticed public meeting. This Agreement has no force and effect and is not binding on the City of Modesto until and unless it is authorized by the City Council of the City of Modesto at a duly noticed public meeting.
28. **Captions, Number and Gender.** The captions appearing at the commencement of the paragraphs, subparagraphs and sections hereof are descriptive only and for convenience in reference. Should there be any conflict between any such caption and the article, paragraph or subparagraph at the head of which it appears the article, paragraph or subparagraph and not the caption shall control and govern the construction of this Agreement. In this Agreement, the masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others whenever the context so requires.

29. **Survival.** All terms and conditions in this Agreement, which represent continuing obligations and duties of the PARTIES, that have not been satisfied prior to Close of Escrow for Title shall survive Close of Escrow for Title and transfer of title to STATE and shall continue to be binding on the respective obligated party in accordance with their terms. All representations and warranties and statements made by the respective parties contained herein or made in writing pursuant to this Agreement are intended to be, and shall remain, true and correct as of the Close of Escrow for Title, shall be deemed to be material, and, together with all conditions, covenants and indemnities made by the respective parties contained herein or made in writing pursuant to this Agreement (except as otherwise expressly limited or expanded by the terms of this Agreement), shall survive the execution and delivery of this Agreement and the Close of Escrow for Title, or, to the extent the context requires, beyond any termination of this Agreement.

30. **Further Action.** Each party hereto shall, before the Close of Escrow for Title, duly execute and deliver such papers, documents and instruments and perform all acts reasonably necessary or proper to carry out and effectuate the terms of this Agreement.

31. **Facsimile Signatures.** Facsimile signatures shall not be accepted unless prior agreement is obtained in writing by both PARTIES. If agreed that facsimile signatures are acceptable, they will be treated as original signatures; however, in no instance shall facsimile signatures be accepted on any document to be recorded. Such documents must bear original signatures.

32. **Exhibits.** The following Exhibits are attached to this Agreement and incorporated by reference herein.

   - Exhibit A: Property Description
   - Exhibit B: Deed with attached Certificate of Acceptance
   - Exhibit C: Form of Master Lease Agreement
   - Exhibit D: Location of Alley
   - Exhibit E: Site Plan of Utilities
   - Exhibit F: Copies of Existing Leases
   - Exhibit G: Relocation Benefit Study
   - Exhibit H-1: Pollution Liability Policy--A
   - Exhibit H-2: Pollution Liability Policy--B

[SIGNATURE PAGE TO IMMEDIATELY FOLLOW]
IN WITNESS WHEREOF, the City of Modesto, a municipal corporation, has authorized the execution of this Property Acquisition Agreement (Agreement) by its City Manager and attestation by its City Clerk by Resolution No. 2014-____ adopted by the Council on ____ day of ______________, 2014, and the State of California, acting by and through the Judicial Council of California, Administrative Office of the Courts, has caused this Agreement to be duly executed.

SELLER:

CITY OF MODESTO, a municipal corporation

By: ____________________________
   GREG NYHOFF
   City Manager

ATTEST:

By: ____________________________
   STEPHANIE LOPEZ, City Clerk
   (SEAL)

APPROVED AS TO LEGAL FORM

ADAM O. LINDGREN
Interim City Attorney

By: ____________________________
   RICHARD B. EVANS
   Senior Deputy City Attorney

APPROVED AS TO RISK MANAGEMENT FORM

By: ____________________________
   MARY AKIN, Risk Manager

AUTHORIZED:

STATE OF CALIFORNIA
State Public Works Board

By: ____________________________
   Jerry Leong
   Assistant Administrative Secretary

BUYER/STATE:

STATE OF CALIFORNIA, acting by and through the JUDICIAL COUNCIL OF CALIFORNIA, ADMINISTRATIVE OFFICE OF THE COURTS

By: ____________________________
   Name: Steven Jahr
   Title: Administrative Director of the Courts
   Date: ____________________________

APPROVED AS TO FORM:

Administrative Office of the Courts, Legal Services Office

By: ____________________________
   Name: Leslie G. Miessner
   Title: Supervising Attorney
   Date: ____________________________
EXHIBIT "A"

Property Description

[Legal Description to be attached to encompass the entire Property]
EXHIBIT “B”

Form of Grant Deed with Certificate of Acceptance
EXHIBIT “C”

Form of Master Lease Agreement
EXHIBIT “D”

Location of Alley
EXHIBIT “E”

Site Plan of Utilities
EXHIBIT "F"

Copies of Existing Leases
EXHIBIT “G”

Relocation Benefit Study
POLLUTION AND REMEDIATION LEGAL LIABILITY POLICY

THIS IS A “CLAIMS-MADE AND REPORTED” POLICY. THIS POLICY REQUIRES THAT A CLAIM BE MADE AGAINST THE INSURED DURING THE POLICY PERIOD AND REPORTED TO THE COMPANY DURING THE POLICY PERIOD OR, WHERE APPLICABLE, THE EXTENDED REPORTING PERIOD. IN ADDITION, THIS POLICY MAY HAVE PROVISIONS OR REQUIREMENTS DIFFERENT FROM OTHER POLICIES YOU MAY HAVE PURCHASED. PLEASE READ CAREFULLY.

THIS POLICY CONTAINS PROVISIONS WHICH LIMIT THE AMOUNT OF LEGAL EXPENSE THE COMPANY IS RESPONSIBLE TO PAY. LEGAL EXPENSE SHALL BE APPLIED AGAINST THE SELF-INSURED RETENTION AMOUNT STATED IN ITEM 4 OF THE DECLARATIONS AND IS SUBJECT TO THE LIMITS OF LIABILITY STATED IN ITEM 3 OF THE DECLARATIONS.

In consideration of the payment of the Policy Premium stated in Item 7 of the Declarations and in reliance upon the statements contained in the Application and any other supplemental materials and information submitted herewith, and subject to all the terms and conditions of this Policy, and the Limits of Liability, and Self-Insured Retention Amount stated in the Declarations, the Company agrees with the INSURED as follows:

I. INSURING AGREEMENT

A. Coverage A - POLLUTION LEGAL LIABILITY

The Company will pay on behalf of the INSURED for LOSS and related LEGAL EXPENSE resulting from any POLLUTION CONDITION on, at, under or migrating from any COVERED LOCATION, which the INSURED has or will become legally obligated to pay as a result of a CLAIM first made against the INSURED during the POLICY PERIOD and reported to the Company, in writing, by the INSURED, during the POLICY PERIOD or, where applicable, the EXTENDED REPORTING PERIOD.

B. Coverage B - REMEDIATION LEGAL LIABILITY

The Company will pay on behalf of the INSURED for REMEDIATION EXPENSE and related LEGAL EXPENSE resulting from any POLLUTION CONDITION on, at, under or migrating from any COVERED LOCATION:

1. for a CLAIM first made against the INSURED during the POLICY PERIOD which the INSURED has or will become legally obligated to pay; or

2. that is first discovered during the POLICY PERIOD,

provided that the INSURED reports such CLAIM or POLLUTION CONDITION to the Company, in writing, during the POLICY PERIOD or, where applicable, the EXTENDED REPORTING PERIOD.

C. Coverage C - CONTINGENT TRANSPORTATION COVERAGE

The Company will pay on behalf of the INSURED for LOSS, REMEDIATION EXPENSE and related LEGAL EXPENSE resulting from any POLLUTION CONDITION that arises solely during the course of TRANSPORTATION by any CARRIER, which the INSURED has or will become legally obligated to pay as a result of a CLAIM first made against the INSURED during the POLICY PERIOD and reported to the Company, in writing, by the INSURED, during the POLICY PERIOD or, where applicable, the EXTENDED REPORTING PERIOD.
II. DEFINITIONS

A. **ADDITIONAL NAMED INSURED** means any person(s) or entity(ies) endorsed onto this Policy as an ADDITIONAL NAMED INSURED, but solely to the extent such person(s) or entity(ies) is liable as a result of the ownership, occupation, development, operation, maintenance, financing or use of any COVERED LOCATION.

B. **BODILY INJURY** means:
   1. physical injury, sickness, disease or building related illness, including death resulting therefrom, and any accompanying medical or environmental monitoring; and/or
   2. mental anguish, emotional distress, or shock, caused by any POLLUTION CONDITION.

C. **CARRIER** means any person(s) or entity(ies), other than the INSURED or any subsidiary or affiliate company of the INSURED, engaged by or on behalf of the INSURED, licensed and in the business of transporting property for hire by land motor vehicle or watercraft.

D. **CLAIM** means any demand(s), notice(s) or assertion(s) of a legal right alleging liability or responsibility on the part of the INSURED and shall include but not be limited to lawsuit(s), petition(s), order(s) or government and/or regulatory action(s), filed against the INSURED.

E. **COVERED LOCATION** means any location(s) listed in the Covered Location Schedule endorsed onto this Policy.

F. **EXTENDED REPORTING PERIOD** means the Automatic Extended Reporting Period or, if applicable, the Optional Extended Reporting Period, as described in Section V. EXTENDED REPORTING PERIOD of this Policy.

G. **FIRST NAMED INSURED** means the person or entity stated in Item 1. of the Declarations.

H. **INSURED** means the FIRST NAMED INSURED, any ADDITIONAL NAMED INSURED endorsed onto this Policy, and any present or former director, officer, partner, employee, leased worker or temporary worker thereof while acting within the course and scope of his/her duties as such.

I. **LEGAL EXPENSE** means legal costs, charges and expenses incurred in the investigation, adjustment or defense of any CLAIM for LOSS or REMEDIATION EXPENSE, or in connection with the payment of any REMEDIATION EXPENSE as applicable, and shall include any necessary expert fees paid to experts retained by defense counsel.

LEGAL EXPENSE does not include the time and expense incurred by the INSURED in assisting in the investigation or resolution of a CLAIM or in connection with REMEDIATION EXPENSE, including but not limited to the costs of the INSURED'S in-house counsel, salary charges of regular employees or officials of the INSURED, and fees and expenses of supervisory counsel retained by the INSURED.

J. **LOSS** means monetary judgment, award or settlement of compensatory damages as well as related punitive, exemplary or multiplied damages where insurance coverage is allowable by law arising from:
   1. BODILY INJURY; and/or
   2. PROPERTY DAMAGE.
K. LOW-LEVEL RADIOACTIVE WASTE AND MATERIAL means:

1. Waste as defined in Title 10 Code of Federal Regulations, Part 61.2; and/or

2. material regulated by the United States Nuclear Regulatory Commission or an Agreement State under a Type A, B or C Specific License of Broad Scope as defined in Title 10 Code of Federal Regulations, Part 33.11.

L. MOLD MATTER means mold, mildew or any type or form of fungus; including any mycotoxins, spores, or byproducts produced or released by fungi.

M. MOLD MATTER REMEDIATION STANDARD means standards for the investigation and abatement of MOLD MATTER imposed by a Federal, State, Local or Provincial governmental authority pursuant to a law or regulation governing the investigation and abatement of MOLD MATTER. If no standards have been imposed by such authority, then the standards for investigation and abatement shall be those necessary to protect human health at the COVERED LOCATION, as determined in consultation with a MOLD MATTER PROFESSIONAL, and shall be no less than those remediation activities recommended by the New York City Department of Health & Mental Hygiene Guidelines on Assessment and Remediation of Fungi in Indoor Environments ("NYC Guidelines"), or any subsequent amendments thereof. All of these standards shall take into consideration the use of the COVERED LOCATION on the date the COVERED LOCATION was endorsed onto this Policy.

N. MOLD MATTER PROFESSIONAL means a Certified Industrial Hygienist, or similarly qualified health and safety professional experienced in performing mold investigation and remediation, retained by or with the prior written consent of the Company.

O. NATURAL RESOURCE DAMAGE means physical injury to or destruction of, as well as the assessment of such injury or destruction, including the resulting loss of value of land, fish, wildlife, biota, air, water, groundwater, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the fishery conservation zone established by the Magnuson-Stevens Fishery Conservation and Management Act 16 U.S.C. 1801 et. seq.), any State, Local or Provincial government, any foreign government, any Native American tribe or, if such resources are subject to a trust restriction on alienation, any member of a Native American tribe.

P. POLICY PERIOD means the period stated in Item 2. of the Declarations, or any shorter period arising as a result of cancellation.

Q. POLLUTANTS means any solid, liquid, gaseous or thermal pollutant, irritant or contaminant including but not limited to smoke, vapors, odors, soot, fumes, acids, alkalis, toxic chemicals, hazardous substances, waste materials, including medical, infectious and pathological wastes, electromagnetic fields, LOW-LEVEL RADIOACTIVE WASTE AND MATERIAL, and MOLD MATTER.

R. POLLUTION CONDITION means:

1. the discharge, dispersal, release, seepage, migration, or escape of POLLUTANTS into or upon land, or structures thereupon, the atmosphere, or any watercourse or body of water including groundwater;

2. the presence of any uncontrolled or uncontained POLLUTANTS into land, the atmosphere, or any watercourse or body of water including groundwater; or

3. the presence of MOLD MATTER on buildings or structures.
S. PROPERTY DAMAGE means:

1. physical injury to or destruction of tangible property, including the resulting loss of use thereof, and including the personal property of third parties;
2. loss of use of such property that has not been physically injured or destroyed;
3. diminished third party property value; and/or
4. NATURAL RESOURCE DAMAGE,

caused by any POLLUTION CONDITION.

PROPERTY DAMAGE does not include REMEDIATION EXPENSE.

T. REMEDIATION EXPENSE means expenses caused by a POLLUTION CONDITION and incurred to investigate, assess, remove, dispose of, abate, contain, treat or neutralize a POLLUTION CONDITION, to the extent required by:

1. Federal, State, Local or Provincial Laws, Regulations or Statutes, or any subsequent amendments thereof, or MOLD MATTER REMEDIATION STANDARDS, enacted to address a POLLUTION CONDITION, including any individual or entity acting under the authority thereof; and/or
2. a legally executed state voluntary program governing the cleanup of a POLLUTION CONDITION.

REMEDIATION EXPENSE shall also include any associated (i) monitoring and testing costs, or (ii) punitive, exemplary or multiplied damages, where insurable by law. REMEDIATION EXPENSE shall also include RESTORATION COSTS.

U. RESTORATION COSTS means reasonable and necessary costs incurred by the INSURED to restore, repair or replace real or personal property to substantially the same condition it was in prior to being damaged during work performed in the course of incurring REMEDIATION EXPENSE.

However, these costs shall not exceed the actual cash value of such real or personal property immediately prior to incurring the REMEDIATION EXPENSE or include costs associated with improvements or betterments. Actual cash value is defined as the cost to replace such real or personal property, immediately prior to incurring the REMEDIATION EXPENSE, minus the accumulated depreciation of the real or personal property.

V. RESPONSIBLE INSURED means:

1. any officer, director, or partner of the INSURED;
2. any person(s) or entity(ies) authorized by the INSURED to act for or in place of the INSURED; and/or
3. any employee of the INSURED responsible for the environmental or health and safety affairs of the INSURED.

W. TRANSPORTATION means:

1. Out-Bound - the movement by a CARRIER of the INSURED'S product or waste generated by the INSURED, after a CARRIER crosses the legal boundary of a COVERED LOCATION until the INSURED'S waste or product is delivered or unloaded by the CARRIER; and/or
2. **In-Bound** - the loading and movement by a CARRIER of material, from a location other than a COVERED LOCATION, until the CARRIER crosses the legal boundary of a COVERED LOCATION.

**X. UNDERGROUND STORAGE TANK(S)** means any stationary container or vessel, including the associated piping connected thereto, which is ten percent (10%) or more beneath the surface of the ground and is: (i) constructed primarily of non-earth materials; and (ii) designed to contain any substance.

**III. TERRITORY**

A CLAIM must be made or brought in the United States, its territories or possessions or in Canada.

This Policy shall not apply to any risk which would be in violation of the laws of the United States or Canada, as applicable, including, but not limited to, United States economic or trade sanction laws or export control laws administered by the United States Treasury, State, and Commerce Departments (e.g., the economic and trade sanctions administered by the United States Treasury Office of Foreign Assets Control).

**IV. EXCLUSIONS**

This Policy does not apply to LOSS, REMEDIATION EXPENSE, LEGAL EXPENSE or any other coverages afforded by endorsement attached to this Policy:

1. **Non-Disclosed Conditions**
   arising from any POLLUTION CONDITION existing prior to the inception date of this Policy, and reported to or known by a RESPONSIBLE INSURED, which was not disclosed in writing to the Company in the Application or related materials prior to the inception date of this Policy or prior to the COVERED LOCATION being endorsed onto this Policy. Any POLLUTION CONDITION disclosed in writing to the Company and not otherwise excluded under this Policy is deemed to be first discovered on the date a COVERED LOCATION is endorsed onto this Policy.

2. **Fines/Penalties/Assessments**
   based upon or arising out of any fines, penalties or assessments.

   This exclusion does not apply to punitive, exemplary or multiplied damages.

3. **Employer's Liability/Workers' Compensation**
   based upon or arising out of injury to:
   a. any employee, director, officer, partner, leased worker or temporary worker of the INSURED if such injury occurs during and in the course of said employment, or during the performance of duties related to the conduct of the INSURED'S business, or arising out of any Workers' Compensation, unemployment compensation or disability benefits law or similar law; and
   b. the spouse, child, parent, brother or sister of such employee, director, officer, partner, leased worker or temporary worker of the INSURED as a consequence of item a. above.

4. **Contractual Liability**
   based upon or arising as a result of liability of others assumed by the INSURED in any contract or agreement unless the liability would exist in the absence of a contract or agreement.

   Only as it applies to coverages offered under this Policy, this exclusion does not apply to liability of others assumed by the INSURED in contracts listed in the Insured Contract(s) Schedule endorsed onto this Policy.
5. **Insured's Property/Bailee Liability**

with respect to PROPERTY DAMAGE only, to property owned, leased or operated by, or in the care, custody or control of the INSURED, even if such PROPERTY DAMAGE is incurred to avoid or mitigate LOSS or REMEDIATION EXPENSE which may be covered under this Policy.

This exclusion does not apply to RESTORATION COSTS or NATURAL RESOURCE DAMAGE.

6. **New Pollution Conditions at Divested Property**

based upon or arising from any POLLUTION CONDITION on, at, under or migrating from any COVERED LOCATION, where the actual discharge, dispersal, release, seepage, migration or escape of POLLUTANTS commenced subsequent to the time such COVERED LOCATION was sold, given away, or abandoned by the INSURED, or condemned.

7. **Radioactive / Nuclear Material**

based upon or arising out of:

a. ionizing radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the processing or reaction of nuclear fuel;

b. the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;

c. the existence, required removal or abatement of Naturally Occurring Radioactive Material, including but not limited to radon;

d. high-level radioactive waste (spent nuclear fuel or the highly radioactive waste produced if spent fuel is reprocessed), uranium milling residues and waste with greater than specified quantities of elements heavier than uranium, or

e. mixed Waste as defined in Title 40 Code of Federal Regulations, Part 266.210; however, this clause e. does not apply to Mixed Waste that contains Waste as defined in Title 10 Code of Federal Regulations, Part 61.2,

including, but not limited to the actual, alleged or threatened exposure of any person(s) or property to any such matter.

8. **Products Liability**

based upon or arising out of goods or products manufactured, sold, handled, distributed, altered or repaired by the INSURED or by others trading under the INSURED's name including any container thereof, any failure to warn, or any reliance upon a representation or warranty made at any time with respect thereto, but only if the POLLUTION CONDITION took place away from a COVERED LOCATION and after physical possession of such goods or products has been relinquished to others.

This exclusion does not apply to Coverage C – CONTINGENT TRANSPORTATION COVERAGE, as stated in Section I. INSURING AGREEMENT of this Policy.

