



City of Palo Alto

City Council Staff Report

(ID # 4988)

Report Type: Action Items

Meeting Date: 8/11/2014

Summary Title: 2180 El Camino Real

Title: Approval of the Proposed Grocery Store Tenant (J&A Family Market) Within PC 5069 (College Terrace Centre) Based on the Finding that the Proposed Grocery Tenant Would Likely be Comparable in Quality of Products and Services as JJ&F as it Existed and Operated on December 7, 2009 at 2180 El Camino Real

From: City Manager

Lead Department: Planning and Community Environment

Recommendation

Staff recommends that Council approve the proposed grocery store tenant (J&A Family Market) pursuant to Planned Community (PC) Zoning Ordinance No. 5069 (College Terrace Centre), adopted January 11, 2010, based on the finding that the proposed grocery tenant would likely be comparable in quality of products and services as the former JJ&F market as it existed and operated on December 7, 2009.

Executive Summary

As a key element of the community benefit package for the Planned Community (PC) zoning ordinance approving a new mixed-use development at 2180 El Camino Real in early 2010, the City Council required that the project include a neighborhood serving grocery store. The ordinance made the grocery tenant subject to City approval, stating specifically:

“The grocery tenant, if it is a party other than John Garcia (DBA JJ&F), shall be subject to the prior approval of the City of Palo Alto,”

and further stating that the City’s approval:

“shall not be withheld unless the City reasonably finds that such proposed grocery tenant is not likely to be comparable in quality of products and service as JJ&F as it existed and operated on December 7, 2009.”

The project applicant is proposing a grocery tenant, J&A Family Market, which is owned by

James Smailey, a member of the development team. The applicant and the tenant have provided information regarding the proposed grocery, including its products and service, but excluding certain confidential information, including the names of experienced grocery store professionals who will assist with business operations.

To evaluate whether the products and service would be comparable to the old JJ&F market as it existed in December 2009, the City contracted with Sutti Associates, a firm that is in the business of designing and building independent grocery stores, including many successful stores in Northern California. Sutti Associates also has firsthand knowledge of the JJ&F Market, and was given access to all of the information provided to the City, as well as additional information that J&A did not provide to the City due to confidentiality concerns.

Sutti Associates's analysis lauded the proposed store layout, marketing strategy, management team and advisors, and concluded that the market "will be comparable, if not superior, in quality of products and services to JJ&F." On the concern that the new market might be short lived, Sutti Associates stated that they "cannot guarantee long term success," but that the proposed tenant "has the retail team and strategy to be successful from its opening day and into the future."

Background

On January 11, 2010 the City Council approved PC Ordinance 5069 for a new mixed use development at 2180 El Camino Real. The approved Planned Community development consisted of 57,900 square feet of floor area to be developed within three new buildings over a two level below grade parking structure. The approval included 8,000 square feet for a grocery store, 5,580 square feet of other ground floor retail space, and 38,980 square feet of office space. Eight below-market-rate residential apartment units were also approved. The provision of a neighborhood grocery store on the property was one of the primary public benefits of the project.

At the time of the original project approval, it was understood that the grocery store that operated on the property at that time, JJ&F, would continue its operation in the new project once it was built. While the developer requested JJ&F to return, John Garcia, the individual that represented JJ&F, has declined to return as the grocery operator at this site. This has placed the applicant in the position to find an alternate grocery tenant that is comparable in quality of products and services as JJ&F as it existed and operated on December 7, 2009.

The PC Ordinance contains a series of Council created safeguards to ensure that a viable grocery store is incorporated into the project and continues operating during the project's useful life. Pursuant to item #3 of the Special Limitations on Land Uses from the PC ordinance, on January 2, 2014 the applicant provided staff with a lease agreement for a new grocery tenant. The City Attorney signed off on the form of the lease agreement, but staff requested more information on the grocery store tenant. The proposed tenant, J&A Family Market, is owned by James Smailey, a member of the project's development team. The proposed grocery

tenant does not appear to have prior experience running a grocery store. For this reason, staff requested that the grocery tenant provide the City with a business plan to assist the City in making the determination that the new store would satisfy the conditions of the PC ordinance.

The proposed grocery tenant provided the requested information, but declined to specify the names of personnel and other business-related information that was deemed to be proprietary or that would put the market at a competitive disadvantage. Staff responded with additional questions, which elicited additional responses, including a floor plan of the proposed grocery. (Correspondence and the floor plan are attached to this staff report.)

City staff also met with the project applicant and the proposed grocery tenant, hoping to learn how the applicant could ensure the longevity of the grocery tenant, since the City and the neighbors have expressed concerns as to whether the proposed grocer -- as the son of the project owner -- is a real business with a track record of successfully operating a grocery store and what mechanism/s the City have to enforce an operation ...*"comparable in quality of products and service as JJ&F"* should such a new operation not prove to be such.

Ordinance No. 5069 requires establishment of a grocery store of the specified quality prior to issuance of a building permit for construction and requires continuous operation. The ordinance however is silent about what would happen if the grocery store goes out of business or diminishes in quality sometime after the project is constructed. Such an unfortunate event would constitute a violation of the City's PC ordinance, but the ordinance itself does not specify a particular remedy or fine. In this situation the City would fall back on the traditional code enforcement remedies (fines and administrative penalties).

The applicant has indicated that loss of the grocery tenant at some point in the future could also have negative consequences in terms of financing (if loan conditions are violated), or leasing (if the lease with a major office tenant contains a condition that is violated). None of the specific financing or lease terms were made available to the City.

Discussion

Based on the information submitted by the proposed grocery tenant, staff believes the tenant is proposing a store with products and service comparable to JJ&F, and that the only outstanding issue is whether the grocery will be a financial success and remain in operation, unlike other small grocery stores in the area that have failed. This is a particular concern because the tenant has not been willing to share information about the personnel with grocery experience who would be engaged to help operate the business.

As reported in the Executive Summary, to resolve this concern, staff retained the services of Sutti Associates to peer review the proposed tenant's business plan, including the management team names and resumes. Sutti Associates has firsthand knowledge of JJ&F Market, and has been involved with the design and construction of many successful markets throughout Northern California.

The peer review concluded that the proposed tenant would offer comparable products and service, and states “As with all business ventures, there is no guarantee of success. But the building blocks to success are based on the fundamentals of the business category” and that the proposed tenant has fundamentals related to location, product relevance, parking, financial management, marketing reach, and management team. (See Sutti Associates’ report item 4(d).)

The applicant has also informed staff that the transaction documentation contain terms that further ensure the continued operation of the grocery store, though applicant was unwilling to provide such documentation directly to the City.

While there are no guarantees that any particular grocery store will be financially viable, staff believes that the applicant has met the showing required by PC Ordinance 5069 and that the applicant has taken steps to ensure the continued viability of the grocery store

Timeline

The project applicant is seeking City approval of a building permit to commence construction. The City’s approval of a grocery tenant is a prerequisite of building permit issuance.

Policy Implications

The College Terrace Center project was approved by PC Ordinance 5069 in January of 2010.

Environmental Review

The College Terrace Center project was reviewed pursuant to the California Environmental Quality Act (CEQA) prior to its approval. The current decision regarding a specific grocery tenant would not alter the project as originally approved or analyzed, and no further review is needed.

Attachments:

- Attachment A: PC Ordinance 5069 (PDF)
- Attachment B: Grocery Tenant Lease Agreement (PDF)
- Attachment C: Grocery Tenant Business Plan (PDF)
- Attachment D: Grocery Tenant Floor Plan (PDF)
- Attachment E: Staff Questions and Responses from Grocery tenant (PDF)
- Attachment F: Demographic Data (PDF)
- Attachment G: Sutti Associates Peer Review (PDF)

Ordinance No. 5069

Ordinance of the Council of the City of Palo Alto Amending Section 18.08.040 of the Palo Alto Municipal Code (The Zoning Map) to Change the Classification of Property Known as 2180 El Camino Real from Neighborhood Commercial (CN) District to PC Planned Community 5069 for a Mixed Use Project Having 57,900 Square Feet of Floor Area For A Grocery Store (intended for JJ&F Market), Other Retail Space, Office Space, and Eight Affordable Residential Units, With Two Levels Of Below-Grade Parking Facilities and Surface Parking Facilities For The College Terrace Centre, and Approval of Design Enhancement Exceptions to Allow a Sign Spire and Gazebo Roof to Exceed the 35-Foot Height Limit, and to Allow Encroachment Into A Minimum Setback on Oxford Avenue.

The Council of the City of Palo Alto does ORDAIN as follows:

SECTION 1.

- (a) Carrasco and Associates c/o Linda Poncini ("the Applicant") on behalf of The Clara Chilcote Trust c/o Patrick Smailey ("property owner") formally applied on October 18, 2007 to the City for approval of a rezoning application (the "amendment") from CN 'Neighborhood Commercial' to a Planned Community (PC) district for a site comprised of four parcels located at 2180 El Camino Real (the "Subject Property") to accommodate the uses set forth below.
- (b) The City Council, after duly noticed public hearings held on July 13, 2009 and July 27, 2009 initiated the amendment process, and forwarded the project to the Planning and Transportation Commission (PTC) for review and recommendation, to be followed by Architectural Review Board (ARB) review and recommendation, and then final review and final action by the City Council.
- (c) The PTC, after a duly noticed public hearing held on October 14, 2009, reviewed, considered, and recommended approval of the revised Initial Study draft Mitigated Negative Declaration and recommended that Section 18.08.040 (the Zoning Map) of the Palo Alto Municipal Code be amended to rezone the Subject Property to Planned Community to permit construction of the proposed project located as shown on 'Exhibit A,' attached to this document and incorporated by reference. Draft conditions of project approval 'Exhibit B' attached to this document and incorporated by reference were presented to the PTC for review and comments.

- (d) The ARB, after a duly noticed public hearing held on November 5, 2009, reviewed the project design and recommended that the City Council approve the project with associated draft conditions of approval 'Exhibit B.'
- (e) The PTC, after a duly noticed public hearing held on December 2, 2009, confirmed their approval of the project and conditions of approval (Exhibit B).
- (f) The City Council, after a duly noticed public hearings held on December 7, 2009, and after due consideration of the proposed project, the Mitigated Negative Declaration, the analysis of the project by City staff, and the modification of the proposed conditions recommended by the PTC and the ARB, finds that the proposed Ordinance is in the public interest and will promote the public health, safety and welfare, as hereinafter set forth.
- (g) The Council finds that (1) the Subject Property is so situated, and the use or uses proposed for the site are of such characteristics that the application of general districts or combining districts will not provide sufficient flexibility to allow for the Project; and (2) development of the Subject Property under the provisions of the PC Planned Community District will result in public benefits not otherwise attainable by application of the regulations of general districts or combining districts, as set forth in Section (4)(c) hereof; and (3) the use or uses permitted, and the site development regulations applicable within the proposed district are consistent with the Comprehensive Plan (Goals, Policies and proposed designation of Mixed Use for the Subject Property) and are compatible with existing and potential uses on adjoining sites or within the general vicinity.

SECTION 2. Section 18.08.040 of the Palo Alto Municipal Code, the "Zoning Map," is hereby amended by changing the zoning of Subject Property from "CN Neighborhood Commercial" to "PC Planned Community 5069."

SECTION 3. The City Council hereby finds with respect to the Subject Property that the project (the "Project") as depicted on Development Plans dated October 22, 2009, incorporated by reference, comprises a mixed-use development that includes the following components:

- (a) The replacement of 18,028 square feet of existing commercial space with 57,900 square feet of new commercial and residential space. The commercial space would include 8,000 square feet for a grocery store, 5,580 square feet of other ground floor retail space, and 38,980 square feet of office space;
- (b) Eight (8) residential below-market-rate (BMR) units, comprising 5,340 square feet;
- (c) Underground parking garage containing 216 parking spaces on two levels;
- (d) Surface parking lot accommodating 11 parking spaces;

- (e) 24 on-street parking spaces around the site's perimeter;
- (f) A landscaped plaza at the corner of Staunton Court and Oxford Avenue;
- (g) Removal of street trees along Staunton Court, and Oxford and College Avenues and planting of new street trees within the sidewalk area;
- (h) Removal and replacement of some or all street trees along El Camino Real in tree wells;
- (i) Automobile driveways on El Camino Real, Oxford Avenue and Staunton Court providing access to parking lots and an area for loading and deliveries. Access to the below grade parking would be provided from the El Camino Real driveway.

SECTION 4. The Development Plan dated October 22, 2009, and any approved supplemental materials, for the Subject Property, as submitted by the applicant pursuant to Palo Alto Municipal Code Section (PAMC) 18.38.090, shall be subject to the following permitted and conditional land uses and special limitations on land uses, development standards, parking and loading requirements, modifications to the development plans and provisions of public benefits outlined below, and conditions of project approval, attached and incorporated as "Exhibit B".

- (a) Permitted and Conditionally Permitted land uses shall be allowed and limited as follows:

Permitted Uses (subject to the limitations below under Section 4(b):

- (1) Multifamily Residential
- (2) Professional and General Business Offices (excluding medical offices)
- (3) Retail Services (excluding liquor stores)
- (4) Eating and Drinking Services (excluding drive-in and Take-out services)
- (5) Personal Services

Conditionally Permitted Uses:

- (1) Farmers Markets
- (2) Businesses that operate or have associated activities at any time between the hours of 10:00 p.m. and 6:00 a.m. (such businesses shall be operated in a manner to protect residential properties from excessive noise, odors, lighting, or other nuisances from any source during those hours)

The following conditionally permitted uses are only permitted within the areas designated as office space on the development plan:

- (1) Banks and Financial Services
- (2) Commercial recreation
- (3) Private clubs, Lodges, and Fraternal Organizations

(b) Special limitations on land uses include the following:

- (1) A grocery store, with an area of at least 8,000 square feet, shall exist within the development for the useful life of the improvements;
- (2) The grocery store shall be a neighborhood serving grocery store that provides all the typical grocery store products and services of a neighborhood serving store such that it shall not become a convenience mart facility;
- (3) A signed lease for the grocery store, enforceable against the tenant and approved by the City Attorney, shall be submitted prior to issuance of any building permits on the site.
- (4) The grocery tenant shall occupy and begin operations prior to any office tenant occupancy.
- (5) The below-market rate housing shall be occupied not later than 120 days after the first occupancy of the office building. No more than 50% of the office space shall be occupied prior to occupancy of the housing.
- (6) The grocery tenant, if it is a party other than John Garcia (DBA JJ&F), shall be subject to the prior approval of the City of Palo Alto and shall not be withheld unless the City reasonably finds that such proposed grocery tenant is not likely to be comparable in quality of products and service as JJ&F as it existed and operated on December 7, 2009.
- (7) The grocery store space shall remain in continuous operation as a grocery store. "Continuous shall be defined to include brief closure for ordinary business purposes."
- (8) No medical office shall be permitted within the development;
- (9) The office uses within the project shall not exceed 38,980 square feet;
- (10) The 5,580 square feet of area designated as "Other Retail" on the development plan shall not be converted to ground floor office space; and
- (11) The "Other Retail" space may be occupied by retail uses, personal service use, or eating and drinking services only.
- (12) Use of the outdoor market area as shown on the project plans as being 2,447 square feet shall be limited to an open air market for grocery related uses only.

(c) Development Standards:

Development Standards for the site shall comply with the standards prescribed for the Planned Community (PC) zone district (Chapter 18.38), and as modified in Section 4(a) and (b) above.

(d) Parking and Loading Requirements:

In addition to the parking and loading requirements specified in PAMC 18.52 and 18.54, a Transportation Demand Management (TDM) Program has been incorporated in the Development Plan to allow reductions in parking requirements. The TDM is shown in 'Exhibit C' and is attached to this document

- (b) The design is compatible with the immediate environment of the site in that the proposed buildings are designed to meet the El Camino Real Design Guidelines and be sensitive to the lower scale residential neighborhood beyond;
- (c) The design is appropriate to the function of the project in that the project has been designed to be pedestrian friendly, provide additional bike and vehicular parking, attract people to the project and provides unique amenity spaces;
- (d) In areas considered by the board as having a unified design character or historical character, the design is compatible with such character. In this case, the building is not within an area of unified design character or historical character;
- (e) The design promotes harmonious transitions in scale and character in areas between different designated land uses in that the project includes the proposal to locate the two story residential component across from the existing residential uses on Staunton Court to create a transitional buffer between the existing residential uses and the proposed commercial buildings;
- (f) The design is compatible with approved improvements both on and off the site in that the proposed buildings and other project improvements would blend well with the existing off site improvements by proposing to break up the proposal in to multiple buildings with varying heights to control the mass and scale;
- (g) The planning and siting of the various functions and buildings on the site create an internal sense of order and provide a desirable environment for occupants, visitors and the general community in that the proposed design reduces neighborhood traffic by placing the garage entry on El Camino, improves the economic viability of the grocery market by placing it at the visible corner of El Camino, brings light into the below grade parking structure with a large open bamboo garden, locates the commercial buildings away from existing residential uses, and provides landscaped open spaces;
- (h) The amount and arrangement of open space are appropriate to the design and the function of the structures in that several open spaces are provided to accommodate the various uses that may occur at the site. These spaces include the garden square at the corner of Staunton Court and Oxford Avenue, the roof top gazebo at the vegetated green roof and the arcade and open area at the corner of Staunton Court and College Avenue;
- (i) Sufficient ancillary functions are provided to support the main functions of the project in that the proposal includes a large trash storage area, ample areas for bike parking, and an underground vehicle parking area;
- (j) Access to the property and circulation thereon are safe and convenient for pedestrians, cyclists and vehicles in that the driveway to the underground garage

and incorporated by reference. The final TDM plan shall provide for implementation and monitoring as provided in the conditions of approval.

(e) Modifications to the Development Plan and Site Development Regulations:

Once the project has been constructed consistent with the approved Development Plan, any modifications to the exterior design of the Development Plan or any new construction not specifically permitted by the Development Plan or the site development regulations contained in Section 4 (a) – (c) above shall require an amendment to this Planned Community zone, unless the modification is a minor change as described in PAMC 18.76.050 (b) (3) (e), in which case the modification may be approved through the Minor Architectural Review process. Any use not specifically permitted by this ordinance shall require an amendment to the PC ordinance, except that conversion of designated office space to retail use shall not require amendment.

(f) Public Benefits:

Development of the Subject Property under the provisions of the PC Planned Community District will result in public benefits not otherwise attainable by application of the regulations of general districts or combining districts. The Project includes the following public benefits that are inherent to the Project and in excess of those required by City zoning districts:

- (1) Provision of an 8,000 square foot neighborhood-serving grocery market.
- (2) 4 Below Market Rate housing units.
- (3) A contribution of \$5,000 dollars for tree planting within the El Camino Real median.

(g) Development Schedule:

The Project is required to include a Development Schedule pursuant to PAMC 18.38.100. The approved Development Schedule is set forth below:

Construction of the Project shall commence on or before December 2012, unless extension(s) are granted. The total time for project construction and occupancy of spaces is three (3) years, or by December 2015.

SECTION 5. Council approves the Architectural Review application, finding that:

- (a) The design is consistent and compatible with applicable elements of the city's Comprehensive Plan as set forth in Resolution No. 9012, Adopting an Amendment to the Comprehensive Plan Land Use Map by Changing the Land Use Designation for 2180 El Camino Real From Neighborhood Commercial to Mixed Use. The proposed mixed use development containing office, residential, retail and commercial uses is consistent with the Mixed Use land use designation;

has been designed such that vehicles existing the garage are level with the sidewalk such that the drivers view of pedestrians is not impeded, extra bike and vehicle parking spaces have been provided and there are pedestrian pathways provided to allow access through the project;

- (k) Natural features are appropriately preserved and integrated with the project. The site is already developed and contains some mature trees that would be removed to accommodate the proposed podium over the below grade parking. The trees to be removed will be replaced with new plantings including approximately 41 new street trees around the perimeter of the project, a bamboo garden that would grow up through the center of the parking structure, various potted plantings throughout the project, and trees and plantings within the proposed garden square.
- (l) The materials, textures, colors and details of construction and plant material are appropriate expression to the design and function in that the proposal includes many detail elements to ensure the proposed architectural style is appropriately expressed;
- (m) The landscape design concept for the site, as shown by the relationship of plant masses, open space, scale, plant forms and foliage textures and colors create a desirable and functional environment in that landscape elements have been incorporated wherever they could over the concrete podium. There are planters at entry locations and the fronts of the buildings, there is a large bamboo garden growing up through the center of the project, a vegetated green roof over the grocery store, and a garden square;
- (n) Plant material is suitable and adaptable to the site, capable of being properly maintained on the site, and is of a variety which would tend to be drought-resistant and to reduce consumption of water in its installation and maintenance in that the proposal includes many plant species that perform well within this environment;
- (o) The project exhibits green building and sustainable design that is energy efficient, water conserving, durable and nontoxic, with high-quality spaces and high recycled content materials. The following considerations should be utilized in determining sustainable site and building design:
 - (1) Optimize building orientation for heat gain, shading, daylighting, and natural ventilation;
 - (2) Design of landscaping to create comfortable micro-climates and reduce heat island effects;
 - (3) Design for easy pedestrian, bicycle and transit access;
 - (4) Maximize on site stormwater management through landscaping and permeable paving;
 - (5) Use sustainable building materials;

- (6) Design lighting, plumbing and equipment for efficient energy and water use;
 - (7) Create healthy indoor environments; and
 - (8) Use creativity and innovation to build more sustainable environments.
- (p) The design incorporates many of the above mentioned green building measures including photovoltaic panels on the roof and a green roof. (see LEED and Build It Green checklists, Attachment G)

The design is consistent and compatible with the purpose of architectural review, to:

- (1) Promote orderly and harmonious development in the city;
- (2) Enhance the desirability of residence or investment in the city;
- (3) Encourage the attainment of the most desirable use of land and improvements;
- (4) Enhance the desirability of living conditions upon the immediate site or in adjacent areas; and
- (5) Promote visual environments which are of high aesthetic quality and variety and which, at the same time, are considerate of each other.

SECTION 6. Design Enhancement Exceptions (DEEs) are approved as follows:

- (a) Height Exceptions for the proposed roof top gazebo and the architectural signage spire above the grocery store, which would exceed the 35 foot limit by five feet and ten feet, respectively, with an additional seven feet of height for the metal pole atop the spire, rising to 52 feet.
- (b) Setback Exception to allow portions of the building along Oxford Avenue to encroach into a ten foot setback; specifically, to allow a 7'9" encroachment for the second floor of the grocery store building and parts of the first floor" and 3'6" encroachment for the recessed first floor areas as set forth in the project plans.
- (c) DEE Findings:
 - (1) There are exceptional or extraordinary circumstances or conditions applicable to the property or site improvements involved that do not apply generally to property in the same zone district, in that, although the adjacent parcel on Oxford Avenue is not occupied by a residential use, its zoning is residential and forces the imposition of a more restrictive setback requirement upon a portion of the site. The intent of the more restrictive height and setback regulations is to ensure that the new commercial development is sensitive to the nearby residential uses. Being that the adjacent use is not residential the need for the sensitivity is diminished.

- (2) The granting of these Exceptions will enhance the appearance of the site or structure, or improve the neighborhood character of the project and preserve an existing or proposed architectural style in a manner which would not otherwise be accomplished through strict application of the minimum requirements of Title 18 and the standards for review set forth in this Chapter, in that (a) the height exception for the gazebo would allow the construction of a shade structure that would provide an amenity space on the roof top and this space would provide views over the vegetated roof and would serve to help increase awareness of green roofs; (b) the height exception for the signage spire allows for the provision of a stronger element for the grocery store building to give the building more dominance at the corner, improving the significance of the building in this location; and (c) the setback encroachment improves the design of the streetscape in this location since the project faces the El Camino Real commercial strip and employing a similar urban setback and sidewalk along Oxford Avenue preserves the continuity of the design, such that implementation of a ten foot setback and landscaped yard at this corner would appear odd in relationship to the use of a hotel across the street.
- (3) The Exception is related to a site improvement that will not be detrimental or injurious to property or improvement in the site vicinity, and will not be detrimental to the public health, safety, general welfare or convenience, in that (a) the height exceptions are for minor architectural elements that improve the architecture, do not contribute to the bulk and mass of the structure, and are not in close proximity to residential uses such that they would have a negative impact upon them; and (b) the setback encroachment occurs opposite a residential zone but no residences would be impacted by encroachment since a hotel is located opposite the grocery store building and the encroaching wall of the grocery store building would be across the street from the back side of the hotel and even with the encroachment, a generous 14'-5" wide sidewalk would be provided.

SECTION 7. Indemnification. To the extent permitted by law, the Applicant shall indemnify and hold harmless the City, its City Council, its officers, employees and agents (the "indemnified parties") from and against any claim, action, or proceeding brought by a third party against the indemnified parties and the applicant to attack, set aside, or void this ordinance or any permit or approval authorized hereby for the project, including (without limitation) reimbursing the City its actual attorneys fees and costs incurred in defense of the litigation. The City may, in its sole discretion, elect to defend any such action with attorneys of its choice.

SECTION 8. Acceptance by the applicant. If the Applicant does not accept the Proposed ordinance in writing prior to second reading of the ordinance and within 30 days of the Council's adoption, the question of the appropriate zoning of the Subject Property shall be referred to the Planning and Transportation Commission for their consideration and recommendation, which may include the CN zone, the CN zone plus various overlays, a newly

crafted zone applicable to Neighborhood Centers or such other zone as the Commission deems appropriate.

SECTION 9. A mitigated negative declaration (MND) for this project was prepared in accordance with the California Environmental Quality Act and circulated for public review for a 30-day period beginning on October 9, 2009. The City Council approved the MND at its meeting of on December 7, 2009.

SECTION 10. This ordinance shall be effective on the thirty-first day after the date of its adoption.

INTRODUCED: December 07, 2009

PASSED: January 11, 2010

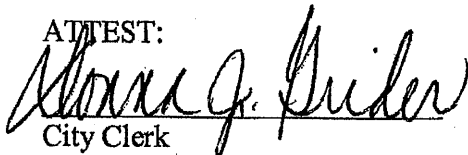
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NOES:

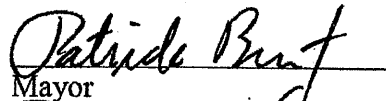
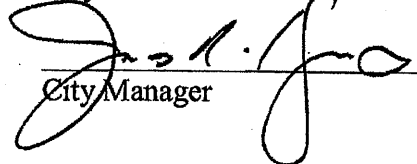
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ABSENT:

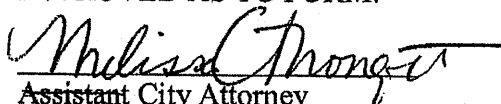
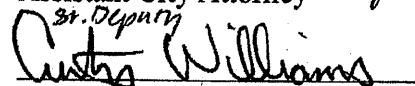
ATTEST:

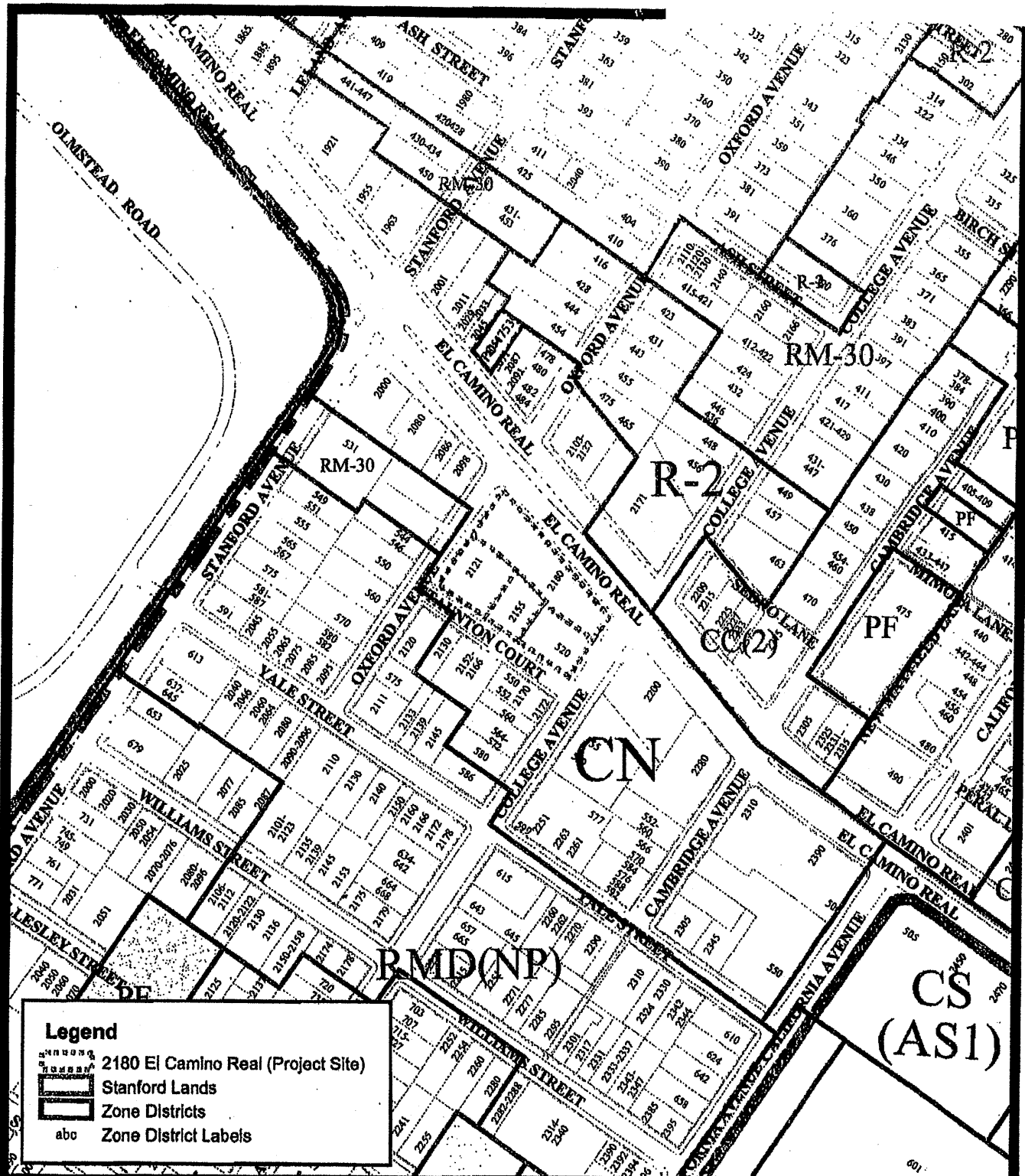

City Clerk

APPROVED:


Mayor

City Manager

APPROVED AS TO FORM:


Assistant City Attorney
Sr. Deputy

Director of Planning and
Community Environment



The City of
Palo Alto



2180 El Camino Real Zoning Districts Area Map

This map is a product of the
City of Palo Alto GIS

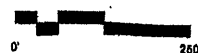


Exhibit B
2180 El Camino Real
Conditions of Project Approval

Planning and Transportation Division Conditions

1. The project shall be constructed as depicted on plans dated October 22, 2009 and labeled as 'Approved Plans' and the project, including uses, shall be implemented in accordance with Section 4 of the PC Ordinance (PC5069), except as modified by these conditions of approval.
2. The applicant shall return to the Architectural Review on consent calendar to address the following:
 - a) Provide clarified floor plans for the BMR units (with room names)
 - b) Clarify the site circulation, making it more clear;
 - c) Consider redesign of the exterior stair to the roof top garden, this shall include the elimination of the diagonal banding;
 - d) Consider simplifying the pathway from the exterior stairs to the gazebo area on the roof;
 - e) Review the banding of the grocery store building, consider one color with the two different finishes;
 - f) Provide details of the transformer fencing;
 - g) Reconsider the tile roofs at the office towers;
 - h) Consider some modification to the grocery walls facing Oxford Avenue such as a mural, display windows etc.;
 - i) Provide additional information about the private open spaces and the materiality of it;
 - j) Provide additional information about the bridge, materials, underside, etc.;
 - k) Consider redesign of the striped tower;
 - l) Reconsider the selection of the Ash tree species;
 - m) Provide additional information about the proposed bamboo (species and height) related to the canted wall;
 - n) Provide detail to show how the headlights going into the below grade parking will or will not impact the BMR units;
 - o) Consider redesign of the BMR units such that they are equally as striking as the other buildings in the project;
 - p) Provide more information regarding the plant pallet and conceptual plan for the green roof;
 - q) Provide more information about all screening elements and locations; and
 - r) Provide additional information about potted plants and the planting at the open area at the center of the project as well as the planting for the trellises located at the at-grade parking area.
3. The ARB shall address making the vegetated roof maximally observable to owners, occupants, tenants and visitors during normal business hours of the office

building, provided, however, that enjoyment of the vegetative roof shall not interfere with or derogate from the health of the growth thereon.