9. **Non-Compliance**

arising from any POLLUTION CONDITION that results from the intentional disregard of, or the deliberate, willful or dishonest non-compliance by a RESPONSIBLE INSURED with any statute, regulation, ordinance, order, notice letter or instruction from, by or on behalf of any governmental body or entity.

10. **Hostile Acts**

based upon or arising out of any consequence, whether direct or indirect, of war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power.
11. **Lead-Based Paint and Asbestos**
   based upon or arising out of the existence, required removal or abatement of lead-based paint or asbestos, in any form, in any building or structure, including but not limited to products containing asbestos, asbestos fibers, asbestos dust, and asbestos containing materials.

12. **Underground Storage Tank(s)**
   based upon or arising out of the existence of any UNDERGROUND STORAGE TANK(S) on, at or under a COVERED LOCATION. This exclusion does not apply to UNDERGROUND STORAGE TANK(S):
   
   a. which are closed, abandoned-in-place or removed prior to the inception date of this Policy, in accordance with all applicable Federal, State, Local or Provincial Regulations in effect at the time of closure, abandonment or removal;
   
   b. listed in the Underground Storage Tank(s) Schedule endorsed onto this Policy, if any;
   
   c. the existence of which is unknown by a RESPONSIBLE INSURED as of the inception date of this Policy;
   
   d. flow-through process tanks, including oil/water separators; or
   
   e. storage tank(s) situated in an underground area (such as a basement, cellar, mine shaft or tunnel) if the storage tank is situated upon or above the surface of the floor.

13. **Insured vs. Insured**
   based upon or arising from a CLAIM by one INSURED against another INSURED.

14. **Material Change in Use or Operations**
   based upon or arising out of a material change in the use of, or a material change in the operations at, any COVERED LOCATION from those set forth by the INSURED in the Application or related materials as of the inception date of this Policy.

15. **Retroactive Date**
   based upon or arising out of any POLLUTION CONDITION that commenced prior to the Retroactive Date stated in Item 5. of the Declarations which includes any dispersal, migration or further movement of the aforementioned POLLUTION CONDITION on or after the Retroactive Date stated in Item 5. of the Declarations.

16. **Reverse Retroactive Date**
   based upon or arising out of any POLLUTION CONDITION that commenced subsequent to the Reverse Retroactive Date stated in Item 6. of the Declarations.

17. **Communicable Diseases**
   based upon or arising out of the exposure to infected individuals or animals, or contact with bodily fluids of infected individuals or animals.

V. **EXTENDED REPORTING PERIOD**

A. **Automatic Extended Reporting Period:**

The INSURED shall be entitled to a ninety (90) day Automatic Extended Reporting Period for no additional premium, commencing on the last day of the POLICY PERIOD, subject to the following terms and conditions:

1. The Automatic Extended Reporting Period shall apply to a CLAIM first made against the INSURED during the POLICY PERIOD and reported to the Company, in writing, by the INSURED during the Automatic Extended Reporting Period and otherwise covered by this Policy.
2. The Automatic Extended Reporting Period shall also apply to a CLAIM first made against the INSURED during the Automatic Extended Reporting Period, resulting from any POLLUTION CONDITION first discovered and reported to the Company, in writing, by the INSURED during the POLICY PERIOD and otherwise covered by this Policy. In this case, the CLAIM shall be deemed to have been made against the INSURED on the last day of the POLICY PERIOD.

3. The Automatic Extended Reporting Period shall also apply to any POLLUTION CONDITION first discovered by the INSURED during the POLICY PERIOD and reported to the Company, in writing, by the INSURED within the Automatic Extended Reporting Period and otherwise covered under this Policy.

The ninety (90) day Automatic Extended Reporting Period does not apply where:

1. this Policy is terminated for fraud, misrepresentation or non-payment of premium as described in Section IX. CONDITIONS, B. Cancellation, Items 2.a. and 2.b.; or

2. the INSURED has purchased other insurance to replace this Policy, which provides coverage for a CLAIM and/or POLLUTION CONDITION.

B. Optional Extended Reporting Period:

The FIRST NAMED INSURED shall be entitled to purchase an Optional Extended Reporting Period in the event this Policy is non-renewed, subject to the following terms and conditions:

1. The Optional Extended Reporting Period shall become effective upon payment of an additional premium of not more than one hundred percent (100%) of the full Policy Premium. The Optional Extended Reporting Period shall be effective for three (3) consecutive three-hundred and sixty-five (365) day periods commencing on the last day of the POLICY PERIOD. The FIRST NAMED INSURED must indicate its intention, in writing, to purchase this Optional Extended Reporting Period within thirty (30) days from the last day of the POLICY PERIOD. The Automatic Extended Reporting Period of ninety (90) days will be merged into this period and is not in addition to this period.

2. The Optional Extended Reporting Period shall only apply to a CLAIM first made against the INSURED during the Optional Extended Reporting Period, resulting from any POLLUTION CONDITION first discovered and reported to the Company, in writing, by the INSURED, during the POLICY PERIOD and otherwise covered by this Policy.

The Optional Extended Reporting Period does not apply where:

1. this Policy is terminated for fraud, misrepresentation or non-payment of premium as described in Section IX. CONDITIONS, B. Cancellation, Items 2.a. and 2.b.; or

2. the INSURED has purchased other insurance to replace this Policy, which provides coverage for a CLAIM and/or POLLUTION CONDITION.

It is a condition precedent to the operation of the rights granted under Item B. above that payment of the appropriate premium shall be made not later than thirty (30) days after expiration of this Policy in the case of non-renewal.

For purposes of Item B. Optional Extended Reporting Period as referenced above, the quotation of different terms and conditions by the Company shall not be construed as a non-renewal of this Policy.
VI. LIMITS OF LIABILITY AND SELF-INSURED RETENTION

A. The Company will pay one hundred percent (100%) of all covered LOSS, REMEDIATION EXPENSE, LEGAL EXPENSE and any other coverages afforded by endorsement attached to this Policy in excess of the applicable Self-Insured Retention Amount stated in Item 4. of the Declarations and subject to the Limits of Liability stated in Item 3. of the Declarations and the other terms and conditions of this Policy.

B. The Self-Insured Retention Amount is borne by the INSURED and is not to be insured unless the Company has expressed its prior consent in writing to the FIRST NAMED INSURED. The applicable Self-Insured Retention Amount stated Item 4. of the Declarations shall apply.

C. All LOSS, REMEDIATION EXPENSE, LEGAL EXPENSE and any other coverages afforded by endorsement attached to this Policy arising out of the same or related POLLUTION CONDITION at any one COVERED LOCATION shall be considered a single POLLUTION CONDITION and shall be subject to the applicable Limits of Liability stated in Item 3a. of the Declarations and the Self-Insured Retention Amount stated in Item 4. of the Declarations.

D. All LOSS, REMEDIATION EXPENSE, LEGAL EXPENSE or any other coverages afforded by endorsement attached to this Policy during the POLICY PERIOD or, where applicable, the EXTENDED REPORTING PERIOD shall not exceed the Limits of Liability stated in Item 3b. of the Declarations.

E. Any LOSS, REMEDIATION EXPENSE, LEGAL EXPENSE and any other coverages afforded by endorsement incurred and reported to the Company, in writing, over more than one policy period, and resulting from the same or related POLLUTION CONDITION. The LOSS, REMEDIATION EXPENSE, LEGAL EXPENSE and any other coverages afforded by endorsement attached to this Policy will be subject to the same Limits of Liability and the Self-Insured Retention Amount in effect at the time the POLLUTION CONDITION was first reported to the Company, in writing, by the INSURED, during the POLICY PERIOD or, where applicable, the EXTENDED REPORTING PERIOD.

VII. REPORTING, DEFENSE, SETTLEMENT AND COOPERATION

A. As a condition precedent to the coverage hereunder, in the event any CLAIM is made against the INSURED for LOSS or REMEDIATION EXPENSE, or any POLLUTION CONDITION is first discovered by the INSURED that results in a LOSS or REMEDIATION EXPENSE:

1. The INSURED shall forward to the Company or to any of its authorized agents every demand, notice, summons, order or other process received by the INSURED or the INSURED’s representative as soon as practicable; and

2. The INSURED shall provide to the Company, whether orally or in writing, notice of the particulars with respect to the time, place and circumstances thereof, along with the names and addresses of the injured and of available witnesses. In the event of oral notice, the INSURED agrees to furnish to the Company a written report as soon as practicable.

It is further agreed, that the INSURED shall cooperate with the Company and upon the Company’s request shall submit to examination by a representative of the Company, under oath if required, and shall attend hearings, depositions and trials and shall assist in effecting settlement, securing and giving evidence, obtaining the attendance of witnesses and in the conduct of suits, as well as in the investigation and/or defense thereof, all without charge to the Company. The INSURED shall further cooperate with the Company and do whatever is necessary to secure and effect any rights of indemnity, contribution or apportionment which the INSURED may have.
B. No costs, charges or expenses shall be incurred, nor payments made, obligations assumed or remediation commenced without the Company's written consent which shall not be unreasonably withheld. This provision does not apply to costs incurred by the INSURED on an emergency basis, where any delay on the part of the INSURED would cause injury to persons or damage to property, or increase significantly the cost of responding to any POLLUTION CONDITION. If such emergency occurs, the INSURED shall notify the Company immediately thereafter.

C. The Company shall have the right and the duty to defend an INSURED against any CLAIM seeking damages for a LOSS or for REMEDIATION EXPENSE. The Company will have no duty to defend the INSURED against any CLAIM for LOSS or for REMEDIATION EXPENSE to which this Policy does not apply.

D. The Company shall have the right and the duty to assume the investigation, adjustment or defense of any CLAIM. In case of the exercise of this right, the INSURED, on demand of the Company, shall promptly reimburse the Company for any element of LOSS, REMEDIATION EXPENSE, LEGAL EXPENSE or any other coverages afforded by endorsement falling within the Self-Insured Retention Amount stated in Item 4. of the Declarations.

The INSURED shall not admit liability or settle any CLAIM without the Company's consent. If the Company recommends a settlement of any CLAIM:

1. for an amount within the Self-Insured Retention Amount and the INSURED refuses such settlement, the Company shall not be liable for any LOSS, REMEDIATION EXPENSE, LEGAL EXPENSE and any other coverages afforded by endorsement in excess of the Self-Insured Retention Amount; or

2. for a total amount in excess of the Self-Insured Retention Amount and the INSURED refuses such settlement, the Company's liability for LOSS, REMEDIATION EXPENSE, LEGAL EXPENSE and any other coverages afforded by endorsement shall be limited to that portion of the recommended settlement and the costs, charges and expenses as of the date of the INSURED's refusal which exceed the Self-Insured Retention Amount but fall within the Limits of Liability.

E. If a POLLUTION CONDITION is first discovered by the INSURED during the POLICY PERIOD and reported in writing to the Company during the POLICY PERIOD or, where applicable, the EXTENDED REPORTING PERIOD, and a CLAIM associated with such POLLUTION CONDITION is made against the INSURED and reported to the Company after the expiration of this Policy, such CLAIM shall be deemed to have been first made and reported on the last day of the POLICY PERIOD in which the POLLUTION CONDITION is first discovered, provided that the INSURED has maintained an equivalent policy with the Company on a continuous uninterrupted basis and the CLAIM is made against the INSURED and reported to the Company prior to the cancellation or expiration of such subsequent policy. It is further agreed that coverage for such CLAIM will not be provided under any subsequent policy issued by the Company.

F. The Company shall have the right to designate legal counsel for the investigation, adjustment and defense of a CLAIM. The Company shall consult with the INSURED in conjunction with the selection of counsel.

VIII. TRANSFER OF LEGAL DEFENSE DUTIES

A. If the Company believes that the Limits of Liability stated in Item 3. of the Declarations has been or soon will be exhausted in defending a CLAIM or that the Company has paid out or will soon pay out the Aggregate Liability stated in Item 3.b. of the Declarations, the Company will so notify the FIRST NAMED INSURED in writing as soon as possible. The Company will advise that its duty to defend a CLAIM seeking damages within those Limits of Liability has terminated, subject to payment of the Limits of Liability, and that it will have no duty to defend or indemnify the INSURED for any CLAIM for which notice is given after the date it sends out such notice. The Company will take immediate and appropriate steps to transfer control of any existing defense prior to exhaustion of the limits to the FIRST NAMED INSURED. The FIRST NAMED INSURED agrees to reimburse the Company for any costs which the Company bears in connection with the transfer of the defense.
B. The Company will take appropriate steps necessary to defend the CLAIM during the transfer of the defense and avoid any unfavorable legal action provided that the FIRST NAMED INSURED cooperates in the transfer of the duties of the defense.

C. The exhaustion of the applicable Limits of Liability by the payment of LOSS, REMEDIATION EXPENSE, LEGAL EXPENSE and any other coverages afforded by endorsement will not be affected by the Company’s failure to comply with any of the provisions of this section.

IX. CONDITIONS

A. Inspection and Audit — The Company shall be permitted but not obligated to inspect and monitor on a continuing basis the INSURED’S property or operations at any COVERED LOCATION, at any time. Neither the Company’s right to make inspections and monitor nor the actual undertaking thereof nor any report thereon shall constitute an undertaking, on behalf of the INSURED or others, to determine or warrant that property or operations are safe, healthful or conform to acceptable engineering practice or are in compliance with any law, rule or regulation. Access for the inspection and audit may be coordinated through the broker or agent of the FIRST NAMED INSURED.

B. Cancellation — The INSURED and the Company agree to the following with regard to cancellation:

1. Cancellation by the FIRST NAMED INSURED — This Policy may be canceled by the FIRST NAMED INSURED by surrender thereof to the Company or any of its authorized agents or by mailing to the Company written notice stating when thereafter the cancellation shall be effective. The mailing of notice as aforesaid shall be sufficient proof of notice of cancellation. The time of surrender or the effective date and hour of cancellation stated in the notice shall become the end of the POLICY PERIOD. Confirmed delivery of such written notice by the FIRST NAMED INSURED shall be equivalent to mailing.

The Minimum Earned Premium for this Policy will be the percentage stated in Item 8. of the Declarations of the total premium for this Policy. The FIRST NAMED INSURED is not entitled to any return of the Minimum Earned Premium upon cancellation by the FIRST NAMED INSURED.

If the Minimum Earned Premium is less than one hundred percent (100%), and the FIRST NAMED INSURED cancels this Policy, then the amount of premium returnable after the minimum premium earned is retained by the Company shall be computed in accordance with the customary short rate table and procedure.

2. Cancellation by the Company — This Policy may be canceled by the Company by mailing to the FIRST NAMED INSURED at the address shown in Item 1. of the Declarations, written notice stating when not less than sixty (60) days [ten (10) days for non-payment of premium] thereafter such cancellation shall be effective. The mailing of notice as aforesaid shall be sufficient proof of notice of cancellation. The effective date and hour of cancellation stated in the notice shall become the end of the POLICY PERIOD.

The Company may cancel this Policy at any time, but only for the following reasons:

a. the INSURED has made a material misrepresentation which affects the Company’s assessment of the risk of insuring any COVERED LOCATION; or

b. the INSURED breaches or fails to comply with Policy terms, conditions, contractual duties, or any of its obligations under this Policy or at law; or

c. the INSURED fails to pay the premium or fails to pay any Deductible or the Self-Insured Retention Amount for this Policy.
If the Company cancels this Policy, then the amount of premium returnable to the INSURED shall be computed pro rata and no minimum earned premium shall apply.

In the event of cancellation of this Policy by the Company from Item b. above, the INSURED shall have sixty (60) days from the date of notice to remedy such breach or failure to comply that is the cause for cancellation. If such remedy is satisfactory to the Company, in its sole discretion, during the applicable notice period, the Company will rescind the Notice of Cancellation with a written confirmation to the FIRST NAMED INSURED that the Policy shall remain in place.

With regard to both Items 1. and 2. above:

1. The premium adjustment may be made either at the time cancellation is affected or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation; and

2. If a CLAIM is made against the INSURED, and the POLLUTION CONDITION related to such CLAIM is discovered or coverage is requested from the Company by the INSURED during the POLICY PERIOD or, where applicable, the EXTENDED REPORTING PERIOD, then the total premium shall be considered one hundred percent (100%) earned, and the INSURED is not entitled to any return of premium upon cancellation.

C. Declarations and Representations – By acceptance of this Policy, the INSURED agrees that the statements contained in the Application and any other supplemental materials and information submitted herewith are the INSURED’s agreements and representations, that they shall be deemed material, that this Policy is issued in reliance upon the truth of such representations and that this Policy embodies all agreements existing between the INSURED and the Company or any of its agents relating to this insurance.

D. Action Against Company -- No action shall lie against the Company unless, as a condition precedent thereto:

1. the INSURED has fully complied with all of the terms of this Policy; and

2. the amount the INSURED is obligated to pay has been finally determined either by judgment against the INSURED after actual trial or by written agreement of the INSURED, the claimant and the Company.

Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this Policy to the extent of the insurance afforded by this Policy. No person or organization shall have any right under this Policy to join the Company as a party to any action against the INSURED to determine the INSURED’s liability, nor shall the Company be impleaded by the INSURED or its legal representative. Bankruptcy or insolvency of the INSURED or of the INSURED’s estate shall not relieve the Company of any of its obligations hereunder.

E. Assignment -- This Policy shall be void as to the assignee or transferee, if assigned or transferred without written consent of the Company. Such consent shall not be unreasonably withheld or delayed by the Company.

F. Subrogation -- In the event of any payment under this Policy, the Company shall be subrogated to all the INSURED’S rights of recovery against any person or organization and the INSURED shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The INSURED shall do nothing to prejudice such rights.

G. Changes – Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this Policy or estop the Company from asserting any right under the terms of this Policy, nor shall the terms of this Policy be waived or changed, except by endorsement issued to form a part of this Policy.
H. **Sole Agent** – The FIRST NAMED INSURED stated in Item 1. of the Declarations shall act on behalf of all INSUREDS for the payment or return of premium, receipt and acceptance of any endorsement issued to form a part of this Policy, giving and receiving notice of cancellation or non-renewal and the exercise of the rights provided in Section V. EXTENDED REPORTING PERIOD, Item B. Optional Extended Reporting Period.

I. **Other Insurance** – Subject to Section VI. LIMITS OF LIABILITY AND SELF-INSURED RETENTION, this insurance shall be in excess of the Self-Insured Retention Amount stated in Item 4. of the Declarations and any other valid and collectible insurance available to the INSURED, whether such other insurance is stated to be primary, pro rata, contributory, excess, contingent or otherwise, unless such other insurance is written only as specific excess insurance over the Limits of Liability provided in this Policy.

J. **Headings** – The descriptions in the headings of this Policy are solely for convenience and form no part of this Policy terms and conditions.

K. **Jurisdiction and Venue** – It is agreed that in the event of the failure of the Company to pay any amount claimed to be due hereunder, the Company and the INSURED will submit to the jurisdiction of the State of New York and will comply with all the requirements necessary to give such court jurisdiction. Nothing in this clause constitutes or should be understood to constitute a waiver of the Company's right to remove an action to a United States District Court.

L. **Choice of Law** – All matters arising hereunder including questions related to the validity interpretation, performance and enforcement of this Policy shall be determined in accordance with the law and practice of the State of New York (notwithstanding New York's conflicts of law rules).

M. **Severability** – Except with respect to Limits of Liability and any rights and duties assigned in this Policy to the FIRST NAMED INSURED, this insurance applies as if each INSURED were the only INSURED and separately to each INSURED against whom a CLAIM is made.