4. The owners/occupants of the BMR units shall have access to view and enjoy the vegetated roof from the gazebo during normal business hours of the office building.
5. The PC shall be inspected at least once every three years for compliance with the PC district regulations and the conditions of the ordinance under which the district was created.
6. The applicant shall comply with applicable provisions of Palo Alto's noise ordinance, both during construction and following construction, for the life of the project as per Chapter 9.10 of the Palo Alto Municipal Code and pursuant to PAMC Section 18.23.060, requiring an acoustical analysis at the time of building permit issuance, and demonstration and certification that it complies with the Noise Ordinance prior to final inspection. Any new noise producing equipment shall be placed as far away as is feasible from any existing residential sites and as close to El Camino Real as is possible.
7. The building permit for the building in which the grocery store is to be located shall be pulled concurrently with the building permit for the other non-residential building in the development.
8. The lease for the grocery store shall have, at minimum, a 20 year initial term.
9. Development Impact fees, totaling approximately \$393,684.70, shall be paid prior to issuance of building permits.
10. The applicant shall file and receive approval of a Preliminary Parcel Map/Parcel Map to combine the four parcels into one. The Parcel Map shall be recorded with the County of Santa Clara prior to issuance of a demolition permit or building permit.
11. The commercial portions of the project shall be required to attain LEED Silver level of certification through the USGBC. The residential portion of the project shall be required to meet the Build It Green multifamily green building requirements.
12. The following mitigation measures from the adopted Mitigated Negative Declaration are included below as project conditions:
 - a. **Mitigation Measure #1:** The project shall include automatic night shades or other system such as motion sensors and timers for the office windows at the rear of the building.
 - b. **Mitigation Measure #2:** Prior to any excavation the applicant shall prepare a site specific Health and Safety Plan that conforms to the requirements of Title 29 of the Code of Federal Regulations (VFR) Section 1910.120, the California General

Industry Safety Order (GISO) and Title 8, California Code of Regulation (CCR) Section 5192.

c. **Mitigation Measure #3:** All employees and subcontractors involved in excavation of potentially contaminated material shall be 40 hour Hazardous Waste Operations and Emergency Response (HAZWOPER) trained and certified.

d. **Mitigation Measure #4:** Soils shall be field screened, tested, and properly profiled during redevelopment to determine appropriate reuse or off site disposal.

e. **Mitigation Measure #5:** The proposed mechanical equipment shall be evaluated to ensure compliance with City of Palo Alto noise limit regulations. Measures such as equipment selection, equipment placement (location), and or the addition of barriers or enclosures shall be employed to ensure that any new noise producing equipment is in compliance with the City's noise ordinance.

f. **Mitigation Measure # 6:** Cal Trans must approve the proposed curb cut on the El Camino Real for the driveway to the underground parking garage.

g. **Mitigation Measure #7:** A Transportation Demand Management (TDM) program must be submitted by the applicant and approved by the Transportation Department prior to submittal of a building permit application. The TDM program shall outline parking and/or traffic demand measures to be implemented to reduce parking need and trip generation. Measures may include, but are not limited to: parking cash-out programs, provision of EcoPass (VTA) or Go Pass (Caltrain) for office tenants, shared parking, enhanced shuttle service, car sharing, providing priority parking spaces for car pools/vanpools or green vehicles, vehicle charging stations, additional bicycle parking facilities, or other measures to encourage transit use or to reduce parking needs. The program shall be proposed to the satisfaction of the Director, shall include proposed performance targets for parking and /or trip reductions, and indicate the basis for such estimates, and shall designate a single entity to implement the proposed measures.

State of California Department of Transportation (Cal Trans) Conditions

13. The design standard of the driveway on El Camino Real (SR 82) must comply with the Highway Design Manual.

14. Work that encroaches onto the State right of way (ROW) requires an encroachment permit that is issued by the Cal Trans. To apply, a completed encroachment permit application, environmental documentation, and five (5) sets of plans clearly indicating State ROW must be submitted to the address below.

Office of Permits
California DOT, District 4
P.O. Box 23660
Oakland, CA 94623-0660

15. Traffic-related mitigation measures shall be incorporated into the construction plans during the encroachment permit process.

Transportation Division Conditions

16. Do not include or add any monument signs, furniture, or other sight obstructions (except trees) in the sight triangle on the northern frontage on El Camino Real. This condition does not prevent the use of produce or flower stalls, or tables and chairs for grocery store patrons in the space designated as grocery store outdoor space, so long as the location of same is approved by the City's Transportation Department.

17. The TDM shall include at least two car share vehicles. The Final TDM plan monitoring and implementation shall be carried out in accordance with Palo Alto Municipal Code Section 18.52.050 (d) TDM requirements, items (3) and (4) with respect to monitoring, and item (2) with respect to implementation related to performance targets for parking and trip reduction, and single entity to implement the TDM measures.

Vehicle Parking

18. Spaces adjacent to walls required to be 9' wide (spaces adjacent to mechanical and utility rooms). Spaces adjacent to poles/columns would be required to be 9.0' wide based on the location of the columns right at the entry to the parking spaces.

19. Northern most HC spaces can also be labeled as "van accessible" if the combined opening is 26.0' (9'-8'-9').

20. Include wheel stops where appropriate (all spaces that are at grade with pedestrian paths, lobbies, or bike locker areas)

Bicycle Parking

21. Illustrate on plans the location of Long Term (lockers) and Short Term bike racks, including total count similar to vehicular parking. Adequate aisles between lockers and racks must be shown.

22. Include details of types of racks to be used (must be approved by City Staff). Plan appears to include inverted-U racks (approved type).

23. All short term bicycle parking (racks) need to be located on the street level and be located within 50 feet and distributed near each of the main entrances to the various buildings. (Office racks not in appropriate location)

24. Long term bike lockers are allowed in the garage, but need to be located near employee elevators/stairs (locations appears to be okay, but all lockers should be on the first level of garage).

Building Division Conditions

25. The plans submitted for the building permit shall include the full scope of the construction of the entire building, including all site development, utility installations,

architectural, structural, electrical, plumbing and mechanical work associated with the proposed project.

26. The applicant shall be required to schedule and attend a pre-application meeting with Building Division staff to review the permit application process and to verify that the permit application will include all items required by these conditions.

27. Due to the scale of the overall project, the applicant shall be required to utilize a 3rd party plan check agency to conduct the building code plan review. A list of the agencies approved by the City of Palo Alto is available at the Development Center. The City Building plan check fees are reduced by 75% when a 3rd party plan check agency is utilized.

28. The plans submitted for the building permit shall include an allowable floor area calculation that relates the mixed occupancies and type of construction.

29. The plans submitted with the permit application shall include the complete design for disabled access and exiting for the entire site. Disable access features and exiting within the unimproved offices spaces may be deferred to future tenant improvement permits.

30. The design of building components that are not included in the plans submitted for building permit and are to be deferred shall be limited to as few items as possible. The list of deferred items shall be reviewed and approved prior to permit application.

31. The plans submitted with the building permit application for the shell building shall include the construction of stairs, exit enclosures and exit passageways extending to the exterior of the building.

32. All entrances and vertical clearances within the parking structures shall have a minimum vertical of 8 feet 2 inches where required for access to the accessible parking spaces per CBC Section 1130B.

33. The location of the building electrical service shall require prior approval by the Inspection Services Division and shall be located at an exterior location or in a room or enclosure accessible directly from the exterior.

34. A separate building permit shall be required for the construction of each building.

35. Plans submitted for plan review shall clearly indicate the proposed occupancy group(s) and type of construction of the building.

36. Plans for the residential units submitted for plan review shall comply with the latest requirements from the State of California [HCD 1/AC] Chapter 11B of the 2007 Edition of the CBC.

37. Plans for the residential units shall include an acoustical analysis and the plans shall incorporate the report's recommendations needed to show the common walls and floor ceiling assemblies in compliance with the sound transmission control requirements in CBC Section 1207.

38. Normal and accessible parking stalls for the residential rental units must be separated from the stalls of the commercial building and their location must be identified on plans submitted for plan review.

39. Plans submitted for plan review shall indicate the required number of parking stalls for the residential units and commercial building. Plans shall also indicate number of accessible stalls is in compliance with HCD 1/AC Chapter 11A for residential units and with DSA/AC Chapter 11B for the commercial facilities. Parking stalls for each use shall be separated in accordance with recommendations of the Planning Division.

Fire Department Conditions

40. The Fire Department requires that the developer have a contingency plan in place to handle any contamination or abandoned underground tanks discovered during excavation.

41. Emergency Contractor must have State HAZ license.

42. Fire Department shall be notified during normal business hours at the earliest opportunity in the event of such a discovery.

43. A permit from the Santa Clara County Department of Environmental Health is required for any underground tank removal.

44. 3 nearest Street Hydrants shall be upgraded to Clow Rich Model 76.

45. Aerial Fire Apparatus access shall be provided for the entire El Camino building Frontage. No overhead cable will be allowed on this side of the building.

46. Site address to be prominently posted on the building. (2001CFC901) Maximum vehicle weight bearing capacity for the podium deck shall be posted.

47. Please contact the Palo Alto Fire Department Training Office at 650-321-5617 if it is at all feasible to allow the Fire Department to use the structures to be demolished for training purposes.

48. A fire sprinkler system shall be provided which meets the requirements of NFPA Standard No. 13, 2002 Edition. (PAMC15.04.160) Fire Sprinkler system installations or modifications require separate submittal to the Fire Prevention Bureau. (PAMC15.04.083)

49. An exterior bell shall be provided, and an approved audible sprinkler flow alarm to alert the occupant shall be provided in the interior of the building in an approved location. (2001CBC904.3.2) Fire Alarm system installations or modifications require separate submittal to the Fire Prevention Bureau. (PAMC15.04.083)
50. Underground fire supply system installations or modifications require separate submittal to the Fire Prevention Bureau as well as the Public Works Department and the Water/Gas/Wastewater Section of the Utilities Department. (PAMC15.04.083)
51. All sprinkler drains, including those for floor control valves and inspector's test valves, as well as the main drain, shall not discharge within the building. Water discharged from these points shall be directed to an approved landscape location or to the sanitary sewer system. (99NFPA13, Sec. 5-14.2.4.3) NOTE: Please check with Roland Ekstrand in Utilities for maximum flow capacity of sanitary sewer in the area. Main Drain test discharge flow rate shall be impounded and attenuated to below sanitary sewer capacity before discharge.
52. Elevator car shall be sized for Fire Department gurney access requirements based on gurney dimensions of 24 in. x 84 in. plus a minimum of two emergency response personnel. (2007 Cal. Bldg. Code Sec. 3002.4a)
53. The maximum weight bearing capacity for the podium deck shall be posted.
54. A fire hydrant is required at the intersections of Oxford Ave./Staunton Ct. and College Ave./Staunton Ct.
55. Fire Department ground ladder access to the dwelling units bedroom egress windows shall be provided.
56. When the Main Electrical Shutoff is located in the interior of the building, an exterior shunt trip or other approved means of emergency shutoff shall be provided. Please contact the Building Div. for details.
57. An approved access walkway shall be provided to each bedroom egress/rescue window.
58. Provide Fire Department access across the roof of the 3 story building. 11. If the residential units have a different address than El Camino Real, provide a separate fire department connection at the housing building.

Public Works Engineering

59. This project must meet the State Regional Water Quality Control Board's (SRWQCB) revised provision C.3. The applicant is required to satisfy all current storm water discharge regulations and shall provide calculations and documents to verify compliance. The project must also enter into a maintenance agreement with the City to

guarantee the ongoing maintenance of the permanent C.3 storm water discharge compliance measures. The maintenance agreement shall be executed prior to the first building occupancy sign-off. Offsite property or ROW cannot be used to satisfy the C.3 requirements. Every effort should be made to use natural (non-mechanical) methods of stormwater treatment. The applicant is required to meet with Public Works Engineering (PWE) prior to final ARB to discuss and review the C.3 stormwater treatment plan.

60. The applicant shall meet with PWE prior to final ARB to discuss the shoring system to be used in the construction of the project. Shoring systems must be on private property, out of the right-of-way (ROW) and the use of tie-back systems has specific requirements which will be discussed at the meeting.

61. The applicant shall, at minimum, submit an application for a minor subdivision with the Planning division prior to issuance of building permits.

62. The street frontages of the development shall be resurfaced (grind and overlay, full width) and the curbs, gutters, and sidewalks shall be removed and replaced. This work shall be detailed in the offsite improvement plans required for the final map process and it is highly encouraged that the work takes place near the end of the construction process.

63. The applicant shall install LED streetlights along the frontages of the development. Type, style and location, etc. shall be determined at the time of offsite improvement construction and in coordination and consultation with Palo Alto Utilities Department.

64. Any special surface (i.e. sidewalk) treatments proposed within the ROW shall be reviewed by PWE.

65. The project must be constructed without the use of perimeter or subgrade drains outside the walls of the subgrade structure. In other words, the project shall be constructed "like a boat".

66. Provisions for a grease trap shall be made onsite.

67. The applicant is required to meet with Public Works Engineering (PWE) to verify the basic design parameters affecting grading, drainage and surface water infiltration. The applicant is required to submit a conceptual site grading and drainage plan that conveys site runoff to the nearest adequate municipal storm drainage system. In order to address potential storm water quality impacts, the plan shall identify the Best Management Practices (BMP's) to be incorporated into the Storm Water Pollution Prevention Plan (SWPPP) that will be required for the project. The SWPPP shall include permanent BMP's to be incorporated into the project to protect storm water quality. (Resources and handouts are available from Public Works – Engineering. Specific reference is made to Palo Alto's companion document to "Start at the Source", entitled

"Planning Your Land Development Project"). The elements of the PWE-approved conceptual grading and drainage plan shall be incorporated into the building permit plans.

PRIOR TO SUBMITTAL FOR BUILDING PERMIT

68. The applicant shall submit a final grading and drainage plan to Public Works Engineering. This plan shall show spot elevations or contours of the site and demonstrate the proper conveyance of storm water to the nearest adequate municipal storm drainage system. Existing drainage patterns, including accommodation of runoff from adjacent properties, shall be maintained.

69. The proposed development will result in a change in the impervious area of the property. The applicant shall provide calculations showing the adjusted impervious area with the building permit application. A Storm Drainage Fee adjustment on the applicant's monthly City utility bill will take place in the month following the final approval of the construction by the Building Inspection Division. The impervious area calculation sheets and instructions are available from Public Works Engineering.

70. A construction logistics plan shall be provided, addressing at minimum parking, truck routes and staging, materials storage, and the provision of pedestrian and vehicular traffic adjacent to the construction site. All truck routes shall conform with the City of Palo Alto's Trucks and Truck Route Ordinance, Chapter 10.48, and the route map which outlines truck routes available throughout the City of Palo Alto. A handout describing these and other requirements for a construction logistics plan is available from Public Works Engineering.

PRIOR TO ISSUANCE OF BUILDING PERMIT

71. Prior to building permit issuance, a digital copy of the parcel map or final map, in AutoCAD format, shall be submitted to Public Works Engineering and shall conform to North American Datum 1983 State Plane Zone 3 for horizontal survey controls and NGVD 1929 for vertical survey controls.

72. A detailed site-specific soil report prepared by a licensed soils or geo-technical engineer must be submitted which includes information on water table and basement construction issues. Measures must be undertaken to render the basement waterproof and able to withstand all projected hydrostatic and soil pressures. No pumping of ground water is allowed. In general, Public Works Engineering recommends that structures be constructed in such a way that they do not penetrate existing or projected ground water levels.

73. The applicant is required to paint the "No Dumping/Flows to Matadero Creek" logo in blue color on a white background, adjacent to all storm drain inlets. Stencils of the logo are available from the Public Works Environmental Compliance Division, which may be contacted at (650) 329-2598. A deposit may be required to secure the return of the stencil. Include the instruction to paint the logos on the construction grading and

drainage plan. Include maintenance of these logos in the Hazardous Materials Management Plan, if such a plan is part of this project.

74. The project includes the construction of dumpster and recycling areas as part of a food service facility. Regulations require that the dumpster/recycling area be adequately roofed or covered.

75. The project includes the construction of dumpster and recycling areas. City guidelines require that this area be covered.

76. The project includes a loading dock. Design of the loading area shall comply with the Palo Alto Municipal Code (PAMC) Sec. 16.09.032(2).

DURING CONSTRUCTION

77. The contractor must contact the CPA Public Works Inspector at (650) 496-6929 prior to any work performed in the public right-of-way.

78. No storage of construction materials is permitted in the street or on the sidewalk without prior approval of Public Works Engineering.

79. The developer shall require its contractor to incorporate best management practices (BMP's) for stormwater pollution prevention in all construction operations, in conformance with the Storm Water Pollution Prevention Plan prepared for the project. It is unlawful to discharge any construction debris (soil, asphalt, sawcut slurry, paint, chemicals, etc.) or other waste materials into gutters or storm drains. (PAMC Chapter 16.09).

80. All construction within the City right-of-way, easements or other property under City jurisdiction shall conform to Standard Specifications of the Public Works and Utility Departments.

PRIOR TO FINALIZATION

81. All sidewalks and curb and gutters bordering the project shall be removed and replaced in compliance with Public Works approved standards. Sec. 12.08.010.

82. All unused driveways shall be removed and replaced with curb and gutter. Sec. 12.08.090.

83. All street surfaces along the frontages of the development shall be removed and replaced (grind and overlay, full-width).

84. The Public Works Inspector shall sign off the building permit prior to the finalization of this permit. All off-site improvements shall be finished prior to this sign-

off. Similarly, all as-builts, on-site grading, drainage and post-developments BMP's shall be completed prior to sign-off.

85. A curb ramp for the disabled will be required at corners of the development.
PRIOR TO SUBMITTAL OF PARCEL OR FINAL MAP

86. Subdivision Agreement is required to secure compliance with condition of approval and security of improvements onsite and offsite. No grading or building permits will be issued until Final or Parcel Map is recorded with County Recorder.

87. The applicant shall arrange a meeting with Public Works Engineering, Utilities Engineering, Planning, Fire, and Transportation Departments after approval of this map and prior to submitting the improvement plans. These improvement plans must be completed and approved by the City prior to submittal of a parcel or final map.

88. The project subdivision includes significant complexity involving, final map and coordination of infrastructure design and construction. Developer shall appoint a Project Manager to coordinate with City, Public Works and Utility, engineering staff. Public Works will conduct daily and longer term communication with appointed project manager in order to facilitate timely review and approval of design and construction matters.

89. All construction within the City right-of-way, easements or other property under City's jurisdiction shall conform to standard specifications of the Public Works and Utility Department. Sec. 12.08.060.

PRIOR TO RECORDATION OF PARCEL/FINAL MAP

90. The subdivider shall post a bond prior to the recording of the final parcel or subdivision map to guarantee the completion of the "on" and "off" site condition(s) of approval. The amount of the bond shall be determined by the Planning, Utilities and Public Works Departments.
Public Works Recycling

91. Recommend that enclosure doors open full width of enclosure, service aisle and curbs do not restrict access to enclosure.

92. Enclosure access must not conflict with loading dock.

93. PASCO services enclosure from street and distance from street to enclosures is beyond standard service. Additional charges apply for service beyond 25 feet from street.

94. PASCO will not drive into loading dock to provide service.

95. Tallow bins must be segregated from refuse/recycling area of enclosure to eliminate slip hazardous due to spills.

Electric Utility Engineering Department Conditions

96. The applicant shall comply with all the Electric Utility Engineering Department service requirements noted during plan review.

PRIOR TO ISSUANCE OF DEMOLITION PERMIT

97. The Permittee shall be responsible for identification and location of all utilities, both public and private, within the work area. Prior to any excavation work at the site, the Permittee shall contact Underground Service Alert (USA) at 1-800-227-2600, at least 48 hours prior to beginning work.

98. The Applicant shall submit a request to disconnect all existing utility services and/or meters including a signed affidavit of vacancy, on the form provided by the Building Inspection Division. Utilities will be disconnected or removed within 10 working days after receipt of request. The demolition permit will be issued after all utility services and/or meters have been disconnected and removed.

THE FOLLOWING SHALL BE INCORPORATED IN SUBMITTALS FOR BUILDING PERMIT

99. A completed Electric Load Sheet and a full set of plans must be included with all building permit applications involving electrical work. The load sheet must be included with the preliminary submittal.

100. Industrial and large commercial customers must allow sufficient lead-time for Electric Utility Engineering and Operations (typically 8-12 weeks after advance engineering fees have been paid) to design and construct the electric service requested.

101. Only one electric service lateral is permitted per parcel. Utilities Rule & Regulation #18.

102. This project requires a padmount transformer. The location of the transformer shall be shown on the site plan and approved by the Utilities Department and the Architectural Review Board. Utilities Rule & Regulations #3 & #16.

103. The developer/owner shall provide space for installing padmount equipment (i.e. transformers, switches, and interrupters) and associated substructure as required by the City. In addition, the owner shall grant a Public Utilities Easement for facilities installed on private property as required by the City.

104. The customer shall install all electrical substructures (conduits, boxes and pads) required from the service point to the customer's switchgear. The design and installation shall be according to the City standards and shown on plans. Utilities Rule & Regulations #16 & #18.

105. The customer shall maintain a minimum of six feet horizontal clearance between the nearest conductor at rest and any part of the new development. The customer shall meet all California General Order No. 95 clearance requirements.

106. Location of the electric panel/switchboard shall be shown on the site plan and approved by the Architectural Review Board and Utilities Department.

107. All utility meters, lines, transformers, backflow preventers, and any other required equipment shall be shown on the landscape and irrigation plans and shall show that no conflict will occur between the utilities and landscape materials. In addition, all aboveground equipment shall be screened in a manner that is consistent with the building design and setback requirements.

108. For services larger than 1600 amps, the customer will be required to provide a transition cabinet as the interconnection point between the utility's padmount transformer and the customer's main switchgear. The cabinet design drawings must be submitted to the Electric Utility Engineering Department for review and approval.

109. The customer is responsible for sizing the service conductors and other required equipment according to the National Electric Code requirements and the City standards. Utilities Rule & Regulation #18.

110. If the customer's total load exceeds 2500kVA, service shall be provided at the primary voltage of 12,470 volts and the customer shall provide the high voltage switchgear and transformers. Utilities Rule & Regulation #3.

111. Projects that require the extension of high voltage primary distribution lines or reinforcement of offsite electric facilities will be at the customer's expense and must be coordinated with the Electric Utility.

112. Any additional facilities and services requested by the Applicant that are beyond what the utility deems standard facilities will be subject to Special Facilities charges. The Special Facilities charges include the cost of installing the additional facilities as well as the cost of ownership. Utilities Rule & Regulation #20.

COMMENTS ON SUBMITTALS

113. Drawing A1.1 – First Floor & Site Plan

- Transformer Pad size (and working spaces), boxes, conduit size and quantity will be determined after Electric Load Sheets are submitted. A 3'x5' primary box is required in front of each transformer pad.

- Three feet clearance is required on each side of the transformer pad. There shall be eight feet of clearance in the front of the transformer. Transformer shall not be in an enclosed environment.

114. Drawing A2.2 – Elevations

- Elevation drawings shall show that the project meets California General Order No. 95 clearance requirements.

Regional Water Quality Control Plant Conditions

115. Drain plumbing for parking garage floor drains must be connected to an oil/water separator with a minimum capacity of 100 gallons, and to the sanitary sewer system (PAMC 16.09.032(B)(17)).

116. Substances containing copper in excess of 2.0 mg/L, tributyl tin in excess of 0.1 mg/L, or chromium in excess of 2.0 mg/L may not be added to cooling systems in Palo Alto. These concentrations apply to the substances prior to dilution with cooling system water. (Note: The City of Palo Alto Municipal Code has proposed additions to this requirement which include substances that may not be added to cooling towers containing Zinc in excess of 2.0 mg/liter and Molybdenum in excess of 2.0 mg/liter.) (PAMC 16.09.115)

117. A flow meter shall be installed to measure the volume of blowdown water from the new cooling tower. Cooling systems discharging greater than 2,000 gallons per day are required to meet a copper discharge limit of 0.25 milligrams per liter.

118. Prior to draining any existing closed loop chilled water, the water in each of the existing loops shall be tested for copper, lead, nickel, and zinc. Test results shall be submitted to the Regional Water Quality Control Plant. Treatment of the chilled loop water prior to draining may be required if the pollutant concentrations exceed discharge limitations contained in the PAMC.

119. If thermometers will be installed on the chilled water supply and return piping. Non-mercury thermometers should be used for this application.(This is a recommendation and not required).

120. If the project is located in an area of known groundwater contamination with Volatile Organic Compounds (VOCs) then the plans must include the following procedure for construction dewatering pursuant to (PAMC 16.09.117, 16.09.110(h):

121. Prior to discharge of any water from construction dewatering, the water shall be tested for volatile organic compounds (VOCs) using EPA Method 601/602. The

analytical results of the VOC testing shall be transmitted to the Regional Water Quality Control Plant (RWQCP). If the concentration of any VOC exceeds 5 ug/L (5 ppb), the water may not be discharged to the storm drain system and an Exceptional Discharge Permit for discharge to the sanitary sewer must be obtained from the RWQCP prior to discharge. If the VOC concentrations exceed the toxic organics discharge limits contained in the Palo Alto Municipal Code, a treatment system for removal of VOCs will also be required prior to discharge to the sanitary sewer. Additionally, any water discharged to the storm drain system must be free of sediment.

122. Connections to the storm drain shall not be permitted for loading docks where chemicals, hazardous materials, grease, oil, or waste products are handled (PAMC 16.09.032).

123. Loading dock drains may be connected to the sewer only if the area in which the drain is located is covered or protected from rainwater run-on by berms and/or grading, and appropriate wastewater treatment approved by the superintendent is provided. Any loading dock area with a sanitary sewer drain shall be equipped with a fail-safe valve, which shall be kept closed during periods of operation.

124. Condensate lines shall not be connected or allowed to drain to the storm drain system (PAMC 16.09.032(b)(8)).

125. New dumpster areas shall be covered. The area shall be designed to prevent water run-on to the area and run-off from the area (PAMC 16.09.106(e) Dumpsters for New and Remodeled Facilities).