Any misrepresentation, act or omission that is in violation of a term, duty or condition under this Policy by one INSURED shall not by itself affect coverage for another INSURED under this Policy. However, this condition shall not apply to the INSURED who is a parent, subsidiary or affiliate of the INSURED which committed the misrepresentation, act or omission referenced above.
Z Choice® Real Estate Environmental Liability

This policy provides coverage on a discovery and/or claims-made and reported basis depending upon the insuring agreements specifically listed as provided in Item 5 of the Declarations. A "pollution event" must be first "discovered" and/or a "claim" must be first made against an "insured" during the "policy period" and such "discovery" or "claim" must be reported to us in writing during the "policy period" or during an applicable extended reporting period. Notice of a "potential claim" is not a "claim" and does not trigger coverage under the policy.

This policy has certain unique provisions and requirements that may be different from other policies the "insured" may have purchased. Coverage is provided only if the word YES appears in the column marked PROVIDED in the schedule set forth in Item 5 of the Declarations. The payment of "claim expenses" reduces the Limits of Liability set forth in Item 3 of the Declarations. If the applicable Limits of Liability are exhausted, we shall not be liable for "claim expenses" or for any "loss", "other loss" or "crisis management expense" which would otherwise be covered under this policy. Read the entire policy carefully including any endorsements thereto to determine rights, duties, and what is and is not covered.

Throughout this policy, the words "we", "us" and "our" refer to the company providing this insurance as identified in the Declarations. Other words and phrases that appear in quotation marks have special meaning. Refer to DEFINITIONS (Section III).

In consideration of the payment of premium and the "named insured's" undertaking to pay the Deductible as described herein, in reliance upon the statements made in the Application all of which are made a part hereof, and subject to the Limits of Liability of this insurance as set forth in Item 3 of the Declarations, and the exclusions, conditions and other terms of this policy, we agree with the "named insured" as follows:

I INSURING AGREEMENTS

THESE COVERAGE ONLY APPLY IF AND TO THE EXTENT SPECIFICALLY LISTED AS PROVIDED IN ITEM 5 OF THE DECLARATIONS

A. Existing Pollution Event

1. First Party Cleanup Costs

We will pay "cleanup costs" to the extent resulting from an "existing pollution event" that is on, at, under or that is migrating or has migrated beyond the boundaries from a "covered location" if that "existing pollution event" is first "discovered" during the "policy period" and the "discovery" is reported to us in writing during the "policy period" or within sixty days following the end of the "policy period".

2. Third Party Liability

We will pay "loss" that an "insured" is legally obligated to pay as a result of a "claim" resulting from an "existing pollution event" in the "coverage territory", provided the "claim" is first made against the "insured" during the "policy period", and the "claim" is reported to us in writing during the "policy period", within sixty days following the end of the "policy period" or during an optional extended reporting period, if purchased.

B. New Pollution Event

1. First Party Cleanup Costs

We will pay "cleanup costs" to the extent resulting from a "new pollution event" that is on, at, under or that is migrating or has migrated beyond the boundaries from a "covered location", if that "new pollution event" is first "discovered" during the "policy period" and the "discovery" is reported to us in writing during the "policy period" or within sixty days following the end of the "policy period".
2. Third Party Liability

We will pay "loss" that an "insured" is legally obligated to pay as a result of a "claim" resulting from a "new pollution event" in the "coverage territory", provided the "claim" is first made against the "insured" during the "policy period", and the "claim" is reported to us in writing during the "policy period", within sixty days following the end of the "policy period" or during an optional extended reporting period, if purchased.

C. Crisis Management Expense

We will pay "crisis management expense" in response to a "pollution event" in the "coverage territory" that the "named insured" reasonably expects could give rise to "loss" or "cleanup costs" under the policy and subjects the "named insured" to significant adverse regional or national media attention. "Crisis management expense" must be first incurred by the "insured" during the "policy period".

II. DEFENSE

We shall have the right and duty to assume the adjustment, defense and settlement of any "claim" to which this policy applies. "Claim expenses" reduce the applicable Limits of Liability set forth in Item 3 of the Declarations as described in LIMITS OF LIABILITY AND DEDUCTIBLE (Section VI.).

If permitted by applicable law, we shall have the right to appoint one legal counsel to represent and/or defend one or more of the "insureds" who are or may be involved in a "claim" to which this insurance applies. In the event an "insured" is entitled by law to select independent counsel to represent and/or defend an "insured" at our expense, the attorneys' fees and all other litigation expenses we must pay to that counsel are limited to "reasonable legal costs". Furthermore, an "insured" may at any time waive any right it may have to select independent counsel.

Our duty to adjust, defend and settle any and all "claims", pending and future, ends when the remaining applicable Limits of Liability have been exhausted by payment of "loss" or "other loss".

III. DEFINITIONS

A. "Automatically qualified property" means a property in the "coverage territory" that the "named insured" acquires, leases or rents after the inception date of this policy that is in compliance with the "environmental due diligence policy" and is of similar type and exposure to the portfolio of "covered locations" and/or consistent with the intended use of the "covered locations" set forth in the Application or any applicable endorsement.

B. "Bodily injury" means any physical injury, sickness, disease, mental anguish or emotional distress sustained by any person, including death resulting therefrom.

C. "Claim" means a written demand or written notice received by the "insured" alleging liability or responsibility on the part of the "insured." "Claim" does not include a "potential claim" that was reported in a prior policy period as described in CLAIM PROVISIONS (Section VII., paragraph B. NOTICE OF POTENTIAL CLAIM), that has become a "claim" during the "policy period".

D. "Certified industrial hygienist" means a licensed professional currently certified pursuant to the requirements of the American Board of Industrial Hygiene and who has experience in indoor air quality particularly with respect to "microbial substances". However, a "certified industrial hygienist" shall not, without our prior written consent, include:

1. A "named insured";
2. Any person who is an "insured" or who is an employee, director or officer of a "named insured" or of a "named insured's" parent, subsidiary or affiliate company; or
3. Any person who has any investment or ownership interest in a "covered location" prior to or during the "policy period."

E. "Claim expenses" means:

1. Fees charged by an attorney designated by:
   a. Us; or
   b. The "insured" with our prior written consent, provided such fees are "reasonable legal costs"; and
2. All other reasonable fees, costs and expenses resulting from the adjustment, defense, settlement and appeal of a "claim" if incurred by us, or by or on behalf of the "insured" with our written consent, including interest on
the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay (including an offer of judgment), or deposited in court the amount available for the judgment under the policy.

"Claim expenses" does not include the salaries or expenses of regular employees of ours or the "insured".

F. "Cleanup costs" means:

1. Reasonable and necessary costs, charges and expenses, incurred in the investigation, removal, remediation (including associated monitoring), neutralization or immobilization of contaminated soil, surface water, groundwater, or other contamination:
   a. To the extent required by "governmental authority", plus reasonable additional costs, charges and expenses incurred, at the "insured's" election, for "green remediation" not to exceed the Green Remediation Limit set forth in Item 3 of the Declarations, where such "green remediation" is neither legally necessary nor required by "governmental authority"; or
   b. That have actually been incurred by the government or any political subdivision of the United States of America or any state thereof or Canada or any province thereof, or by third parties;

2. Where real property or improvements thereto are damaged in the course of performing the activities described in paragraph 1. above, reasonable and necessary costs, charges and expenses to repair, replace or rebuild such real property or improvements to substantially their condition immediately prior to any such damage, plus reasonable additional costs, charges and expenses to repair, replace or rebuild such damaged property to comply with applicable "green standards" not to exceed the Green Standards Limit set forth in Item 3 of the Declarations; but excluding any:
   (a) Damage caused by the underlying "pollution event"; or
   (b) Other than "green standards" as described above, any costs, charges or expenses for improvements or betterments, including, but not limited to, those arising from compliance with any law that was not applicable to (including by operation of any grandfather provision contained in any such law) or not enforced against the property before it was so damaged; and

3. "Emergency expenses".

G. "Coverage territory" means worldwide where permitted by applicable law.

H. "Covered location" means:

1. Property listed in a Schedule of Covered Locations endorsement and any amendments thereto including an endorsement to add a "covered location" that is not an "automatically qualified property" because it does not satisfy the "environmental due diligence policy" but for which we have otherwise agreed to provide coverage subject to any additional exclusions, conditions or other limitations;

2. "Automatically qualified property" as of the date on which a "named insured" acquires, leases or rents the property by evidence of written transfer of title to, or written lease or rental agreement with, such "named insured" and which satisfies the "environmental due diligence policy", provided that the "named insured" provides us with a written list of all such property in accordance with the time frame set forth in Item 6 of the Declarations, and

3. "Inadvertently omitted property".

I. "Covered operations" means those operations conducted by or on behalf of an "insured" that are specifically described in the Application and any supporting documentation provided to us by the "named insured" during the application process.

J. "Crisis management expense" means reasonable and necessary costs, charges, expenses and fees that are incurred by an "insured":

1. To retain a public relations or crisis management firm with our consent which shall not be unreasonably withheld, to help maintain or restore public confidence in the "named insured";

2. For essential emergency travel expenses incurred by a "named insured's" principals, partners, directors or employees;

3. For rental of temporary staging or meeting space necessitated by the unavailability of the "named insured's"
space as a result of the "pollution event";

4. For any other services or activities for which we have given our prior written consent.

K. "Discovered" or "discovery" means discovery by a "responsible insured" of a "pollution event" in amounts or concentrations that exceed allowable levels or concentrations established under "governmental authority".

L. "Emergency expenses" means costs, charges and expenses incurred to avoid an actual imminent and substantial endangerment to the public health or the environment.

M. "Environmental due diligence policy" means, at a minimum, that the "named insured" shall either commission a Phase I Environmental Site Assessment for a property by a qualified environmental consultant in accordance with ASTM Standard E 1527-05 (or any subsequent revisions) or shall review a Phase I Environmental Site Assessment for a property conducted by a qualified environmental consultant for another party, provided that such Phase I Environmental Site Assessment is prepared in accordance with ASTM Standard E 1527-05 (or any subsequent revisions) and either of such Phase I Environmental Site Assessment expressly states:

1. That there are no Recognized Environmental Concerns for the property that require any potential or actual further investigative, or remedial action pursuant to "governmental authority"; or

2. That investigative or remedial action was required for the property, in which case, a No Further Action Letter or state equivalent issued in accordance with "governmental authority" must also be submitted to and accepted by us.

N. "Excluded property" means any property other than a "covered location", "non-owned disposal site" or "job site".

O. "Existing pollution event" means a "pollution event" that commenced on or after the "retroactive date" and prior to the inception date of this policy.

P. "Governmental authority" means federal, state or local statutes, regulations, ordinances or orders applicable to "pollution events" including those applicable to any licensed professional authorized pursuant to state law to oversee remediation at a "covered location". For the purpose of "microbial substances", "governmental authority" includes a written determination by a "certified industrial hygienist" in accordance with all applicable professional standards.

Q. "Green standards" means the following standards, products, methods, and processes for improving the environment, increasing energy efficiency, and enhancing safety and property protection:

1. LEED® Green Building Rating System™ of the U.S. Green Building Council;

2. Green Globes™ Assessment and Rating System;

3. ENERGY STAR®; and

4. National Fire Protection Association codes, Underwriter Laboratories standards, or other local or international codes.

R. "Green remediation" means the use of cleanup technologies considering the Principles for Greener Cleanups developed by the United States Environmental Protection Agency Office of Solid Waste and Emergency Response and Technology Innovation dated August 2009.

S. "Inadvertently omitted property" means any:

1. "Automatically qualified property"; or

2. Property in the "coverage territory" in which the "named insured" had an ownership interest as of or prior to the inception date of this policy, other than an "excluded property"; and

that was inadvertantly omitted from the materials submitted to us during the application process and/or from the Schedule of Covered Locations Endorsement, or in the case of an "automatically qualified property", inadvertently omitted from the written list described in CONDITIONS (Section VIII, paragraph J. PROPERTY ADDED AFTER INCEPTION), provided that for any such property, upon determination of an omission, the property will be reported to us as soon as possible thereafter and listed on an Amended Schedule of Covered Locations Endorsement.

T. "Insured" means:

1. The "named insured";
2. Any current or former principal, partner, officer, director, employee, member or manager (in the case of a limited liability company) or leased personnel of a "named insured", while acting within the scope of their employment or written agreement with such "named insured";

3. Any entity that has entered into a note, mortgage or deed of trust with the "named insured" for which the "covered location" serves as collateral and for which such entity obtains a lien or other security interest in the "covered location".

U. "Insured contract" means a contract or agreement listed in a Schedule of Insured Contracts endorsement to this policy, if any.

V. "Job site" means a location that is neither owned nor leased or rented by an "insured" at which an "insured" is performing "covered operations".

W. "Loss" means:

1. Compensatory damages, whether awarded by a court in a judgment or paid in settlement for:
   (a) "Bodily injury" including costs for medical monitoring for a person but only when such medical monitoring is a direct result of physical injury to such person; or
   (b) "Property damage" including diminution in property value and stigma damage to property, but only when such diminution in value or stigma damage is a direct result of physical injury to such property; and

2. "Cleanup costs";

3. "Natural resource damages";

4. Civil fines and civil penalties and punitive, exemplary or multiple damages to the extent insurable by law in connection with a "claim" under paragraph 1. above; and

5. "Claim expenses".

X. "Microbial substances" means any substance that reproduces through release of spores or the splitting of cells including but not limited to bacteria (including legionella), viruses or mold whether or not the substance is living.

Y. "Named insured" means the person or entity set forth in Item 1 of the Declarations and any other person or entity listed in a Named Insured endorsement to the policy, if any, and all subsidiary companies, limited liability companies or partnerships of such person or entity who own, operate or manage a "covered location".

Z. "Natural resources" means land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States, any State or local government, any foreign government, any Indian tribe, or, if such resources are subject to a trust restriction on alienation, any member of an Indian tribe.

AA. "Natural resource damages" means the sum of:

1. Reasonable and necessary direct costs, including such costs of assessment and replacement, required by applicable "governmental authority" to restore "natural resources" to their baseline condition as they existed prior to the "pollution event"; and

2. The value of the "natural resources" to the public that is attributable to the direct use of the services provided by such "natural resources" between the time of the "pollution event" and restoration of the "natural resources" injured by the "pollution event", other than any aesthetic or historic use value.

BB. "New pollution event" means a "pollution event" that first commences on or after the inception date of the policy and before the end of the "policy period".

CC. "Non-owned disposal site" means a location that is:

1. Neither partially nor wholly owned or operated by an "insured" or any subsidiary or affiliate company of an "insured";

2. Licensed and/or certified by "governmental authority" to accept waste, products and/or materials generated from a "covered location", "unscheduled location" or "job site"; and
3. Not included nor proposed to be included on the National Priorities List (NPL) or any state equivalent at the time of any treatment, recycling, reclamation, storage or disposal of any goods, products or waste, including oil, petroleum, pesticide products, and materials to be recycled, reconditioned or reclaimed.

DD. "Other loss" has the specific meaning given in a Z Choice® Coverage endorsement to this policy, if any. "Other loss" does not include "loss".

EE. "Policy period" means the period set forth in Item 2 of the Declarations or:

1. Any shorter period arising from:
   (a) Cancellation or termination of this policy; or
   (b) With respect to a specific "covered location" the deletion of such "covered location" from this policy by us upon the "named insured's" written request; or

2. As otherwise expressly provided in an endorsement.

FF. "Pollution event" means the discharge, dispersal, release, or escape of any solid, liquid, gaseous or thermal irritant, contaminant or pollutant, including smoke, vapor, soot, fumes, acids, alkalis, toxic or hazardous substances, electromagnetic fields, chemicals, waste (including medical, infectious and pathological waste), and low level radioactive waste and materials, into or upon land, or any structure on land, the atmosphere, or any watercourse or body of water including groundwater in concentrations or at levels in excess of those naturally present in the environment. "Pollution event" includes:

1. The illicit abandonment of any irritant, contaminant or pollutants at a "covered location" provided that such abandonment was committed by parties other than the "insured" and without the knowledge of a "responsible insured"; and

2. Any "microbial substances" that are present on, at or within any buildings or other structures at a "covered location" or "job site".

However, "pollution event" does not include any exposure to infected humans or animals, or contact with bodily fluids or materials of infected humans or animals.

GG. "Potential claim" means a "new pollution event" that an "insured" reasonably expects may result in a "claim".

HH. "Property damage" means:

1. Physical injury to or destruction of tangible property of parties other than an "insured" including resulting loss of use thereof; or

2. Loss of use of tangible property of parties other than an "insured" that has not been physically injured or destroyed.

II. "Reasonable legal costs" means attorneys' fees, costs, charges, and all other litigation expenses in connection with the defense of a "claim" or negotiation of cleanup standards and representation before environmental agencies in connection with "discovery", limited to rates we actually pay to counsel we retain in the ordinary course of business in the defense of similar "claims" or negotiation and representation of similar matters in the community where the "claim" arose or is being defended or the "discovery" was made or is being negotiated and represented; provided that we shall pay such rates and amounts only to the extent that and so long as they are evidenced to be reasonable and necessary attorney fees, costs, charges, and expenses. We may exercise the right to require that such counsel have certain minimum qualifications with respect to legal competency including experience in defending "claims" or negotiating in connection with a "discovery" similar to the one pending against or involving an "insured" and to require such counsel to have errors and omissions insurance coverage. It is a condition precedent to our obligation to pay any "reasonable legal costs" that an "insured" agree and be responsible for counsel responding to our requests for information regarding the "claim", "discovery" or any other matter in a timely and comprehensive manner.

JJ. "Responsible insured" means a "named insured's" principal, partner, director, officer, member or manager (in the case of a limited liability company), or an employee with responsibility for compliance, environmental or legal affairs, or risk management, or any manager of a "covered location".

KK. "Retroactive date" means the date set forth in Item 7 of the Declarations.

LL. "Termination of coverage" means the effective date of:
1. Cancellation or nonrenewal of this policy by the "named insured", or cancellation or nonrenewal of this policy by us other than for fraud or material misrepresentation, change in use of or operations conducted at the "covered location", or nonpayment of premium; or

2. Deletion of a "covered location" from this policy by us upon the "named insured's" written request but only with respect to such "covered location".

MM. "Transportation" means the movement of goods, products or waste, including oil, petroleum, pesticide products, and materials to be recycled, reconditioned or reclaimed, beyond the boundaries of any "covered location", "non-owned disposal site" or "job site" and includes any loading or unloading of such goods, products or waste.

NN. "Underground storage tank" means any tank in existence at a "covered location" as of the inception date of this policy or installed thereafter, including associated underground piping connected thereto, that has at least ten (10) percent of its volume, or any associated piping, below the ground.

IV. EXCLUSIONS

This insurance does not apply to "claims", "loss", "crisis management expense" or "other loss" based upon, arising out of, or to the extent comprised of:

A. Asbestos and Lead Abatement
Any activities to remove, or prevent, abate, avoid, or control the release of asbestos-containing material or lead-based paint which are part of or applied to any fixtures, buildings or improvements on, at or under a "covered location", including, but not limited to, removal, encapsulation, repair, enclosure, encasement, and operations and maintenance programs.

B. Contractual Liability
Any liability assumed by an "insured" under any contract or agreement. However, this exclusion does not apply to liability:

1. For "loss" or "other loss" that would have attached to an "insured" by operation of law in the absence of such contract or agreement; or

2. That is specifically assumed in an "insured contract" but only to the extent that any indemnity or contractual liability assumed thereby is consistent with liability expressly covered under, and not otherwise excluded from coverage by, the policy.

C. Criminal Fines or Criminal Penalties
Any criminal fines or criminal penalties.

D. Excluded Property
Any "pollution event" on, at, under or that is migrating or has migrated beyond the boundaries from any "excluded property". However, this exclusion does not apply to "transportation".