Undesignated Retail Space

126. Newly constructed or improved buildings with all or a portion of the space with undesignated tenants or future use will need to meet all requirements that would have been applicable during design and construction. If such undesignated retail space becomes a food service facility the following requirements must be met pursuant to PAMC Section 16.09.103(a) Grease Control Devices for Food Service Facilities:

- A grease control device (GCD) shall be installed with a minimum capacity of 750 gallons. The GCD must be sized in accordance with the 2007 California Plumbing Code. The sizing calculation must be submitted with the plans. All grease generating drainage fixtures shall be connected to the GCD. The connection of any dishwashers or pasta cookers to a GCD is prohibited. All large, in-ground interceptors shall have a minimum of three manholes to allow visibility of each inlet piping, baffle (divider) piping and outlet piping to ensure accessibility for inspection, cleaning and removal of all contents. The plans shall clearly indicate the number of manholes on the GCD and a list of all drainage fixtures connecting to the GCD. Two manholes may be allowed under certain conditions only granted by the Environmental Compliance Division of Public Works Department.

- To ensure all food service establishment drainage fixtures are connected to the correct lines, each drainage fixture shall be clearly labeled on the plans. Also a list of all fixtures and their discharge connection, i.e. sanitary sewer or grease waste line, shall be included on the plans.
- New buildings constructed to house food service facilities shall include a covered area for a dumpster. The area shall be designed to prevent water run-on to the area and runoff from the area. Drains that are installed within the enclosure for recycle and waste bins, dumpsters and tallow bins (used oil containers) serving food service facilities are optional. Any such drain installed shall be connected to a GCD and the sanitary sewer. If tallow is to be stored outside then an adequately sized, segregated space for a tallow bin shall be included in the covered area (PAMC 16.09.032b(16) 'Covered Dumpsters for Food Service Facilities').
- The installation of a garbage grinder at any food service facility is prohibited after January 1, 2003. The kitchen cannot utilize a garbage grinder for food waste disposal to the sanitary sewer (PAMC 16.09.103(e) Prohibition Against Garbage Disposals).
- Food service facilities shall have a sink or other area for cleaning floor mats, containers, and equipment, which is connected to a grease interceptor and the sanitary sewer (PAMC 16.09.032b(16) Large Item Cleaning Sink for Food Service Facilities.)

Public Works Operations-Trees

127. Provide optimum public tree replacement for street trees. The plans shall show and provide a streetscape design with materials on the civil, landscape and irrigation drawings with the following information and direction:

- El Camino Real and Oxford Avenue Frontage: Utilize city-approved Silva Cell soil planter (approx. 30-inch depth) beneath the new sidewalk from corner to corner. Utilities shall be allowed to pass thru the planters. Provide automatic irrigation using a solar smart controller with two bubblers per tree. Utilize Public Works Planting Detail #604. Beneath each tree planting site, auger two 4-6" diameter drain holes 3ft deep below the bottom of the planter basin soil and backfill with medium sand (0.25 to 0.5 mm) or fine gravel. For El Camino Real, utilize Platanus a. 'Columbia', Columbia Plane, #15 size, spaced 30-feet on center, a minimum of 15-feet from street lights and 10-feet from utilities and driveways. For Oxford Avenue, utilize Fraxinus a. 'Autumn Purple', Autumn Purple Ash (or other species as may be agreed upon by the Directors of Planning and Community Environment and Public Works), #15 (ball and burlap) B&B or 15 gallon minimum size, spaced 25-30 feet on center, a minimum of 15-feet from street lights and 10-feet from utilities and driveways.
- Staunton Court and College Avenue Frontage: Provide automatic irrigation using a solar smart controller with two bubblers per tree. Utilize Public Works Planting Detail #604. Beneath each tree planting site, auger two 4-6" diameter drain holes 3ft deep below the bottom of the planter basin soil and backfill with medium sand (0.25

to 0.5 mm) or fine gravel. Automatic irrigation shall be provided to all street trees as required in landscape design conditions below. On College Avenue, utilize Fraxinus a. 'Autumn Purple', Autumn Purple Ash (or other species as may be approved by the Directors of Planning and Community Environment and Public Works), #15 B&B or 15 gallon minimum size, spaced 25-30 feet on center, a minimum of 15-feet from street lights and 10-feet from utilities and driveways. On Staunton Court frontage, utilize Fraxinus pennsylvanica 'Cimmzam', Red Ash (or other species as may be approved by the Directors of Planning and Community Environment and Public Works), #15 B&B or 15 gallon minimum size, spaced 25-30 feet on center, a minimum of 15-feet from street lights and 10-feet from utilities and driveways.

Planning Department Arborist

128. LANDSCAPE PLANS.

a. Provide a detailed landscape and irrigation plan encompassing on-and off-site plantable areas out to the curb shall be approved by the Architectural Review Board. A Landscape Water Use statement, water use calculations and a statement of design intent shall be submitted for the project. A licensed landscape architect and qualified irrigation consultant will prepare these plans, to include:

- i) All existing trees identified both to be retained and removed including street trees.
- ii) Complete plant list indicating tree and plant species, quantity, size, and locations.
- iii) Irrigation schedule and plan.
- iv) Fence locations.
- v) Lighting plan with photometric data.
- vi) Trees to be retained shall be irrigated, aerated and maintained as necessary to ensure survival.
- vii) All new trees planted within the public right-of-way shall be installed per Public Works (PW) Standard Planting Diagram #603 or 604 (include on plans), and shall have a tree pit dug at least twice the diameter of the root ball.
- viii) Landscape plan shall include planting preparation details for trees specifying digging the soil to at least 30-inches deep, backfilled with a quality topsoil and dressing with 2-inches of wood or bark mulch on top of the root ball keeping clear of the trunk by 1-inch.
- ix) Automatic irrigation shall be provided to all trees. For trees, PW Detail #513 shall be included on the irrigation plans and show two bubbler heads mounted on flexible tubing placed at the edge of the root ball. Bubblers shall not be mounted inside an aeration tube. The tree irrigation system shall be connected to a separate valve from other shrubbery and ground cover, pursuant to the City's Landscape Water Efficiency Standards. Irrigation in the right-of-way requires a street work permit per CPA Public Works standards.
- x) Landscape Plan shall ensure the backflow device is adequately obscured with the appropriate screening to minimize visibility (planted shrubbery is

preferred, painted dark green, decorative boulder covering acceptable; wire cages are discouraged).

b) Mandatory Landscape Architect (LA) Inspection Verification to the City. The LA of record shall verify the performance measurements are achieved with a separate letter of verification to City Planning staff, in addition to owner's representative for each of the following:

- i) Tree and Shrub Planting Specifications, including delivered stock, meets Standards in the CPA Tree Technical Manual, Section 3.30-3.50. Girdling roots and previously topped trees are subject to rejection.

DURING CONSTRUCTION

129. TREE DAMAGE. Tree Damage, Injury Mitigation and Inspections apply to Contractor. Reporting, injury mitigation measures and arborist inspection schedule (1-5) apply pursuant to TTM, Section 2.20-2.30. Contractor shall be responsible for the repair or replacement of any publicly owned or protected trees that are damaged during the course of construction, pursuant to Title 8 of the Palo Alto Municipal Code, and city Tree Technical Manual, Section 2.25.

130. GENERAL. The following general tree preservation measures apply to all trees to be retained: No storage of material, topsoil, vehicles or equipment shall be permitted within the tree enclosure area. The ground under and around the tree canopy area shall not be altered. Trees to be retained shall be irrigated, aerated and maintained as necessary to ensure survival.

PRIOR TO OCCUPANCY

131. LANDSCAPE INSPECTION. The Planning Department shall be in receipt of written verification that the Landscape Architect has inspected all trees, shrubs, planting and irrigation and that they are installed and functioning as specified in the approved plans.

132. PLANNING INSPECTION. Prior to final sign off, contractor or owner shall contact the city planner (650-329-2441) to inspect and verify Special Conditions relating to the conditions for structures, fixtures, colors and site plan accessories.

POST CONSTRUCTION

133. MAINTENANCE. All landscape and trees shall be maintained, watered, fertilized, and pruned according to Best Management Practices-Pruning (ANSI A300-2001 or current version). Any vegetation that dies shall be replaced or failed automatic irrigation repaired by the current property owner within 30 days of discovery.

January 2, 2014

Client-Matter: 40325-032

VIA FEDERAL EXPRESS

Russ Reich
Senior Planner
City of Palo Alto
Planning and Community Environment Department
250 Hamilton Avenue
Palo Alto, CA 94301

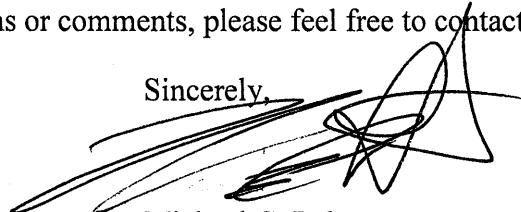
Re: College Terrace Centre LLC

Dear Russ:

Please find enclosed a redacted copy of the Commercial Lease between College Terrace Centre LLC and J & A Family Markets, Inc. along with a wet signature page for your records.

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

Sincerely,

A handwritten signature in black ink, appearing to be "Michael C. Polentz", written over a horizontal line.

Michael C. Polentz

MCP:ehs
Enclosure

COMMERCIAL LEASE

THIS COMMERCIAL LEASE (this "Lease") is made as of [REDACTED] 2013, by and between COLLEGE TERRACE CENTRE LLC, a California limited liability company (collectively, "Landlord"), and J & A FAMILY MARKETS, INC., a California corporation ("Tenant"). Landlord and Tenant are collectively referred to herein as the "Parties," and each individually a "Party."

RECITALS

WHEREAS, Landlord owns the city block on which the Premises is to be located (the "City Block"); and

WHEREAS, a portion of the City Block was previously leased and operated as a grocery store for more than sixty (60) years; and

WHEREAS, Landlord has submitted an application to the City of Palo Alto for a PC Zone for the City Block for the purposes of redeveloping the entire City Block (the "Application"); and

WHEREAS, the Council of the City of Palo Alto granted the Application and on January 11, 2010 passed Ordinance No. 5069 creating the PC Zone for the City Block (the "Ordinance"); and

WHEREAS, the name of the new development of the City Block is College Terrace Centre (the "Project"); and

WHEREAS, the Application and the Ordinance include a plan to locate a grocery store (the "Grocery Store") with eight thousand (8,000) square feet of floor space on the Northwest corner of 2180 El Camino Real, Palo Alto, CA, in a building (the "Building") located on a portion of the City Block, along with an outdoor market of approximately two thousand (2,000) square feet immediately adjacent thereto and approximately six hundred (600) square feet of dry storage in the basement garage (collectively, the "Premises"); and

WHEREAS, Tenant desires to lease the Premises from Landlord for the purpose of operating the Grocery Store upon completion of construction of the portion of the Project in which the Premises will be located; and

WHEREAS, on the terms and conditions set forth in this Lease, Tenant hereby leases the Premises from Landlord upon the terms and conditions stated herein.

AGREEMENT

1. AGREEMENT. Landlord hereby leases the Premises to Tenant, and Tenant hereby leases the Premises from Landlord, according to the terms of this Lease.

2. PREMISES. The Premises shall comprise eight thousand (8,000) square feet of interior space ("Interior Space"), approximately two thousand (2,000) square feet of outdoor

space ("**Outdoor Space**") immediately adjacent thereto and approximately six hundred (600) square feet of dry storage ("**Storage Space**") in the basement garage.

3. TERM.

(a) Term. The "**Term**" of this Lease shall be for a period of 20 years commencing on the first day of the month following issuance of a Certificate of Occupancy by the City of Palo Alto for the building in which the Premises are located (the "**Commencement Date**") and expiring on the date that is 20 years later (the "**Expiration Date**").

(b) Tenant shall have the right to extend the Term for [REDACTED] years by delivery of written notice ("**Extension Notice**") to Landlord no less than six (6) months and no more than twelve (12) months before the existing Expiration Date. If Tenant timely delivers the Extension Notice, and provided that no default exists, or shall occur with the giving of notice or the passage of time or both, the Expiration Date shall so be extended and the Expiration Date shall be the Expiration Date as extended by the Extension Notice.

(c) Possession. If Landlord fails to deliver possession of the Premises by the Commencement Date, Landlord shall not be liable for any damages resulting from that failure, nor shall that failure cause a termination of this Lease or Tenant's obligations under this Lease or extend the Term of this Lease except as otherwise provided in this Lease or agreed to in writing between Landlord and Tenant.

4. RENT.

(a) Base Monthly Rent. Commencing on the first day of the first full calendar month following the Commencement Date (or on the Commencement Date if it is the first day of a calendar month) and continuing throughout the Term on the first day of each succeeding calendar month, Tenant shall pay Landlord base monthly rent in the amount as set forth below in this Subparagraph (the "**Base Monthly Rent**"). Base Monthly Rent shall be paid in advance in lawful money of the United States at the address specified for Landlord in Paragraph 27(f), below (or such other place as Landlord designates) without demand, abatement, counterclaim, deduction or offset. If the Commencement Date occurs on a day other than the first day of a calendar month, or if this Lease expires or sooner terminates on a day other than the last day of a calendar month, then the Base Monthly Rent for the fractional month shall be prorated on a daily basis. The Base Monthly Rent shall be increased during the Extension Term as set forth above.

(i) The Base Monthly Rental shall be as set forth in Attachment A-2, attached hereto and incorporated herein by this reference.

(ii) "**Triple net**" means that Tenant will be responsible for payment of property taxes, insurance and utilities with respect to the Premises. Utilities (with the possible exception of water, which Landlord may not be able to separately meter) will be separately metered. Tenant will maintain all of its equipment, including but not limited to the heating, ventilating, air conditioning ("**HVAC**") systems.

(iii) Notwithstanding the provisions in Section (i), during the first, second and third months of the Term, Base Monthly Rent will be [REDACTED] and, during

the fourth, fifth and sixth months of the Term, Base Monthly Rent will be reduced by [REDACTED] percent ([REDACTED]%).

(iv) During the Term, the Base Monthly for each respective element of the Premises (i.e., the Indoor Space, the Outdoor Space and the Storage Space) will increase, every [REDACTED] years, by the amount of increase, if any, in the San Francisco-San Jose-Oakland CPI Index over the previous [REDACTED] year period.

(b) Prepaid Rent. Tenant shall, upon execution of this Lease, pay to Landlord the first month's rent as prepayment of rent for credit against the first payment of Base Monthly Rent due hereunder.

(c) Additional Rent. In addition to all Base Monthly Rent, Tenant agrees to pay all Additional Rent as and when provided in this Lease. "Additional Rent" shall mean any and all monetary obligations of Tenant under this Lease other than the obligation to pay Base Monthly Rent. As Additional Rent hereunder, Tenant shall pay to Landlord and/or those third parties designated in this Lease to receive Additional Rent from Tenant, all charges and other amounts due under this Lease including, without limitation, Tenant's obligation to pay (1) certain costs and expenses as provided in Paragraphs 6(b), 8(a) and 24(f), below; (2) the cost of all utilities and services as provided in Paragraph 7, below; (3) all late charges and interest due Landlord under this Lease; and (4) any and all other charges due Landlord under this Lease.

(d) Late Charges. Tenant hereby acknowledges that late payment to Landlord of any installment of Base Monthly Rent or any item of Additional Rent shall cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed on Landlord by the terms of any ground lease, underlying lease, mortgage or trust deed affecting the premises. Accordingly, if during the Term hereof any installment of Base Monthly Rent or item of Additional Rent is not received by Landlord within three (3) days of its due date, Tenant shall pay Landlord a late charge equal to five percent (5%) of such overdue amount. The parties agree that such late charge represents a fair and reasonable estimate of the costs Landlord will incur by reason of a late payment by Tenant. Acceptance of such late charge by Landlord shall in no event constitute a waiver by Landlord of Tenant's default with respect to such overdue amount, nor prevent Landlord from exercising any of its rights or remedies granted under this Lease or otherwise available to Landlord.

(e) Interest on Past-Due Obligations. Any monetary payment due Landlord hereunder, other than late charges, not received by Landlord within ten (10) days following the date when due, shall bear interest from the date due at the lesser of (i) the "prime rate" (also known as the "reference rate") being charged by Bank of America at that time plus four percent (4%) per annum or (ii) the maximum, non-usurious rate allowed by law.

(f) Guaranty. The obligations of Tenant under this Lease shall be guaranteed by [REDACTED], an individual ("Guarantor"), pursuant to a Guaranty in the form of Exhibit C (the "Guaranty").

5. ACCEPTANCE OF THE PREMISES.

(a) Acceptance; "AS-IS"; Waivers.

(i) Tenant acknowledges that it is familiar with the condition of the Premises and the Common Area and that it has had the opportunity to inspect the Premises and the Common Area to its complete satisfaction (including, but not limited to, the electrical systems, if any, security, applicable environmental conditions and requirements, applicable seismic and earthquake conditions and requirements, and compliance with applicable zoning and other Applicable Laws, defined below in Paragraph 10), and has either done so, or has voluntarily elected not to do so, thereby voluntarily and knowingly assuming the risk of adverse conditions or other defects in or about the Premises, the Common Area, and other portions of the Project. Subject to Landlord's obligations under Subparagraph (d) below, Tenant hereby accepts the Premises and Common Area in their "AS-IS" condition and "AS-IS" state of repair, inclusive of all faults and defects, whether known or unknown, latent or patent, or foreseeable or unforeseeable. Tenant hereby fully and forever waives, and Landlord hereby fully and forever disclaims, all warranties of whatever type or kind with respect to the Premises and the Common Area, whether express, implied or otherwise including, without limitation, those of fitness for a particular purpose, tenability, habitability or use.

(ii) Tenant hereby waives, releases and relinquishes any and all rights, claims and causes of action which Tenant may now have or may hereafter be entitled to assert against Landlord, whether known or unknown, (a) with respect to the environmental condition of the Premises and the soil, air and groundwater thereof, including, without limitation, any and all rights, claims and causes of action arising under or with respect to the California Health and Safety Code, Title 42 of the United States Code Section 9601 et, seq., the federal and state Occupational Health & Safety Acts, and common law tort theories, and/or (b) arising out of the use, generation, handling, exposure of others to, disposal or release of Hazardous Materials by Tenant or any Tenant Party (defined below) on, in, or about the Premises. With respect to the foregoing releases and waivers, Tenant expressly waives the benefits of Civil Code Section 1542, which reads as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor"

and any similar statute or common law that would render a waiver of unknown claims unenforceable.

6. PROPERTY TAXES.

(a) Definitions.

(1) As used herein, the term "Real Property Taxes" shall include any form of real estate tax or assessment, general, special, ordinary or extraordinary, and any license fee, commercial rental tax, improvement bond or bonds, levy or tax (other than inheritance, personal income or estate taxes) imposed upon the Project or any part thereof by any authority having the direct or indirect power to tax, including any city, state or federal

government, or any school, agricultural, sanitary, fire, street, drainage, or other improvement district thereof, levied against any legal or equitable interest of Landlord in the Project or any part thereof, Landlord's right to rent or other income therefrom, and/or Landlord's business of leasing the Premises. Real Property Taxes shall also include any tax, fee, levy, assessment or charge, or any increase therein, imposed by reason of events occurring, or changes in Applicable Laws taking effect, during the Term of this Lease, including but not limited to a change in the ownership of the Project or any part thereof, the execution of this Lease, or any modification, amendment or transfer thereof, and whether or not contemplated by the parties.

(b) Payment of Real Property Taxes. Tenant shall pay the Real Property Taxes applicable to the Project. Notwithstanding the foregoing, Tenant shall pay, within fifteen (15) days after demand from Landlord, any part of the Real Property Taxes assessed against the Project by reason of Alterations or Trade Fixtures placed in or on the Premises by Tenant or at Tenant's request.

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

(d) Tenant's Property Taxes. Tenant shall pay prior to delinquency all taxes, charges and assessments assessed against or levied upon: all furniture and other personal property of Tenant within the Premises, all Alterations, and all Trade Fixtures. When possible, Tenant shall cause all such items to be assessed and billed separately from the real property of the Landlord. If any of such items shall be assessed with Landlord's real property, Tenant shall pay Landlord the taxes attributable to Tenant's property within ten (10) days after receipt of a written statement setting forth the taxes applicable to Tenant's property.

7. UTILITIES. Tenant shall pay, prior to delinquency, all charges for water, gas, electricity, light, heat, telephone, power, waste pickup, sewer services, and other utilities and communications services furnished to or otherwise used by Tenant on or about the Premises, whether or not the services are billed directly to Tenant, including, without limitation, any connection or hook-up fees and any penalties for discontinued or interrupted service. Tenant shall also procure, or cause to be procured, without cost to Landlord, any and all necessary permits, licenses, or other authorizations required for the lawful and proper installation and maintenance upon the Premises of wires, pipes, conduits, tubes, and other equipment and appliances for use in supplying any utilities or communications services to and upon the Premises. Landlord, upon request of Tenant, and at the sole expense and liability of Tenant, shall join with Tenant in any application reasonably required for obtaining or continuing any of the services.

8. INSURANCE.

(a) Payment of Premium Increases. As used herein, the term "Landlord's Insurance Cost" is defined as the actual cost of the insurance required to be carried by Landlord

pursuant to Subparagraphs (b) and (c), below, calculated on an annual basis. Tenant shall be responsible for all costs associated with such insurance obtained by Landlord hereunder; provided, however, in the event that Tenant's particular use of the Premises, or Alterations or Trade Fixtures causes such premiums to be increased, Tenant shall pay such increase of the premiums.

(b) Property Insurance - Building. Landlord shall obtain and keep in force during the Term of this Lease a policy of policies in the name of Landlord, with loss payable to Landlord and to any Lender(s) (defined below) insuring against physical loss or damage to the Building. Such insurance shall be the amount required by any Lender(s), but in no event more than the commercially reasonable and available insurable value thereof if by reason of the unique nature or age of the Building such latter amount is less than full replacement cost. If the coverage is available and commercially appropriate, Landlord's policy or policies of casualty insurance shall insure against all risks of direct physical loss or damage (except the perils of flood and/or earthquake, unless required by Lender(s) or Landlord), including coverage for any additional costs resulting from debris removal and reasonable amounts of coverage for the enforcement of any ordinance or law regulating the reconstruction or replacement of any undamaged sections or the Building required to be demolished or removed by reason of the enforcement of any building zoning or safety or land use laws as the result of a covered loss, but not including plate glass insurance. Said policy or policies of casualty insurance shall also contain an agreed valuation provision in lieu of any co-insurance clause and inflation guard protection causing an increase in the annual property insurance coverage amount by a factor of not less than the adjusted U.S. Department of Labor Consumer Price Index for all Urban Consumers for the city nearest to where the Premises are located. All of Tenant's furniture and other personal property, all Alterations, and all Trade Fixtures shall be insured by Tenant pursuant to Subparagraph (c), below.

(c) Property Insurance - Tenant. Subject to the requirements of Subparagraph (f), below, Tenant at its sole cost shall either by separate policy or, at Landlord's option, by endorsement to a policy already carried, maintain insurance coverage on all of Tenant's furniture and other personal property, Trade Fixtures and Alterations in or on the Premises similar in coverage to that carried by Landlord as the insuring party under Subparagraph (b), above. Such insurance shall be full replacement cost coverage with a deductible not to exceed One Thousand Dollars (\$1,000) per occurrence. The proceeds from any such insurance shall be used by Tenant solely for the replacement of furniture and other personal property located on the Premises and for the repair and restoration of Trade Fixtures and Alterations. Upon request from Landlord, Tenant shall provide Landlord with written evidence that such insurance is in full force and effect.

(d) Liability Insurance - Tenant. Tenant shall obtain and keep in force during the Term of this Lease a commercial general liability policy of insurance protecting Tenant, Landlord and any Lender(s) whose names have been provided to Tenant in writing (as additional insureds) from claims or damages for bodily injury (including death), personal injury, and property damage based upon, involving or arising out of (a) any occurrence on the Premises, (b) any act or omission of Tenant, any subtenant of Tenant, or any of their respective invitees, agents, servants, contractors, or employees anywhere on the Premises, the Common Area, or Project, (c) the business operated by Tenant and by any subtenant of Tenant on the Premises, or

(d) the contractual liability of Tenant to Landlord pursuant to the indemnification provisions of Paragraphs 10(d)(7) and 20(a), below (including deletion of the contractual liability exclusion for personal injury). Such insurance shall be on an occurrence basis providing single limit coverage in an amount not less than Three Million Dollars (\$3,000,000) per occurrence with an "Additional Insured-Mangers or Landlords of Premises" endorsement and contain the "Amendment of the Pollution Exclusion" endorsement for damage caused by heat, smoke or fumes from a hostile fire. The policy shall not contain any intra-insured exclusions as between insured persons or organizations, but shall include coverage for liability assumed under this Lease as an "insured contract" for the performance of Tenant's indemnity obligations under this Lease. The limits of said insurance required by this Lease or as carried by Tenant shall not, however, limit the liability of Tenant nor relieve Tenant of any obligation under this Lease. All insurance to be carried by Tenant shall be primary to and not contributory with any similar insurance carried by Landlord, whose insurance shall be considered excess insurance only.

The liability policy shall contain an endorsement (ISO Form 20-26) naming Landlord, its members, and shareholders (as applicable) and any Lender(s) as additional insureds, and shall provide that the insurance carrier shall have the duty to defend and/or settle any legal proceeding filed against Landlord seeking damages based upon personal injury, bodily injury or property damage liability even if any of the allegations of such legal proceedings are groundless, false or fraudulent. In addition, Tenant's liability insurance policies shall be endorsed as needed to provide cross liability coverage for Tenant, Landlord and any lender of Landlord and shall provide for severability of interest.

(e) Liability Insurance - Landlord. Landlord shall also maintain liability insurance similar to the liability insurance described in Subparagraph (d), above, in addition to and not in lieu of, the insurance required to be maintained by Tenant. Tenant shall not be named as an additional insured therein.

(f) Worker's Compensation - Tenant. Tenant shall carry and maintain during the entire Term hereof, at Tenant's sole cost and expense, a policy or policies of worker's compensation insurance as required by Applicable Laws. Such policy or policies shall contain waivers of subrogation in favor of Landlord.

(g) Business Income and Extra Expense Coverage. Tenant shall carry and maintain during the entire Term hereof, at Tenant's sole cost and expense, keep in full force and effect, a policy or policies of business income/business interruption insurance and extra expense coverage (collectively, "**Business Income Insurance**") with coverage that will reimburse Tenant for all direct and indirect loss of income and charges and costs incurred arising out of all named perils insured against by Tenant's policies of property insurance, including prevention of, or denial of use of or access to, all or part of the Premises or Building as a result of those named perils. The Business Income Insurance coverage must provide coverage for no less than twelve (12) months of the loss of income, charges and costs contemplated under this Lease.

(h) Other Matters. All insurance required of Tenant under this Paragraph 8 and all renewals of it shall be issued by companies authorized to transact business in the State of California, and rated at least A, VIII, or such other rating as may be required by Lender(s), as set forth in the most current issue of Best's Insurance Guide. All insurance policies shall be subject

to approval by Landlord and any Lender(s) as to form and substance; shall expressly provide that the policies will not be canceled or altered without thirty (30) days' prior written notice to Landlord and any Lender(s), in the case of "all-risk" coverage insurance, and to Landlord, in the case of general liability insurance; and shall, to the extent obtainable, provide that no act or omission of Tenant which would otherwise result in forfeiture or reduction of the insurance will affect or limit the obligation of the insurance company to pay the amount of any loss sustained.

(i) Additional Insureds. All policies of liability insurance that Tenant is obligated to maintain according to this Lease (other than any policy of workmen's compensation insurance) shall name Landlord and such other persons as Landlord specifies from time to time as additional insureds (including any Lender(s)). Original or copies of original policies (together with copies of the endorsements naming Landlord, and any others specified by Landlord, as additional insureds) and evidence of the payment of all premiums of such policies shall be delivered to Landlord prior to Tenant's occupancy of the Premises and from time to time at least thirty (30) days prior to the expiration of the term of each policy. All public liability, property damage liability, and casualty policies maintained by Tenant shall be written as primary policies, not contributing with and not in excess of coverage that Landlord may carry. No insurance required to be maintained by Tenant under this Paragraph 8 shall be subject to any deductible without Landlord's prior written consent.

(j) Waiver of Subrogation. In addition to the waiver of subrogation contained in Paragraph 8(f), above, Tenant hereby waives its rights and the subrogation rights of its insurer against Landlord and any other tenants of the Project, as well as their respective members, officers, employees, agents, authorized representatives and invitees, with respect to any claims including, but not limited to, claims for injury to any persons, and/or damage to the Premises and/or any furniture, personal property, Trade Fixtures, and/or Alterations in or to the Premises, which are caused by or result from (a) risks or damages required to be insured against by Tenant under a policy of property insurance under this Lease, or (b) risks and damages which are in fact insured against by one or more property insurance policies maintained by Tenant from time to time. It is the intent of Landlord that with respect to any loss from a named peril required to be covered under a policy of property insurance, Tenant will look solely to its insurance companies for recovery. Tenant shall obtain for Landlord from Tenant's insurers under each policy required of Tenant under this Lease a waiver of all rights of subrogation which such insurers of Tenant might otherwise have against Landlord (and such waiver may be included in a certificate of insurance from the insurer).