E. Known Pollution Event
Any "pollution event" known to a "responsible insured" prior to the inception date of this policy, or in the case of an "automatically qualified property", prior to or as of the date on which a "named insured" acquires or leases such property by evidence of written transfer of title or lease agreement, unless such "pollution event" was disclosed to us in writing and listed on a Known Pollution Event Schedule and/or Disclosed Documents endorsement and provided that such "pollution event" is not otherwise excluded under the policy.

F. Known Underground Storage Tanks
Any "underground storage tank", whether active, inactive or abandoned, known to any "responsible insured"; however this exclusion does not apply to:

1. Any "underground storage tank" that is listed on a Scheduled Underground Storage Tank endorsement to this policy, if any;

2. Any "underground storage tank" that was closed or abandoned-in-place prior to the inception date of this policy in accordance with all "environmental laws" in effect at the time of closure or abandonment;

3. Any septic tank;
(4) Any oil-water separator; or
(5) Any storage tank that is situated in an underground area such as a basement, cellar, mine shaft or tunnel if such storage tank is situated upon or above the surface of the floor.

G. Operations
Any "pollution event" resulting from operations performed by or on behalf of an "insured" beyond the boundaries of a "covered location" or "job site".

H. Products
Any goods or products designed, manufactured, sold, handled, distributed, or supplied by the "insured" or by others trading under its name or under license from the "insured" after possession of such goods or products has been relinquished to others by the "insured" or others trading under its name or under license from the "insured". However, this exclusion does not apply to "transportation" on or after the "retroactive date".

I. Professional Services
The rendering of or the failure to render any professional services by an "insured".

J. Related Persons and Organizations
Any "claim" made:
1. By an "insured" against any other "insured", however this provision shall not apply to any indemnification given by a "named insured" to another "insured" in an "insured contract" or to a "claim" made against a "named insured" by an additional "insured"; or
2. Against an "insured" by an organization or individual:
   a. That wholly or partially controls, owns, operates or manages an "insured"; or
   b. That is wholly or partially controlled, owned, operated or managed by the "insured".

K. War
1. War, including undeclared or civil war;
2. Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
3. Insurrection, rebellion, revolution or usurped power, or action taken by any government, sovereign or other authority in hindering or defending against any of these.

L. Workers' Compensation and Injury as a Consequence of Employment
1. Any obligation of the "insured" under a workers compensation, disability benefits, unemployment compensation or any similar law;
2. Injury to any "insured" if such injury occurs during and in the course of employment;
3. Injury to the spouse, child, parent, brother or sister of any "insured" as a consequence of such "insured's" employment; or
4. Any obligation of an "insured" for indemnity or contribution to another because of "loss" or "other loss" arising out of such injury in the course of employment.

M. Wrongful Acts or Deliberate Non-Compliance
Any:
1. Knowingly wrongful act, or
2. Deliberate non-compliance with any "governmental authority", administrative complaint, notice of violation, notice letter, or instruction of any governmental agency or body,
   by or at the direction of a "responsible insured".

V. OPTIONAL EXTENDED REPORTING PERIOD
A. Upon "termination of coverage", the "named insured" will be entitled to purchase an optional extended reporting period of up to three years (at a cost not to exceed 100% of the total premium for this policy) commencing at the end of the "policy period" in which to report any "claim" first made against an "insured" during such optional extended reporting period, provided that the "named insured":

1. Has not purchased any other insurance to replace coverage provided by this policy and which applies to a "claim" covered hereunder;
2. Makes a written request for such optional extended reporting period which we receive within thirty days following the effective date of the "termination of coverage";
3. Pays the additional premium when due.

If such additional premium is paid when due, the optional extended reporting period may not be canceled by us provided that all other terms and conditions of this policy are met.

B. Any "claim" reported to us during the optional extended reporting period will be deemed to have been made on the last day of the "policy period" and will be subject to the remaining Limits of Liability for the "policy period", if any, provided that:

1. The "pollution event" first commenced on or after the "retroactive date" and before the end of the "policy period"; and
2. The "claim" is otherwise covered under the terms and conditions of this policy.

VI. LIMITS OF LIABILITY AND DEDUCTIBLE

A. EACH POLLUTION EVENT LIMIT

Subject to the Aggregate Policy Limit, the most we will pay for all "loss" or "other loss" arising out of the same, continuous or repeated "pollution event" or series of related "pollution events" is the Each Pollution Event Limit set forth in Item 3 of the Declarations.

We shall not be obligated to pay any "loss" or "other loss", or undertake or continue the defense of any "claim", pending or future, after the Each Pollution Event Limit has been tendered into court or exhausted by payments for "loss" or "other loss".

B. AGGREGATE POLICY LIMIT OF LIABILITY

The most we will pay for all "loss" and "other loss" to which this insurance applies is the Aggregate Policy Limit set forth in Item 3 of the Declarations.

C. CRISIS MANAGEMENT EXPENSE AGGREGATE LIMIT

The most we will pay for all "crisis management expense" to which this insurance applies is the Crisis Management Expense Aggregate Limit set forth in Item 3 of the Declarations. The Crisis Management Expense Aggregate Limit does not reduce or exhaust any other Limit of Liability.

D. GREEN REMEDIATION AGGREGATE LIMIT

The Green Remediation Aggregate Limit is the most we will pay for all costs, charges and expenses for "green remediation". The Green Remediation Aggregate Limit does not reduce or exhaust any other Limit of Liability.

E. GREEN STANDARDS AGGREGATE LIMIT

The Green Standards Aggregate Limit is the most we will pay for all costs, charges and expenses to comply with "green standards". The Green Standards Aggregate Limit does not reduce or exhaust any other Limit of Liability.

F. SUB-LIMIT OF LIABILITY/AGGREGATE SUB-LIMIT

If a sub-limit of liability is shown in Item 5 of the Declarations corresponding with a specific insuring agreement or in an endorsement to this policy, then, subject to the Each Pollution Event Limit and Aggregate Policy Limit set forth in Item 3 of the Declarations and the corresponding Aggregate Sub-Limit, such sub-limit of liability is the most we will pay for all "loss" or "other loss", as applicable, arising from the same, continuous or repeated "pollution event" or series of related "pollution events" to which the specific insuring agreement or endorsement applies. The corresponding Aggregate Sub-Limit is the most we will pay for all "loss" or "other loss", as applicable, under the terms of the insuring agreement or endorsement to which that Aggregate Sub-Limit corresponds.

The sub-limit of liability is not in addition to and will erode the Each Pollution Event Limit and the Aggregate Policy Limit.
Limit set forth in Item 3 of the Declarations. If the Each Pollution Event Limit and/or Aggregate Policy Limit has been reduced to an amount which is less than the sub-limit of liability corresponding with a specific insuring agreement or in an endorsement, the lesser of the remaining Aggregate Policy Limit or remaining Each Pollution Event Limit is the most that will be available for payment of "loss" or "other loss" as applicable, to which to which that insuring agreement or endorsement applies.

G. DEDUCTIBLE

We will pay "loss" or "other loss" to which this insurance applies in excess of the Deductible set forth in Item 4 or Item 5 (corresponding with an insuring agreement specifically listed as provided) of the Declarations or as set forth in an endorsement to this policy, if any. The Deductible is the "named insured's" obligation and applies to all "loss" and "other loss" arising from the same, continuous or repeated "pollution event" or series of related "pollution events". The Deductible does not erode the Limits of Liability. We may advance payment for "loss" or "other loss" within the Deductible. The "named insured" shall promptly reimburse us for advancing any element of such "loss", or "other loss" paid by us within the Deductible.

If an "insured" agrees with us to use non-binding mediation to resolve a "claim" for which a defense has been provided and such "claim" is resolved thereby, the Deductible shall be reduced by 50% for that "claim" only, subject to a maximum reduction of $25,000.

H. MULTIPLE INSUREDS OR CLAIMANTS, MULTIPLE COVERAGES AND MULTIPLE POLICY PERIODS

1. MULTIPLE INSUREDS OR CLAIMANTS

The inclusion of more than one "insured" in the "discovery" of a "pollution event" or in the making of a "claim" regarding the same "pollution event" shall not increase the Limits of Liability set forth in Item 3 of the Declarations. Nor shall the "discovery" of a "pollution event" or the making of "claims" by more than one person or organization increase the Limits of Liability stated in the Declarations.

2. MULTIPLE COVERAGES

If the same, continuous or repeated "pollution event" or series of related "pollution events" is covered under more than one insuring agreement specifically listed as provided in Item 5 of the Declarations, only a single Each Pollution Event Limit shall apply to all "loss" or "other loss" arising from such "pollution event" or series of related "pollution events". Furthermore, if more than one Deductible is applicable, only the highest Deductible shall apply to all "loss" or "other loss" arising from such "pollution event" or series of related "pollution events".

3. MULTIPLE POLICY PERIODS

If we or an affiliate have issued pollution liability coverage to the "named insured" in one or more consecutive and uninterrupted policy periods, and:

(a) a "pollution event" or series of related "pollution events" that is first reported to us in accordance with all of the terms and conditions of this policy takes place over the "policy period" and one or more subsequent policy periods;

(b) a "claim" for "loss" or "other loss" is first made against the "insured" during the "policy period" and reported to us in accordance with all of the terms and conditions of this policy;

(c) a "pollution event" is first "discovered" during the "policy period" and reported to us in accordance with all of the terms and conditions of this policy; and/or

(d) a "pollution event" that is the subject of a "potential claim" is reported to us in accordance with Section VIII., paragraph B,

all "claims", "loss", and "other loss" arising out of the same, continuous or repeated "pollution event" or series of related "pollution events" whether reported during the "policy period" or during a subsequent policy period shall be subject to the Limits of Liability and Deductible corresponding with this policy.

VII. CLAIM PROVISIONS

A. NOTICE OF DISCOVERY OR CLAIM

In the event of a "discovery" or "claim", the "insured" shall give written notice to us as soon as possible containing particulars sufficient to identify an "insured" and reasonably obtainable information including:
1. The time, place, location, and a detailed explanation of the "pollution event" including, as applicable, the date of "discovery" or the date the "insured" received the "claim";

2. The names and addresses of any injured parties and available witnesses;

3. Any and all investigative or engineering reports, data or information about the "pollution event", "loss" or "other loss"; and

4. Any and all other relevant information about the "pollution event", "claim", "loss" or "other loss".

If a "claim" is made against an "insured", the "insured" shall immediately forward to us every demand, notice, summons, complaint, order or other process or legal papers received by an "insured" or its representatives.

B. NOTICE OF POTENTIAL CLAIM

If during the "policy period" the "insured" first becomes aware of a "potential claim", the "insured" may provide written notice to us containing particulars sufficient to identify an "insured" and providing all of the following information:

1. The cause of the "new pollution event" if known or suspected, including any potential cause;

2. The time, place, location, and details of the "new pollution event" including how and when the "insured" first became aware of the "potential claim";

3. The names and addresses of any actually or potentially injured parties or damaged property, and available witnesses, if and to the extent reasonably available;

4. Any and all investigative or engineering reports, data or information about the "potential claim", and any other information concerning "loss" or "other loss" that may result; and

5. Any other relevant information about the "potential claim", "loss" or "other loss".

If all of the foregoing information is provided to us in writing during the "policy period" and the "potential claim" subsequently becomes a "claim" made against the "insured" and reported to us during any renewal policy, any applicable extended reporting period, or within five (5) years after the later of the end of any such policy or extended reporting period, such "claim" shall be deemed, for the purposes of this insurance, to have been made and reported on the date on which written notice of the "potential claim" was first received by us and shall be subject to the terms, conditions and Limits of Liability applicable to this policy.

We may elect to investigate any "potential claim" which is reported to us. Any costs associated with the investigation of a "potential claim" prior to a "claim" being made will not be considered "claim expenses". These costs shall not be applied towards reducing the applicable Deductible, and are in addition to the Limits of Liability and shall be borne by us.
C. NOTICE TO US

All “discovery”, “claims” and “potential claims” shall be reported to us in writing at the address shown in item 9 of the Declarations.

D. SETTLEMENT

The “insured” shall not settle any “claim” without our written consent. If we recommend a settlement, the “insured” shall have the opportunity to concur, such concurrence not to be unreasonably withheld or denied. If we recommend a settlement that is acceptable to a claimant for a total amount in excess of the applicable Deductible and the “insured” refuses to concur with such settlement, then our liability for “loss” and “other loss” shall be limited to that portion of the recommended settlement and the “claim expenses” incurred as of the date of the “insured’s” refusal, which exceed the Deductible and fall within the Limit of Liability.

E. VOLUNTARY PAYMENTS, ADMISSIONS OR ASSUMPTIONS OF LIABILITY

No costs, charges or expenses shall be incurred or paid or liability admitted or assumed by an “insured” without our written consent, which shall not be unreasonably withheld or denied.

Notwithstanding the foregoing, an “insured” may incur such “emergency expenses” as reasonably necessary to prevent or mitigate “loss” or “other loss”, provided the “insured” provides written notice to us within ninety-six (96) hours after any portion of such “emergency expenses” is incurred.

VIII. CONDITIONS

A. APPRAISAL

If we and the “insured” disagree as to the value of real property or improvements thereto in connection with “cleanup costs” or the amount of “other loss”, either party may make written demand for an appraisal of the value of the property or the amount of “cleanup costs” or “other loss”. In this event, each party will select a competent and impartial appraiser. The two appraisers will select an umpire. If they cannot agree, either may request that selection be made by a judge of a court having jurisdiction. The appraisers will state separately the value of the property and amount of “cleanup costs” or “other loss”. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

1. Pay its chosen appraiser; and
2. Bear the other expenses of the appraisal and umpire equally.

If there is an appraisal, we retain our right to deny coverage for “cleanup costs” or “other loss” as applicable.

B. ASSIGNMENT

Assignment of interest under this policy shall not bind us unless and until our consent is endorsed thereon, which consent shall not be unreasonably withheld, delayed or denied.

C. AUDIT AND INSPECTION

We shall be permitted upon reasonable prior notice to audit the “insured’s” books and records at any time during the “policy period” and within three (3) years after the final termination of this policy, as far as they relate to the subject matter of the policy and any “loss” or “other loss” for which payment may be made under the policy. We shall also be permitted, upon reasonable prior notice, to inspect, sample and monitor on a continuing basis any “covered location” and operations conducted thereon. Neither our right to make inspections, sample and monitor, nor the actual undertaking thereof, nor any report thereon shall constitute an undertaking, on behalf of us or others, to determine or warrant that a “covered location” or operation is safe, healthful or conforms to acceptable engineering practice or is in compliance with any law, rule or regulation. We will not manage or exercise control over any “covered location” or operation.

D. BANKRUPTCY

Bankruptcy or insolvency of an “insured” will not relieve us of our obligations to an “insured” under this policy nor increase our obligations including, but not limited to, those with respect to any Deductible amount. However, if we have advanced any payment for “loss” or “other loss” within the Deductible pursuant to LIMITS OF LIABILITY AND DEDUCTIBLE (VI., paragraph E), then any such payments to the extent not reimbursed to us shall reduce the Limits of Liability. Furthermore, this condition shall not impair our ability to assert any defense on behalf of an “insured”.

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E. CANCELLATION

This policy may be canceled by the "named insured" by surrender of this policy to us or by mailing to us written notice stating when thereafter cancellation shall be effective.

This policy may be canceled by us by mailing to the "named insured" at the address set forth in Item 1 of the Declarations, a notice stating when thereafter such cancellation shall be effective. We may cancel this policy for the following reasons only:

1. Fraud or material misrepresentation;
2. Any "insured's" material failure to comply with the terms, conditions or contractual obligations under this policy including failure to pay the Deductible when due;
3. A material change in the use of, or operations conducted at any "covered location"; or
4. Nonpayment of premium.

The mailing of notice as aforesaid shall be sufficient proof of notice. The time of surrender or the effective date and hour of cancellation stated in the notice shall become the end of the "policy period". Delivery of such written notice either by the "named insured" or by us shall be equivalent to mailing. Notice of pending cancellation will be provided not less than: (a) ninety days prior to the effective date of cancellation for any "insured's" material failure to comply with the terms, conditions or contractual obligations under this policy including failure to pay the Deductible when due, or material change in the use of, or operations conducted at a "covered location"; (b) thirty days prior to the effective date of cancellation for fraud or material misrepresentation; and (c) ten days prior to the effective date of cancellation for nonpayment of premium.

If we cancel, subject to any minimum earned premium that may apply, the return premium will be calculated on a pro rata basis. If the "named insured" cancels, subject to any minimum earned premium that may apply, there may be no return premium or the return premium may be less than pro rata.

F. CHANGES

The terms of this policy shall not be waived or changed, except by endorsement issued to form a part of this policy.

G. COOPERATION

The "insured" agrees with us to assist and cooperate in the fulfillment of the policy's terms, including the investigation, adjustment, defense or settlement of any "claim" or in connection with the "discovery" of any "pollution event". Such cooperation may include participating at meetings; testifying at hearings, depositions and trials; and securing evidence. The "insured" shall be allowed $250 per day but no more than $5,000 in total allowable expenses for compensation to its principals, partners, officers, directors, employees or members or managers for personally attending any such meetings, hearings or depositions at our request. These allowable expenses shall not reduce the applicable Limits of Liability and Deductible set forth in Item 3 of the Declarations.

In addition, all "insureds" shall cooperate with us in the pursuit of any coverage that may be available from other insurers and/or under other insurance policies for "claim expenses", "loss" or "other loss", covered under this policy.

H. HEADINGS

The descriptions in the headings of this policy are solely for convenience and form no part of the policy terms and conditions.

I. OTHER INSURANCE

1. The insurance provided under this policy is primary insurance, except as otherwise provided in connection with "transportation", any Optional Extended Reporting Period or where stated in an endorsement to apply in excess of, or contingent upon the absence of, other insurance. When this insurance is primary and the "insured" has other insurance which is stated to be applicable to the "loss" or "other loss" on an excess basis, the amount of our liability under this policy shall not be reduced by the existence of such excess insurance.

2. When this insurance is excess, we shall have no duty to defend the "insured" against any "claim" if any other insurer has a duty to defend the "insured" against such "claim". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers. When this insurance is
excess over other insurance, we will pay only our share of the amount of “loss” or "other loss" if any, that exceeds the sum of:

a. The total amount that all such other insurance would pay for the "loss" or "other loss" in the absence of this insurance; and

b. The total of all deductible and self-insured amounts under all that other insurance.

3. When both this insurance and other insurance apply to the “loss” or "other loss" on the same basis, whether primary, excess or contingent, we shall not be liable under this policy for a greater proportion of the "loss" or "other loss" than the amount set forth in Item 3 of the Declarations or the amount resulting from the following contribution methods, whichever is lesser:

a. Contribution by equal shares - Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the "loss" or "other loss" remains, whichever occurs first; or

b. Contribution by limits - each insurer’s share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

J. PROPERTY ADDED AFTER INCEPTION

We agree to issue an endorsement to the policy to list an “automatically qualified property” or “inadvertently omitted property” as a “covered location.” Prior to the issuance of such endorsement, coverage will apply for such “automatically qualified property” or “inadvertently omitted property” as a “covered location”, provided, however, that we reserve the right to exclude any such property upon our determination that the “named insured” did not follow the “environmental due diligence policy” with respect to such property or the property type, exposure or use is not similar to that of existing “covered locations” in the portfolio. The “insured” shall provide us with a written list of all such property in accordance with the time frame set forth in Item 6 of the Declarations.

K. REPRESENTATIONS

By acceptance of this policy, the “named insured” agrees that the statements in the Declarations and in the Application are its agreements and representations, that this policy is issued in reliance upon the truth of such statements and representations and that this policy embodies all agreements existing between the “named insured” and us relating to this insurance.

L. SEPARATION OF INSUREDS

Except with respect to the Limits of Liability and any rights and duties specifically assigned to the “named insured” set forth in Item 1 of the Declarations, this insurance applies:

1. As if each “named insured” were the only “named insured”; and

2. Separately to each “insured” against whom a “claim” is made.

Misrepresentation, concealment, breach of condition or violation of any duty under this policy by one “insured” shall not prejudice the interest of coverage for another “insured” under this policy, except where an “insured” is a parent, subsidiary, or affiliate of the “named insured” set forth in Item 1 of the Declarations. For purposes of the immediately preceding sentence, an “affiliate” is any company or entity that is in control of, controlled by, or under common control with the “named insured”. “Control” (including the terms “controlled by” and “under common control with”) as used herein includes, but is not limited to, the possession, directly or indirectly and whether acting alone or in conjunction with others, of the authority to direct or cause the direction of the management or policies of a company or entity. A voting interest of twenty five percent (25%) or more creates a rebuttable presumption of control.
M. SOLE AGENT

The "named insured" set forth in Item 1 of the Declarations shall act on behalf of all "insureds" for all purposes, including but not limited to the payment of Deductible, payment or return of premium, receipt and acceptance of any endorsement issued to form a part of this policy, giving and receiving notice of cancellation or nonrenewal, and the exercise of the rights provided in OPTIONAL EXTENDED REPORTING PERIOD (Section V.)

N. SUBROGATION

In the event of any payment under this policy, we shall be subrogated to all of an "insured's" rights of recovery against any person or organization, including any rights to contribution from any other insurer. An "insured" shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. No "insured" shall do anything to impair, prejudice or waive such rights.

Any recovery obtained through subrogation, after expenses incurred in such subrogation are deducted by the party bearing the expense, shall be applied proportionately to the "insured" and us for actual payments as a result of judgment, settlement or defense of a "claim", or "cleanup costs" with respect to the "discovery" of a "pollution event".

O. THIRD PARTY BENEFICIARIES

No third party beneficiaries are created as a result of this policy. This policy creates no rights by or on behalf of any third parties. We have no obligation under this policy to any third party whatsoever and specifically we have no obligation to make payment to anyone except the "insured".
A RESOLUTION CONDITIONALLY VACATING AN ALLEY LOCATED WITHIN DOWNTOWN BLOCK 54, LOCATED BETWEEN H STREET, 9TH STREET, G STREET, AND 10TH STREET IN THE CITY OF MODESTO

WHEREAS, the State of California, acting by and through the Judicial Council of California, Administrative Office of the Courts, intends to acquire all the properties within downtown block 54 located between H Street, 9th Street, G Street, and 10th Street to develop a new courthouse (court site), and

WHEREAS, the new courthouse is proposed to be constructed over the alley within downtown block 54, and

WHEREAS, the City of Modesto submitted an application to vacate an alley located within downtown block 54, the legal description of which is attached hereto as Exhibit “A” and depicted in Exhibit “B”, and incorporated herein by reference, and

WHEREAS, California Streets and Highways Code Section 8320 et seq. prescribes the procedures to vacate public right-of-way, and

WHEREAS, a title report was submitted with the vacation request which discloses that fee title of the alley right-of-way is vested in the adjacent property owners, and

WHEREAS, the proposed vacation has been reviewed by affected City departments and local utility companies, and no objection to the proposed vacation has been received, and

WHEREAS, Government Code Section 65402(a) requires that prior to vacating a public right-of-way, the Planning Commission shall make a determination as to whether the vacation is consistent with the General Plan, and
WHEREAS, a hearing was held by the Planning Commission on March 17, 2014, in the Tenth Street Chambers, located at 1010 Tenth Street, Modesto, California, at which hearing evidence both oral and documentary was received and considered regarding whether the proposed vacation conforms to the City’s Urban Area General Plan and is appropriate, and

WHEREAS, by Planning Commission Resolution No. 2014-08, the Planning Commission rendered a report finding that the proposed vacation is in conformance with the Modesto Urban Area General Plan and is appropriate, and

WHEREAS, a duly noticed public hearing was held by the Council of the City of Modesto on Tuesday, April 15, 2014, at 5:30 p.m., in the Tenth Street Place Chambers located at 1010 Tenth Street, Modesto, California, and

WHEREAS, notices no more than 300 feet apart were posted along the line of the proposed right-of-way to be vacated for at least two weeks prior to the hearing, and notice was published in the Modesto Bee for two successive weeks prior to the hearing, per California Streets & Highways Code Sections 8323 and 8322, respectively, and

WHEREAS, all things and acts necessary to be done as required by California Streets and Highways Code Sections 8300 through 8363: Public Streets, Highways and Service Easements Vacation Law, in order to vacate the subject right-of-way have been done and accomplished, and

WHEREAS, it is anticipated that construction activity for the new courthouse will not commence until on or after June 1, 2016, and

WHEREAS, that certain Purchase Acquisition Agreement and that certain Master Lease between the City of Modesto and State of California, acting by and through the
Judicial Council of California, Administrative Office of the Courts to be considered for approval by the City Council in conjunction with vacation of the alley specify that (1) the court site may continue to be used and occupied until December 15, 2015, (2) all tenants and occupants of the court site shall vacate the court site by or before December 31, 2015, and (3) City of Modesto shall complete removal of all utilities above, upon or under the alley by April 1, 2016, and

WHEREAS, the alley within block 54 (court site) must stay open to serve the public until utility removal is completed,

NOW, THEREFORE, BE IT RESOLVED that the Council of the City of Modesto finds and determines as follows:

1. The alley to be vacated is not necessary to serve future pedestrian or traffic needs in the area after April 1, 2016.
2. The alley vacation will provide for the development of a new courthouse.
3. The alley vacation is in conformance with the General Plan.
4. The proposed alley vacation is Categorically Exempt under Section 15332 of the California Environmental Quality Act Guidelines for in-fill development projects, because (a) it is consistent with the applicable general plan designation and policies, and all applicable zoning designations and regulations; (b) it is located within City limits on a project site of no more than five acres substantially surrounded by urban uses; (c) the project site has no value as habitat for endangered, rare, or threatened species; (d) approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality; and (e) the site can be adequately served by all required utilities and public services.

BE IT FURTHER RESOLVED that the City Council hereby orders and declares the vacation of the alley located within downtown block 54 located between H Street, 9th Street, G Street, and 10th Street (court site), as described in Exhibit “A” and depicted in Exhibit “B” attached hereto, and by this reference made a part hereof as though set forth in full herein, subject to the following conditions:
1. The alley vacation will be effective on the City's removal of all utilities above, upon or under the alley as evidenced by the recording, by the City, of a Notice of Completion of the removal of the utilities, which is expected to be not later than April 1, 2016.

2. Prior to the effective date, all existing underground and aboveground utilities, irrigation, and electrical lines shall be protected, relocated, or removed as required by the respective utility companies, Modesto and/or City Engineer or designee.

BE IT FURTHER RESOLVED that the City Clerk shall hold this resolution until all conditions specified herein have been fully satisfied to the satisfaction of the City Engineer or City’s Community and Economic Director and not less than five (5) working days after said conditions have been fully satisfied, the City Clerk shall cause a certified copy of this resolution, attested under seal of the City, to be recorded in the Office of the Recorder of the County of Stanislaus.
The foregoing resolution was introduced at a special meeting of the Council of the City of Modesto held on the 15th day of April, 2014, by Councilmember Madrigal, who moved its adoption, which motion being duly seconded by Councilmember Cogdill, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Cogdill, Gunderson, Kenoyer, Lopez, Madrigal, Zoslocki, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: 

SEAL

APPROVED AS TO FORM:

By: ADAM U. LINDREN, Interim City Attorney

APPROVED AS TO LEGAL DESCRIPTION

By: Community & Economic Development Department Planning Division

STEFANIE LOPEZ, City Clerk
Exhibit "A"

Legal Description
EXHIBIT A

A portion of the lands shown on that certain City of Modesto Block Map, Block 54, filed for record on in Book 15 of Maps, Page 54, Stanislaus County Records, and being located in the City of Modesto, County of Stanislaus, State of California, said lands being more particularly described as follows:

All of the 20-foot wide alley, as shown on said City of Modesto Block Map, Block 54, and containing an area of 8,000 square feet, more or less.

See Exhibit B attached hereto and made a part hereof.

This property description has been prepared by me or under my direction in conformance with the Professional Land Surveyors' Act.

Curt Chappell, PLS 7992

FEBRUARY 13, 2014
Date
RESOLUTION APPROVING A MASTER LEASE WITH THE STATE OF CALIFORNIA, ACTING BY AND THROUGH THE JUDICIAL COUNCIL OF THE COURTS, ADMINISTRATIVE OFFICE OF THE COURTS FOR THE USE, POSSESSION, CONTROL AND MANAGEMENT OF THE 10TH STREET SITE, AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE (1) THE MASTER LEASE, AND (2) ALL RELATED AND NECESSARY DOCUMENTS REQUIRED TO COMPLETE THE TRANSACTION

WHEREAS, the State of California, acting by and through the Judicial Council of the Courts, Administrative Office of the Courts (State/AOC), desires to develop a new courthouse for the Superior Court of Stanislaus County and in 2011 selected the city block bounded by G and H Streets, and 9th and 10th Streets (the 10th Street Site) as a potential site, and

WHEREAS, the City Council directed City staff to assist the State/AOC and to negotiate with the AOC’s project team for acquisition and sale of the 10th Street Site, and

WHEREAS, in June 2013, the State/AOC informed the City of its interest in acquiring the property comprising the 10th Street Site, and

WHEREAS, in a public meeting held March 12, 2014, the Court Facilities Advisory Committee voted to endorse a directive from its Cost Reduction Subcommittee to continue negotiations on the preferred site for the new Modesto Courthouse to be constructed on 10th Street, and

WHEREAS, the City and the State/AOC have successfully negotiated a Property Acquisition Agreement whereby the City agrees to sell and the State/AOC agrees to purchase the 10th Street Site for the new Modesto Courthouse Project, and

WHEREAS, the State/AOC anticipates construction activity will commence after
June 1, 2016; consequently, the State/AOC does not require use or occupancy of the 10th Street Site until June 1, 2016, and

WHEREAS, as part of the agreement for the purchase/sale of the 10th Street Site, the City and the State/AOC agreed to execute a Master Lease (Exhibit A) where the State/AOC assigns to the City the control and management of the 10th Street Site after close of escrow through April 1, 2016, and

WHEREAS, the proposed project that includes the acquisition and sale of real property, the conditional vacation of the public alley and the lease of real property has been determined to be Categorically Exempt under Section 15332 of the California Environmental Quality Act guidelines for in-fill development projects,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the Master Lease with the State of California, acting by and through the Judicial Council of the Courts, Administrative Office of the Courts for the lease of the 10th Street Site for the purpose of the new Modesto Courthouse Project, and

BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to execute (1) the Master Lease, and (2) all related and necessary documents required to complete the transaction.
The foregoing resolution was introduced at a special meeting of the Council of the City of Modesto held on the 15th day of April, 2014, by Councilmember Madrigal, who moved its adoption, which motion being duly seconded by Councilmember Cogdill, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Cogdill, Gunderson, Kenoyer, Lopez, Madrigal, Zoslocki, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: ADAM LINDGREN, Interim City Attorney
MASTER LEASE

By and Between

THE STATE OF CALIFORNIA, ACTING BY AND THROUGH THE JUDICIAL COUNCIL OF CALIFORNIA, ADMINISTRATIVE OFFICE OF THE COURTS,

as “Master Lessor”

and

CITY OF MODESTO,

a charter city and municipal corporation,

as “Master Lessee”
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**EXHIBITS**

“A” Description of Land

“B” List of Existing Subleases
MASTER LEASE

THIS MASTER LEASE (this “Master Lease”) is made and entered into as of the Effective Date (as hereinafter defined) by and between the STATE OF CALIFORNIA, ACTING BY AND THROUGH THE JUDICIAL COUNCIL OF CALIFORNIA, ADMINISTRATIVE OFFICE OF THE COURTS (“Master Lessor”), and the CITY OF MODESTO, a charter city and municipal corporation (“Master Lessee”). Master Lessor and Master Lessee are sometimes hereinafter referred to individually as a “Party” and collectively as the “Parties.”

RECITALS

A. Concurrent with the execution of this Master Lease, Master Lessor and Master Lessee have executed a Property Acquisition Agreement (“Acquisition Agreement”) in which Master Lessor has agreed to acquire the real property described in Exhibit “A” (i) Master Lessee agreed to sell, transfer and convey to Master Lessor, and Master Lessor agreed to accept from Master Lessee, among other things, title to the Leased Premises (as hereinafter defined); (ii) Master Lessor agreed to assign to Master Lessee all of Master Lessor’s right, title, and interest as the “landlord” or “lessor” under the existing leases located on or within the Leased Premises as of the Effective Date, and all then-existing amendments, addenda, and modifications thereto (“Existing Leases”), which Existing Leases are described on Exhibit “B” attached hereto whereupon the Existing Leases shall become subleases to this Master Lease (“Subleases”); and (iii) Master Lessee agreed to accept such assignment and assume from Master Lessor all of Master Lessor’s duties, liabilities, and obligations as the “landlord” or “lessor” under the Subleases.

B. The fully-executed version of this Master Lease shall take effect and be binding on the Parties upon the date of the transfer and conveyance of fee simple title to the Leased Premises by Master Lessee to Master Lessor (the “Effective Date”).

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Master Lessor and Master Lessee hereby agree as follows:

LEGAL02/31373774v8
ARTICLE 1.
SUMMARY OF BASIC MASTER LEASE TERMS

<table>
<thead>
<tr>
<th>1.1 Parties and Notice Addresses:</th>
<th>Master Lessor:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Administrative Office of the Courts Office of Real Estate and Facilities Management Attention: Portfolio Administration Analyst 455 Golden Gate Avenue, 8th Floor San Francisco, California 94102-3688 Telephone: (415) 865-4053</td>
</tr>
<tr>
<td></td>
<td>With a copy to:</td>
</tr>
<tr>
<td></td>
<td>Administrative Office of the Courts Office of Real Estate and Facilities Management Attention: Manager, Real Estate 455 Golden Gate Avenue, 8th Floor San Francisco, California 94102-3688 Telephone: (415) 865-4048</td>
</tr>
<tr>
<td></td>
<td>In addition, notices by Master Lessee relating to termination of this Master Lease or alleged breach or default by Master Lessor of this Master Lease must also be sent to:</td>
</tr>
<tr>
<td></td>
<td>Administrative Office of the Courts Fiscal Services Office Attention: Senior Manager, Business Services 455 Golden Gate Avenue, 7th Floor San Francisco, California 94102-3688 Telephone: (415) 865-4090</td>
</tr>
</tbody>
</table>
**Master Lessee:**
City of Modesto  
Attention: Brent Sinclair  
1010 10th Street  
Modesto, California 95354  
Telephone: (209) 577-5282

**With a copy to:**
City of Modesto  
Office of the City Attorney  
P.O. Box 642  
Modesto, CA 95353  
Attn: Richard Evans  
Telephone: (209) 577-5282

**With a copy to:**
Mathew O. Pacher  
Damrell Nelson Schrimp Pallios Pacher & Silva  
1601 I Street, Fifth Floor  
Modesto, California 95354  
Telephone: (209) 526-3500

<table>
<thead>
<tr>
<th>Paragraph</th>
<th>Description</th>
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<tr>
<td>1.2</td>
<td>Leased Premises: The land described on Exhibit “A.”</td>
</tr>
<tr>
<td>1.3</td>
<td>Use: The Leased Premises may be used and occupied only for the purposes for which the Leased Premises are being used as of the Effective Date.</td>
</tr>
<tr>
<td>1.4</td>
<td>Expiration Date: April 1, 2016, or upon such date as the Parties may agree to extend the Lease Term pursuant to section 3.2 of this Master Lease.</td>
</tr>
<tr>
<td>1.5</td>
<td>Lease Term: The period commencing on the Effective Date and ending at 11:59 p.m. Pacific time on the</td>
</tr>
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</table>
ARTICLE 1.

Monthly Rent: None.

The above terms are incorporated in this Master Lease as indicated above and referenced herein.

This Article 1 is intended to supplement and/or summarize certain of the terms, conditions, and provisions set forth in the balance of this Master Lease. If there is any conflict between any terms, conditions, and provisions contained in this Article 1 and the balance of this Master Lease, the terms, conditions, and provisions contained in the balance of this Master Lease shall govern.

ARTICLE 2.

LEASED PREMISES

2.1 Leased Premises; Demise. In consideration of the covenants and agreements on the part of Master Lessee to be paid and performed under this Master Lease and for other good and valuable consideration described in the Acquisition Agreement, Master Lessor hereby leases to Master Lessee, and Master Lessee hereby leases from Master Lessor, for the Lease Term, at the rent, and upon the terms, conditions, and provisions set forth in this Master Lease, that certain land described on Exhibit “A” attached hereto and incorporated herein by this reference (the “Land”), together with any and all buildings and improvements situated on the Land during the Lease Term (collectively, the “Improvements”) (the Land and the Improvements, herein collectively referred to as the “Leased Premises”).

2.2 Leased Premises Covenants. During the Lease Term, Master Lessor shall have the right to (i) grant, create, or allow the creation of any easement, right-of-way, encumbrance, lien, restriction, or assessment on title that does not adversely affect or impair the use of the Leased Premises by any Subtenant (as hereinafter defined) under and for the purposes permitted by its Sublease (as hereinafter defined), or (ii) amend, extend, renew, or otherwise modify the terms of any existing easement, right-of-way, encumbrance, lien, restriction, or assessment in a manner that does not more adversely affect or more greatly impair the use of the Leased Premises by any Subtenant under and for the purposes permitted by its Sublease than did the original easement, right-of-way, encumbrance, lien, restriction, or assessment prior to such amendment, extension, renewal, or other modification.

2.3 Acceptance of Leased Premises. Master Lessee accepts the Leased Premises in an “as is” condition upon the Effective Date. Master Lessee acknowledges that, except for the delivery by Master Lessor to Master Lessee of those certain Phase I Environmental Site Assessment Reports about the Leased Premises dated March 2012
ARTICLE 3.
LEASE TERM

3.1 Lease Term/Expiration Date. The term of this Master Lease (the "Lease Term") shall commence on the Effective Date and, unless sooner terminated in accordance with this Master Lease, shall expire at 11:59 p.m. Pacific time on April 1, 2016 (the "Expiration Date").

3.2 Extension of Expiration Date. The Expiration Date of this Master Lease may only be extended beyond April 1, 2016, with a written amendment to this Master Lease.

ARTICLE 4.
RENT

4.1 No Monthly Rent. In consideration for the Master Lessee managing the property on behalf of Master Lessor during the Lease Term as set forth in this Master Lease including without limitation section 7.2 of this Master Lease, Master Lessee shall have no obligation to pay Master Lessor any monetary base rent, fees, or other charges as rental for the Leased Premises during the Lease Term, except as otherwise expressly set forth in this Master Lease.

ARTICLE 5.
SUBLEASES

5.1 Assignment of Existing Leases. As of the Effective Date, Master Lessor assigns, delegates, and transfers to the Master Lessee all of Master Lessor's duties, obligations, liabilities, and responsibilities under the Existing Leases, and all of Master Lessor's right, title, and interest in and to, and, the Existing Leases including the right to receive rent under the Existing Leases. As of the Effective Date, Master Lessee accepts Master Lessor's assignment of the Existing Leases and is entitled to all of the rights and benefits accruing under the Existing Leases including any rent due under the Existing Leases. Upon assignment of the Existing Leases from Master Lessor to Master Lessee, the Existing Leases shall become subleases to this Master Lease and shall be referred to as Subleases.