(k) Adequacy of Insurance. Landlord makes no representation or warranty to Tenant that the amount of insurance to be carried by Tenant under the terms of this Lease is adequate to fully protect Tenant's interests. Tenant acknowledges that Landlord shall not, by the fact of approving, disapproving, waiving, accepting, or obtaining any insurance, insure any liability for or with respect to the amount of insurance carried, the form or legal sufficiency of such insurance, the solvency of any insurance companies or the payment or defense of any lawsuit in connection with such insurance coverage, and Tenant hereby expressly assumes full responsibility therefor and all liability, if any, with respect thereto.

9. USE.

(a) Permitted Use. The Premises shall be used for a full service grocery store, storage areas and office and administrative purposes and for no other use or purpose.

(b) Restrictions on Use. Tenant shall not do or permit any act that could: (1) cause any structural damage to the Premises or any other part of the Project; (2) cause any other damage to any part of the Premises, except to the extent reasonably necessary for the installation of trade fixtures, equipment, machinery, or the construction of Alterations approved in writing in advance by Landlord, provided such damage is promptly repaired by Tenant; (3) materially damage the Premises or any other part of the Project; (4) impair the efficient operation of the Premises' or Building's heating, ventilation, or air conditioning systems, if any; (5) overload or otherwise place an undue strain on the Premises' or Building's electrical and mechanical systems; or (6) damage, overload, or corrode the Premises' or Building's sanitary sewer system.

(c) Further Restrictions.

(1) Tenant shall not install or attach anything in the Premises in excess of the load limits established by Landlord for the Premises. Tenant shall contain and dispose of all dust, fumes, or waste products generated by Tenant's use of the Premises so as to avoid: (i) fire or health hazards, (ii) damage to the Project, or (iii) any violation of Applicable Laws.

(2) Except as may be approved by Landlord in advance in writing, Tenant shall not change the exterior of the Building or install any equipment, machinery, or antennas on or make any penetrations of, the exterior or roof of the Building. Tenant shall not commit, or suffer to be committed, any waste or nuisance in or about the Premises and shall keep the Premises or Common Area in a neat, clean, attractive and orderly condition, free of any waste or nuisances. Tenant shall not conduct on any part of the Premises or Project, any sale of any kind, including but not limited to any public or private auction, going out-of-business sale, distress sale, or other liquidation sale.

10. USE RESTRICTIONS; COMPLIANCE; ENVIRONMENTAL MATTERS.

(a) Restrictions on Use. Tenant shall not use or occupy, or permit any part of the Premises to be used or occupied: (1) in violation of any federal, state or local law, ordinance, order, rule, regulation, permit, license, certificate of occupancy, or other governmental requirement now or hereafter in effect (collectively, "**Applicable Laws**") or any covenants, conditions, or restrictions affecting the Project or any part thereof (collectively, "**CC&Rs**"); (2) for any disreputable business or purpose; or (3) in any manner or for any business or purpose that creates risks of fire or other hazards, or that would in any way violate, suspend, void, or increase the rate of fire or liability or any other insurance of any kind at any time carried by Landlord upon all or any part of the Premises, the Building, or its contents.

(b) Compliance. Tenant shall comply with all CC&Rs and all Applicable Laws relating to the use, condition, or occupancy of the Premises or the conduct of Tenant's business (including workplace safety and the employment of Tenant's employees), and all rules,

orders, regulations, and requirements of the board of fire underwriters or insurance service office, or any other similar body, having jurisdiction over the Project or any part thereof.

(c) Legally Required Alterations. Tenant shall pay the entire expense of any and all alterations as may be needed to conform the Premises to all Applicable Laws (including without limitation the Americans with Disabilities Act and Title 24 of the Code of California Regulations) governing the use or occupancy of the Premises including, without limitation, any and all alterations to the Premises that may be required under any Applicable Laws relating to accessibility or usability of, to, or within the Premises by disabled persons.

(d) Tenant's Obligations with Respect to Environmental Requirements.

(1) Without limiting Tenant's obligations under Subparagraphs (a) and (b), above, Tenant shall comply with and shall cause the Premises to comply with, all Applicable Laws relating to (i) human health or safety, (ii) workplace safety, (iii) industrial hygiene, or (iv) the use, generation, handling, manufacture, installation, maintenance, disposal, transportation, storage, spill, or release of Hazardous Materials by Tenant or any Tenant Party, all as amended and modified from time to time (collectively, "**Environmental Requirements**"). The foregoing obligation shall not negate Landlord's obligation under Paragraph 10(e), below. Tenant shall cause all governmental permits and other approvals relating to the use or operation of the Premises by Tenant required by applicable Environmental Requirements or any other Applicable Laws to at all times remain in effect, and Tenant shall at all times comply with such permits and other approvals. "**Reportable Use**" shall mean (i) the installation or use of any above or below ground storage tank, (ii) the release, generation, possession, storage, handling, use, transportation, or disposal of any Hazardous Materials that requires a permit from, or with respect to which a report, notice, registration or business plan is required to be filed with, any governmental authority, or (iii) the presence in, on or about the Premises of any Hazardous Materials with respect to which any Environmental Requirements or other Applicable Laws require that a notice be given to persons entering or occupying the Premises, the Project, or neighboring properties.

(2) Tenant shall not, nor allow any Tenant Party to, release, use, generate, manufacture, store, transport, or dispose of any Hazardous Materials on, under, or about the Premises. Notwithstanding the foregoing, Tenant may use on the Premises, without Landlord's prior consent, but only upon written notice to Landlord and in compliance with all Environmental Requirements and other Applicable Laws, any ordinary and customary materials reasonably required for use by Tenant in the normal course of the permitted use described in Paragraph 9(a), above, and further, only so long as such use is not a Reportable Use and does not expose the Premises or any other portion of the Project or neighboring properties to any meaningful risk of contamination or damage or expose Landlord to any liability therefor. In addition, Landlord may (but without any obligation to do so) condition its consent to any Reportable Use of any Hazardous Materials by Tenant upon Tenant's giving Landlord such additional assurances as Landlord deems necessary to protect itself, the public, the Premises, the Project, and the environment against damage, contamination or injury and/or liability therefor, including but not limited to the installation (and, at Landlord's option, removal on or before Lease expiration or earlier termination) of reasonably necessary protective modifications to the Premises (such as concrete encasement) and/or the deposit of an additional security deposit.

(3) If Tenant knows, or has reasonable cause to believe, that any Hazardous Materials have been introduced upon the Premises or any other portion of the Project by Tenant or a Tenant Party (other than as may have been previously consented to by Landlord), Tenant shall immediately give Landlord written notice thereof, together with a copy of any statement, report, notice, registration, application, permit, business plan, license, claim, action, or proceeding, given to, or received from, any governmental authority or private party concerning such Hazardous Materials including, but not limited to, all such documents as may be involved in any Reportable Use involving the Premises. Landlord's receipt of any notice, documents or other information from Tenant as provided above in this Subparagraph shall not create any obligation on the part of Landlord to respond in any way to such notice, documents or information or the conditions described therein.

(4) Tenant shall immediately notify Landlord and provide copies upon receipt of all written complaints, claims, citations, demands, inquiries, reports, or notices relating to the condition of the Premises or compliance with Environmental Requirements (provided, however, that Landlord's receipt of any of the foregoing shall in no way create or impose any duty or obligation upon Landlord to respond thereto). Tenant shall promptly cure and have dismissed with prejudice any of those actions and proceedings to the satisfaction of Landlord.

(5) Landlord, its agents, employees, contractors and designated representatives, and the holders of any mortgages, deeds of trust or ground leases on the Premises ("Lender(s)") shall have the right, but not the obligation, to enter the Premises at any time in the case of an emergency, and otherwise at reasonable times, for the purpose of inspecting the condition of the Premises and for verifying compliance by Tenant with this Lease (including compliance with Environmental Requirements) and Landlord shall be entitled to employ experts and/or consultants in connection therewith to advise Landlord with respect to Tenant's activities, including but not limited to Tenant's installation, operation, use, monitoring, maintenance, or removal of any Hazardous Materials on or from the Premises. The costs and expenses of any such inspections shall be paid by the party requesting same, unless a default or breach of this Lease by Tenant or a violation of Environmental Requirements or a contamination, caused or materially contributed to by Tenant or a Tenant Party, is found to exist or to be imminent, or unless the inspection is requested or ordered by a governmental authority as the result of any such existing or imminent violation or contamination, and in each such case, Tenant shall upon demand reimburse Landlord, or Landlord's Lender(s), as the case may be, for the costs and expenses of such inspections.

(6) If Tenant breaches any of its warranties, representations, and covenants under this Paragraph 10, Landlord may cause the removal from the Premises (or other cleanup acceptable to Landlord) of any Hazardous Materials which relate to or are the subject of such breach. The costs of Hazardous Materials removal, remediation, and other response (including, without limitation, transportation and storage costs) shall be deemed covered by the indemnity in Subparagraph (d)(7), below, whether or not a court has ordered the cleanup, and those costs shall become due and payable on demand by Landlord. Tenant shall give Landlord, its agents, contractors, and employees access to the Premises to remove or otherwise clean up any Hazardous Materials. Landlord, however, has no obligation whatsoever

to remove, clean up, or otherwise respond to any Hazardous Materials, and this Lease shall not be construed as creating any such obligation.

(7) Tenant agrees to indemnify, defend (with counsel reasonably acceptable to Landlord and at Tenant's sole cost), and hold Landlord and Landlord's members, affiliates, employees, agents, successors and assigns free and harmless from and against all losses, liabilities, obligations, penalties, claims, litigation, orders, demands, defenses, costs, judgments, suits, proceedings, damages (including consequential damages), disbursements, losses, or expenses of any kind (including attorneys' and experts' fees and expenses and fees and expenses incurred in investigating, defending, or prosecuting any litigation, claim, or proceeding) that may at any time be imposed upon, incurred by, or asserted or awarded against Landlord or any of them in connection with or arising from or out of:

a. any Hazardous Materials (whether or not the use thereof has been consented to by Landlord) in, under, or affecting all or any part of the Premises or Project, the presence of which is attributable, in whole or in part, to any act or omission of Tenant or any of its officers, directors, members, employees, agents, contractors, visitors, customers, shippers, suppliers, invitees, licensees, subtenants, or other persons entering the Premises under the express or implied invitation of Tenant (collectively, "**Tenant Parties**");

b. any misrepresentation, inaccuracy, or breach of any warranty, covenant, or agreement contained or referred to in this Paragraph 10;

c. any violation or claim of violation by Tenant or any Tenant Party of any Environmental Requirement; or

d. the imposition of any lien for the recovery of any costs for environmental cleanup or other response costs relating to the release or threatened release of Hazardous Materials by Tenant or any Tenant Party.

This indemnification is the personal obligation of Tenant and shall survive the expiration or sooner termination of this Lease. Tenant, its successors, and assigns waive, release, and agree not to make any claim or bring any cost recovery action against Landlord under the Comprehensive Environmental Response, Compensation and Liability Act, as amended and reauthorized to date (42 U.S.C. § 9601 et seq.), or any state equivalent or any similar law now existing or enacted after this date. To the extent that Landlord is strictly liable under any such law, regulation, ordinance, or requirement, Tenant's obligation to Landlord under this indemnity shall also be without regard to fault on the part of Tenant with respect to the violation or condition that results in liability to Landlord.

(8) "**Hazardous Materials**" means any product, substance, chemical, material or waste whose presence, nature, quantity and/or intensity or existence, use, manufacture, disposal, transportation, spill, release, or effect, either by itself or in combination with other materials, is either (i) potentially injurious or harmful to the public health, safety or welfare, the Premises, any other portion of the Project, or the environment (including, without limitation, any soil, air, or groundwater on, in, under, above or about the Project); (ii) regulated or monitored by any governmental authority; or (iii) a basis for potential liability of Landlord to

any governmental agency, private party, or other third party under any applicable statute, regulation, code, ordinance or common law theory. Without limiting the scope or generality of the forgoing, Hazardous Materials shall include, but not be limited to, petroleum hydrocarbons, gasoline, crude oil or any products or by products thereof.

11. ASSIGNMENT AND SUBLETTING

(a) Restrictions on Transfer. The terms and conditions in this Lease were offered solely to Tenant as an inducement to lease the Premises. Landlord would not necessarily lease the Premises to another Tenant on such favorable terms and conditions, it being understood that Landlord is specifically relying on the identity of Tenant in agreeing to the terms and conditions in this Lease. Tenant acknowledges that the lease terms and conditions are for Tenant's benefit only so long as Tenant operates the business allowed by this Lease, and that Tenant is not entering into this Lease for any other purpose, such as the recognition of a leasehold value that it could later sell. It is understood and agreed that any value, upon the early termination of Tenant's occupancy of the Premises, shall revert to Landlord, either by termination of this Lease or as a condition of assignment or subletting, as provided in this Paragraph 11. But for the previously stated reasons, Landlord would not enter into this Lease. Therefore, without the express prior written consent of Landlord, which may be withheld for any reason whatsoever, Tenant shall not voluntarily, involuntarily, or by operation of law: (1) sublet all or any part of the Premises or allow it to be sublet, occupied, or used by any person or entity other than Tenant; (2) assign Tenant's interest in this Lease; (3) mortgage or encumber this Lease, or otherwise use this Lease as a security device in any manner; or (4) amend or modify an assignment, sublease, or other transfer that has not been previously approved by Landlord.

Any action taken or proposed to be taken pursuant to clauses (1) through (4) in the preceding paragraph shall be collectively referred to herein as an "Assignment", and any third party succeeding to all or a portion of Tenant's interest under this Lease or proposed to succeed to all or a portion of Tenant's interest under this Lease shall be referred to as an "assignee". If Tenant is a partnership, any withdrawal or substitution, whether voluntary, involuntary, or by operation of law, and whether occurring at one time or over a period of time, of any partner owning twenty-five percent (25%) or more, cumulatively, of any interest in the capital or profits of the partnership or the dissolution of the partnership, shall be deemed an assignment. If Tenant is a corporation, any dissolution, merger, consolidation, or other reorganization of Tenant, any sale or transfer or cumulative sales or transfers of the capital stock of Tenant in excess of twenty-five percent (25%) or any sale or cumulative sales of fifty-one percent (51%) or more of the value of Tenant's assets shall be deemed an assignment. However, the previous provisions shall not apply to corporations, the capital stock of which is publicly traded.

(b) Payment of Landlord's Costs. Tenant shall pay to Landlord, as Additional Rent, all reasonable costs and attorney fees incurred by Landlord in connection with the evaluation, processing, or documentation of any requested assignment, whether or not Landlord's consent is granted. Landlord's reasonable costs shall include the cost of any review or investigation performed by Landlord or consultant acting on behalf of Landlord of: (1) any Hazardous Materials used, stored, released, or disposed of by the proposed assignee, or (2) violations of any environmental law by Tenant or the proposed assignee.

(c) Effectiveness of Assignment. Any Assignment approved by Landlord shall not be effective until Tenant has delivered to Landlord an executed counterpart of the document evidencing the Assignment that: (1) is in form and substance reasonably satisfactory to Landlord, and (2) contains the same terms and conditions as stated in Tenant's notice given to Landlord pursuant to Subparagraph (c), below.

(d) Assignment Voidable. Any attempted Assignment without Landlord's express prior written consent shall constitute an event of default hereunder and shall be voidable at Landlord's sole option. Landlord's consent to any one assignment shall not constitute a waiver of the provision of this Paragraph 11 as to any subsequent assignment or a consent to any subsequent assignment. No Assignment, even with the consent of Landlord, shall relieve Tenant of the obligation to pay the rent and to perform all of the other obligations to be performed by Tenant. The acceptance of rent by Landlord from any person shall not be deemed to be a waiver by Landlord of any provision of this Lease, nor to be a consent to any Assignment.

(e) Notice of Proposed Assignment. At least sixty (60) days before a proposed Assignment is to become effective, Tenant shall give Landlord written notice of the proposed terms of the Assignment and request Landlord's approval, which notice shall include the following: (1) the name and legal composition of the assignee; (2) a current financial statement of the assignee, financial statements of the assignee covering the preceding three (3) years, if they exist, and, if available, an audited financial statement of the assignee for a period ending not more than one (1) year prior to the proposed effective date of the assignment, all of which are to be prepared in accordance with generally accepted accounting principles; (3) the nature of the assignee's business to be carried on in the Premises; (4) a statement of all consideration to be given on account of the assignment; and (5) any other information that Landlord reasonably requests.

(f) Withholding of Consent. Landlord's consent to any requested Assignment may be withheld for any reason whatsoever.

(g) Guarantor's Consent. If Tenant's obligations under this Lease have been guaranteed by third parties, any assignment of Tenant's interest under this Lease and Landlord's consent shall not be effective unless those guarantors give written consent to the assignment.

(h) Order. If an event of default occurs and is continuing, Landlord may proceed directly against Tenant, any assignee, any guarantors, or any other party responsible for the performance of this Lease, without first exhausting Landlord's remedies against any other party responsible to Landlord, or resorting to any security held by Landlord.

(i) Attornment. If an event of default occurs and is continuing, Landlord may require any subtenant to attorn to Landlord, in which event Landlord shall undertake the obligations of Tenant under any sublease, provided, however, that Landlord shall not be liable for any amounts paid by the subtenant to Tenant or for any defaults by Tenant or prior obligations of Tenant under the sublease.

(j) Binding. Every provision of this Paragraph 11 shall be binding on any assignee as if that assignee were the Tenant under this Lease.

(k) No Further Assignment or Subletting. No assignee shall further assign or sublet the Premises without Landlord's prior written consent.

12. SIGNS. Landlord reserves the exclusive right to control the architectural and aesthetic appearance of the exterior side-walls and roof of the Premises and Building. Tenant will not place or permit to be placed in or upon the exterior side walls, windows or roof of the Building or within the Common Area any signs, advertisements or notices, or alter its architecture or appearance without first obtaining the express prior written consent of Landlord. Landlord shall have the right to post or place such signs, notices or displays as Landlord reasonably deems necessary or appropriate upon the roof, the exterior of the Building, and/or within the Common Area. Landlord shall have the right to remove any of Tenant's signs, advertisements or notices to which Landlord objects, at Tenant's sole expense. Landlord shall be entitled to all revenues from such advertising signs.

13. REPAIRS AND MAINTENANCE.

(a) By Tenant. Except as otherwise provided in Paragraphs 13(b), 16, 17 and 24(f) hereof, Tenant shall, at its sole expense, maintain the Premises and make repairs, restorations, and replacements to the Premises, including, without limitation, the heating, ventilating, air conditioning, mechanical, electrical, sewage, and plumbing systems, interior walls, floors, carpets, window coverings, ceilings, roof, windows, plate glass, and doors, and the fixtures and appurtenances to the Premises, as and when needed to preserve them in good working order and condition and regardless of whether the repairs, restorations, and replacements are structural or non-structural, ordinary or extraordinary, foreseeable or unforeseeable, capital or noncapital, or the fault or not the fault of Tenant or any Tenant Party. Without limitation of the scope or generality of the foregoing, at all times during the Term Tenant shall maintain a contract for the regular maintenance and servicing of the HVAC systems serving the Premises, and such contract shall be with a duly licensed HVAC service and repair specialist acceptable to Landlord. All repairs, restorations, and replacements shall be in quality and class equal to the original work or installations. If Tenant fails to make repairs, restorations, or replacements within fifteen (15) days after written demand by Landlord, Landlord may make them at the expense of Tenant and the expense shall be collectible as Additional Rent to be paid by Tenant within fifteen (15) days after delivery of a statement for the expense.

(b) By Landlord. Subject to the other provisions of this Lease, Landlord shall keep in good order and repair the exterior walls of the Building. Notwithstanding the foregoing, Landlord shall not be obligated to paint the exterior or interior surfaces of exterior walls or doors (including any roll up doors), nor shall Landlord be obligated to maintain, repair or replace any windows, doors (including any roll up doors), or plate glass of the Premises. Notwithstanding anything to the contrary herein, Landlord shall not be obligated to perform any maintenance, repairs or replacements in response to or arising out of damage caused by the act or omission of Tenant or any Tenant Party, which repairs or replacements shall be the sole obligation of Tenant. Tenant expressly waives the benefit of any statute now or hereafter in effect which would otherwise afford Tenant the right to make repairs at Landlord's failure to keep the Building, Common Area, or any other portion of the Project in good order, condition and repair.

14. ALTERATIONS.

(a) Alterations. Tenant shall not make, or suffer to be made, any alterations, additions, renovations or improvements (collectively "**Alterations**") to the Premises without Landlord's prior written consent; however, Landlord's prior written consent shall not be necessary for any Alteration which: (1) costs less than one thousand dollars (\$1,000.00) including labor and materials; (2) does not change the general character of the Premises, or reduce the fair market value of the Premises below its fair market value prior to the alteration, addition, or improvement; (3) is made with due diligence, in a good and workmanlike manner, and in compliance with the laws, ordinances, orders, rules, regulations, certificates of occupancy, or other governmental requirements described in Paragraph 9, and above; (4) is promptly and fully paid for by Tenant.

(b) Architect's Supervision; Compliance with Laws; Ownership; Removal. All Alterations (other than those costing less than One Thousand Dollars (\$1,000.00)) shall be made by Tenant under the supervision of an architect and/or engineer hired by Tenant and reasonably satisfactory to Landlord and in accordance with plans and specifications and cost estimates approved by Landlord. In addition, Landlord may designate a supervising architect and/or engineer to assure compliance with the provisions of this paragraph, and if it does, Tenant shall pay as Additional Rent the supervising architect's and/or engineer's charges. All Alterations shall be performed solely at Tenant's expense, in compliance with all Applicable Laws, and shall be performed only by properly licensed contractors or workers. Subject to Tenant's rights under Paragraph 15, below, all Alterations and Trade Fixtures, whether temporary or permanent in character, made in or on the Premises by Tenant shall immediately become Landlord's property, and upon the expiration or sooner termination of this Lease shall remain on the Premises without compensation to Tenant; provided, however, that by written notice given to Tenant at any time prior to the expiration or sooner termination of this Lease, Landlord may require that any Alterations and/or Trade Fixtures made in or on the Premises be removed by Tenant. In such event, Tenant shall remove the designated Alterations and/or Trade fixtures at Tenant's sole cost and shall restore the Premises to the condition in which it was in before the Alterations and Trade fixtures were installed, reasonable wear and tear excepted.

(c) Mechanic's Liens. Tenant shall also pay and discharge any and all mechanics' liens placed against the Premises and/or the Project resulting from the actions of Tenant or any of Tenant's employees or agents (including, without limitation, any work performed at the request of Tenant or any of its employees or agents). If Tenant wishes in good faith to contest the validity of any mechanic's lien claim placed against the Premises and/or project for any reason whatsoever, Tenant shall forth-with either pay the disputed amount or shall, at Tenant's sole cost and expense and with the prior written consent of the Landlord, obtain a bond conforming with the requirements of California Civil Code Section 3143 so as to release the lien against the Premises and/or any other portion of the Project.

15. END OF TERM. Upon the expiration or sooner termination of this Lease, Tenant shall surrender the Premises clean and free of debris and in good operating order and condition, ordinary wear and tear excepted. If Tenant is not then in default, Tenant may remove from the Premises any trade fixtures, machinery and equipment owned by Tenant which can be removed without doing material damage to the Premises (herein collectively called "**Trade Fixtures**")

and any movable furniture owned by and placed in the Premises by Tenant, whether or not such Trade Fixtures are fastened to the Premises. Tenant shall not remove any Trade Fixtures without Landlord's prior written consent if the Trade Fixtures are used in the operation of the Premises or if the removal of the Trade Fixtures will impair the structure of the Premises. Whether or not Tenant is then in default, Tenant shall remove all Alterations, Trade Fixtures, and furniture that Landlord has requested be removed in accordance with Paragraph 14, above, and shall, under all circumstances, fully repair any damage occasioned by the removal of any Alterations, Trade Fixtures, or furniture. Any Alterations, Trade Fixtures, or furniture not so removed shall be conclusively deemed to have been abandoned by Tenant and may be appropriated, sold, stored, destroyed, or otherwise disposed of by Landlord without notice to Tenant or any other person and without obligation to account for them. Tenant shall pay Landlord all expenses incurred in connection with Landlord's disposition of such property, including without limitation the cost of repairing any damage to Premises caused by removal of such property. Tenant's obligation to observe and perform covenants set forth in this Paragraph 15 shall survive the expiration or sooner termination of this Lease.

16. DAMAGE AND DESTRUCTION.

(a) Definitions.

(1) **"Premises Partial Damage"** means damage or destruction to the Premises, other than any furniture, inventory, Alterations, Trade Fixtures or other items owned, installed, leased or paid for by Tenant (collectively, "Excluded Items"), the repair cost of which damage or destruction is less than fifty percent (50%) of the then Replacement Cost (as defined below) of the Premises, excluding all Excluded Items, immediately prior to such damage or destruction.

(2) **"Premises Total Destruction"** means damage or destruction to the Premises, other than Excluded Items, the repair cost of which damage or destruction is fifty percent (50%) or more of the then Replacement Cost of the Premises (excluding any Excluded Items) immediately prior to such damage or destruction. In addition, damage or destruction to the Building, other than Excluded Items of any tenants of the Building, the cost of which damage or destruction is fifty percent (50%) or more of the then Replacement Cost (excluding Excluded Items of any tenants of the Building) of the Building shall, at the option of Landlord, be deemed to be Premises Total Destruction.

(3) **"Insured Loss"** shall mean damage or destruction to the Premises, other than Excluded Items, which was caused by an event required to be covered by the casualty insurance described in Paragraph 8(b), above, irrespective of any deductible amounts or coverage limits involved.

(4) **"Replacement Cost"** shall mean the cost to repair or rebuild the improvements owned by Landlord at the time of the occurrence to their condition existing immediately prior thereto, including demolition, debris removal and upgrading required by the operation of applicable building codes, ordinances or laws, and without deduction for depreciation.

(5) Premises Partial Damage - Insured Loss. If Premises Partial Damage that is an Insured Loss occurs, then Landlord shall, at Landlord's expense, repair such damage (but not Excluded Items) as soon as reasonably possible and this Lease shall continue in full force and effect. In the event, however, that there is a shortage of insurance proceeds and such shortage is due to the fact that, by reason of the unique nature of the improvements in the Premises, full replacement cost insurance coverage was not commercially reasonable and available, Landlord shall have no obligation to pay for the shortage in insurance proceeds or to fully restore the unique aspects of the Premises unless Tenant provides Landlord with the funds to cover same or adequate assurance thereof, within ten (10) days following receipt of written notice of such shortage and request therefor. If Landlord receives said funds or adequate assurance thereof within said ten (10) day period, Landlord shall complete them as soon as reasonably possible and this Lease shall remain in full force and effect. If Landlord does not receive such funds or assurance within said period, Landlord may nevertheless elect by written notice to Tenant within ten (10) days thereafter to make such restoration and repair as is commercially reasonable with Landlord paying any shortage in proceeds, in which case this Lease shall remain in full force and effect. If Landlord does not receive such funds or assurance within such ten (10) day period, and if Landlord does not so elect to restore and repair, then this Lease shall terminate sixty (60) days following the occurrence of the damage or destruction. Unless otherwise agreed, Tenant shall in no event have any right to reimbursement from Landlord for any funds contributed by Tenant to repair any such damage or destruction. Premises Partial Damage due to flood or earthquake shall be subject to Paragraph 16(c) rather than this Paragraph 16(b), notwithstanding that there may be some insurance coverage, but the net proceeds of any such insurance shall be made available for the repairs if made by either party.

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

(c) Total Destruction. Notwithstanding any other provision hereof, if Premises Total Destruction occurs (including any destruction required by any authorized public authority) this Lease shall terminate sixty (60) days following the date of such Premises Total Destruction, whether or not the damage or destruction is an Insured Loss or was caused by a

negligent or willful act of Tenant. In the event, however, that the damage or destruction was caused by Tenant, Landlord shall have the right to recover all of Landlord's damages and losses from Tenant.

(d) Damage Near End of Term. If at any time during the last six (6) months of the term of this Lease there is damage for which the cost to repair exceeds one month's Base Monthly Rent, whether or not an Insured Loss, Landlord may, at Landlord's option, terminate this Lease effective sixty (60) days following the date of occurrence of such damage by giving written notice to Tenant of Landlord's election to do so within thirty (30) days after the date of occurrence of such damage.

(c) Abatement of Rent; Tenant's Remedies.

(1) In the event of Premises Partial Damage for which Tenant is not legally responsible, the Base Monthly Rent and the Additional Rent payable by Tenant hereunder for the period during which such damage or condition, its repair, or restoration continues, shall be abated in proportion to the degree to which Tenant's use of the Premises is impaired, but not in excess of the amount of Base Monthly Rent for a 12-month period. Except for abatement of Base Monthly Rent and Additional Rent as aforesaid, all other obligations of Tenant hereunder shall be performed by Tenant, and Tenant shall have no claim against Landlord for any damage suffered by reason of any such damage, destruction, or repair.

(2) If Landlord shall be obligated to repair or restore the Premises under this Paragraph 16 and shall not commence, in a substantial and meaningful way, the repair or restoration of the Premises within ninety (90) days after such obligation shall accrue, Tenant may, at any time prior to the commencement of such repair or restoration, give written notice to Landlord and to any Lender(s) of which Tenant has actual notice of Tenant's election to terminate this Lease on a date not less than sixty (60) days following the giving of such notice. If Tenant gives such notice to Landlord and such Lender(s) and such repair or restoration is not commenced within thirty (30) days after receipt of such notice, this Lease shall terminate as of the date specified in said notice. If Landlord or a Lender(s) commences the repair or restoration of the Premises within thirty (30) days after the receipt of such notice, this Lease shall continue in full force and effect. "Commence" as used in this paragraph shall mean either the unconditional authorization of the preparation of the required plans, or the beginning of actual work on the Premises, whichever occurs first.