5.2 Termination of Subleases. Master Lessee shall ensure that all Subleases are terminated by December 31, 2015 ("Subleases Termination Date") and that all
Subleases require the subtenants under the Subleases ("Subtenants") to vacate their respective portions of the Leased Premises no later than the Subleases Termination Date, however, Master Lessor shall be solely responsible for providing relocation assistance and benefits to the Subtenants pursuant to Paragraph 13 of the Acquisition Agreement. Master Lessee shall provide: (i) at least 90 days written notice to the Subtenants when providing notices to vacate (or termination notices) to Subtenants ("Notices to Vacate"), however, Master Lessee shall provide 30 days written notice of intent that Master Lessee will be providing Notices to Vacate to the Subtenants ("Notices of Intent") which Notices of Intent shall be given to both (A) Master Lessor and (B) Master Lessor’s Relocation Consultant at least 30 days prior to providing any Notices to Vacate.

Master Lessee shall not provide any Notices to Vacate to any of the Subtenants without first coordinating with Master Lessor’s Relocation Consultant as to whether Master Lessee and/or Master Lessor’s Relocation Consultant will individually or jointly provide any necessary notices to any of the Subtenants which are required under the Subleases and/or the Relocation Assistance Laws (defined in Paragraph 13 of the Acquisition Agreement). For purposes of this paragraph and Paragraph 13 of the Acquisition Agreement, Master Lessor’s Relocation Consultant is David Richman of Auto Temp at P.O. Box 459, Mammoth Lakes, CA 93546; (760)934-4263; david@autotempservices.com. Notwithstanding the foregoing, in the event that Master Lessee has provided the Notices of Intent by September 1, 2015 and Master Lessor’s Relocation Consultant has failed to timely coordinate with Master Lessee, Master Lessee may provide 90 day Notices to Vacate to Subtenants on October 1, 2015.

ARTICLE 6.
MAINTENANCE, REPAIRS AND ALTERATIONS

6.1 Maintenance and Repair Obligations of Master Lessee.

(a) General Maintenance and Repair Obligations; Capital Improvements. Subject to the provisions of Article 11 of this Master Lease, Master Lessee shall, at Master Lessee’s sole cost and expense, maintain in good operating condition and repair (reasonable wear and tear excluded) the Leased Premises, including without limitation, all costs related to its continuing occupancy and use of the Leased Premises as well as all costs related to the Subleases, and all maintenance, utilities, repair, risk management, insurance and security costs related to the Leased Premises, and hold Master Lessor harmless from such costs (collectively, "Master Lessee’s Maintenance Obligations"). Notwithstanding anything contained in this Master Lease to the contrary, the Master Lessee’s Maintenance Obligations shall not include, and neither Master Lessor nor Master Lessee shall otherwise be obligated to make to the Leased Premises and/or pay for, any extraordinary, whether foreseen or unforeseen, repairs, alterations, replacements, upgrades, or retrofitting to the Leased Premises and/or any structural improvements to the Leased Premises, including, without limitation, any improvements to the structural portions, walls, foundations, or roof of any of the buildings located upon
the Leased Premises and/or any improvements to comply with the requirements of Title III of the Americans With Disabilities Act of 1990, as amended (collectively, “Capital Improvements”); provided, however, that notwithstanding the preceding portion of this sentence, Master Lessee hereby (i) covenants to comply with all of its obligations under the Subleases (including, without limitation, any obligations, if any, under the Subleases to construct Capital Improvements to the Leased Premises), and (ii) agrees to make Capital Improvements to the Leased Premises if and to the extent same are necessary to comply with or to correct a violation of applicable Laws during the Lease Term; provided that if Master Lessee is permitted to do so under applicable Laws, Master Lessee may elect to demolish and remove the buildings (or such portion of the buildings subject to or in violation of applicable Laws) at Master Lessee’s sole cost and expense, in accordance with section 11.1 below instead of making such Capital Improvements if permissible under the Subleases. During the Lease Term, Master Lessee shall also be responsible for all Service Contracts (as defined below), including without limitation service contracts, affecting the maintenance and repair of the Leased Premises, including, without limitation, any components of any system that may be located within individual Subtenant’s spaces with respect to any of the Subleases.

(b) Master Lessee’s Failure to Maintain. If Master Lessee fails to maintain the Leased Premises in good operating condition and repair (reasonable wear and tear excluded), then Master Lessor may give Master Lessee written notice to do such acts as are reasonably required to so maintain the Leased Premises. If Master Lessee fails to promptly commence such work and diligently prosecute it to completion within 60 days of Master Lessee’s receipt of written notice from Master Lessor, then Master Lessor shall have the right (but not the obligation) to perform such work and expend such funds at the expense of Master Lessee as are reasonably required to perform such work. Any documented, out-of-pocket costs and expenses reasonably incurred by Master Lessor in connection with the performance of such work shall be paid by Master Lessee as additional rent within 30 days following Master Lessee’s receipt of a statement for such costs from Master Lessor. Any such work performed by Master Lessee or Master Lessor shall be performed in a commercially reasonable manner, and, except for emergency work (which, for purposes of this Master Lease, shall be any work on the Leased Premises that is reasonably necessary to prevent imminent injury to life, health, safety, security, or property), shall not unreasonably disturb the quiet enjoyment by such Subtenants of their premises under such Subleases, and shall otherwise be subject to the rights of the Subtenants under the Subleases.

6.2 Removal of Utilities. Notwithstanding anything in this Master Lease to the contrary, Master Lessee shall have the obligation during the Lease Term, subject to Section 3.2 of this Master Lease, to complete the Removal of Utilities (as defined in the Acquisition Agreement) from the Leased Premises as provided for in section 11.a of the Acquisition Agreement.
6.3 Alterations. Except as provided for in sections 6.1 and 6.2 of this Master Lease, Master Lessee shall have no rights to make any alterations (including any construction, changes, demolition, removal, or alterations to buildings and/or the ground of the Leased Premises (each an “Alteration” and collectively, “Alterations”) unless Master Lessee obtains the written consent of the Master Lessor which Master Lessor may withhold in its absolute discretion. In the event that Master Lessor provides written consent to make Alterations to the Leased Premises pursuant to this section 6.3 of this Master Lease, then Master Lessee will have the right, but not the obligation, at any time and from time to time during the Lease Term and at Master Lessee’s sole cost and expense, to make those Alteration(s) for which Master Lessor has giving its written consent. Any Alterations shall be made in all cases subject to the conditions set forth in sections 6.4(a), (b), and (c) below, which Master Lessee covenants to observe and perform. For clarification purposes, the term “Alterations,” as used in this Master Lease, shall also include Capital Improvements, if any, that Master Lessee constructs on the Leased Premises during the Lease Term, however the term Alterations shall specifically exclude Removal of Utilities which are instead governed by section 6.2 of this Master Lease and section 11.a of the Acquisition Agreement. Notwithstanding anything contained in this Master Lease to the contrary, Master Lessee shall provide Master Lessor with written notice at least 20 days prior to commencement of construction of any Alteration to the Leased Premises costing in excess of $200,000, and during such 20 day period preceding the commencement of such Alteration, the Parties shall meet and confer to discuss the nature of such Alteration, the plans and specifications for such Alteration submitted to Master Lessor in accordance with section 6.4(b) below, Master Lessee’s anticipated construction schedule for such Alteration, and Master Lessee’s compliance with the requirements of section 6.4(a) below. Within 60 days following completion of any Alteration costing in excess of $50,000, Master Lessee shall provide Master Lessor with two complete sets of “as built” plans of such Alteration.

(a) Indemnification. Master Lessee shall, and it hereby does, indemnify, defend, and hold harmless Master Lessor, the Judicial Council of California, the Administrative Office of the Courts, and the respective officers, agents, and employees, and the successors and assigns of each of them (the “Master Lessor Parties”), from and against all damages, liabilities, settlements, penalties, fines, costs, expenses, losses, or attorney and consultant fees and costs of every kind, incurred by the Master Lessor Parties arising from any claim, demand, litigation, arbitration, or other dispute-resolution proceeding asserted by a person or entity other than a Master Lessor Party that arises or results from Master Lessee’s performance of any Alterations, and except where and to the extent that such damages, liabilities, settlements, penalties, fines, costs, expenses, losses, or attorney and consultant fees and costs arise or result from the negligence or willful misconduct of any of the Master Lessor Parties. If, in connection with Master Lessee’s performance of any Alterations all or any portion of the buildings or grounds on the Leased Premises are damaged or destroyed, then the provisions of Article 11 of this Master Lease shall apply to such damage and/or destruction. Master Lessee’s obligation
to indemnify, defend, and hold harmless the Master Lessor Parties under this section 6.3 shall survive the expiration or termination of this Master Lease and/or any transfer of all or any portion of the Leased Premises or of any interest in this Master Lease for the legally applicable statute of limitations period.

6.4 Alterations and Repairs - General Conditions. All Alterations and repairs to the Leased Premises that the Master Lessee desires or is required to make pursuant to sections 6.1 and/or 6.3 of this Master Lease are subject to the following:

(a) Permits and Authorizations. No Alterations or repairs shall be undertaken until Master Lessee shall have procured all required municipal, state, and other governmental permits and authorizations from the various municipal, state, and other governmental departments and subdivisions having jurisdiction over such Alterations or repairs. Master Lessor agrees that so long as Master Lessee is in compliance with its obligations under sections 6.1 and/or 6.3 with respect to such Alterations or repairs and there is no uncured and continuing Event of Default by Master Lessee under this Master Lease, Master Lessor shall actively cooperate with Master Lessee's efforts to obtain such permits and authorizations at no cost or expense to Master Lessor, and shall execute all necessary applications, requests, and other documents, and permit its name to be used, in connection with the obtaining of the permits and authorizations. At least 10 business days prior to commencement of construction of any Alterations or repairs on the Leased Premises by, on behalf of, or at the direction of Master Lessee under this Master Lease, Master Lessee shall deliver to Master Lessor written evidence that all required permits and authorizations, if any, have been obtained for such Alterations and/or repairs from any municipal, state, or other governmental departments or subdivisions having jurisdiction over such Alterations or repairs.

(b) Supervising Architect or Engineer; Plans and Specifications. If so required by applicable Laws, the Alteration or repair shall be conducted under the supervision of an architect or engineer licensed as such in the State of California; provided that such architect or engineer may be an employee of Master Lessee and shall be selected by Master Lessee. If such Alteration or repair is required by applicable Laws to be conducted under the supervision of an architect or engineer licensed as such in the State of California, then plans and specifications for such Alteration or repair shall be submitted to Master Lessor, prior to the commencement of such Alteration or repair, solely for the purpose of enabling Master Lessor to determine whether such Alteration or repair will comply with the provisions of this section 6.4.

(c) Compliance With Laws. All work done in connection with any Alteration or repair shall be done in a good and workmanlike manner and in compliance with all applicable Laws, and any Alteration that consists of or includes the demolition and removal of all or any portion of any building located upon the Leased Premises or changes to the ground located upon the Leased Premises shall also be done in accordance with the California Environmental Quality Act, which is codified in California Public
Resources Code sections 21000, et seq. and its implementing guidelines set forth in Title 14, California Code of Regulations, sections 15000, et seq.

6.5 Mechanics' Liens. At all times during the Lease Term, Master Lessee shall keep the Leased Premises free and clear of all liens and claims of liens for labor, services, materials, supplies, or equipment performed on or furnished to the Leased Premises. Master Lessee may, in good faith and at Master Lessee's own expense, contest the validity of any such asserted lien or claim, provided that Master Lessee pursues such contest diligently and, if Master Lessor so requests of Master Lessee in writing, Master Lessee shall furnish a bond freeing the Leased Premises from any such lien or claim. If Master Lessee does not cause such bond to be recorded or otherwise protect the Leased Premises within 30 days after service on Master Lessee of written request from Master Lessor to do so, Master Lessor may, at its option (but without obligation), pay, adjust, compromise, and discharge any such lien or claim of lien on such terms and manner as are reasonably appropriate. In such event, Master Lessee shall, on or before the first day of the next calendar month following any such payment by Master Lessor, reimburse Master Lessor for the documented, out-of-pocket costs and expenses reasonably incurred by Master Lessor in paying, adjusting, compromising, and discharging such lien or claim of lien. Master Lessee shall give Master Lessor at least 10 days' notice prior to the commencement of any Alterations and cooperate with Master Lessor in posting and maintaining notices of non-responsibility in connection therewith.

6.6 Ownership of Alterations. All Alterations and repairs made and paid for by Master Lessee to the Leased Premises shall be deemed to have attached to the Master Lessor's fee and shall become the property of the Master Lessor, except to the extent that such Alterations consist of Personal Property (as hereinafter defined) of Master Lessee and/or any Subtenant.

6.7 Personal Property. Subject only to the provisions of section 9.1 and the foregoing provisions of this Article 6, Master Lessee may install, maintain, and remove, and may permit the Subtenants to install, maintain, and remove, at any time and from time to time, all of Master Lessee's and the Subtenants' trade fixtures (whether or not permanently affixed to the Subtenant's premises under the applicable Sublease), furniture, furnishings, signs, and other personal property not permanently affixed to the Leased Premises (collectively, "Personal Property"). The Personal Property shall remain the property of Master Lessee (or the applicable Subtenant(s)) during the Lease Term and after the Expiration Date (or after the Subleases Termination Date with respect to Subtenants). Master Lessee shall, at its own expense, immediately repair, or cause the Subtenants to repair, any damage occasioned to the Leased Premises by reason of the removal of Personal Property from the Leased Premises, whether during the Lease Term or upon the Expiration Date; provided, however, that Master Lessee shall only be required to repair the Leased Premises (or such portion thereof affected by such removal of Personal Property) to its condition existing prior to the installation of such Personal
Property (reasonable wear and tear excepted), except if and only to the extent otherwise required by applicable Laws, otherwise, Master Lessee is only required to restore the Leased Premises to a condition that is acceptable to Master Lessor.

ARTICLE 7.
UTILITIES AND TAXES

7.1 Utility Services and Charges. During the Lease Term, Master Lessee agrees, at its own expense, to make all arrangements for all utilities of every type and nature required by it in its (or its Subtenants') use or operation of the Leased Premises and shall pay directly, or cause to be paid by the applicable Subtenants, to the appropriate utility company when due all charges for utility services supplied in or about the Leased Premises including, but not limited to, gas, electricity, water, telephone, trash collection, sewerage, heat, and for all connection charges, fees, or taxes associated therewith.

7.2 Real Property Taxes and Assessments. To the extent that any real property taxes or assessments become due with respect to either the Leased Premises or the Property, including without limitation any ad valorem taxes, special taxes, general assessments and special assessments, Master Lessee will, during the Lease Term, make payment of all such taxes and assessments, if any, levied against the Leased Premises or the Property within the time allowed by the taxing authorities in order to avoid penalty. In addition, Master Lessee recognizes and understands that this Master Lease may create a possessory interest subject to property taxation and that the Master Lessee, and not the Master Lessor, will be required to make the payment of property taxes levied on such interest should the Master Lease create a possessory interest that is subject to property taxation.

7.3 Nonpayment. If any charges or payments referred to in sections 7.1 and/or 7.2 hereof are not paid prior to delinquency, Master Lessor shall have the right, but not the obligation, to pay the charges, and Master Lessee agrees to reimburse Master Lessor for any amount paid by Master Lessor within sixty days of invoice from Master Lessor.

ARTICLE 8.
INSURANCE

8.1 Master Lessee's Insurance. At all times during the Lease Term, Master Lessee shall maintain the Property Insurance Policies (as hereinafter defined) in effect with respect to the Leased Premises. "Property Insurance Policies" means one or more policies of property insurance maintained by Master Lessee that insure the Leased Premises against those risks covered under a form of coverage with terms and conditions as comprehensive as those in an All-Risk/Special Form property insurance policy (as such policy and covered risks may exist or change from time to time). Coverage amounts shall be equal to at least 100% of the replacement cost of the improvements located upon the Lease Premises. The Property Insurance Policies shall not be required to include
earthquake or terrorism insurance coverage. Master Lessee’s obligation to provide the Property Insurance Policies may be satisfied, in whole or in part, by the purchase of commercial insurance, a program of self-insurance, or by Master Lessee’s participation in a joint powers authority established for the purpose of pooling self-insured claims. During the Lease Term, any and all proceeds of any Property Insurance Policies maintained by Master Lessee with respect to the Leased Premises shall be paid to Master Lessee, subject, however, to Master Lessee’s obligation to deliver such proceeds (or applicable portion thereof) to Master Lessor if, as, when, and to the extent required by section 11.1 below.

ARTICLE 9.
USE OF LEASED PREMISES; COMPLIANCE WITH LAWS; HAZARDOUS MATERIALS

9.1 Use of Leased Premises; Compliance with Laws. The Leased Premises may be used and occupied for the purposes for which they are being occupied as of the Effective Date as long as such uses are lawful. Master Lessee shall comply with all of the requirements of all local, municipal, state, and federal authorities now in force, or which may hereafter be in force, pertaining to Master Lessee’s use or occupancy of the Leased Premises, and shall faithfully observe in the use and occupancy of the Leased Premises all applicable local, municipal, state, and federal laws, ordinances, codes, statutes, regulations, administrative rules, policies, orders, and decrees that are final and no longer subject to appeal, issued by a court or governmental entity with jurisdiction over the matter, pertaining to Master Lessee’s use or occupancy of the Leased Premises (each a “Law” and, collectively, “Laws”). Master Lessee shall not permit the Leased Premises to be occupied or used in any manner that will constitute waste or a nuisance. Master Lessee shall have the right to contest the validity and enforceability of any applicable Laws, regardless of whether such Laws are being enforced against Master Lessor or Master Lessee. Master Lessor agrees that it shall cooperate in Master Lessee’s exercise of its right to contest and shall join, and permit its name to be used, in any proceedings brought with respect to such Laws, provided that Master Lessee shall reimburse Master Lessor for all of its documented, out-of-pocket costs, expenses, and attorney fees and costs reasonably incurred in connection with such proceedings.


(a) Definitions. The following defined terms shall have the following meanings as used in this Master Lease:

(1) “Hazardous Materials” means any hazardous or toxic material or substance regulated under any Law.

(2) “Hazardous Materials Laws” shall mean all Laws applicable to Hazardous Materials.
(b) **Master Lessee’s Covenants.** Master Lessee hereby covenants to comply with the following provisions of this section 9.2 during the Lease Term, unless otherwise specifically approved in writing by Master Lessor:

(1) Except for any Hazardous Materials that may be present in, on, or under the Leased Premises as of the Effective Date, Master Lessee shall not cause, or expressly permit under any Sublease, any Hazardous Materials to be brought, kept, or used in or about the Leased Premises by Master Lessee or its officers, agents or employees (collectively, the **"Master Lessee Group"**) during the Lease Term; provided, however, that normal quantities of Hazardous Materials customarily used in the conduct of Master Lessee’s permitted use of the Leased Premises and the Subtenants’ use of their premises on the Leased Premises may be transported to, and handled, stored, treated, or used on the Leased Premises by Master Lessee and/or such Subtenants without Master Lessor’s prior written consent, provided that any such handling, transportation, storage, treatment, or usage shall at all times be in compliance with the manufacturer’s instructions therefor and all applicable Hazardous Materials Laws;

(2) Any Hazardous Materials deposited or released on the Leased Premises during the Lease Term by the Master Lessee Group or the Subtenants shall, to the extent required by applicable Hazardous Materials Laws, be promptly and thoroughly cleaned and removed from the Leased Premises by Master Lessee at its sole expense, to a standard consistent with use of the Leased Premises for the uses existing thereon as of the Effective Date, and any such discharge or release shall be promptly reported in writing to Master Lessor, and to any other appropriate governmental regulatory authorities in compliance with applicable Hazardous Materials Laws;

(3) No underground improvements, including, but not limited to, treatment or storage tanks, or water, gas, or oil wells shall be placed in, on, or under the Leased Premises by Master Lessee Group during the Lease Term without Master Lessor’s prior written consent;

(4) During the Lease Term, Master Lessee shall conduct and complete all investigations, studies, sampling, and testing procedures and all remedial, removal, and other actions necessary to clean up and remove all Hazardous Materials deposited or released on the Leased Premises during the Lease Term by the Master Lessee Group or the Subtenants to a standard consistent with use of the Leased Premises for the uses existing thereon as of the Effective Date, but only to the extent that such investigations, studies, sampling, or testing procedures or such remedial, removal, or other actions are required by applicable Hazardous Materials Laws;

(5) Activities proposed by Master Lessee Group during the Lease Term that involve disturbing asbestos-containing materials in, on, or under the Leased Premises shall only be conducted in accordance with all federal, state, or local Hazardous Materials Laws governing asbestos-containing materials including, but not limited to,
those promulgated by the California Occupational Safety and Health Administration (Cal/OSHA), the United States Environmental Protection Agency (EPA), and the Air Pollution Control District (APCD);

(6) Master Lessee shall promptly supply Master Lessor with copies of all notices, reports, correspondence, and submissions made by the Master Lessee Group during the Lease Term to the United States Environmental Protection Agency, the California Occupational Safety and Health Administration, and any other local, state, or federal authority that requires submission of any information concerning environmental matters or Hazardous Materials pursuant to applicable Hazardous Materials Laws;

(7) Master Lessee shall promptly notify Master Lessor of any liens threatened or attached against the Leased Premises during the Lease Term pursuant to any Hazardous Materials Laws. If such a lien is filed against the Leased Premises related to Hazardous Materials deposited or released on the Leased Premises during the Lease Term by the Master Lessee Group or the Subtenants, then, within the earlier of (a) 20 days following such filing, or (b) before any governmental authority commences proceedings to sell the Leased Premises pursuant to the lien, Master Lessee shall either (i) pay the claim and remove the lien from the Leased Premises, or (ii) furnish either (A) a bond or cash deposit reasonably satisfactory to Master Lessor in any amount not less than the claim from which the lien arises, or (B) other security reasonably satisfactory to Master Lessor in an amount not less than that which is sufficient to discharge the claim from which the lien arises. Upon the expiration of the Lease Term, Master Lessee shall surrender the Leased Premises to Master Lessor free of any and all Hazardous Materials that were deposited or released in, on, or under the Leased Premises during the Lease Term by the Master Lessee Group or the Subtenants, and remediated to a standard consistent with the use of the Leased Premises for the uses existing thereon as of the Effective Date, to the extent that such Hazardous Materials are required to be removed therefrom by Hazardous Materials Laws.

(c) Master Lessor’s Inspection Rights. Master Lessor and Master Lessor’s agents and employees including, without limitation, legal counsel and environmental consultants and engineers retained by Master Lessor, may (but without the obligation or duty so to do), at any time and from time to time, on not less than 10 business days’ prior written notice to Master Lessee (except in the event of an emergency in which case no prior written notice shall be required, but reasonable, prior verbal notice to Master Lessee shall be attempted to be made by Master Lessor), inspect the Leased Premises to determine whether Master Lessee is complying with Master Lessee’s obligations set forth in this section 9.2, and to perform environmental inspections and samplings, during regular business hours (except in the event of an emergency) or during such other hours as Master Lessor and Master Lessee may mutually agree to in writing. If Master Lessee is not in compliance with this section 9.2, then Master Lessor shall have
the right, in addition to Master Lessor’s other remedies available at law and in equity, on
not less than 10 business days’ prior written notice to Master Lessee (except in the event
of an emergency in which case no prior written notice shall be required, but reasonable,
prior verbal notice to Master Lessee shall be attempted to be made by Master Lessor), to
enter upon the Leased Premises and take such action as Master Lessor in its reasonable
judgment deems appropriate to remediate any actual or threatened contamination caused
by Master Lessee’s failure to so comply with this section 9.2. Upon completion of any
sampling or testing, Master Lessor will (at Master Lessee’s expense if Master Lessor’s
actions are a result of Master Lessee’s default under this section 9.2, and otherwise at
Master Lessor’s expense) restore the affected area of the Leased Premises from any
damage caused by Master Lessor’s sampling and testing. Notwithstanding anything
contained in this section 9.2(c) to the contrary, except in the event of any emergency, any
entry into the Leased Premises by Master Lessor pursuant to this section 9.2(c) and/or
any inspections, samplings, testing, or other activities of the Master Lessor with respect
to such entry pursuant to this section 9.2(c) shall be subject to the rights of the Subtenants
under the Subleases, shall not unreasonably interfere with the Subtenants’ quiet
enjoyment of their premises under their Subleases and shall not unreasonably interfere
with Master Lessee’s use of the Leased Premises. For purposes of this section 9.2, an
“event of an emergency” shall mean an event that poses a threat of imminent injury to
life, health, safety, security, or property.

(d) Master Lessee’s Indemnification. Master Lessee shall, and hereby
does, indemnify, defend, and hold harmless the Master Lessor Parties from and against
all damages, liabilities, settlements, penalties, fines, costs, expenses, losses, or attorney
and consultant fees and costs incurred by the Master Lessor Parties arising during or after
the Lease Term in connection with the presence of Hazardous Materials deposited by the
Master Lessee Group or the Subtenants during the Lease Term anywhere in, on, or under
the Leased Premises, including, the soil, ground water, or soil vapor on or under the
Leased Premises, except where and to the extent the Hazardous Materials are present as a
result of the negligence or willful misconduct of any Master Lessor Party (collectively,
the “Hazardous Materials Claims”). Without limiting the generality of the foregoing,
the indemnification provided by this section 9.2(d) shall specifically cover costs incurred
by the Master Lessor Parties in connection with investigation of site conditions or any
cleanup, remedial, removal, or restoration work required by any Hazardous Materials
Laws because of the presence of Hazardous Materials in the soil, ground water, or soil
vapor deposited by Master Lessee Group or any Subtenants in, on, or under the Leased
Premises during the Lease Term, and the release or discharge of Hazardous Materials by
Master Lessee during the course of any alteration or repair of the Leased Premises during
the Lease Term, except to the extent Hazardous Materials are present as a result of the
negligence or willful misconduct of any Master Lessor Party. The foregoing Master
Lessee obligation to indemnify, defend, and hold harmless the Master Lessor Parties shall
not apply to any Hazardous Materials Claims arising from or in connection with
Hazardous Materials that existed on the Leased Premises prior to the Effective Date of
this Master Lease, which Hazardous Materials Claims shall be governed by the applicable provisions of the Acquisition Agreement. Nothing in this Master Lease shall be deemed or construed to waive, release, limit, or otherwise diminish Master Lessor's or Master Lessee's rights or remedies with respect to Subtenants or any other third party, all of which are expressly reserved by Master Lessor and Master Lessee, respectively.

(e) Pre-Effective Date Rights and Obligations. The provisions of the Acquisition Agreement will in no manner modify this section 9.2 of this Master Lease.

(f) Survival. Any remedies and the environmental indemnities provided for in this section 9.2 shall survive the Expiration Date of this Master Lease and/or any transfer of all or any portion of the Leased Premises or of any interest in this Master Lease for the legally applicable statute of limitations period.

ARTICLE 10.
ENTRY BY MASTER LESSOR

Master Lessee shall permit Master Lessor and Master Lessor's agents to enter the Leased Premises, at Master Lessor's sole cost and expense, at all reasonable times for the purpose of posting notices of non-responsibility for Alterations and repairs and on not less than two business days' prior written notice to Master Lessee, for the purpose of inspecting the Leased Premises (except in the event of an emergency, in which case no prior written notice shall be required, but reasonable, prior verbal notice to Master Lessee shall be attempted to be made by Master Lessor); provided, however, that (except in the event of any emergency) any such entry and other activities of the Master Lessor with respect to such entry shall be subject to the rights of the Subtenants under the Subleases, shall not unreasonably disturb the Subtenants' quiet enjoyment of their premises under such Subleases and shall not unreasonably interfere with Master Lessee's use of the Leased Premises. For purposes of this Article 10, the phrase "event of an emergency" shall mean an event that poses a threat of imminent injury to life, health, safety, security, or property.

In addition to the foregoing, Master Lessee grants Master Lessor access to the Leased Premises for the purpose of conducting inspections and preparing for construction of Master Lessor's courthouse project which Master Lessor will commence after the expiration of the term of this Master Lease. While accessing the Leased Premises pursuant to the foregoing, Master Lessor agrees to not unreasonably interfere with Master Lessee's use of the Leased Premises pursuant to this Master Lease.

ARTICLE 11.
DAMAGE OR DESTRUCTION

11.1 Master Lessee's Right to Repair and Restore, Demolish and Remove, or Terminate Master Lease.
(a) **Master Lessee’s Rights Upon Damage or Destruction.** If all or any portion of the Leased Premises is rendered untenanted, or inaccessible by damage and/or destruction to all or any part of the Leased Premises from fire or other casualty, then Master Lessee shall elect one of the following by delivering to Master Lessor written notice of such election within 120 days after such fire or other casualty: (i) at Master Lessee’s sole cost and expense, repair and restore the Leased Premises to the condition required by the Subleases and in compliance with the requirements set forth in Article 6 of this Master Lease; (ii) at Master Lessee’s sole cost and expense and in compliance with the requirements set forth in Article 6 of this Master Lease, and subject to Master Lessee’s indemnification obligations set forth in Article 6 of this Master Lease, demolish and remove the Improvements (or such applicable portion thereof) on the Leased Premises that are damaged and/or destroyed; or (iii) terminate this Master Lease, without any obligation to repair or restore damage and/or destruction to the Leased Premises or to demolish and remove the Improvements (or such applicable portion thereof) on the Leased Premises that are damaged and/or destroyed; provided that Master Lessee shall be required to repair or abate such damage and/or destruction, or to demolish and remove such Improvements (or such applicable portion thereof) and/or any debris, if and to the extent necessary to prevent or correct a violation of applicable Laws or to prevent or correct an imminent threat to life, health, public safety, or security (which actions, for purposes of this Master Lease, shall be referred to herein as actions to **“Secure the Premises”**); and further provided that if Master Lessee elects the option described in clause (iii) of this section 11.1(a), Master Lessee shall be responsible, at Master Lessee’s sole cost and expense, to terminate all Subleases that are then in effect and to cause all Subtenants to vacate, and to remove all of their Personal Property from, the Leased Premises prior to the termination of this Master Lease subject to providing the Notices to Vacate in accordance with section 5.2 of this Master Lease and coordinating with Master Lessor’s Relocation Consultant as provided for in section 5.2 of this Master Lease.

(b) **Notice to Master Lessor.** If Master Lessee elects to repair and restore damage to and/or destruction of the Leased Premises (in accordance with clause (i) of section 11.1(a) above) or to demolish and remove the Improvements (or such applicable portion thereof) on the Leased Premises that are damaged and/or destroyed (in accordance with clause (ii) of section 11.1(a) above), then this Master Lease shall continue in effect, Master Lessee shall deliver to Master Lessor an estimate of the time required to complete such repair and restoration or demolition and removal (as applicable) within the 120 day period referenced in section 11.1(a) above, and Master Lessee shall diligently complete such repair and restoration or demolition and removal (as applicable) in accordance with the terms of Article 6 and section 11.1(a) of this Master Lease.

(c) **Termination of Master Lease.** If Master Lessee elects to terminate this Master Lease in accordance with clause (iii) of section 11.1(a) above, then upon such termination, the Leased Premises shall be transferred from Master Lessee to Master
Lessor in accordance with the provisions of section 15.6 of this Master Lease. Additionally, upon such termination, Master Lessee shall deliver to Master Lessor, or assign to Master Lessor all of Master Lessee's interest in and rights to receive, all proceeds of the Property Insurance Policies and/or of any property insurance policies maintained by any Subtenant that are received by Master Lessee or to which Master Lessee is entitled arising from direct, physical loss of, damage to, or destruction of the Leased Premises, but only where and to the extent required to Secure the Premises, and only where and to the extent that Master Lessee has not already acted to Secure the Premises pursuant to section 11.1(a) above, but specifically excluding all or any of the following: proceeds to compensate Master Lessee and Subtenants for their furniture, fixtures, equipment, and other Personal Property; and proceeds for business interruption and/or rental loss coverage in favor of Master Lessee and/or any Subtenants, and as between Master Lessor and Master Lessee, Master Lessee shall be solely responsible and liable for any claims made by any Subtenants for losses arising from the fire or other casualty to the Leased Premises (except where and to the extent such Subtenant claims arise from the negligence or willful misconduct of Master Lessor or its officers, agents, employees, or contractors) and/or from Master Lessee's election to terminate this Master Lease under clause (iii) of section 11.1(a) above. Master Lessee shall be entitled to retain, and shall not be obligated to deliver or assign to Master Lessor pursuant to this section 11.1(c), any proceeds available from or through a program of self-insurance or by Master Lessee's participation in a joint powers authority established for the purpose of pooling self-insured claims except to the extent that such proceeds are required to Secure the Premises, as described above in this section 11.1(c).

11.2 Waiver. Master Lessor and Master Lessee each hereby waive the provisions of California Civil Code sections 1932(2) and 1933(4) and any other applicable Law permitting the termination of a lease agreement in the event of damage or destruction under any circumstances other than as provided in section 11.1 of this Master Lease.

ARTICLE 12.
ASSIGNMENT AND SUBLETTING; SERVICE CONTRACTS

12.1 Assignment. Master Lessee may not assign Master Lessee’s right, title, and interest, as Master Lessee, in this Master Lease, without Master Lessor’s prior written consent which consent can be withheld in Master Lessor’s sole discretion; and further provided that Master Lessee agrees that, in connection with giving any such consent, Master Lessee shall not be released of any of its duties, obligations, and/or liabilities under this Master Lease in connection with such assignment. Except for the Existing Leases, Master Lessee shall not enter into any agreements which would allow a third party to use or occupy any portion of the Property, including without limitation, any leases, subleases or licenses ("Proposed Lease"), without Master Lessor’s prior written consent which consent shall not be unreasonably withheld. In no event shall Master
Lessor be required to consent to any Proposed Lease that (i) provides for a term beyond December 31, 2015, and/or (ii) does not require the proposed Subtenant to acknowledge their ineligibility to relocation assistance from Master Lessor and Master Lessee.

(a) **Subletting.** Subject to the provisions set forth below in this section 12.1, Master Lessee shall have the right to modify any of the Subleases of the Leased Premises without the consent of Master Lessor, however, Master Lessee shall not renew or extend any of the terms of any of the Subleases beyond the Subleases Termination Date, and Master Lessee shall not assign, encumber, or otherwise convey any right or interest of Master Lessee in any Sublease. All termination of Subleases shall be in accordance with section 5.2 of this Master Lease with respect to providing Notices to Vacate and coordinating with Master Lessor’s Relocation Consultant.

12.2 The Subleases shall be subject to the following:

(a) Each Sublease will expire no later than the Subleases Termination Date;

(b) No modifications of any Subleases shall provide the Subtenants with any right to compensation for Master Lessee’s termination of such New Sublease prior to its expiration; and

(c) Within 30 days after execution of any amendment to a Sublease, Master Lessee shall provide Master Lessor a true and correct copy of the amendment to such Sublease;

Master Lessor agrees to execute, upon the request of Master Lessee or a Subtenant, a non-disturbance and attornment agreement with each Subtenant, in a form mutually acceptable to such Subtenant and Master Lessor.

12.3 **Assignment and Assumption of Existing Subleases.** Pursuant to section 5.1 of this Master Lease, Master Lessor has assigned to Master Lessee all of Master Lessor’s right, title, and interest, as the “landlord” or “lessor” under the Subleases, and Master Lessee has accepted such assignment and assumed all of Master Lessor’s duties, liabilities, and obligations as the “landlord” or “lessor” under the Subleases that arise on and after the Effective Date.

12.4 **Master Lessee’s Covenant Regarding Subleases.** During the Lease Term, Master Lessee shall use commercially reasonable efforts to enforce the terms, conditions, and provisions of the Subleases and to exercise Master Lessee’s rights under the Subleases.

12.5 **Service Contracts.** During the Lease Term, Master Lessee shall have the right to (i) enter into any contracts with respect to the maintenance, management, or operations of the Leased Premises (“Service Contract(s)”), (ii) extend, modify, or renew
any Service Contracts existing as of the Effective Date, and (iii) terminate any Service Contracts, all without the consent of Master Lessor, provided that Master Lessee shall at all times be solely liable and responsible for performance of Master Lessee’s obligations under such Service Contracts and that the Service Contracts are all terminated, at Master Lessee’s sole cost and expense, as of the Expiration Date, or the earlier termination of this Master Lease if Master Lessee elects to terminate this Master Lease in accordance with section 11.1.

ARTICLE 13.
DEFAULT AND REMEDIES

13.1 Events of Default. The occurrence of any of the following shall constitute an “Event of Default” by Master Lessee under this Master Lease:

(a) Failure to Pay Additional Rent. Master Lessee fails to make payment of any amount due under this Master Lease when due, if payment in full is not received by Master Lessor within 30 days after Master Lessor’s delivery to Master Lessee of written notice that such payment is due.

(b) Bankruptcy. Master Lessee files a petition seeking relief under any state or federal bankruptcy or other Law affecting creditors’ rights.

(c) Uncured Failure to Perform. Master Lessee fails to perform or comply with any provision of this Master Lease other than those described in sections 13.1(a) or (b) above, and does not fully cure such failure within 60 days after Master Lessor’s delivery to Master Lessee of written notice of such failure or, if such failure cannot be cured within such 60 day period, Master Lessee fails within such 60 day period to commence, and thereafter diligently proceed to cure, such failure as soon as reasonably possible.

13.2 Remedies Upon Default. Upon the occurrence of an Event of Default by Master Lessee, Master Lessor shall have the following rights and remedies and all the rights and remedies available under the Law, all subject to the rights of any Subtenants under the Subleases:

(a) Termination of Master Lessee’s Right to Possession. Master Lessor may terminate Master Lessee’s right to possession of the Leased Premises by written notice to Master Lessee. Master Lessee expressly acknowledges that in the absence of such written notice from Master Lessor, no other act of Master Lessor, including re-entry into the Leased Premises, efforts to relet the Leased Premises, reletting of the Leased Premises for Master Lessee’s account, storage of Master Lessee’s Personal Property, acceptance of keys to the Leased Premises from Master Lessee, or exercise of any other rights and remedies under this section 13.2, shall constitute an acceptance of Master
Lessee’s surrender of the Leased Premises or constitute a termination of this Master Lease or of Master Lessee’s right to possession of the Leased Premises.

(b) **Master Lessor Cure.** Master Lessor may cure the Event of Default, and Master Lessee shall reimburse Master Lessor for the documented, out-of-pocket cost and expense reasonably incurred by Master Lessor in connection with Master Lessor’s cure of the Event of Default within 30 days of Master Lessor’s written request to Master Lessee therefor.

(c) **Disposition of Master Lessee’s Property.** Master Lessor may remove all of Master Lessee’s property from the Leased Premises (but not any property of any Subtenant), and such property may be stored by Master Lessor in a public warehouse or elsewhere at the sole cost and for the account of Master Lessee. If Master Lessor does not elect to store any or all of Master Lessee’s property left upon or in the Leased Premises, Master Lessor may consider such property to be abandoned by Master Lessee, and Master Lessor may thereupon dispose of such property in compliance with applicable Laws. Any proceeds realized by Master Lessor on the disposal of any such property shall be applied first to offset all expenses of storage and sale, then credited against Master Lessee’s outstanding obligations to Master Lessor under this Master Lease, and any balance remaining after satisfaction of all obligations of Master Lessee under this Master Lease shall be delivered to Master Lessee.