(f) Waiver. Except as expressly provided in this Lease, damage to or destruction of the Premises shall not terminate this Lease or result in any abatement of Base Monthly Rent, Additional Rent or any other charge hereunder. Tenant waives any right of offset against Tenant's rental obligations that may be provided by any statute or rule of law in connection with Landlord's duties of repair and restoration under the provisions of this Lease.

(g) Landlord Not Responsible. Landlord shall not be responsible for any loss, damage, or destruction to any Alterations, Trade Fixtures, or to other of Tenant's leasehold improvements or to any furniture, inventory, or other Tenant-owned improvements or property.

17. CONDEMNATION.

(a) Total Taking. If, by exercise of the right of eminent domain or by conveyance made in response to the threat of the exercise of such right (in either case a "Taking"), all of the Premises are Taken, or if so much of the Premises are Taken that the Premises (even if the restorations described in Subparagraph (b), below, were to be made) cannot be used by Tenant for the purposes for which they were used immediately before the Taking, this Lease shall end on the earlier of the vesting of title to the Premises in the condemning authority or the taking of possession of the Premises by the condemning authority (in either case the "Ending Date"). If this Lease ends according to this Subparagraph (a), prepaid rent shall be appropriately prorated to the Ending Date. The award in a taking subject to this Subparagraph (a) shall be allocated according to Subparagraph (d), below.

(b) Partial Taking. If, after a Taking, in Landlord's reasonable discretion, so much of the Premises remains that the Premises can be used for substantially the same purposes for which they were used immediately before the taking:

(1) this Lease shall end on the Ending Date as to the part of the Premises which is Taken;

(2) prepaid rent shall be appropriately allocated to the part of the Premises which is Taken and prorated to the Ending Date;

(3) beginning on the day after the Ending Date, rent for so much of the Premises as remains shall be reduced in the proportion of the floor area of the Premises remaining after the Taking to the floor area of the Premises before the Taking;

(4) at its sole expense, Tenant shall restore so much of the Premises as remains to a sound architectural unit substantially suitable for the purposes for which it was used immediately before the Taking, using good workmanship and new first class materials, all according to Paragraph 14, above;

(5) upon the completion of restoration according to Subparagraph (4), above, Landlord will pay Tenant the lesser of (A) the net award made to Landlord on account of the taking (after deducting from the total award attorneys', appraisers', and other costs incurred in connection with obtaining the award, and amounts paid to the holders of mortgages affecting the Premises), or (B) Tenant's actual out-of-pocket cost of restoring the Premises; and

(6) Landlord shall keep the balance of the net award.

(c) Tenant's Award. In connection with any Taking subject to Subparagraph (b), above, Tenant may prosecute its own claim by separate proceedings against the condemning authority for damages legally due to it (such as the loss of fixtures which Tenant was entitled to remove and moving expenses) only so long as Tenant's award does not diminish or otherwise adversely affect Landlord's award in any manner.

(d) Allocation of an Award for a Total Taking. If this Lease ends according to Subparagraph (a), above, Landlord shall receive the entirety of any award that may be paid in connection with the Taking, including severance and consequential damages and any award for the value of this Lease, and Tenant shall have no claim or interest in any award, whether or not the award or any part of it is attributable to the value of the unexpired Term of this Lease. Tenant hereby irrevocably assigns and transfers to Landlord any right to compensation or damages to which Tenant may become entitled during the Term hereof by reason of any taking.

(e) Waiver. Each party hereby waives the provisions of California Code of Civil Procedure Section 1265.130 allowing either party to petition the Superior Court to terminate this Lease in the event of a partial Taking of the Premises.

18. SUBORDINATION.

(a) General. This Lease and Tenant's rights under this Lease are subject and subordinate to any ground lease or underlying lease, first mortgage, first deed of trust, or other first lien encumbrance or indenture, together with any renewals, extensions, modifications, consolidations, and replacements of them, which now or at any subsequent time affect the Premises, any interest of Landlord in the Premises, or Landlord's interest in this Lease and the estate created by this Lease (except to the extent that any such instrument expressly provides that this Lease is superior to it). This provision shall be self-operative and no further instrument of subordination shall be required in order to effect it. Nevertheless, Tenant shall execute, acknowledge and deliver to Landlord, at any time and from time to time, upon demand by Landlord, any documents as may be requested by Landlord, any ground Landlord or underlying Landlord, or any mortgagee, or any holder of a deed of trust or other instrument described in this paragraph, to confirm or effect the subordination. If Tenant fails or refuses to execute, acknowledge, and deliver any such document within twenty (20) days after written demand, Landlord, its successors, and assigns shall be entitled to execute, acknowledge, and deliver the document on behalf of Tenant as Tenant's attorney-in-fact. Tenant constitutes and irrevocably appoints Landlord, its successors, and assigns, as Tenant's attorney-in-fact to execute, acknowledge, and deliver on behalf of Tenant any documents described in this paragraph.

(b) Attornment. If any holder of any mortgage, indenture, deed of trust, or other similar instrument described in Subparagraph (a), above, succeeds to Landlord's interest in the Premises, Tenant shall pay to it all rents subsequently payable under this Lease. Tenant shall, upon request of anyone so succeeding to the interest of Landlord, automatically become the tenant of, and attorn to, the successor in interest without change in this Lease. The successor in interest shall not be bound by (1) any payment of rent for more than one month in advance, (2) any amendment or modification of this Lease made without its written consent, (3) any claim against Landlord arising prior to the date on which the successor succeeded to Landlord's interest, or (4) any claim or offset of rent against the Landlord. Upon request by the successor in interest and without cost to Landlord or the successor in interest, Tenant shall execute, acknowledge, and deliver an instrument or instruments confirming the attornment. The instrument of attornment shall also provide that, so long as Tenant does not default under this Lease, the successor in interest shall not disturb Tenant in its use of the Premises in accordance with this Lease. If Tenant fails or refuses to execute, acknowledge, and deliver the instrument within twenty (20) days after written demand, the successor in interest shall be entitled to

execute, acknowledge, and deliver the document on behalf of Tenant as Tenant's attorney-in-fact. Tenant constitutes and irrevocably appoints the successor in interest as Tenant's attorney-in-fact to execute, acknowledge, and deliver on behalf of Tenant any document described in this paragraph.

19. LANDLORD'S ACCESS. Landlord, its agents, employees, and contractors may enter the Premises at any time in response to an emergency, and at all reasonable times to (1) inspect the Premises, (2) exhibit the Premises to prospective purchasers, lenders, or tenants, (3) determine whether Tenant is complying with its obligations under this Lease, (4) supply any service which this Lease may require Landlord to provide, (5) post notices of nonresponsibility or similar notices, or (6) make repairs or do any other act which this Lease or Applicable Laws may require or permit Landlord to make or do. Tenant waives any claim on account of any injury or inconvenience to Tenant's business, interference with Tenant's business, loss of occupancy or quiet enjoyment of the Premises, or any other loss occasioned by any entry of Landlord, its agents, employees, or contractors permitted hereunder. Landlord shall at all times have a key with which to unlock all of the doors in the Premises (excluding Tenant's vaults, safes, and similar areas designed in writing by Tenant in advance). No entry to the Premises by Landlord by any means will be a forcible or unlawful entry into the Premises or a detainer of the Premises or an eviction, actual or constructive, of Tenant from the Premises, or any part of the Premises, nor will any entry entitle Tenant to damages or an abatement of rent or other charges which this Lease requires Tenant to pay. Subject to the foregoing and to the other terms and conditions of this Lease, so long as Tenant pays the rent and fully performs all of its other obligations in this Lease, Tenant's possession of the Premises will not be disturbed by Landlord.

20. INDEMNIFICATION, WAIVER AND RELEASE.

(a) Indemnification. Tenant shall indemnify Landlord, its members, agents, and employees (Landlord and all such other persons are collectively referred to herein as "Landlord Parties") against, and hold Landlord and all other Landlord Parties harmless from and against any and all demands, claims, causes of action, fines, penalties, damages (including consequential damages), losses, liabilities, judgments, costs, and expenses (including, without limitation, attorneys' fees and court costs) (collectively, "Claims") incurred in connection with or arising from: (1) the use or occupancy of the Premises by Tenant or any person claiming under or through Tenant; (2) any activity, work, or thing done by Tenant on or about the Premises, the Common Area, or any other part of the Project; (3) any acts, omissions, or negligence of Tenant, any person claiming under Tenant or any Tenant Party; (4) any breach, violation, or nonperformance by Tenant or any person claiming under Tenant of any term, covenant, or provision of this Lease or any Applicable Laws; or (5) except for loss of use of all or any portion of the Premises or Tenant's property located within the Premises that is proximately caused by or results proximately from the willful misconduct of Landlord or its agents or employees, any injury or damage to the person, property, or business of Tenant or any Tenant Party.

If any action or proceeding is brought against Landlord, its employees, or agents by reason of any claim, Tenant, upon notice from Landlord, shall defend the claim at Tenant's sole expense with counsel reasonably satisfactory to Landlord. Landlord need not have first paid any claim or other item covered by the foregoing indemnity or by any other indemnity contained in

this Lease in order to be indemnified. The rights of Landlord and the obligations of Tenant under the foregoing indemnity are in addition to, and not in lieu of, the rights of Landlord and the obligations of Tenant under the other indemnities made by Tenant in this Lease.

(i) Waiver and Release. Tenant waives and releases all claims against Landlord, its employees, and agents with respect to all matters for which Landlord has disclaimed liability pursuant to the provisions of this Lease. In addition, Tenant agrees that Landlord, its members, agents, and employees shall not be liable for, and Tenant hereby waives and releases any claims, causes of action, or rights arising from or based on, any loss, injury, death, damage (including consequential damages) or other liability to persons, property, or Tenant's business occasioned by or arising from theft; fire; earthquake or other act of God; public enemy; injunction; riot; strike; insurrection; war; court order; requisition; order of governmental body or authority; fire; explosion; falling objects; steam, water, rain or snow; leak or flow of water (including water from the elevator system), rain or snow from the Premises or into the Premises or from the roof, street, subsurface, or from any other place, or by dampness, or from the breakage, leakage, obstruction, or other defects of the pipes, sprinklers, wires, appliances, plumbing, air conditioning, or lighting fixtures of the Premises; or from construction, repair, or alteration of the Premises or from any acts or omissions of any visitor of the Premises; the acts or omissions of Landlord or its employees, agents, contractors or other persons acting for or on behalf of Landlord, regardless of whether such acts or omissions be negligent, grossly negligent or otherwise (but not including the willful misconduct of Landlord); or from any cause beyond Landlord's control. With respect to the foregoing releases and waivers, Tenant expressly waives the benefits of Civil Code Section 1542, which reads as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor"

and any similar statute or common law that would render a waiver of unknown claims unenforceable.

(b) Scope. Except as provided in the following sentence, the indemnities and waivers made or given by Tenant under this Lease will apply regardless of the active or passive negligence or sole, joint, concurrent, or comparative negligence of any Landlord Parties and regardless of whether liability without fault or strict liability is imposed or sought to be imposed on any of them. The indemnities and waivers made or given by Tenant under this Lease will not apply to the extent of the percentage of liability that a final judgment of a court of competent jurisdiction establishes under the comparative negligence principles of the State of California that a Claim against a Landlord Party was proximately caused by the willful misconduct or direct and active gross negligence of that Landlord Party; provided, however, that in such event the indemnity or waiver will remain valid for all other Landlord Parties. Tenant's duty to defend Landlord Parties is separate and independent of Tenant's duty to indemnify Landlord Parties, and applies regardless of whether issues of negligence, liability, fault, default or other obligation on the part of Tenant have been determined and whether or not Landlord Parties have paid any sums or incurred any detriment arising out of or relating, directly or indirectly, to any Claims. Tenant's compliance with the insurance requirements and other obligations under this Lease does not in any way restrict, limit or modify Tenant's indemnification obligations under this Lease.

(c) Survival. The provisions of this Paragraph 20 shall survive the expiration or sooner termination of this Lease.

21. SECURITY DEPOSIT. Upon the execution of this Lease, Tenant shall deposit [REDACTED] Dollars (\$ [REDACTED]) with Landlord as security for Tenant's payment of rent and performance of its other obligations under this Lease. If Tenant defaults in its payment of rent or performance of its other obligations under this Lease, Landlord may use all or part of the security deposit for (a) the payment of rent or any other amount in default, (b) for the payment of any other amount which Landlord may spend or become obligated to spend by reason of Tenant's default, (c) for the payment to Landlord of any other loss or damage which Landlord may suffer by reason of Tenant's default or (d) to clean and restore or repair the Premises, the Building or the Common Area following their surrender by Tenant hereunder. If Landlord so uses any portion of the security deposit, Tenant shall restore the security deposit to its original amount within five (5) days after written demand from Landlord. Landlord shall not be required to keep the security deposit separate from its general funds, and Tenant shall not be entitled to interest on the security deposit. The security deposit shall not be a limitation on Landlord's damages or other rights under this Lease, or a payment of liquidated damages, or an advance payment of the rent. If Tenant pays the rent and performs all of its other obligations under this Lease, Landlord will return the unused portion of the security deposit to Tenant within sixty (60) days after the end of the Term; however, if Landlord has evidence that the security deposit has been assigned to an assignee of this Lease, Landlord will return the security deposit to the assignee. Landlord may deliver the security deposit to the purchaser of the Premises and be discharged from further liability with respect to it.

22. LIMITATION ON TENANT'S RECOURSE. Tenant's sole recourse against Landlord, and any successor to the interest of Landlord in the Premises, is to the interest of Landlord, and any successor, in the Premises. Tenant shall not have any right to satisfy any judgment which it may have against Landlord, or any successor, from any other assets of Landlord, or any successor. In this paragraph the terms "Landlord" and "successor" include the shareholders, venturers, and partners of Landlord and successor and the officers, directors, and employees of Landlord and successor. The provisions of this paragraph are not intended to limit Tenant's right to seek injunctive relief or specific performance, or Tenant's right to claim the proceeds of insurance (if any) specifically maintained by Landlord for Tenant's benefit.

23. DEFAULT.

(a) Cure by Landlord. If Tenant fails to pay when due amounts payable under this Lease or to perform any of its other obligations under this Lease within the time permitted for its performance, then Landlord, after ten (10) days' written notice to Tenant (or, in case of any emergency, upon notice or without notice as may be reasonable under the circumstances) and without waiving any of its rights under this Lease, may (but shall not be required to) pay the amount or perform the obligation. All amounts so paid by Landlord and all costs and expenses incurred by Landlord in connection with the performance of any obligations (together with interest at the rate described in Paragraph 4(d), above, from the date of Landlord's payment of the amount or incurring of each cost or expense until the date of full repayment by Tenant) shall be payable by Tenant to Landlord on demand. In the proof of any damages that Landlord may claim against Tenant arising out of Tenant's failure to maintain insurance, Landlord shall not be

limited to the amount of the unpaid insurance premium but shall also be entitled to recover as damages for the breach the amount of any uninsured loss (to the extent of any deficiency in the insurance required by the provisions of this Lease), damages, costs and expenses of suit, including attorneys' fees, arising out of damage to, or destruction of, the Premises occurring during any period for which Tenant has failed to provide the insurance.

(b) Events of Default. Any of the following events or conditions shall constitute an event of default hereunder without any notice or demand, except as otherwise expressly specified:

(1) Tenant fails to make any payment of rent, whether an installment of Base Monthly Rent or an item of Additional Rent, as and when required under the terms of this Lease;

(2) Tenant vacates or abandons the Premises;

(3) This Lease or the Premises or any part of the Premises is taken upon execution or by other process of law directed against Tenant, or is taken upon or subjected to any attachments by any creditor of Tenant or claimant against Tenant, and the attachment is not discharged within fifteen (15) days after its levy;

(4) Tenant files a petition in bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency act of any state, or is dissolved, or makes an assignment for the benefit of creditors;

(5) Involuntary proceedings under any bankruptcy laws or insolvency act or for the dissolution of Tenant are instituted against Tenant, or a receiver or trustee is appointed for all or substantially all of Tenant's property, and the proceeding is not dismissed or the receivership or trusteeship is not vacated within sixty (60) days after institution or appointment;

(6) Tenant's assignment in violation of Paragraph 11, above;

(7) Tenant breaches any of the other agreements, terms, covenants, or conditions that this Lease requires Tenant to perform, fulfill, comply with or observe, and the breach continues for a period of ten (10) days after written notice by Landlord to Tenant;

(8) Tenant fails to take possession of the Premises on the Commencement Date; or

(9) Any default occurs under the Guaranty.

Tenant agrees that each and every one of the foregoing events of default are a material part of this Lease, and that Landlord would not have entered into this Lease without each and every one of said events of defaults being a material part of this Lease.

(c) Remedies. If any one or more events of default set forth in Subparagraph (b), above, occurs, then Landlord may, at its sole election, exercise any one or more of the following remedies:

(1) give Tenant written notice of its intention to terminate this Lease on the date of the notice or on any later date specified in the notice, and, on the date specified in the notice, Tenant's right to possession of the Premises shall cease and this Lease shall be terminated, except as to Tenant's liability set forth in this Subparagraph (c)(1) and as to any obligations stated in this Lease to survive the termination of this Lease, as if the date fixed in the notice were the end of the Term of this Lease. If this Lease is terminated pursuant to the provisions of this Subparagraph (c)(1), Tenant shall remain liable to Landlord for damages in an amount equal to the rent and other sums that would have been owing by Tenant under this Lease for the balance of the Term if this Lease had not been terminated, less the net proceeds, if any, of any reletting of the Premises by Landlord subsequent to the termination, after deducting all Landlord's expenses in connection with reletting, including without limitation the expenses set forth in Subparagraph (c)(2), below. Landlord shall be entitled to collect damages from Tenant monthly on the days on which the rent and other amounts would have been payable under this Lease if this Lease had not been terminated, and Landlord shall be entitled to receive damages from Tenant on each day. Alternatively, at the option of Landlord, if this Lease is terminated, Landlord shall be entitled to recover from Tenant:

a. the worth at the time of award of the unpaid rent which had been earned at the time of termination;

b. the worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of rent loss that Tenant proves could reasonably have been avoided;

c. the worth at the time of award of the amount by which the unpaid rent for the balance of the Term of this Lease after the time of award exceeds the amount of rent loss that Tenant proves could reasonably be avoided; and

d. any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result from the failure.

The "worth at the time of award" of the amount referred to in clauses (A) and (B), above, is computed by allowing interest at the highest rate permitted by law. The "worth at the time of award" of the amount referred to in clause (C), above, is computed by discounting the amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award.

(2) Without demand or notice, re-enter and take possession of the Premises or any part of the Premises; repossess the Premises as of the Landlord's former estate; expel the Tenant from the Premises and those claiming through or under Tenant; and remove the effects of all or any, without being deemed guilty of any manner of trespass and without prejudice to any remedies for arrears of rent or preceding breach of covenants or

conditions. If Landlord elects to re-enter as provided in this Subparagraph (c)(2), or if Landlord takes possession of the Premises pursuant to legal proceedings or pursuant to any notice provided by law, Landlord may, from time to time, without terminating this Lease, relet the Premises or any part of the Premises, either alone or in conjunction with other portions of the Project of which the Premises are a part, in Landlord's or Tenant's name but for the account of Tenant, for the term or terms (which may be greater or less than the period which would otherwise have constituted the balance of the Term of this Lease) and on such terms and conditions (which may include concessions of free rent, and the alteration and repair of the Premises) as Landlord, in its uncontrolled discretion, may determine. Landlord may collect and receive the rents for the Premises. Landlord shall not be responsible or liable for any failure to relet the Premises, or any part of the Premises, or for any failure to collect any rent due upon the reletting. No re-entry or taking possession of the Premises by Landlord shall be construed as an election on Landlord's part to terminate this Lease unless a written notice of the intention is given to Tenant. No notice from Landlord under this Lease or under a forcible entry and detainer statute or similar law shall constitute an election by Landlord to terminate this Lease unless the notice specifically says so. Landlord reserves the right following any re-entry or reletting, or both, to exercise its right to terminate this Lease by giving Tenant written notice, and in that event this Lease shall terminate as specified in the notice. If Landlord elects to take possession of the Premises according to this Subparagraph (c)(2) without terminating this Lease, Tenant shall pay Landlord the rent and other sums which would be payable under this Lease if the repossession had not occurred, less the net proceeds, if any, of any reletting of the Premises after deducting all of Landlord's expenses incurred in connection with the reletting, including without limitation all repossession costs, brokerage commissions, legal expenses, attorneys' fees, expenses of employees, alteration, remodeling and repair costs, and expenses of preparation for the reletting. If, in connection with any reletting, the new lease term extends beyond the existing Term, or the Premises covered by the reletting include areas that are not part of the Premises, a fair apportionment of the rent received from the reletting and the expenses incurred in connection with the reletting shall be made in determining the net proceeds received from reletting. In addition, in determining the net proceeds from reletting, any rent concessions shall be apportioned over the Term of the new lease. Tenant shall pay the amounts to Landlord monthly on the days on which the rent and all other amounts owing under this Lease would have been payable if possession had not been retaken, and Landlord shall be entitled to receive the rent and other amounts from Tenant on each day. Landlord has the remedy described in California Civil Code Section 1951.4 (lessor may continue lease in effect after lessee's breach and abandonment and recover rent as it becomes due, if lessee has right to sublet or assign, subject only to reasonable limitations).

(3) Have a receiver appointed to take possession of the Premises and to conduct Tenant's business thereon (and neither the filing of a petition for the appointment of a receiver nor the appointment itself shall constitute an election by Landlord to terminate this Lease).

(4) Exercise any and all other remedies available to Landlord under this Lease, at law, in equity, by statute, under any other contract or agreement between Landlord and Tenant, or otherwise, in such order and in such manner as Landlord deems appropriate in its sole discretion.

24. COMMON AREA.

(a) Definition. The term "Common Area" refers only to the area outside the Premises designated as "Common Area" in Exhibit "A" hereto, which Common Area shall be for the non-exclusive use during the Term of Landlord, Tenant and other tenants of the Project, if any, and their respective employees, customers, and invitees, including parking areas, loading and unloading areas, trash areas, roadways, sidewalks, walkways, driveways and landscaped areas, if any.

(b) Tenant's Right to Use Common Area. During the Term of this Lease, Tenant and its employees, customers and invitees shall have the non-exclusive right to use, in common with others entitled to such use (including, without limitation, Landlord, other tenants of the Project and their respective employees, suppliers, shippers, contractors, customers and invitees), the Common Area as it may be redesignated by Landlord from time-to-time, subject to any rights, powers and privileges reserved by Landlord under this Lease or under the terms of any rules and regulations or restrictions governing the use of the Project or any part thereof.

(c) No Storage In Common Area. Under no circumstances shall the right granted under Subparagraph (b), above, be deemed to include the right to store any refuse, boxes, equipment, or other property of any type or kind, whether temporarily or permanently, in or on the Common Area. Any such storage shall be permitted only by the prior written consent of Landlord or Landlord's designated agent, which consent may be revoked at any time. In the event that any unauthorized storage shall occur, Landlord shall have the right, without notice and without liability to Tenant or any other person, in addition to all other rights and remedies Landlord may have under this Lease, to remove any refuse, boxes, equipment, or other property stored, whether permanently or temporarily, within the Common Area without Landlord's prior written consent, and charge the cost of such removal to Tenant, which cost shall constitute Additional Rent and shall be immediately payable upon demand by Landlord. Tenant shall not have any right to use or occupy, or have any other rights respecting, any buildings or structures (other than the Premises), parking areas, roadways, driveways, walkways, trash areas, landscaped areas, loading and unloading areas, sidewalks, or other improvements or areas located within the Project.

(d) Rules and Regulations. Tenant agrees that it shall abide by, and keep and observe all Rules and Regulations ("Rules and Regulations") which Landlord may make from time to time for the management, safety, care, and cleanliness of the grounds, the parking and unloading of vehicles and the preservation of good order, as well as for the convenience of other occupants or tenants of the Project and their invitees. Landlord or such other person(s) as Landlord may appoint shall have the exclusive control and management of the Common Area and shall have the right, from time to time, to establish, modify, amend and enforce the Rules and Regulations. Tenant agrees to cause all Tenant Parties to abide and conform to all such Rules and Regulations. Landlord shall not be responsible to Tenant for the non-compliance with said rules and regulations by other tenants or subtenants of the Project or anyone else occupying or using the Project.

(e) Changes. Landlord shall have the right, in Landlord's sole discretion, from time to time: (1) to make changes to the Common Area, including, without limitation,

changes in the location, size, shape and number of driveways, entrances, parking spaces, parking areas, loading and unloading areas, ingress, egress, direction of traffic, landscaped areas, walkways and utility raceways; (2) to close temporarily any of the Common Area for maintenance purposes so long as reasonable access to the Premises remains available; (3) to designate land outside the boundaries of the Project to be a part of the Common Area; (4) to add buildings and improvements to the Common Area; (5) to use the Common Area while engaged in making additional improvements, repairs or alterations to the Project, or any portion thereof; (6) to remove unauthorized persons from the Project; (7) to change the name or address of the Premises or the Project; and (8) to do and perform such other acts and make such other changes in, to or with respect to the Common Area and project as Landlord may, in the exercise of sound business judgment, deem to be appropriate.

(f) Common Area Maintenance. During the Term, Landlord shall keep the Common Area in good order, condition and repair. The costs incurred by Landlord to do so (including maintenance, repair and replacement costs of any type or kind) are referred to herein as "CAM Costs". Landlord shall periodically (but not more often than monthly) invoice to Tenant, and Tenant shall reimburse to Landlord within fifteen (15) days following Tenant's receipt of Landlord's invoice, all such CAM Costs through the date of the invoice.

25. VEHICLE PARKING.

(a) Number of Spaces. Tenant shall be entitled to use [REDACTED] percent [REDACTED] of the unreserved parking spaces on those portions of the Common Area designated from time to time by Landlord for Tenant's parking ("**Unreserved Parking Spaces**"). Tenant shall not be entitled to any reserved or exclusive vehicle parking spaces. Said Unreserved Parking Spaces shall be used for parking by vehicles no larger than full-size passenger automobiles or pick-up trucks, herein called "Permitted Size Vehicles". Vehicles other than Permitted Size Vehicles shall be parked and loaded or unloaded as directed by Landlord in the rules and regulations issued by Landlord.

(b) Restrictions on Parking. Tenant shall not permit or allow any vehicles that belong to or are controlled by Tenant or any Tenant Party to be loaded, unloaded, or parked in areas other than those designated by Landlord for such activities.

(c) Removal of Unauthorized Vehicles. If Tenant permits or allows any of the prohibited activities described in this Paragraph 25, then Landlord shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove or tow away the vehicle involved and charge the cost to Tenant, which cost shall be immediately payable upon demand by Landlord.

26. SECURITY. Tenant acknowledges that Landlord shall have no obligation to provide any guard service or other security measures to the Premises or any other part of the Project, and Tenant assumes all responsibility for the protection of Tenant and each Tenant Party, and the property of Tenant and each Tenant Party from acts of third parties. Nothing in this Lease shall prevent Landlord, at Landlord's sole option, from providing security protection for the Project.

27. MISCELLANEOUS.

(a) No Recordation. Neither this Lease nor a Memorandum thereof shall be recorded.

(b) Holding Over. If Tenant remains in possession of the Premises after this Lease expires or sooner terminates, Tenant shall occupy the Premises as a tenant from month-to-month, subject to all conditions, provisions, and obligations of this Lease in effect on the last day of the Term, except that monthly rent shall be increased to an amount which is two hundred percent (200%) of the Base Monthly Rent then in effect immediately prior to the expiration or sooner termination of this Lease. Nothing herein shall grant, or be deemed to grant, Tenant any right whatsoever to retain possession of the Premises or any part thereof beyond the expiration or earlier termination of this Lease.

(c) Estoppel Certificates. Within no more than ten (10) days after written request by Landlord, Tenant shall execute, acknowledge, and deliver to Landlord a certificate stating: (1) that this Lease is unmodified and in full force and effect, or, if this Lease is modified, the way in which it is modified accompanied by a copy of the modification agreement; (2) the date to which rental and other sums payable under this Lease have been paid; (3) that no notice has been received by Tenant of any default which has not been cured, or, if the default has not been cured, what Tenant intends to do in order to effect the cure, and when it will do so; (4) that Tenant has accepted and occupied the Premises; (5) that Tenant has no claim or offset against Landlord, or, if it does, stating the date of the assignment and assignee (if known to Tenant); and (6) other matters as may be reasonably requested by Landlord. Any certificate may be relied upon by any prospective purchaser of the Premises and any prospective mortgagee or beneficiary under any deed of trust or mortgage encumbering the Premises. If Landlord submits a completed certificate to Tenant, and if Tenant fails to object to its contents within ten (10) days after its receipt of the completed certificate, the matters stated in the certificate shall conclusively be deemed to be correct. Furthermore, Tenant irrevocably appoints Landlord as Tenant's attorney-in-fact to execute and deliver on Tenant's behalf any completed certificate to which Tenant does not object within ten (10) days after its receipt.

(d) No Waiver. No waiver of any condition or agreement in this Lease by Landlord shall imply or constitute a further waiver by Landlord of the same or any other condition or agreement. No act or thing done by Landlord or Landlord's agents during the Term of this Lease shall be deemed an acceptance of a surrender of the Premises, and no agreement to accept the surrender shall be valid unless in writing signed by Landlord. The delivery of Tenant's keys to any employee or agent of Landlord shall not constitute a termination of this Lease unless Landlord has entered into an express written agreement to that effect. No payment by Tenant, or receipt from Landlord, of a lesser amount than the rent or other charges stipulated in this Lease shall be deemed to be anything other than a payment on account of the earliest stipulated rent. No endorsement or statement on any check or any letter accompanying any check or payment as rent shall be deemed an accord and satisfaction. Landlord may accept any check for payment without prejudice to Landlord's right to recover the balance of the rent or to pursue any other right or remedy available to Landlord. If this Lease is assigned, or if the Premises or any part of the Premises are sublet or occupied by anyone other than Tenant, Landlord may collect rent from the assignee, subtenant, or occupant and apply the net amount

collected to the rent reserved in this Lease. No collection shall be deemed a waiver of the covenant in this Lease against assignment and subletting, the acceptance of the assignee, subtenant, or occupant as Tenant, or a release of Tenant from the complete performance by Tenant of its covenants and obligations under this Lease. Unless otherwise expressly stated to the contrary in this Lease, Landlord may withhold its consent or approval in Landlord's sole and absolute discretion.

(e) Authority. If Tenant signs this Lease as a corporation, each of the persons executing this Lease on behalf of Tenant warrants to Landlord that Tenant is a duly authorized and existing corporation, that Tenant is qualified to do business in the state in which the Premises are located, that Tenant has full right and authority to enter into this Lease, and that each and every person signing on behalf of Tenant is authorized to do so. Upon Landlord's request, Tenant shall provide evidence satisfactory to Landlord confirming these representations.

(f) Notices. Any notice, request, demand, consent, approval, or other communication required or permitted under this Lease shall be written and shall be deemed to have been given (1) when personally delivered, (2) when served pursuant to the Federal Rules of Civil Procedure, (3) on the second (2nd) business day after it is deposited in any depository regularly maintained by the United States postal service, postage prepaid, certified or registered mail, return receipt requested, or (4) on the date of scheduled delivery when sent by FedEx or other nationally recognized overnight commercial mail service, addressed as follows:

If to Landlord:

[REDACTED]

If to Tenant:

[REDACTED]

Either Landlord or Tenant may change its address or addressee for purposes of this paragraph by giving ten (10) days' prior notice according to this paragraph. Notwithstanding the foregoing, any notice from Landlord to Tenant shall be deemed to have been given if delivered to the Premises, addressed to Tenant, whether or not Tenant has vacated or abandoned the Premises.

(g) Attorneys' Fees. In any dispute arising out of this Lease (or the enforcement of interpretation thereof), the prevailing party shall be entitled to all costs and expenses, including reasonable attorneys' fees and expert fees incurred by the prevailing party at trial and on any appeal.

(h) Waiver of Jury Trial. Landlord and Tenant waive trial by jury in any action, proceeding, or counterclaim brought by either of them against the other on all matters arising out of this Lease or the use and occupancy of the Premises (except claims for personal injury or property damage). If Landlord commences any summary proceeding for nonpayment of rent, Tenant shall not interpose (and waives the right to interpose) any counterclaim in any proceeding.

(i) Binding Effect. This Lease shall inure to the benefit of, and shall be binding upon, Landlord's successors and assigns. This Lease shall inure to the benefit of, and shall be binding upon, Tenant's successors and assigns so long as the succession or assignment is permitted by Paragraph 11, above.

(j) Termination; Merger. Unless specifically stated otherwise in writing by Landlord, the voluntary or other surrender of this Lease by Tenant, the mutual termination or cancellation hereof, or a termination hereof by Landlord for Breach by Tenant, shall automatically terminate any sublease or lesser estate in the Premises; provided, however, Landlord shall, in the event of any such surrender, termination or cancellation, have the option to continue any one or more of any existing subtenancies. Landlord's failure within ten (10) days following any such event to make a written election to the contrary by written notice to the holder of any such lesser interest, shall constitute Landlord's election to have such event constitute the termination of such interest.

(k) Approximations. Unless otherwise provided herein, any statement of square footage set forth in this Lease, or that may have been used in calculating rental and/or CAM Costs, is an approximation which Landlord and Tenant agree is reasonable and the rental is not subject to revision whether or not the actual square footage is more or less.

(l) Brokers. Each party warrants to each other that neither has dealt with any real estate agents, brokers or finders in connection with this Lease. Each party agrees to indemnify, defend, and hold the other harmless from all loss, claim, cost, and expense incurred as a result of the breach of this warranty.

(m) Cumulative Remedies. No remedy or election hereunder made by Landlord shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies available at law, in equity, by statute, under any other contract or agreement between Landlord and Tenant, or which are otherwise available to Landlord.

(n) Covenants and Conditions. All provisions of this Lease to be observed or performed by Tenant are both covenants and conditions.

(o) Landlord's Liability. The term "Landlord" as used herein shall mean the owner or owners at the time in question of the fee title to the Premises. In the event of a transfer of Landlord's title or interest in the Premises (or any parcel of which the Premises are a part) or in this Lease, Landlord shall deliver to the transferee or assignee (in cash or by credit) any unused security deposit held by Landlord at the time of such transfer or assignment. Upon such transfer or assignment and delivery of the security deposit, as aforesaid, the prior Landlord shall be relieved of all liability with respect to the obligations and/or covenants under this Lease.

thereafter to be performed by Landlord. Subject to the foregoing, the obligations and/or covenants in this Lease to be performed by Landlord shall be binding only upon the Landlord as herein above defined.

(p) Reservations. Landlord reserves the right from time to time, to grant, without the consent or joinder of Tenant, such easements, rights of way, utility raceways, and dedications that Landlord deems necessary, and to cause the recordation of parcel maps and restrictions, so long as such easements, rights of way, utility raceways, dedications, maps and restrictions do not unreasonably interfere with the use of the Premises by Tenant. Tenant agrees to sign any documents reasonably requested by Landlord to effectuate any such easement rights, dedication, map or restrictions.

(q) Entire Agreement; Amendment. This Lease constitutes the entire agreement between Landlord and Tenant with respect to the subject matter hereof, and there are no agreements, warranties or representations between the parties except as expressly set forth in this Lease. Tenant acknowledges that neither Landlord nor any agent, employee or representative of Landlord have made any representation or warranty as to any matter except as may be expressly set forth in this Lease. Landlord and Tenant acknowledge that there are no oral agreements between them affecting this Lease, and this Lease supersedes and cancels all previous negotiations, arrangements, brochures, agreements, and understandings, if any, between Landlord and Tenant with respect to the subject matter of this Lease. This instrument shall not be legally binding until it is executed by both Landlord and Tenant. No change, modification, amendment or addition to this Lease shall be binding unless in writing and signed by both Landlord and Tenant.

EXHIBIT A

Building, Premises and Common Area

T B D

EXHIBIT B

Base Monthly Rent

Redacted

EXHIBIT C

Guaranty of Lease

GUARANTY OF LEASE

WHEREAS, COLLEGE TERRACE CENTRE LLC, a California limited liability company ("Landlord"), and J & A FAMILY MARKETS, INC., a California corporation ("Tenant"), are about to execute or have executed a document entitled "Commercial Lease" dated [REDACTED] (the "Lease") concerning the premises to be located at the northwest corner of 2108 El Camino Real, City of Palo Alto, California, upon which Tenant will operate a grocery store containing eight thousand (8,000) square feet of floor space, along with an outdoor market of approximately two thousand (2,000) immediately adjacent thereto and approximately six hundred (600) square feet of dry storage in the basement garage (collectively, the "Premises"), wherein Landlord will lease the Premises to Tenant, and

WHEREAS, [REDACTED] an individual ("Guarantor") has a financial interest in Tenant, and

WHEREAS, Landlord would not execute the Lease if Guarantor did not execute and deliver to Landlord this Guaranty of Lease.

NOW THEREFORE, in consideration of the execution of the Lease by Landlord and as a material inducement to Landlord to execute the Lease, Guarantor hereby unconditionally and irrevocably guarantees the prompt payment by Tenant of "Monthly Base Rent" (as defined in the Lease), Additional Rent (as defined in the Lease), any late charges (as described in Section 4(d) of the Lease) and any interest on past due obligations (as described in Section 4(e) of the Lease) (collectively, the "Tenant's Obligations").

It is specifically agreed by Landlord and Guarantor that: (i) the terms of the Lease may be modified by written agreement between Landlord and Tenant, and (ii) the Lease may be assigned by Landlord or any assignee of Landlord without consent or notice to Guarantor. Landlord shall provide Guarantor with written notice of any amendment to the Lease.

This Guaranty shall not be released, modified or affected by the failure or delay on the part of Landlord to enforce any of the rights or remedies of the Landlord under the Lease.

No notice of default by Tenant under the Lease need be given by Landlord to Guarantor, it being specifically agreed that the guarantee of the undersigned is a continuing guarantee under which Landlord may proceed immediately against Tenant and/or against Guarantor following any breach of default by Tenant in the payment of Tenant's Obligations or for the enforcement of any rights which Landlord may have as against Tenant under the terms of the Lease or at law or in equity, resulting from the default by Tenant in the payment of Tenant's Obligations.

Landlord shall have the right to proceed against Guarantor following any breach or default by Tenant in the payment of Tenant's Obligations under the Lease without first proceeding against Tenant and without previous notice to or demand upon either Tenant or Guarantor.

Guarantor hereby waives (a) notice of acceptance of this guaranty, (b) demand of payment, presentation and protest, (c) all right to assert or plead any statute of limitations relating to this Guaranty or the Lease, (d) any right to require the Landlord to proceed against the Tenant or any other Guarantor or any other person or entity liable to Landlord, (e) any right to require Landlord to apply to any default any security deposit or other security it may hold under the lease, (f) any right to require Landlord to proceed under any other remedy Landlord may have before proceeding against Guarantor, (g) any right of subrogation that Guarantor may have against Tenant.

Guarantor does hereby subordinate all existing or future indebtedness of Tenant to Guarantor to the obligations owed to Landlord under the Lease and this Guaranty.

The term "Landlord" refers to and means the Landlord named in the Lease and also Landlord's successors and assigns. The term "Tenant" refers to and means the Tenant named in the Lease and also Tenant's successors and assigns.

No provision of this Guaranty or right of the Landlord can be waived, nor can the Guarantor be released from their obligations except in writing signed by the Landlord.

Any litigation concerning this Guaranty shall be initiated in a state court of competent jurisdiction in the county in which the leased premises are located and the Guarantor consents to the jurisdiction of such court. This Guaranty shall be governed by the laws of the State of California and for the purposes of any rules regarding conflicts of law the parties shall be treated as if they were all residents or domiciles of California.

In the event any action be brought by the Landlord against Guarantor hereunder to enforce the obligation of Guarantor hereunder, the unsuccessful party in such action shall pay to the prevailing party therein a reasonable attorney's fee. The attorney's fee award shall not be computed in accordance with any court fee schedule, but shall be such as to full reimburse all attorney's fees reasonably incurred.

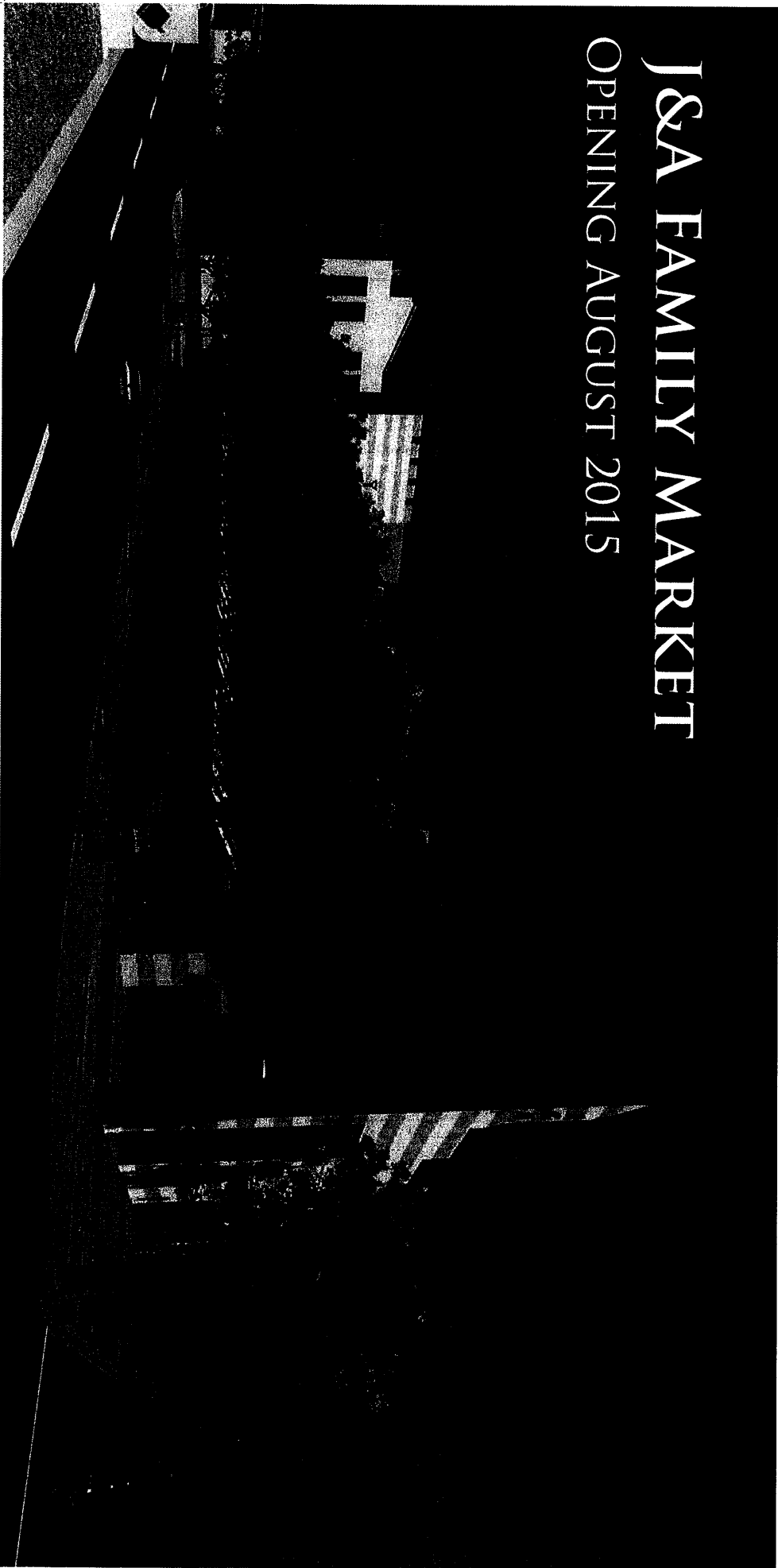
Each individual executing this Guaranty on said entity's behalf represents and warrants that he or she is duly authorize to execute this Guaranty on behalf of such entity.

Executed on [REDACTED] 2013

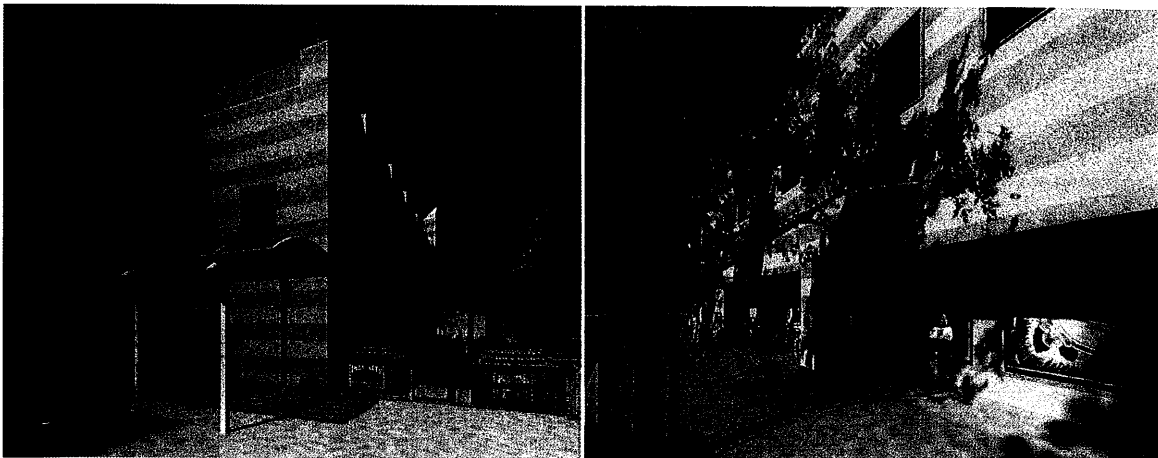
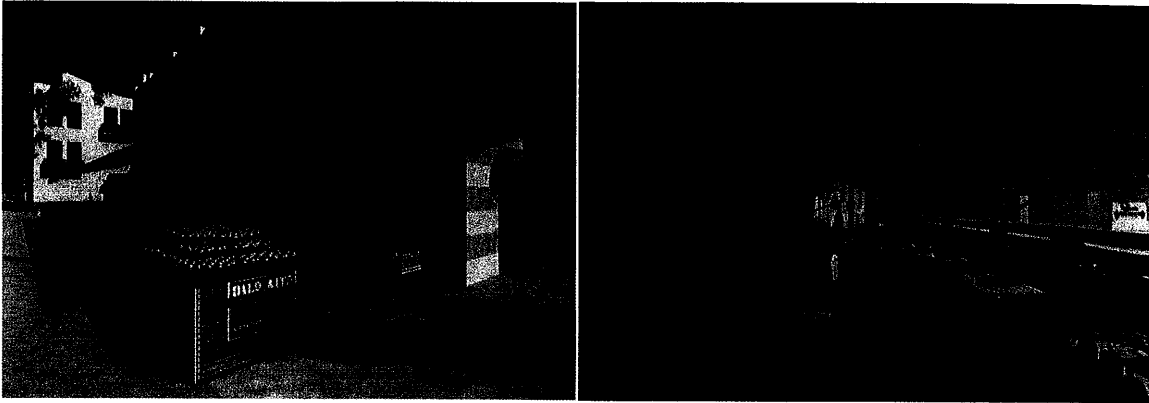
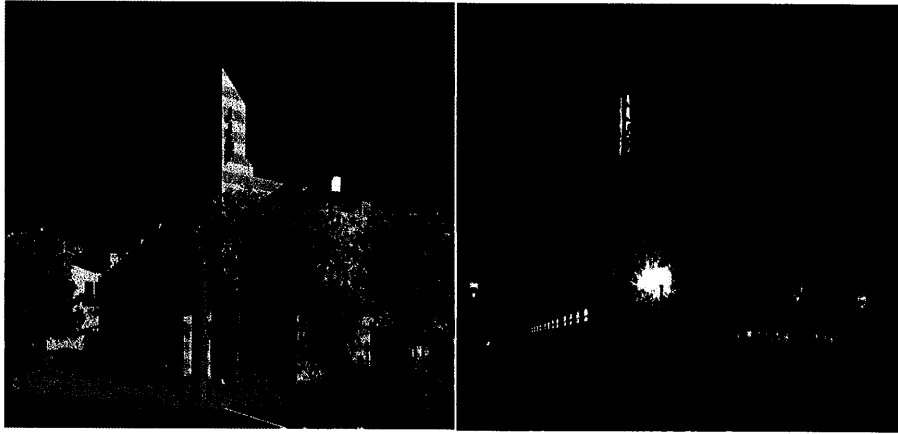
By: [REDACTED] _____
[REDACTED] an individual

J&A FAMILY MARKET

OPENING AUGUST 2015



J & A FAMILY MARKET



Proud To Be A Local Family Owned Provider Of Only The Best!

J & A FAMILY MARKET BUSINESS PLAN

EXECUTIVE SUMMARY

J&A Family Market (J&A) will continue a 70 year history of serving the College Terrace neighborhood as an independent operator by replacing a historical operation that has vacated the site due to the age of the proprietors, the lack of visibility from El Camino Real (the major north/south interstate highway corridor between San Francisco and San Jose) and the physical obsolescence of an eighty year old structure. By City Ordinance and community preference, Palo Alto California prohibits the construction of new grocery stores larger than 20,000 square feet. As with most retail operations, locally owned and operated businesses are preferred and supported. J&A will open in a new structure facing El Camino Real with the benefit of exposure to approximately 60,000 daily vehicle trips, an all new building and premises, a history of neighborhood support and a growing client base as Stanford University continues to add residential units to the immediate area. With the prospects of growing demand the opportunity of success for this full service grocery in a community with exceptionally high barriers to entry is very strong. The rent structure mirrors the structure offered to JJ&F, and remains a confidential term of the lease. However, it should be noted that the rent structure provides offsets during the initial occupancy phase and increases over time as the store's operations and sales stabilize. The ownership of the project is committed to the successful operation of a grocery store on site. All involved parties benefit by having a thriving and successful grocery in operation from both a compliance and economic point of view.

MISSION STATEMENT

J&A Family Market is committed to providing our customers the best food and beverage values and the highest quality products, while minimizing our carbon footprint. By providing a full array of products to serve the neighborhood and community, J&A Market is committed to supplying merchandise that is locally grown and sustainable whenever possible and Tobacco Products will not be available in the store. We will provide information to our customers that allows them to make informed buying decisions, and will do so with a dedication to the highest quality of customer satisfaction delivered with a sense of warmth, friendliness, fun, individual pride and company spirit.

MANAGEMENT TEAM

The Management Team and its advisors have more than 100 years of grocery and retail experience between them. Backgrounds include but are not limited to the CFO of a regional grocery chain and individuals with extensive direct sales and management of retail stores in the Palo Alto market. This experience will be augmented by retaining professional organizations such as UNY and Unified Grocers to be coupled with a twenty year history of observing the operations of the prior grocery store's business. These resources provide an excellent base from which to launch this new operation in a growing and proven market. The grocery executive that is a member of the team will have a key role in managing and supervising the day-to-day operations of the store. We are assuming 13-17 employees NOT including advisors, family, and ownership.

The success of the JJ&F operation was built on decades of service to a neighborhood that grew up around the store. As time passed, it was the wish of the operator to relocate to El Camino Real so as to market the store to a larger client base while maintaining the neighborhood feel of the operations. Accomplishing the relocation of the store is step one. Step two will be to expand on a sixty plus year history of providing excellent service and a full

spectrum of product. Historically, the main business has been the meat department and deli. Quality product and customer service are the most important thing. This is a whole new operation in a much better location which will have customers on site with approximately 300 office employees and 8 residential units.

STRATEGIC AND MARKET ANALYSIS

J&A Family Market has been developed to provide a full service grocery operation within walking distance to the College Terrace neighborhood, Stanford University housing for professors, grad students and coaching staff, those residing in Escondido Village, and the work force in the adjacent Stanford Research Park. These customer groups have a history of "walk-ability" and rarely use their vehicles to shop at the store, preferring to either bike or walk to the store to do their shopping. There is a substantial customer base adjacent to or within walking distance to the store. The College Terrace neighborhood plus the work force within the Stanford Research Park, the existing and to be built Stanford University housing and the employees and clients populating the office and retail portions of the development on a daily basis provide an excellent client base to build upon. There are approximately 10,000 residents and employees within walking distance to the store.

The viability of the new store and its prospects for success were clearly identified during the entitlement process for the development of the project which houses the grocery. Staff for the City of Palo Alto acknowledged in open forum that they had never seen such strong community support for the construction of a neighborhood grocery. They also acknowledged that the number of signatures submitted in support of the grocery surpassed any previous submittal.

MARKETING SUMMARY

Historical sales indicate a strong client base within the neighborhood. However, to expand the business we have identified prospective clients outside those predisposed to the walk-ability of the grocery and there are new opportunities for business to business sales as well. Marketing professionals will be retained to promote the new store through a variety of media, community outreach and through neighborhood and professional associations.

COMPETITION

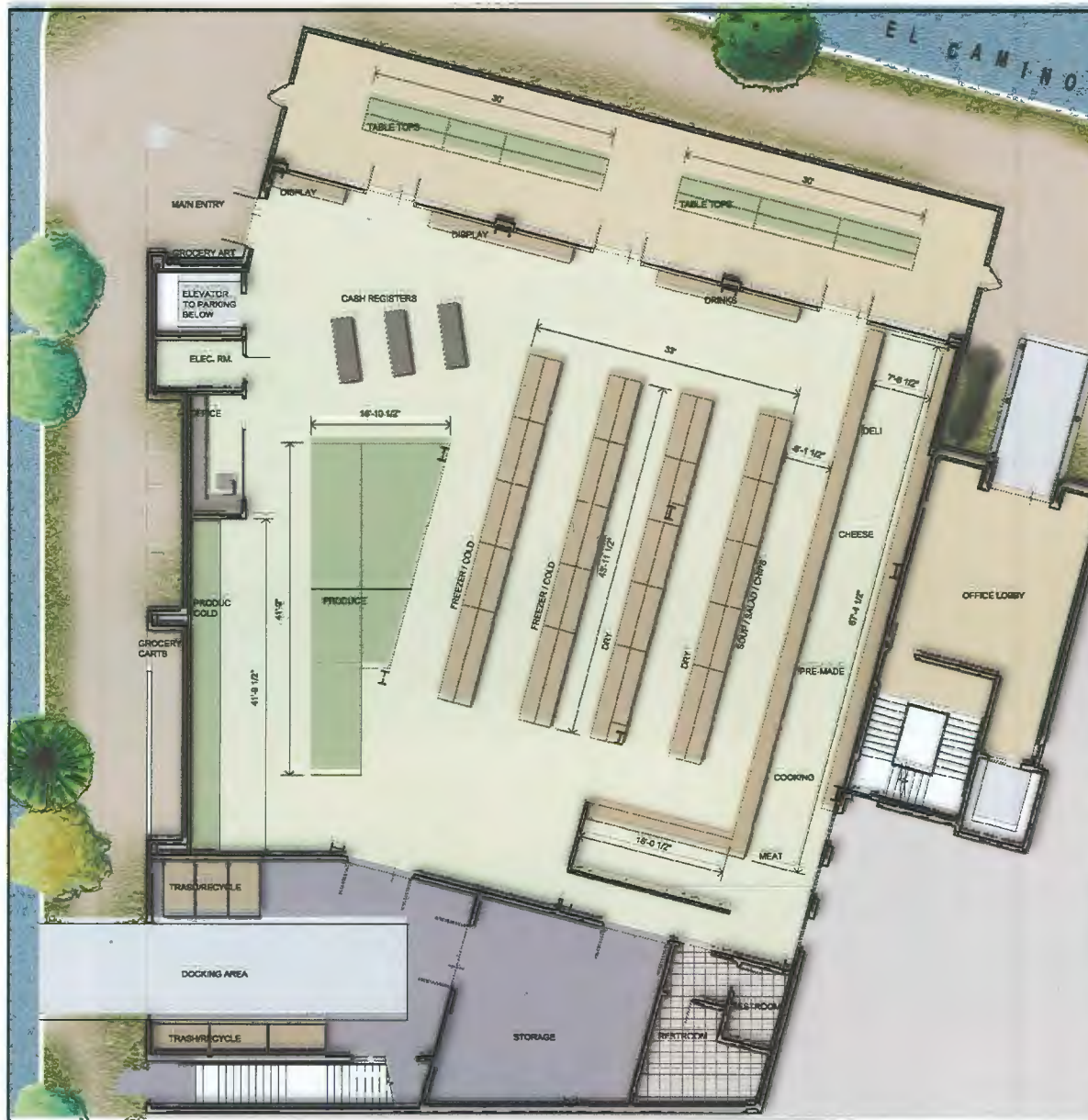
Palo Alto is made up of distinct neighborhoods and geographically separate areas. For example, CalTrain has tracks running from San Francisco to San Jose that dissect the community, thereby creating distinct shopping areas to the west and east of that divide. In a similar manner El Camino Real is a state highway that also runs north to south and presents the same impression of separation. With this separation in place, it is noted that there are no competing grocery stores west of El Camino Real servicing the client base referenced above. Neither are there competing grocery stores within 2 miles to the north or 4 miles to the south. However, Mollie Stones operates a very successful store east of El Camino Real and is recognized as a bonafide competitor. It is also noteworthy that Big Box retailers do not exist within the city limits of Palo Alto. Therefore, immediate/proximate competition from retailers such as Costco does not exist. However, J&A Market does not plan to compete with outlets such as Costco, but rather it will focus on providing a local and convenient shopping experience with a full array of products requested by its client base. It is also worth noting that as a local enterprise with an attentive staff, J&A will be aware of the needs of its clients through surveys and questionnaires, personal interactions and requests for feedback and evaluation. Based on the results of this feedback J&A will have the flexibility to select products in keeping with client needs and demands.