13.3 **Master Lessor Defaults and Master Lessee Remedies.**

(a) Master Lessee may perform any obligation, covenant, or agreement of Master Lessor under this Master Lease if Master Lessor fails to perform or comply with any provision of this Master Lease and does not fully cure such failure within 60 days after Master Lessee’s delivery to Master Lessor of written notice of such failure or, if such failure cannot be cured within such 60 day period, Master Lessor fails within such 60 day period to commence, and thereafter diligently proceed to cure such failure as soon as reasonably possible. In the event Master Lessee so performs for Master Lessor, Master Lessor shall reimburse Master Lessee for all its documented, out-of-pocket costs and expenses reasonably incurred by Master Lessee in connection therewith within 30 days of Master Lessee’s written request to Master Lessor therefor.

(b) Should Master Lessor fail to pay any amounts due and owing by Master Lessor under this Master Lease as a result of the State of California’s failure to timely approve and adopt a State budget, without limiting any other rights that Master Lessee may have at law or in equity, no default by Master Lessor shall be deemed to have occurred under this Master Lease, and Master Lessor will promptly pay any previously due and unpaid amounts due and owing under this Master Lease upon approval and adoption of the State budget.
ARTICLE 14.
DISPUTE RESOLUTION

14.1 Unassisted Negotiation. In the event of a dispute between the Parties relating to performance of the Parties' obligations under this Master Lease, the City of Modesto's Director of Community and Economic Development and the Assistant Director of the Administrative Office of the Courts' Office of Real Estate and Facilities Management, or their respective designees who are authorized to negotiate for and recommend settlement terms to the Party they represent, will meet to attempt to resolve the dispute. If the Parties are not able to resolve their dispute within 30 days through that unassisted negotiation, they will attempt to resolve the dispute by mediation under this section 14.1 below. In the event that the Parties are unable to resolve the dispute by mediation, the Parties will be free to pursue any and all of its rights and remedies under the Law or equity.

(a) Initiation of Mediation. Either or both of the Parties may request the initiation of mediation for any dispute described in section 14.1 by delivering a written request for mediation ("Mediation Request") to the other Party. The Mediation Request must: (1) include a brief summary of the issues in dispute; and (2) state the dates on which, as of the date of the Mediation Request, the requesting Party is unavailable to attend the mediation within the immediately-succeeding 90 days after the delivery to the other Party of the Mediation Request. Within seven days after the requesting Party's delivery of a Mediation Request to the other Party, the responding Party must deliver to the requesting Party a response to the Mediation Request ("Mediation Response"), which must: (i) include a brief summary of the issues in dispute (which may or may not be the same as the summary provided by the requesting Party); and (ii) state the dates on which, as of the date of the Mediation Response, the responding Party is unavailable to attend the mediation within the 83 days immediately following the responding Party's receipt of the Mediation Request.

(b) Mutual Selection of Mediator. Within 12 days after delivery to the requesting Party of the Mediation Response, the Parties will attempt in good faith to agree upon a neutral mediator to preside over the mediation.

(c) Selection of Mediator by Exchanging Mediator Lists. If the Parties are not able to mutually agree upon a neutral mediator within 12 days after delivery to the requesting Party of the Mediation Response, then within 17 days after delivery to the requesting Party of the Mediation Response, each Party shall deliver to the other Party a list of five potential mediators, which list shall rank the mediator candidates in order of preference and include at least two, but not more than three, former judges who sat on the Superior Court of California, County of Stanislaus, and the remaining selections shall not include any former judges of the Superior Court of California, County of Stanislaus whatsoever. If the same mediator candidate appears on both lists, then such mediator candidate shall be deemed to be selected as the mediator. If more than one mediator
candidate appears on both lists, then the mediator shall be selected based on the priority that each such mediator candidate is specified on both lists. If there is no mediator listed on both lists, the Parties shall, within 22 days after delivery to the requesting Party of the Mediation Response, attempt in good faith to mutually agree upon a single mediator from the names on the two lists.

(d) Mediator Panel Selection. If the Parties are not able to agree upon a single mediator, then each Party, within 27 days after delivery to the requesting Party of the Mediation Response, shall select one mediator on the other Party’s list of five mediator candidates, and the mediation shall be conducted by two mediators.

(e) Cost of Mediation. The Parties will share equally in payment of all costs of the mediation, including the compensation of the mediator(s). The Parties and the mediator(s) must reach a written agreement regarding the mediator’s compensation and expenses before the mediation is commenced.

(f) Date, Time, and Place of Mediation. In consultation with the Parties, the mediator(s) will fix the date, time, and place of each mediation session. The mediation may be held at any convenient location agreeable to the Parties and the mediator(s). The mediator’s or mediators’ schedule permitting, mediation must be completed within 90 days after the requesting Party’s delivery to the responding Party of the Mediation Request.

(g) Attendance at Mediation. Both Parties must attend the mediation session(s). The Parties may satisfy this attendance requirement by sending a representative familiar with the facts of the dispute, who has the authority to negotiate on behalf of, and to effectively recommend settlement to, the Party he or she represents. Any Party to the mediation may have the assistance of an attorney or other representative of its choice at its own cost. Other persons may attend the mediation sessions only with the consent of the Parties and the mediator(s).

(h) Statements Before Mediation. The mediator(s) will determine the manner in which the issues in dispute will be framed and addressed. The Parties should expect that the mediator will request a premediation statement outlining facts, issues, and positions of each Party ("Premediation Statement") in advance of the mediation session. At the discretion of the mediator(s), the Premediation Statements or other information may be mutually exchanged by the Parties.

(i) Confidentiality. The mediation will be confidential in all respects, and the provisions of California Evidence Code sections 1152 and 1154 will apply to all written and verbal evidence presented in the mediation and to settlement communications made in the Premediation Statements, during the mediation itself, or otherwise in furtherance of or related to the mediation or the settlement of the dispute. The Premediation Statements shall be confidential, for settlement purposes only, and will not
be admissible in any hearing before the mediator(s) or for any purpose other than for the mediation. Without limiting the foregoing, the provisions of California Evidence Code sections 1115 through 1128, inclusive, will apply in connection with any mediation under this Master Lease.

ARTICLE 15.
MISCELLANEOUS PROVISIONS

15.1 Captions. The captions of this Master Lease are for convenience only and are not a part of this Master Lease, do not in any way limit or amplify the terms and provisions of this Master Lease and are not to be used to interpret or construe this Master Lease.

15.2 Interpretation. The provisions of this Master Lease shall be construed in accordance with the fair meaning of the language used and shall not be strictly construed against either Party, even if such Party drafted the provision in question. When required by the context of this Master Lease, the singular includes the plural, the plural shall include the singular, and the word “person” shall include an individual, corporation, limited liability company, partnership, firm, association, or any other entity. All references to a “section” in this Master Lease shall refer to such “section” together with any and all of its corresponding “subsections.”

15.3 Modifications. This instrument contains all of the agreements, covenants, conditions, and representations made between the Parties to this Master Lease and may not be modified orally or in any other manner except by an agreement in writing signed by all of the Parties to this Master Lease.

15.4 Brokers. Master Lessor and Master Lessee each warrant and represent to the other that they have not dealt with any real estate broker, agent, or finder in connection with the negotiation and/or execution of this Master Lease. Master Lessor and Master Lessee hereby agree to and shall indemnify, defend, and hold each other harmless from any and all losses, obligations, claims, demands, actions, liabilities, damages, costs, or expenses arising out of any claims or causes of action that may be asserted against the other Party by any broker, agent, finder, or other person with whom the other Party to this Master Lease has purportedly dealt in connection with the negotiation and/or execution of this Master Lease.

15.5 Severability. The determination that any provisions of this Master Lease may be void, invalid, illegal, or unenforceable shall not impair any other provisions hereof and all such other provisions of this Master Lease shall remain in full force and effect. The unenforceability, invalidity, or illegality of any provision of this Master Lease under particular circumstances shall not render unenforceable, invalid, or illegal other provisions of this Master Lease, or the same provisions under other circumstances.
15.6 **Surrender of Master Lease.** Upon the Expiration Date or any termination of this Master Lease by Master Lessee under section 11.1 hereof, Master Lessee shall surrender the Leased Premises, and all Improvements located on the Leased Premises as of such date, to Master Lessor, except to the extent that such Improvements consist of Personal Property of Master Lessee and/or any Subtenant. All such Improvements shall, without compensation to Master Lessee, then become Master Lessor’s property, except to the extent that such Improvements consist of Personal Property of Master Lessee and/or any Subtenant. Additionally, under section 11.1 hereof, Master Lessee shall remove its Personal Property by the Expiration Date or other early termination of this Master Lease by Master Lessee, and shall remove or store in a location other than the Leased Premises any Personal Property not removed by any Subtenants, by the Expiration Date. Pursuant to section 5.2 hereof, Master Lessee is required to have terminated all of the Subleases by the Subleases Termination Date, however, in the event that Master Lessee failed to terminate the Subleases as required under section 5.2 hereof and those Subleases have still not been terminated by the Expiration Date, Master Lessee will be responsible, for all cost and expense in evicting or otherwise removing any and all Subtenants or other occupants remaining on or in possession of the Leased Premises. The provisions of this section 15.6 shall survive the expiration or earlier termination of this Master Lease for the legally applicable statute of limitations period.

15.7 **No Holding Over.** Master Lessee shall have no right to hold over after the expiration or termination of this Master Lease. No act or omission by Master Lessor, other than its specific written consent, shall constitute permission for Master Lessee to continue in possession of the Leased Premises, and if such consent is given or declared to have been given by a court judgment, Master Lessor may terminate Master Lessee’s holdover tenancy at any time upon 30 days’ written notice. In the event of any such holdover, Master Lessee shall continue to comply with or perform all the terms and obligations of Master Lessee under this Master Lease.

15.8 **Demolition/Removal of Improvements.** Except as otherwise required by section 11.1(a) of this Master Lease or as provided for in the Acquisition Agreement, Master Lessee shall have no obligation to demolish and/or remove any of the Improvements on the Leased Premises, and any other demolition and/or removal of such Improvements either during or after the Lease Term shall be the sole obligation of Master Lessor at Master Lessor’s sole cost and expense.

15.9 **No Violations.** Neither this Master Lease nor any other documents executed by Master Lessor pursuant hereto will violate any provision of any agreement, judgment, or judicial order to which Master Lessor is a party or to which Master Lessor is subject. Neither this Master Lease nor any other documents executed by Master Lessee pursuant hereto will violate any provision of any agreement, judgment, or judicial order to which Master Lessee is a party or to which Master Lessee is subject.
15.10 **Notices.** Any tender, delivery, notice, demand, or other communication ("Notice") required or permitted under this Master Lease shall be in writing, and shall be personally delivered, sent by certified mail (with postage prepaid and return receipt requested), sent by overnight delivery service, or sent by facsimile to the address of such recipient shown in Article 1 hereof and shall be deemed delivered, given, and received upon the earlier of: (a) if personally served, the date of delivery to the person to receive such notice; (b) if given by facsimile, when sent if received by the recipient by 5:00 p.m. local time of the recipient on a business day (or, if after such time, then on the next business day), provided confirmation of the transmission is received by the sender’s facsimile machine; (c) if mailed, upon actual receipt or refusal to accept delivery; or (d) if sent by overnight delivery service, within one business day after deposited with such service. Any Party may change the address specified in Article 1 by giving the other Party Notice of such new address in the manner set forth herein. Any Party’s attorney may give an effective and binding Notice in accordance with this section 15.10 on behalf of such Party.

15.11 **Computation of Periods.** All periods of time referred to in this Master Lease shall include all Saturdays, Sundays, and City or State holidays, unless the period of time specifies “business days”, in which case such period of time shall exclude Saturdays, Sundays, and City or State holidays; provided that if the date or last date to perform any act or give any Notice with respect to this Master Lease shall fall on a Saturday, Sunday, or City or State holiday, such act or Notice may be timely performed or given on the next succeeding day that is not a Saturday, Sunday, or City or State holiday. For purposes of this Master Lease, the phrase “City and State holiday” shall refer to any day on which Master Lessee and/or Master Lessor is/are closed for business.

15.12 **Waiver.** The waiver by Master Lessor or Master Lessee of any breach of any Master Lease term, covenant, condition, or provision shall not be deemed to be a waiver by such Party of such Master Lease term, covenant, condition, or provision or any subsequent breach of the same or any other term, covenant, condition, or provision therein contained.

15.13 **Binding Effect.** Subject to Article 12, this Master Lease shall be binding on and shall inure to the benefit of the Parties and their respective successors, assigns, and legal representatives.

15.14 **Quiet Possession.** Subject to Master Lessee’s full and timely performance of all of Master Lessee’s obligations under this Master Lease and subject to the terms of this Master Lease, Master Lessee shall have the quiet possession of the Leased Premises throughout the Lease Term as against any persons or entities lawfully claiming by, through, or under Master Lessor.

15.15 **Force Majeure.** If either Master Lessor or Master Lessee is delayed, interrupted, or prevented from performing any of its obligations under this Master Lease
(other than the payment of any amounts due from one Party to the other under this Master Lease), and such delay, interruption, or prevention is due to fire, act of God, governmental act or failure to act, labor dispute, unavailability of materials, or any cause outside the reasonable control of Master Lessor or Master Lessee, then the time for performance of the affected obligations of Master Lessor or Master Lessee, as the case may be, shall be extended for a period equivalent to the period of such delay, interruption, or prevention. The inability to pay money shall in no event constitute force majeure.

15.16 **No Joint Venture.** The Parties expressly intend not to undertake any joint venture or partnership or in any way create a relationship by which either Party may be considered an agent of the other hereby. Neither Party has the authority to create or assume in the name of the other Party or on its behalf any obligations whatsoever, nor shall either Party in any way be obligated for any liabilities or obligations of the other.

15.17 **Third Parties.** This Master Lease is entered into for the sole benefit of Master Lessor and Master Lessee, their respective successors and permitted assigns, and no other person or entity shall have any right of action under or rights or remedies by reason of this Master Lease.

15.18 **Nonmerger.** If both Master Lessor’s and Master Lessee’s estates in the Leased Premises or the Improvements or both become vested in the same owner, this Master Lease shall nevertheless not be destroyed by the application of the doctrine of merger except at the express election of such owner with an interest in the Leased Premises at such time.

15.19 **Covenant of Further Assurances.** The Parties hereby agree to execute such other documents and perform such other acts as may be reasonably necessary to carry out the purposes of this Master Lease.

15.20 **Governing Law.** This Master Lease shall be construed and enforced in accordance with the laws of the State of California.

15.21 **Effective Date.** Upon the Effective Date, the Party having possession of the fully-executed originals of this Master Lease shall promptly provide the other Party with its copies. The Effective Date of this Master Lease shall not be affected in any way by the date the signed originals of this Master Lease are delivered to all Parties.

15.22 **Signature Authority.** Each of the persons executing this Master Lease on behalf of each of the respective Parties certifies that he or she is authorized to do so.

15.23 **Entire Agreement.** This Master Lease and the Acquisition Agreement, including the Exhibits attached thereto, constitutes the entire agreement between Master Lessor and Master Lessee with respect to the leasing of the Leased Premises by Master
Lessee from Master Lessor and supersedes all prior or contemporaneous agreements, understandings, proposals, and other representations by or between Master Lessor and Master Lessee, whether written or oral, all of which are merged herein.

15.24 Memorandum of Lease. This Master Lease shall not be recorded, nor shall a memorandum of this Master Lease be recorded.

[SIGNATURE PAGE TO IMMEDIATELY FOLLOW]
IN WITNESS WHEREOF, the City of Modesto, a municipal corporation, has authorized the execution of this Property Acquisition Agreement (Agreement) by its City Manager and attestation by its City Clerk by Resolution No. 2014-____ adopted by the Council on _____day of __________, 2014, and the State of California, acting by and through the Judicial Council of California, Administrative Office of the Courts, has caused this Agreement to be duly executed.

MASTER LESSEE:

CITY OF MODESTO, a municipal corporation

By: _____________________________
    GREG NYHOFF
    City Manager

ATTEST:

By: _____________________________
    STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO LEGAL FORM

ADAM O. LINDGREN
Interim City Attorney

By: _____________________________
    RICHARD B. EVANS
    Senior Deputy City Attorney

APPROVED AS TO RISK MANAGEMENT FORM

By: _____________________________
    MARY AKIN, Risk Manager

AUTHORIZED:

STATE OF CALIFORNIA
State Public Works Board

By: _____________________________

MASTER LESSOR:

STATE OF CALIFORNIA, acting by and through the JUDICIAL COUNCIL OF CALIFORNIA, ADMINISTRATIVE OFFICE OF THE COURTS

By: _____________________________
    Name: Steven Jahr
    Title: Administrative Director of the Courts
    Date: ____________________________

APPROVED AS TO FORM:
Administrative Office of the Courts,
Legal Services Office

By: _____________________________
    Name: Leslie G. Miessner
    Title: Supervising Attorney
    Date: ____________________________
Jerry Leong
Assistant Administrative Secretary
EXHIBIT “A”

DESCRIPTION OF LAND

(TO BE ATTACHED)
EXHIBIT “B”

LIST OF EXISTING LEASES

(1) One written lease (i.e. Gervasoni’s restaurant) and one verbal lease (i.e. e-cigarette business) relating to the property located at 706 9th Street, Modesto, CA (multiple tenants)

(2) 26 leases relating to the property located at 900 H Street (7 written office leases and 19 verbal storage units leases), Modesto, CA
RESOLUTION APPROVING THE CREATION OF A MULTI-YEAR OPERATING BUDGET IN FISCAL YEAR 2013-2014 FOR THE COURTHOUSE PROJECT AND AMENDING THE FISCAL YEAR 2013-2014 MULTI-YEAR BUDGET TO APPROPRIATE REVENUES AND EXPENDITURES IN THE AMOUNT OF $330,000

WHEREAS, the Administrative Office of the Courts (AOC) desires to develop a new courthouse for the Superior Court of Stanislaus County, and

WHEREAS, the City has assisted the State of California (State)/AOC in the acquisition process including the negotiation of price, terms and conditions of the purchase of the 10th Street Site property, and

WHEREAS, the State/AOC must acquire all parcels of the site in order to proceed with the project, and

WHEREAS, the proposed transaction calls for (i) the City to acquire, by negotiated purchase, each of the six (6) private parcels with title conveyed to the City by grant deeds; (ii) the City will sell the eleven (11) total parcels to the State/AOC with the title conveyed to the State/AOC by grant deed; and (iii) the City will conditionally vacate the public alley at the 10th Street Site, and

WHEREAS, all lease revenues, associated property management expenses, as well as the cost of the utility removal and any other related operating transactions will be processed in this budget, and

WHEREAS, at the termination of the lease agreement with the State/AOC, the remaining and unused funds will be transferred to the General Fund,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby creates a multi-year operating budget in Fiscal Year 2013-2014 for the
Courthouse Project and amends the Fiscal Year 2013-2014 Multi-Year Budget to appropriate revenues and expenditures in the amount of $330,000.

BE IT FURTHER RESOLVED that the Director of Finance, or her designee, is hereby authorized to implement the provisions of this resolution.

The foregoing resolution was introduced at a special meeting of the Council of the City of Modesto held on the 15th day of April, 2014, by Councilmember Madrigal, who moved its adoption, which motion being duly seconded by Councilmember Cogdill, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Cogdill, Gunderson, Kenoyer, Lopez, Madrigal, Zoslocki, Mayor Marsh

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: [Signature]

(Seal)

APPROVED AS TO FORM:

By: [Signature]

ADAM LINDGREN, Interim City Attorney