J A Family Market
Staffing Schedule

MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY	SUNDAY
6:00AM-8:00PM	6:00AM-8:00PM	6:00AM-8:00PM	6:00AM-8:00PM	6:00AM-8:00PM	7:00AM-7:00PM	7:00AM-7:00PM
BUTCHER (1) 6:00AM-2:30PM	BUTCHER (1) 6:00AM-2:30PM	BUTCHER (1) 6:00AM-2:30PM	BUTCHER (1) 6:00AM-2:30PM	BUTCHER (1) 6:00AM-2:30PM	BUTCHER (1) 7:00AM-3:30PM	BUTCHER (1) 7:00AM-3:30PM
CASHIER (2) 6:00AM-2:30PM	CASHIER (2) 6:00AM-2:30PM	CASHIER (2) 6:00AM-2:30PM	CASHIER (2) 6:00AM-2:30PM	CASHIER (2) 6:00AM-2:30PM	CASHIER (2) 7:00AM-3:30PM	CASHIER (2) 7:00AM-3:30PM
STOCKER (1) 6:00AM-2:30PM	STOCKER (1) 6:00AM-2:30PM	STOCKER (1) 6:00AM-2:30PM	STOCKER (1) 6:00AM-2:30PM	STOCKER (1) 6:00AM-2:30PM	STOCKER (1) 7:00AM-3:30PM	STOCKER (1) 7:00AM-3:30PM
FOOD PREP (3) 6:00AM-2:30PM	FOOD PREP (3) 6:00AM-2:30PM	FOOD PREP (3) 6:00AM-2:30PM	FOOD PREP (3) 6:00AM-2:30PM	FOOD PREP (3) 6:00AM-2:30PM	FOOD PREP (2) 7:00AM-3:30PM	FOOD PREP (2) 7:00AM-3:30PM
MANAGER (1) 6:00AM-2:30PM	MANAGER (1) 6:00AM-2:30PM	MANAGER (1) 6:00AM-2:30PM	MANAGER (1) 6:00AM-2:30PM	MANAGER (1) 6:00AM-2:30PM	MANAGER (1) 7:00AM-3:30PM	MANAGER (1) 7:00AM-3:30PM
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CASHIER (1) 11:00AM-7:30PM	CASHIER (1) 11:00AM-7:30PM	CASHIER (1) 11:00AM-7:30PM	CASHIER (1) 11:00AM-7:30PM	CASHIER (1) 11:00AM-7:30PM	CASHIER (1) 3:00PM-7:30PM	CASHIER (1) 3:00PM-7:30PM
CASHIER (1) 2:00PM-8:30PM	CASHIER (1) 2:00PM-8:30PM	CASHIER (1) 2:00PM-8:30PM	CASHIER (1) 2:00PM-8:30PM	CASHIER (1) 2:00PM-8:30PM	FOOD PREP (1) 3:00PM-7:30PM	FOOD PREP (1) 3:00PM-7:30PM
FOOD PREP (2) 11:00AM-7:30PM	FOOD PREP (2) 11:00AM-7:30PM	FOOD PREP (2) 11:00AM-7:30PM	FOOD PREP (2) 11:00AM-7:30PM	FOOD PREP (2) 11:00AM-7:30PM	STOCKER (1) 7:30PM	STOCKER (1) 7:30PM
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Pg. 3





CARRASCO & ASSOCIATES
ARCHITECTS • PLANNERS
A PROFESSIONAL CORPORATION

1885 EL CAMINO REAL
PALO ALTO, CA. 94306
650-322-2288

**COLLEGE
TERRACE CENTRE**
2100 EL CAMINO REAL
PALO ALTO, CA

GROCERY STORE LAYOUT

DATE: 06-26-2014

Attachment E

1. How will rent be structured to give the market the best chance of success, especially during first few years? Response: The rent structure has been agreed to between the operator, the ownership and the lender to provide assurances of success and profitability. The lease and rent structure is identical to that provided to and accepted by John Garcia which the City Attorney has reviewed and approved.
2. What assurances can you give the City that a new market will open if the current market goes out of business? Response: Pursuant to PC Ordinance 5069, "The grocery store space shall remain in continuous operation as a grocery store." Ownership is compelled and committed to ensuring compliance with the requirements of the Ordinance and is doing all it can to ensure the success of this operator. Should the operator close, Ownership will take all necessary steps in the marketplace to procure a replacement operator as required by the Ordinance.
3. What position will former CFO have in new company? What will the structure of the organization actually be? How many total people will you employ? Response: The former CFO will act as the Operations Manager reporting directly to the store owner. In addition to being the CFO of a regional grocery operator he has personally owned and operated grocery and pharmacy stores. The Manager, who oversees all departments and reports to the Operations Manager, has grown up in the grocery business, his family has owned and operated a grocery store since before he was born and he followed into the family business. Agreements are in place with these individuals as to duties/responsibilities, compensation, participation and organizational structure. Obviously no one has been "hired" yet because the store will not open for another 16-18 months but when the hiring process starts we have a pool of cashiers, butchers, produce specialists and assistant managers that we will hire from. An outline of duties and a preliminary schedule is attached for your review.
4. You mention a 20 year history of observation of the former market. This is a significant opportunity to provide some detail about what you have learned from those years of observations? Response: The success of the JJ&F operation was built on decades of service to a neighborhood that grew up around the store. As time passed, it was the wish of the operator to relocate to El Camino Real so as to market the store to a larger client base while maintaining the neighborhood feel of the operations. Accomplishing the relocation of the store is step one. Step two will be to expand on a sixty plus year history of providing excellent service and a full spectrum of products. Historical sales data will be used as a basis for stocking the new store with products that have proven demand. The Garcia's made it very clear that the neighborhood does not shop at the store for their large grocery purchases. Historically the main business was the meat department and the deli department. However, buying habits have changed and are fluid. Beef is no longer a primary food source, with poultry and fish now making up a much larger portion of the household diet. By maintaining close communications with the core neighborhood client base, the 300 +/- on site employees and the larger community, products will be adjusted from time-to-time to meet current demands and needs of our clients. With a propensity for prospective customers to buy locally and a commitment to quality product and customer service, we are confident that we can build on a 60 plus year history of success in a newly designed and better located store.
5. I think it would be helpful if you are able to be more specific about the management team and their experience. I am not suggesting the names of individuals be provided, but listing the specific positions each individual would fill within your organization and detailing the experience or background of each one of those key individuals within the management or advisory team is important. Response: Please see our response to question #3 above and the schedule and assigned responsibilities outlined therein.
6. How many total people within walking distance? I am sure you have those numbers, and it is generally public knowledge and won't give anything away. Response: J&A Family Market has been developed to provide a full service grocery operation within walking distance of the College Terrace neighborhood, the adjacent housing for professors, grad students and coaching staff, those residing in Escondido Village at Stanford University, and the work force in the adjacent Stanford Research Park.

Please reference the attached 1-3-5 Mile Demographic data. These customer groups have a history of "walk-ability" and rarely use their vehicles to shop at the store, preferring to either bike or walk to do their shopping. There are approximately 20,986 residents in a 1 mile radius, 140,425 in a 3 mile radius, 275,708 in a 5 mile radius. Further, 2014 – 2019 estimated growth trends are positive and reflect a strong and growing sales base. Additionally, there are approximately 20,000 employees in the Stanford Research Park, many of which are within walking distance of the store and have historically provided a strong daytime client base – http://lbre.stanford.edu/realestate/sites/all/lbre-shared/files/docs_public/Stanford%20Research%20Park%20September%202012.pdf.

7. This section really needs to be beefed up beyond two sentences. Who will you outreach to? And how? You can keep it broad by giving generally categories of outreach. For example, "senior housing communities" rather than Lytton Gardens. Also how will you outreach to net customers? Response: Marketing professionals will be retained to promote the new store and to accomplish outreach through community associations. Additionally, direct outreach to neighborhood organizations such as the College Terrace Residents Association (CTRA) will be pursued. In reviewing the concerns of the old JJ&F store, it was clear that location setback from El Camino Real was the primary deficiency. The new project design has been built around locating the grocery store to the predominant location on the block. With nearly 50,000 daily vehicle trips on El Camino Real, a European style store with colorful awnings and food displays, outdoor seating and spire signage, the physical asset will be a primary market/outreach tool. In addition, Marketing Professionals will be retained to advertise the grand opening to the community and press, and to market the store (through local publications, store and neighborhood flyers, electronic media, local community and civic organizations, Stanford University, and others) in its on-going operations.

8. I think you need to acknowledge Molly Stones in this statement. While they are not on El Camino Real, they are close by. Response: While we recognize and respect Mollie Stone's as a competitor, our outreach to the community to date indicates that El Camino Real acts as a physical barrier and impediment to shoppers. Therefore, we have focused on our primary client base, serving residents, businesses and employees adjacent to our location, such as employees from the Stanford Research Park and the university, and traffic from El Camino Real.

9. I like the layout, but this isn't a "professional" drawing. I would suggest having an architect or designer lay out the floor plan and include it as an attachment (you can insert the image here). You are going to need a designer to complete a floor plan during the TI stage anyway. Also, please say why you have selected this floor plan - has it worked well in other locations? Where? Response: The store layout remains a work in progress. For example, the location of the project Grease Trap was finalized just prior to Plan Check submittal and subsequent to our discussions with Staff regarding this preliminary layout. Another factor still effecting the final lay out is the selection of adjacent retail tenants. To be specific, since this initial submittal we have entered into lease negotiations with a higher end restaurant that will occupy nearly one half of the remaining retail space. We have also had discussions with a second retail user that will effect whether or not we have a coffee subtenant/kiosk in the store. The result of these efforts is that we no longer anticipate a "traditional cooking area" in the store, but rather a "food prep" area. The impact of this change is the potential deletion of fire suppression equipment, major venting, gas line and drain locations, etc. Furthermore, these changes affect all display cabinet sizing (dry goods, cold and freezer), lighting locations, aisle widths and sight lines within the store. While the basic layout of the store, such as point of sale systems (POS), has been vetted (i.e., the flow of the store will take the customer to the most purchased items: produce, dairy and deli) by visiting other similarly sized stores on the Peninsula, in the South Bay and in San Francisco. To that end we are interviewing firms that specialize in grocery store layouts such as East Bay Restaurant Supply, Berliner, Duray and Sudie and have also discussed preliminary plans with Carrasco & Associates, but we intend to defer finalizing plans until we have completed the garage and are starting the building structure or within nine (9) months of

our proposed store opening. At that time we will be able to better quantify display areas and needs, and provide plans sufficient to obtain our permit for tenant improvements.

10. Sounds great - but where is this on the site plan? Please note. I would also elaborate on this as it is a cool concept that would attract people. Response: The Open Air Market will act as both a primary marketing tool with bright/colorful eye catching displays visible from El Camino Real, and it will also provide an added seating area adjacent to the fence enclosure for this area. The produce bins and merchandise will be located up against the window line so people can't just grab things as they are walking along El Camino Real. The seats and tables will be located along the 4ft high fence that goes around the open air market. We plan on offering free wi-fi and flat screens for viewing. Customers will only be able to access and exit this area by going through the store.

11. Once again, need examples. You don't need to be specific, but we do need some broad categories of outreach noted. And a timetable of those outreach efforts leading up to the grand opening. Will you be having a ribbon cutting ceremony? Response: As construction progresses, we will have notification signs erected on the project announcing future tenancies. As we progress toward occupancy we will reach out to local publications and periodicals to generate press releases as we did with the announcements of our construction loan. This will be particularly impactful when we announce the restaurant tenant as the operator is a local, very well known and respected person that will generate considerable buzz. As construction nears completion, ribbon cutting ceremonies, Chamber of Commerce announcements and advertisements in local publications will be released leading up to and announcing the Grand Opening. These efforts and a calendar of events will be coordinated with all of the retail tenants to benefit their individual businesses. We are being very careful to emphasize the synergy we anticipate between their products and to maximize cross selling/mutual support as much as possible. We will not create a situation where a business suffers because it is being cannibalized by an adjacent use.

12. In our meeting you explained that the reason you decided to take on the financial risk of being the grocery tenant yourself is that you wanted to ensure that the grocery store would not fail. You did not want to let the community down, as was the case with Miki's. This was a pretty compelling statement but you have not included that here. You should consider some discussion in your document about the "why?". What is your reason and motivation for the difficulties that other developers bring this on beyond the fact that you believe it will be a financially successful endeavor? Response: Ownership and the development team remain committed to having a successful grocery store as part of the project for another 60 years. When College Terrace Centre was originally envisioned, it went through a series of designs that focused on retaining and improving the grocery store. The grocer "wish list" was solicited from JJ&F and consisted in part of store size, location, access, visibility and numerous other factors that were all considered in the final plan and agreed to by the operator. The family has a sixty year history of supporting that use, as a customer, a public proponent and a generous landlord that provided economic benefits to the tenancy. As part of the planning process, and substantial expenditures in time, effort and money, a grocery location was agreed to and the project moved forward with that design as the keystone to the development. The ownership team remains committed to the successful operation of a grocery in the project. Having observed the difficulties experienced by other noted owners/developers in the Palo Alto market to keep their stores open and operating, the development team elected to open and operate the store themselves. This commitment to operations and service is unwavering.

Demographic Trend Report

1 Mile Radius

College Terrace Center

200 S. GARDEN ROAD, PUEBLO, CO 81008

Description	2010	2014	2019
Population	20,332	20,986	22,280
Age 0 - 4	974 4.79%	1,565 7.46%	1,752 7.86%
Age 5 - 9	878 4.32%	1,119 5.33%	1,505 6.75%
Age 10 - 14	837 4.12%	917 4.37%	1,208 5.42%
Age 15 - 19	2,027 9.97%	1,270 6.05%	1,134 5.09%
Age 20 - 24	3,504 17.23%	2,225 10.60%	1,482 6.65%
Age 25 - 29	3,049 15.00%	2,870 13.68%	2,095 9.40%
Age 30 - 34	1,392 6.85%	2,331 11.11%	2,389 10.72%
Age 35 - 39	970 4.77%	1,483 7.07%	2,104 9.44%
Age 40 - 44	970 4.77%	1,081 5.15%	1,589 7.13%
Age 45 - 49	1,082 5.32%	1,027 4.89%	1,233 5.53%
Age 50 - 54	1,027 5.05%	1,031 4.91%	1,094 4.91%
Age 55 - 59	936 4.60%	986 4.70%	1,043 4.68%
Age 60 - 64	783 3.85%	876 4.17%	965 4.33%
Age 65 - 69	614 3.02%	716 3.41%	837 3.76%
Age 70 - 74	427 2.10%	530 2.53%	670 3.01%
Age 75 - 79	329 1.62%	378 1.80%	486 2.18%
Age 80 - 84	246 1.21%	262 1.25%	323 1.45%
Age 85+	287 1.41%	319 1.52%	372 1.67%
Age 15+	17,643 86.77%	17,385 82.84%	17,816 79.96%
Age 20+	15,616 76.81%	16,115 76.79%	16,682 74.87%
Age 65+	1,903 9.36%	2,205 10.51%	2,688 12.06%
Median Age	28	31	34
Average Age	34	35	36
Population By Race	20,332	20,986	22,280
White	13,265 65.24%	13,569 64.66%	14,415 64.70%
Black	668 3.29%	692 3.30%	729 3.27%
Am. Indian & Alaskan	100 0.49%	106 0.51%	108 0.48%
Asian	5,212 25.63%	5,535 26.37%	5,878 26.38%
Hawaiian & Pacific Islander	42 0.21%	45 0.21%	46 0.21%
Other	997 4.90%	1,039 4.95%	1,104 4.96%

Demographic Trend Report

1 Mile Radius

College Terrace Centre

1000 College Terrace, College Park, GA 30006

Description	2010	2014	2019
Population by Race (Hispanic)	1,583	1,664	1,767
White	1,358 85.79%	1,432 86.06%	1,525 86.30%
Black	46 2.91%	48 2.88%	49 2.77%
Am. Indian & Alaskan	48 3.03%	49 2.94%	50 2.83%
Asian	48 3.03%	48 2.88%	50 2.83%
Hawaiian & Pacific Islander	3 0.19%	5 0.30%	3 0.17%
Other	79 4.99%	82 4.93%	90 5.09%
Household by Household Income	7,988	8,231	8,739
<\$25,000	1,776 22.23%	1,642 19.95%	1,700 19.45%
\$25,000 - \$50,000	1,176 14.72%	1,335 16.22%	1,454 16.64%
\$50,000 - \$75,000	948 11.87%	962 11.69%	1,015 11.61%
\$75,000 - \$100,000	787 9.85%	737 8.95%	757 8.66%
\$100,000 - \$125,000	367 4.59%	474 5.76%	535 6.12%
\$125,000 - \$150,000	596 7.46%	653 7.93%	706 8.08%
\$150,000 - \$200,000	734 9.19%	677 8.23%	695 7.95%
\$200,000+	1,604 20.08%	1,751 21.27%	1,877 21.48%
Average Household Income	\$117,795	\$120,961	\$121,486
Median Household Income	\$77,986	\$80,987	\$81,621

Demographic Summary Report

College Terrace Centre

2000 - 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019

Radius	1 Mile	3 Mile	5 Mile
Population			
2019 Projection	22,280	150,003	294,182
2014 Estimate	20,986	140,425	275,788
2010 Census	20,332	132,530	261,382
Growth 2014 - 2019	6.17%	6.82%	6.67%
Growth 2010 - 2014	3.22%	5.96%	5.51%
2014 Population by Hispanic Origin	1,664	21,984	65,999
2014 Population By Race	20,986	140,425	275,788
White	13,569 64.66%	95,259 67.84%	195,774 70.99%
Black	692 3.30%	5,876 4.18%	11,437 4.15%
Am. Indian & Alaskan	106 0.51%	708 0.50%	2,118 0.77%
Asian	5,535 26.37%	31,108 22.15%	51,638 18.72%
Hawaiian & Pacific Island	45 0.21%	1,824 1.30%	4,059 1.47%
Other	1,039 4.95%	5,649 4.02%	10,763 3.90%
Households			
2019 Projection	8,740	57,001	108,838
2014 Estimate	8,231	53,338	101,990
2010 Census	7,988	50,437	96,848
Growth 2014 - 2019	6.18%	6.87%	6.71%
Growth 2010 - 2014	3.23%	5.76%	5.51%
Owner Occupied	3,021 36.70%	26,970 50.56%	53,473 52.43%
Renter Occupied	5,210 63.30%	26,368 49.44%	48,517 47.57%
2014 Households by HH Income	8,231	53,338	101,990
Income: <\$25,000	1,642 19.95%	6,975 13.08%	13,766 13.50%
Income: \$25,000 - \$50,000	1,335 16.22%	7,735 14.50%	15,646 15.34%
Income: \$50,000 - \$75,000	962 11.69%	5,942 11.14%	11,765 11.54%
Income: \$75,000 - \$100,000	737 8.95%	4,798 9.00%	9,703 9.51%
Income: \$100,000 - \$125,000	474 5.76%	4,951 9.28%	9,572 9.39%
Income: \$125,000 - \$150,000	653 7.93%	3,568 6.69%	7,106 6.97%
Income: \$150,000 - \$200,000	677 8.23%	5,110 9.58%	9,582 9.40%
Income: \$200,000+	1,751 21.27%	14,259 26.73%	24,850 24.37%
2014 Avg Household Income	\$120,961	\$141,221	\$135,210
2014 Med Household Income	\$80,987	\$106,155	\$100,300

Demographic Market Comparison Report

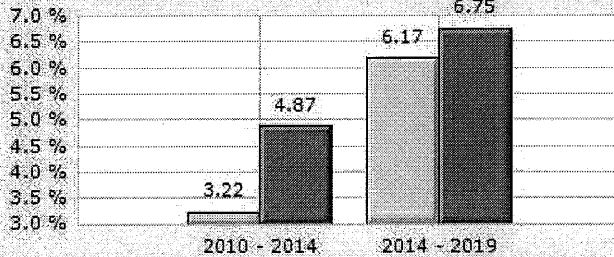
1 mile radius

Collegio Terrace Centre
20001 Camino Real, Palo Alto, CA 94303

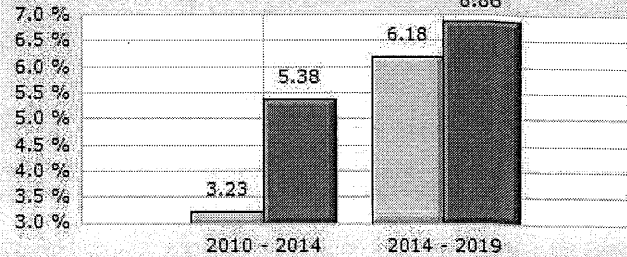
County: **Santa Clara**

1 Mile
County

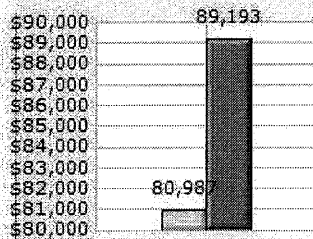
2010-2014 Population Growth



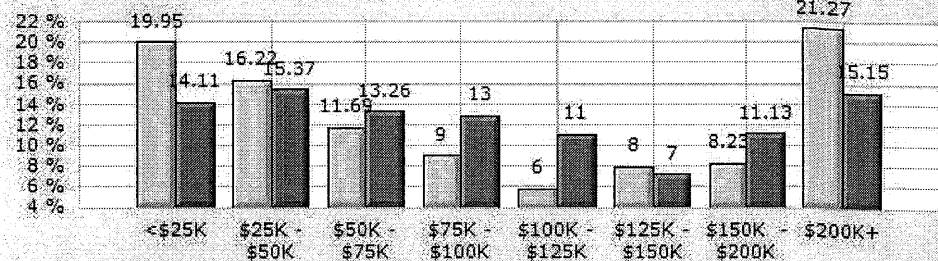
Household Growth



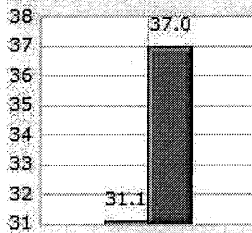
2014 Median Home Price



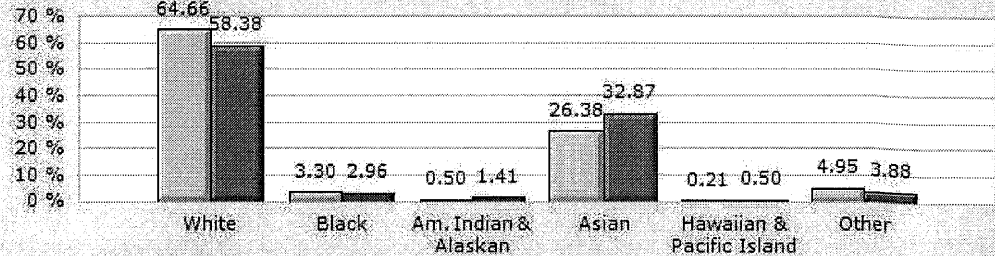
2014 Households by Household Income



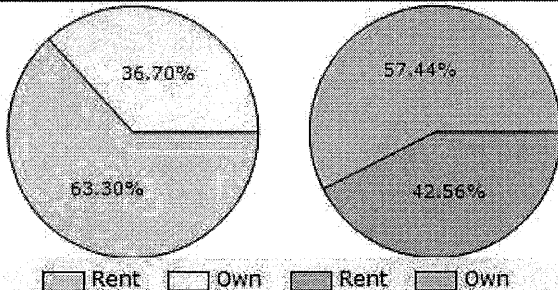
2014 Median Age



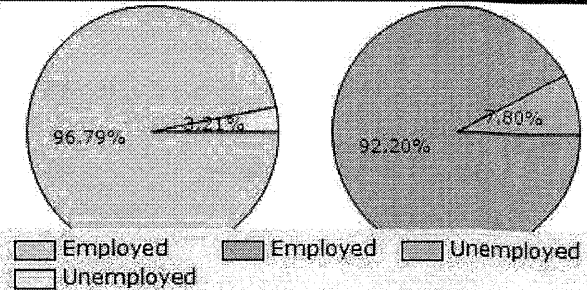
2014 Population by Race



2014 Rental vs. Owned



2014 Employed vs. Unemployed



Demographic Market Comparison Report

1 mile radius

College Terrace Centre

1000 College Terrace, Santa Clara, CA 95050

County: **Santa Clara**

Population Growth				
Growth 2010 - 2014	3.22%		4.87%	
Growth 2014 - 2019	6.17%		6.75%	
Employed	9,652	96.79%	914,325	92.20%
Unemployed	320	3.21%	77,330	7.80%
2014 Population by Race	20,985		1,868,374	
White	13,569	64.66%	1,090,706	58.38%
Black	692	3.30%	55,327	2.96%
Am. Indian & Alaskan	105	0.50%	26,418	1.41%
Asian	5,535	26.38%	614,188	32.87%
Hawaiian & Pacific Island	45	0.21%	9,266	0.50%
Other	1,039	4.95%	72,469	3.88%
Household Growth				
Growth 2010 - 2014	3.23%		5.38%	
Growth 2014 - 2019	6.18%		6.86%	
Renter Occupied	5,210	63.30%	269,919	42.56%
Owner Occupied	3,021	36.70%	364,259	57.44%
2014 Households by Household Income	8,231		634,178	
Income <\$25K	1,642	19.95%	89,472	14.11%
Income \$25K - \$50K	1,335	16.22%	97,445	15.37%
Income \$50K - \$75K	962	11.69%	84,063	13.26%
Income \$75K - \$100K	737	8.95%	81,217	12.81%
Income \$100K - \$125K	474	5.76%	69,794	11.01%
Income \$125K - \$150K	653	7.93%	45,544	7.18%
Income \$150K - \$200K	677	8.23%	70,566	11.13%
Income \$200K+	1,751	21.27%	96,077	15.15%
2014 Med Household Inc	\$80,987		\$89,193	
2014 Median Age	31.10		37.00	

Demographic Detail Report

College Terrace Center
2501 E. College Ave., Chico, CA 95926

Radius	1 Mile	3 Mile	5 Mile
Population			
2019 Projection	22,280	150,003	294,182
2014 Estimate	20,986	140,425	275,788
2010 Census	20,332	132,530	261,382
Growth 2014 - 2019	6.17%	6.82%	6.67%
Growth 2010 - 2014	3.22%	5.96%	5.51%
2014 Population by Age	20,986	140,425	275,788
Age 0 - 4	1,565 7.46%	9,110 6.49%	18,008 6.53%
Age 5 - 9	1,119 5.33%	9,008 6.41%	18,032 6.54%
Age 10 - 14	917 4.37%	8,815 6.28%	17,464 6.33%
Age 15 - 19	1,270 6.05%	8,808 6.27%	17,001 6.16%
Age 20 - 24	2,225 10.60%	9,528 6.79%	17,360 6.29%
Age 25 - 29	2,870 13.68%	10,459 7.45%	19,400 7.03%
Age 30 - 34	2,331 11.11%	10,143 7.22%	20,129 7.30%
Age 35 - 39	1,483 7.07%	9,630 6.86%	19,680 7.14%
Age 40 - 44	1,081 5.15%	9,723 6.92%	19,678 7.14%
Age 45 - 49	1,027 4.89%	9,891 7.04%	19,674 7.13%
Age 50 - 54	1,031 4.91%	9,485 6.75%	18,975 6.88%
Age 55 - 59	986 4.70%	8,382 5.97%	16,995 6.16%
Age 60 - 64	876 4.17%	7,195 5.12%	14,668 5.32%
Age 65 - 69	716 3.41%	5,823 4.15%	11,735 4.26%
Age 70 - 74	530 2.53%	4,438 3.16%	8,794 3.19%
Age 75 - 79	378 1.80%	3,370 2.40%	6,481 2.35%
Age 80 - 84	262 1.25%	2,680 1.91%	4,957 1.80%
Age 85+	319 1.52%	3,938 2.80%	6,758 2.45%
Age 65+	2,205 10.51%	20,249 14.42%	38,725 14.04%
Median Age	31.10	37.30	37.70
Average Age	34.50	38.00	38.00

Demographic Detail Report

College Terrace Centre 2000 University Road, Parkville, GA 30066						
Radius	1 Mile		3 Miles		5 Miles	
2014 Population By Race	20,986		140,425		275,788	
White	13,569	64.66%	95,259	67.84%	195,774	70.99%
Black	692	3.30%	5,876	4.18%	11,437	4.15%
Am. Indian & Alaskan	106	0.51%	708	0.50%	2,118	0.77%
Asian	5,535	26.37%	31,108	22.15%	51,638	18.72%
Hawaiian & Pacific Island	45	0.21%	1,824	1.30%	4,059	1.47%
Other	1,039	4.95%	5,649	4.02%	10,763	3.90%
Population by Hispanic Origin	20,986		140,425		275,788	
Non-Hispanic Origin	19,322	92.07%	118,441	84.34%	209,790	76.07%
Hispanic Origin	1,664	7.93%	21,984	15.66%	65,998	23.93%
2014 Median Age, Male	30.60		35.80		36.40	
2014 Average Age, Male	33.70		36.90		37.00	
2014 Median Age, Female	31.80		38.80		39.00	
2014 Average Age, Female	35.30		39.10		39.00	
2014 Population by Occupation Classification	17,127		111,731		218,883	
Civilian Employed	9,652	56.36%	67,121	60.07%	134,326	61.37%
Civilian Unemployed	320	1.87%	3,669	3.28%	8,758	4.00%
Civilian Non-Labor Force	7,155	41.78%	40,928	36.63%	75,652	34.56%
Armed Forces	0	0.00%	13	0.01%	147	0.07%
Households by Marital Status						
Married	3,353		26,215		51,303	
Married No Children	1,762		12,823		25,829	
Married w/Children	1,592		13,392		25,474	
2014 Population by Education	14,265		98,931		197,184	
Some High School, No Diploma	238	1.67%	6,538	6.61%	19,658	9.97%
High School Grad (Incl Equivalency)	644	4.51%	7,275	7.35%	20,684	10.49%
Some College, No Degree	1,515	10.62%	12,741	12.88%	30,634	15.54%
Associate Degree	375	2.63%	3,774	3.81%	9,261	4.70%
Bachelor Degree	4,364	30.59%	27,236	27.53%	50,374	25.55%
Advanced Degree	7,129	49.98%	41,367	41.81%	66,573	33.76%

Demographic Detail Report

College Terrace Centre

College Terrace, 2011, San Jose, CA 95128

Ranking	1 Mile	3 Miles	5 Miles
2014 Population by Occupation	38,232	264,712	528,044
Real Estate & Finance	520 1.36%	4,120 1.56%	7,853 1.49%
Professional & Management	9,070 23.72%	61,630 23.28%	110,729 20.97%
Services	747 1.95%	7,778 2.94%	19,478 3.69%
Information	602 1.57%	3,381 1.28%	7,081 1.34%
Sales	1,436 3.76%	9,148 3.46%	21,191 4.01%
Transportation	452 1.18%	3,193 1.21%	6,111 1.16%
Education & Health	3,857 10.09%	20,294 7.67%	33,723 6.39%
Retail	491 1.28%	3,939 1.49%	9,161 1.73%
Wholesale	118 0.31%	1,172 0.44%	2,707 0.51%
Construction	337 0.88%	4,227 1.60%	12,322 2.33%
Agriculture & Mining	24 0.06%	117 0.04%	647 0.12%
Farming, Fishing, Forestry	7 0.02%	25 0.01%	299 0.06%
2014 Worker Travel Time to Job	8,802	61,975	125,037
<30 Minutes	7,059 80.20%	47,591 76.79%	93,956 75.14%
30-60 Minutes	1,334 15.16%	11,631 18.77%	25,574 20.45%
60+ Minutes	409 4.65%	2,753 4.44%	5,507 4.40%
2010 Households by HH Size	7,987	50,436	96,849
1-Person Households	2,738 34.28%	15,355 30.44%	27,435 28.33%
2-Person Households	2,870 35.93%	15,880 31.49%	30,161 31.14%
3-Person Households	1,052 13.17%	7,362 14.60%	14,438 14.91%
4-Person Households	921 11.53%	7,295 14.46%	14,012 14.47%
5-Person Households	288 3.61%	2,720 5.39%	5,881 6.07%
6-Person Households	93 1.16%	963 1.91%	2,390 2.47%
7 or more Person Households	25 0.31%	861 1.71%	2,532 2.61%
2014 Average Household Size	2.20	2.50	2.60
Households			
2019 Projection	8,740	57,001	108,838
2014 Estimate	8,231	53,338	101,990
2010 Census	7,988	50,437	96,848
Growth 2014 - 2019	6.18%	6.87%	6.71%
Growth 2010 - 2014	3.23%	5.76%	5.51%

Demographic Detail Report

College Terrace Centre

College Terrace Centre, Park Ave, CA 94306

Radius:	1 Mile	3 Miles	5 Miles
2014 Households by HH Income	8,231	53,338	101,990
<\$25,000	1,642 19.95%	6,975 13.08%	13,766 13.50%
\$25,000 - \$50,000	1,335 16.22%	7,735 14.50%	15,646 15.34%
\$50,000 - \$75,000	962 11.69%	5,942 11.14%	11,765 11.54%
\$75,000 - \$100,000	737 8.95%	4,798 9.00%	9,703 9.51%
\$100,000 - \$125,000	474 5.76%	4,951 9.28%	9,572 9.39%
\$125,000 - \$150,000	653 7.93%	3,568 6.69%	7,106 6.97%
\$150,000 - \$200,000	677 8.23%	5,110 9.58%	9,582 9.40%
\$200,000+	1,751 21.27%	14,259 26.73%	24,850 24.37%
2014 Avg Household Income	\$120,961	\$141,221	\$135,210
2014 Med Household Income	\$80,987	\$106,155	\$100,300
2014 Occupied Housing	8,231	53,338	101,990
Owner Occupied	3,021 36.70%	26,970 50.56%	53,473 52.43%
Renter Occupied	5,210 63.30%	26,368 49.44%	48,517 47.57%
2010 Housing Units	8,563	56,760	107,515
1 Unit	4,229 49.39%	31,922 56.24%	64,556 60.04%
2 - 4 Units	867 10.12%	4,203 7.40%	7,539 7.01%
5 - 19 Units	1,435 16.76%	7,511 13.23%	13,701 12.74%
20+ Units	2,032 23.73%	13,124 23.12%	21,719 20.20%
2014 Housing Value	3,021	26,970	53,472
<\$100,000	15 0.50%	384 1.42%	1,027 1.92%
\$100,000 - \$200,000	35 1.16%	487 1.81%	909 1.70%
\$200,000 - \$300,000	14 0.46%	664 2.46%	1,435 2.68%
\$300,000 - \$400,000	43 1.42%	1,079 4.00%	2,863 5.35%
\$400,000 - \$500,000	67 2.22%	1,340 4.97%	3,169 5.93%
\$500,000 - \$1,000,000	614 20.32%	7,111 26.37%	16,364 30.60%
\$1,000,000+	2,233 73.92%	15,905 58.97%	27,705 51.81%
2014 Median Home Value	\$1,097,067	\$1,045,646	\$1,010,493
2014 Housing Units by Yr Built	8,579	57,033	108,715
Built 2010+	344 4.01%	3,472 6.09%	6,222 5.72%
Built 2000 - 2010	891 10.39%	4,751 8.33%	6,589 6.06%
Built 1990 - 1999	766 8.93%	3,599 6.31%	6,309 5.80%
Built 1980 - 1989	947 11.04%	3,526 6.18%	8,160 7.51%
Built 1970 - 1979	1,087 12.67%	7,363 12.91%	16,105 14.81%
Built 1960 - 1969	880 10.26%	8,692 15.24%	19,107 17.58%
Built 1950 - 1959	1,120 13.06%	13,602 23.85%	25,866 23.79%
Built <1949	2,544 29.65%	12,028 21.09%	20,357 18.73%
2014 Median Year Built	1966	1962	1963

Daytime Employment Report

1 Mile Radius

College Terrace Center
4000 College Terrace, Suite 200, Santa Ana, CA 92705

Business Employment by Type	# of Businesses	# Employees	#Emp/Bus
Total Businesses	1,479	18,406	12
Retail & Wholesale Trade	133	1,124	8
Hospitality & Food Service	75	1,367	18
Real Estate, Renting, Leasing	42	241	6
Finance & Insurance	96	1,127	12
Information	50	564	11
Scientific & Technology Services	556	4,515	8
Management of Companies	0	0	0
Health Care & Social Assistance	271	1,348	5
Educational Services	43	1,068	25
Public Administration & Sales	8	55	7
Arts, Entertainment, Recreation	12	176	15
Utilities & Waste Management	36	415	12
Construction	32	372	12
Manufacturing	23	5,327	232
Agriculture, Mining, Fishing	0	0	0
Other Services	102	707	7

Consumer Spending Report

Collegiate Marketing Services
200001-000000, Reno, NV 89400

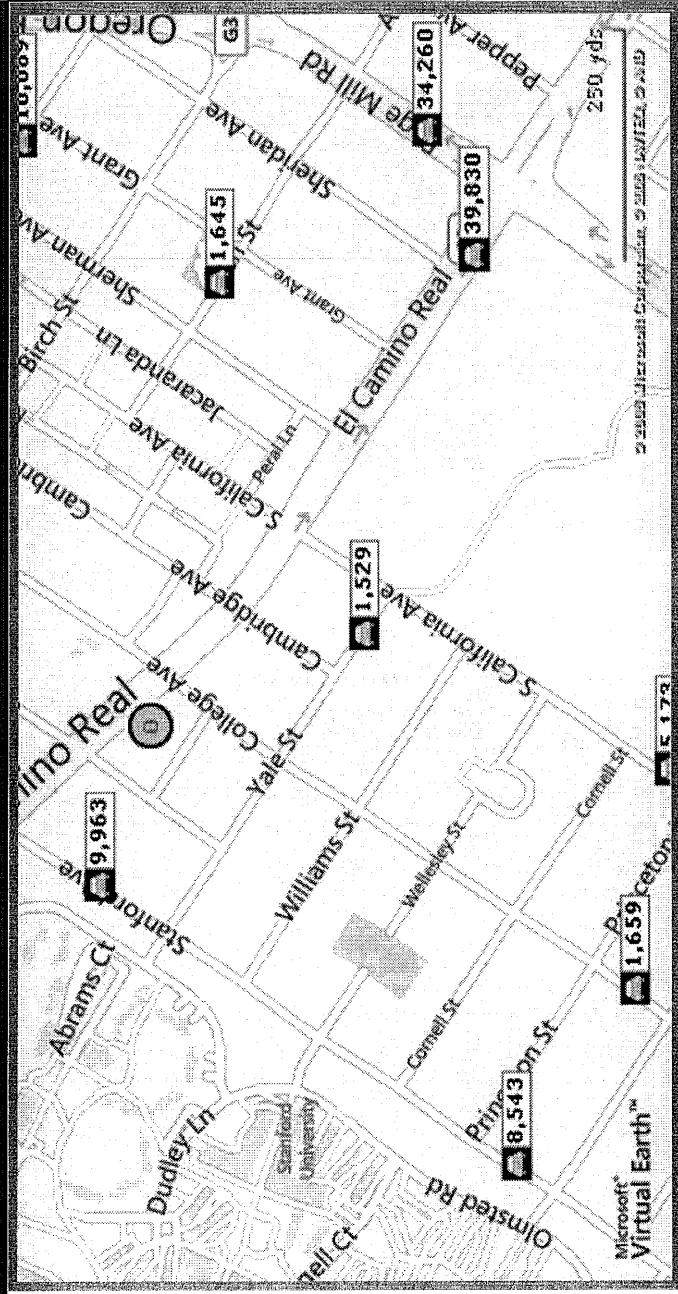
2014 Annual Spending (\$000s)	1 Mile	3 Mile	5 Mile
Total Specified Consumer Spending	\$283,521	\$2,079,017	\$3,947,387
Total Apparel	\$14,494	\$106,388	\$203,815
Women's Apparel	5,982	44,540	84,613
Men's Apparel	3,342	24,126	46,340
Girl's Apparel	1,028	7,761	14,862
Boy's Apparel	661	5,126	9,917
Infant Apparel	657	4,153	8,024
Footwear	2,824	20,682	40,059
Total Entertainment & Hobbies	\$19,859	\$145,040	\$275,157
Entertainment	4,142	31,626	62,303
Audio & Visual Equipment/Service	8,415	59,918	113,195
Reading Materials	1,427	9,886	17,797
Pets, Toys, & Hobbies	5,875	43,610	81,861
Total Food and Alcohol	\$69,428	\$498,512	\$947,039
Food At Home	34,014	247,967	477,971
Food Away From Home	29,932	212,396	397,897
Alcoholic Beverages	5,482	38,149	71,171
Total Household	\$45,048	\$337,858	\$630,994
House Maintenance & Repair	5,046	42,796	82,659
Household Equip & Furnishings	16,838	123,211	230,134
Household Operations	15,712	116,373	216,938
Housing Costs	7,452	55,478	101,262

Consumer Spending Report

College Savings Center
 2010-2011 Annual Report

2010/2011 Annual Report (in millions)	1 Mile	3 Mile	5 Mile
Total Transportation/Maint.	\$76,804	\$563,276	\$1,096,788
Vehicle Purchases	22,631	173,656	353,238
Gasoline	32,012	231,516	451,345
Vehicle Expenses	3,628	26,960	48,489
Transportation	9,845	68,734	124,521
Automotive Repair & Maintenance	8,688	62,410	119,195
Total Health Care	\$12,406	\$93,894	\$177,263
Medical Services	7,763	58,187	109,734
Prescription Drugs	3,380	26,270	49,856
Medical Supplies	1,264	9,437	17,672
Total Education/Day Care	\$25,467	\$185,635	\$341,071
Education	15,681	112,853	207,609
Fees & Admissions	9,786	72,782	133,462

Traffic Count Report



1	Stanford Ave	Yale St	0.05 SW	2006	9,963	ADT	.10
2	Yale St	Cambridge Ave	0.03 NW	2007	1,529	ADT	.15
3	Ash St	Grant Ave	0.03 SE	2012	1,645	MPSI	.28
4	S California Ave	Princeton St	0.03 SW	2012	5,382	MPSI	.33
5	S California Ave	Princeton St	0.03 SW	2007	5,173	ADT	.33
6	College Ave	Oberlin St	0.03 SW	2006	1,659	ADT	.35
7	Stanford Ave	Princeton St	0.03 NE	2007	8,543	ADT	.36
8	El Camino Real	Palo Alto Sq	0.00	2012	39,830	MPSI	.36
9	Park Blvd	Grant Ave	0.02 SE	2012	10,089	MPSI	.37
10	Oregon Expy	Ash St	0.06 NE	2012	34,260	ADT	.41



700 Airport Blvd., #260
Burlingame, CA 94010

Tel. 650-343-4244
Fax 650-343-4944

www.suttiassoc.com

Received

AUG 05 2014

Department of Planning
& Community Environment

Report to the City of Palo Alto

Re:

Grocery Analysis for J&A Family Market

By

Lawrence J. Brucia
Sutti and Associates

Revised

August 4, 2014



700 Airport Blvd., #260
Burlingame, CA 94010

Tel. 650-343-4244
Fax 650-343-4944

www.suttiassoc.com

August 4, 2014

Mr. Thomas Fehrenbach, Economic Development Manager
City of Palo Alto
250 Hamilton Ave.
Palo Alto, Ca. 94301

Project: Grocery Analysis for J&A Family Market (Revised)

Dear Mr. Fehrenbach,

Attached is a revised Grocery Analysis for J&A Family Market dated August 4, 2014. This revised analysis includes the following:

- a. Corrections regarding misspelled word
- b. Cross-use between the grocery and office tenant: See 4.d.7
- c. Re-state the operative condition in the ordinance: See 5.b
- d. Information on deli consultant and produce buyer: See 4.c.3 and 4.c.5

As a background, Sutti and Associates remodeled JJ&F Market in 1996 and we were able to find the schematic layout of the store with many of the defined departments that once existed within the market. This allowed Sutti and Associates to compare plans for J&A Family Market as compared to the product offerings of the JJ&F Market.

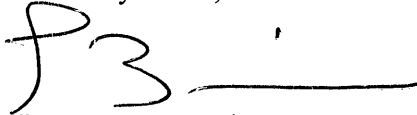
Also, George Kammeyer, who was the project manager for the remodel in 1996 is still with Sutti and Associates and had first hand experience with some of the specifics of the JJ&F market. The store continued to operate for over 14 years after the remodel and during this period of time we would assume there were product changes in offerings and merchandising.

We were able to secure some visual images of JJ&F market in 2009-2010 in which it did not appear that there were any subsequent remodels after the remodel by Sutti and Associates in 1996.

The writer received extensive information from J&A Family Market, as well as the redacted Business Plan and the original Business Plan. We also were able to review the job experiences of the management team and advisors as well as Sutti and Associates recommending several individuals who can also augment the J&A Family Market operations team.

I have scheduled to make myself available to the City Council currently scheduled for August 11th in the evening. Please confirm the time and place when you are able to do so.

Sincerely Yours,

A handwritten signature in black ink, appearing to be 'J3' followed by a horizontal line.

Lawrence J. Brucia
President



700 Airport Blvd., #260
Burlingame, CA 94010

Tel. 650-343-4244
Fax 650-343-4944

www.suttiassoc.com

Scope of Work Review

1. **Review publicly available material submitted to the City by the applicant describing the proposed grocery tenant and proposed operation of the grocery.**
 - a. J&A Family Market provided the Consultant with 10 e-mail documents which included all the materials submitted to the City as stated by the applicant including the following:
 - 1) Redacted Business plan
 - 2) E-mails chains including James Smailey communications to City Staff including Aaron Aknin, Russ Reich, Hillary Gitelman, Thomas Fehrenbach, and Amy French
 - 3) Answer to questions requested in "Yellow Sticky" notes associated with the business plan
 - 4) Schematic (layout) plan for the store
 - 5) Detailed demographic information relating to the neighborhood and the stores potential client base.
 - 6) Ordinance No. 5069 consisting of 11 pages
 - 7) Plans and images for 2180 El Camino Real including 57,99 square feet of floor area for a grocery store and other retail space, parking and residential units.
2. **Review confidential material redacted from the public submittals by the applicant.**
 - a. J & A Family Market provided the Consultant with confidential material within 10 e-mail documents; several telephone conferences, several e-mail communications from Consultant with specific follow-up questions, which were answered by James Smailey. The following confidential information was received from J&A Family Market to Consultant:
 - 1) Un-redacted (original) J&A Family market Business Plan
 - 2) Management Team names and resumes for J&A Family market
 - 3) Percentage of sales per department by JJ&F circa 2010

- 4) Quantitative information regarding customer base count within a walking distance to the store re J&A Family Market
- 5) Quantitative information regarding an on-going outreach program to local neighborhoods re J&A Family Market
- 6) On-site/on-line strategies using a specific app and software applications for ease of billing re J&A Family Market
- 7) Financial information of JJ&F including the following:
 - a) Balance Sheet supplemental information January 31, 2010
 - b) Statement of Financial Position for 4 periods ending January 31, 2010 including prior year (2009) information; included Balance Sheet listing Assets and Liabilities
 - c) Statement of Operations for 4 periods ending January 31, 2010 including prior year (2009) for sales per department, gross profits per department, rebates and allowances, salaries, benefits, supplies, advertising, depreciation and Amortization, insurance expense, rent, repairs and Maintenance, taxes, utilities, other operating expenses, operating profit, other income, net income before taxes.
 - d) Statement of Operations for 6 periods including items per (c) above.
 - e) Statement of Financial Position for 6 periods including items per (b) above.
 - f) Weekly Sales Report week ending 9/25/10-10/16/10 breaking out sales per department per day per week
- 8) J&A Family market Financial Summary including outline of Gross Profits and Net Profit projections with respective yearly expenses.
- 9) J&A Family market sensitivity financial analysis with various projections of daily sales and respective yearly expenses
- 10) J&A Family market projected start up costs including 17 line items associated with a grocery store.
- 11) J& A Family market marketing awareness strategies leading up to the opening of J& A Family market
- 12) Vendor information for J&A Family identifying specific distributors to be suppliers to the store including several manufacturers.
- 13) Sources and Uses Budget for J&A Family market including the following:

- a) Lease rate per month
 - b) Insurance
 - c) CAM charges
 - d) Leasehold Improvements
 - e) Equipment
 - f) Inventory
 - g) Overhead/admin prior to opening
 - h) Start up promotion
 - i) Start up staffing
 - j) Holding site cost
 - k) Working capital
 - l) Reserves
 - m) Owner contributions
- 14) Monthly Operating Expenses for J&A Family market
 - 15) Schedule of personnel for J&A Family market including:
 - i) Weekly Schedule
 - ii) Daily Schedule
 - iii) Hours per worker
 - iv) Weekly wages
 - v) Total hours per day
 - vi) Job description per worker per day
 - 16) Product offerings for J & A Family Market broken into 11 major store departments with over 170 categories and/or products identified.

3. Obtain baseline information regarding products and services provided by JJ&F Market in December 2009

a. The following information was reviewed regarding JJ&F market

- 1) Statement of Financial Position 2010 and 2009 for a 4 month period and a 6 month period
- 2) Statement of Operations 2010 and 2009 for a 4 month period and a 6 month period
- 3) Over 20 photos of the store circa 2009-2010
- 4) 1996 Remodel plans for the store including:
 - a) Equipment Schedule
 - b) Layout of the store
 - c) Product categories

4. Assess whether the proposed grocery tenant is likely to provide comparable quality of products and services to the baseline for the foreseeable future. Give an opinion on the sustainability of the grocery tenants strategy.

a. Comparable quality of products

The key to the quality of products is driven by the source of the products. The distributors identified by J&A Family market are well known, established distributors who have a strict buying process regarding quality of product, manufacturer of product, presentation of product and relevance of the product to the current consumer base. These distributors are California based and are the leading suppliers for all the independent markets in California, including JJ&F.

These distributors, identified by J&A Family market, can supply all the product categories required within a contemporary independent grocery store. Also, these distributors are industry leaders and offer many other service support programs for independent grocery stores.

b. Comparable product offerings between JJ&F and J&A Family market

Having the ability to review the photographs of JJ&F circa 2010 and the schematic (layout) of the remodel of 1996 developed by Sutti and Associates as well as the schematic (layout) and product offerings of the proposed J&A Family market, it is the opinion of this Consultant that J&A Family market will have some stronger product offerings, similar product offerings, and smaller product offering in some categories as compared to JJ&F.

This opinion is based on the following:

- 1) Currently Grab & Go product offerings are growing in grocery store sales due to the lifestyles of many consumers today. J&A Family market is planning a larger and more extensive product line in this category as compared to JJ&F.
- 2) JJ&F had a larger meat department as compared to the plans of J&A Family market. Meat sales have gone through an interesting sales cycle over the past 5 years. Meat sales, in some areas, declined over the past 5 years but recent consumer trends are showing an increased interest in specialty high-end meats, which are creating a renewed interest in developing meat departments.
- 3) Grocery sales between JJ&F and J&A Family market appear to be similar in product offerings.
- 4) Dairy sales have grown recently with the strong consumer demand for Greek yogurts. This trend has taken place over the past three years and was probably not experienced by JJ&F.
- 5) Bakery supplies including specialty cakes, cookies, and breads continue to sell well, especially if merchandised in an effective way. In reviewing the JJ&F photographs, it is difficult to determine if they merchandised bakery

- properly. J&A Family market plans to merchandise bakery in strategic areas of the store.
- 6) Salad and Soup bars were offered at the JJ&F market as well as being offered at the J&A Family market.
 - 7) Produce is an important category for all markets. There was a significant presentation of produce at JJ&F with a produce aisle with 24-36 feet of refrigerated cases on both sides of the aisle. J&A Family market will have less produce inside the store than JJ&F, but will have a significant presence of produce outside in the "Open Market" area facing El Camino Real.
 - 8) Deli operations are an important department for grocery retailers wanting to capture the grab and go consumer dollars. From the Consultants research, JJ&F had a limited deli department and product offerings as compared to J&A Family market deli plans.
 - 9) Refrigerated equipment offerings have improved over the past 10 years with increase product space within these displays. Increase product space allows the retailer to offer more products within a category. Since J&A Family market will have the opportunity to purchase new equipment, it is projected that they will be able to offer more products within the frozen and refrigeration categories including produce and dairy.
 - 10) JJ&F used Metro shelving (wire shelving) which allows the grocery to maximize the center store square footage space for efficient product offerings. J&A Family market has not made a decision regarding their shelving selection so Sutti and Associates has recommended J&A Family owners visit a number of stores which use Metro shelving for their review and study.

c. Comparable quality of service

Service within a grocery store encompasses many aspects of a retail store. Quality of service involves store management, store personnel, product offerings, store environment, and promotions and pricing. Clearly, the management team is critical to the quality of service throughout the existence of a grocery store. Without quality of service, regardless of the product offerings, consumers will seek to purchase their grocery items from other markets. It is the Consultants opinion that JJ&F had good quality of service due to the years that the store existed and the word of mouth throughout the industry about the owners of JJ&F.

The Consultant has reviewed J&A Family market plans that would affect the quality of service at their store. Based on the confidential information the Consultant has received from J&A Family market the following are comments regarding quality of service:

- 1) The management team and advisors for J&A Family Market have qualified credentials to participate in managing and advising the owners of J&A Family market.
- 2) The key individual that will be co-manager as well as CFO has extensive experience in the grocery business since 1984. According to his resume the various roles he was responsible for in the grocery trade included working for his family grocery business, owning his own store, working with distributors and vendors, a buyer of many product categories within a grocery store and the training of employees in various departments within a grocery store.
- 3) Due to the importance of the deli at the J&A Family market, Sutti and Associates has recommended to J&A market owners a highly respected deli consultant who has advised independent grocery store owners for almost 20 years on deli operations. J&A Family market owners have expressed a high interest with this individual.

J&A Family market is currently in contact and discussions with the above deli consultant.

- 4) J&A Family market has a number of close advisors including an individual with extensive experience in retail stores. Even though this advisor does not have grocery store experience, the fundamentals of retailing are equally important to a grocery store as it is to a non grocery store.
- 5) Another important department is produce. Having a good produce buyer/department manager is of critical importance to have a successful produce department. Even though the key individual (2) above has produce experience, J&A Family market is currently seeking to find a produce buyer/department manager. Sutti and Associates know of several possible individuals who could fill this position as well as the Consultants relationship with the San Francisco Wholesale Produce Market.

J&A Family market is currently in contact and discussions with a recommended individual who has extensive experience in managing independent type market departments, including produce.

- 6) Together, with the above individuals, the redesigning and building of a new store with new equipment, the expectations regarding the environment of the store is

high. A new store will have a fresh start which represents a clean, well lighted store and should be maintained by a qualified management team.

- 7) Product offerings and pricing will be determined by the management team in collaboration with their advisors, distributors and suppliers of which are well respected in the grocery field.

d. Sustainability of the grocery tenant's strategy

As with all business ventures, there is no guarantee of success. But the building blocks to success are based on the fundamentals of the business category.

Grocery retailing has the following fundamentals to achieve:

- 1) Location, Location, Location: J&A Family Market will have a superior visual presentation compared to JJ&F. JJ&F was in the back of a building and not visible from El Camino. J&A Family Market, on the other hand, not only will be seen by car travelers along El Camino, but with the addition of the outdoor produce market concept, it will create added attention to J&A Family Market.
- 2) Product Relevance: J&A Family market is proposing to offer products that are of interest with today's consumers. Grab and Go is a growing category and J&A Family market will offer considerably more products than JJ&F offered in this category. There are other categories within the J&A Family market that will offer more products due to improvements in equipment design and fixtures.
- 3) Parking: From listening to individuals familiar with JJ&F, parking was a problem. The parking lot next to the market was shared with other companies and many times was full. J&A Family market will have 36 dedicated parking spots in the garage and another 14-16 spaces on Oxford Avenue.
- 4) Financial Management: J&A Family market has budgeted monies for leasehold improvements, equipment, inventory, start up costs, working capital and staffing. It has also allocated a significant reserve for unexpected higher costs for the above line items. With the budgeted monies and the reserve, the company has the financial ability to accomplish its schematic (layout) plans and marketing strategies.
- 5) Marketing Reach: The areas that J&A Family market will focus on the following marketing strategies:

- a) Walk-ability demographics
- b) Internet reach
- c) Destination consumers who will drive to the store
- d) Localize marketing with visual presence on El Camino
- e) Increasing population densities within a three mile radius of the store
- f) Delivery program to specific consumer groups

The consultant does not have information on the marketing programs of JJ&F so it would be difficult to compare JJ&F and J&A Family market marketing strategies.

- 6) Management Team: Based on the Consultants review of the management team and advisors, the sustainability of J&A Family market can be achieved for many years into the future.
- 7) Tenant and J&A Family market opportunities: The Consultant has had the opportunity to review the office tenant who are currently in negotiations with the landlord to lease all of the office space available (43,000 square feet) at the new site. This tenant is a well-known company that will employ hundreds of employees. This new tenant offers an opportunity for J&A Family market to provide pre-made meals for the employees of this company for dinner or lunch. The employees of this company tend to purchase their meals already made and tend to eat at all hours of the day.

5. Provide a draft report summarizing the consultant's qualifications, analysis and conclusions for review for City Staff.

a. Consultants qualifications

Sutti and Associates has been designing and building independent grocery stores since 1976. Many of the services provided by Sutti and Associates includes interior décor design, architectural services (licensed in the state of California), general construction services (licensed in the states of California and Nevada), the specification and selling of all the equipment within a grocery store, food consulting and product merchandising.

Sutti and Associates has designed and built many stores in Northern California including JJ&F market, Mollie Stones, Lunardi's, Andronicos, Piazza Markets, Biachini Markets, Emerald Market, Whole Foods Markets, and many more.

Lawrence Brucia, owner and president of Sutti and Associates, purchased the company in 2004 after an extensive career in the food retail industry including

being the inventor of Trail mix in 1973, developed carob and yogurt candies, designed the concept of bulk foods in grocery stores and developed many other products in the natural food industry.

Mr. Brucia also owns Planet cleaning products, Green Forest paper products, Sonoma Sparkler beverages and Marin Food Specialties, which manufacturers many snack products for the natural food industry.

b. Analysis and Conclusion of J&A Family markets

Operative condition in the ordinance:

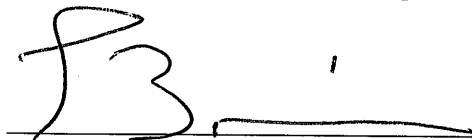
*(6) The grocery tenant, if it is a party other than John Garcia (DBA JJ&F), shall be subject to the prior approval of the City of Palo Alto and shall not be withheld unless the City reasonably finds that such proposed grocery tenant is not likely to be comparable in quality of products and service as JJ&F as it existed and operated on December 7, 2009."

After reviewing the information provided to the Consultant by J&A Family market per above, it is the opinion of the Consultant that the proposed store layout, marketing strategy, management team and advisors will create a store that will be a benefit to the community of Palo Alto.

J&A Family market will be comparable, if not superior, in quality of products and services to JJ&F market.

The Consultant cannot guarantee long term success for J&A Family market, but with the information provided to Consultant, it is the opinion of the Consultant that J&A Family market has the retail team and strategy to be successful from its opening day and into the future.

I hereby certify that as of August 4, 2014, the information provided to me by James Smailey regarding J&A Family market, was per above and the analysis and opinion of such information is true and complete.



Signature

Lawrence J. Brucia President

Printed and Title

Aug 4, 2014

Date