AGENDA REPORT

Meeting Date: February 17, 2009

Item Number: C-1A & C-1B

To: Honorable Chair & Members of the Board of Directors

From: Scott G. Miller, Director of Administrative Services/CFO

Noel Marquis, Assistant Director of Administrative Services

Subject: **RESOLUTION OF THE CITY OF BEVERLY HILLS PUBLIC FINANCING AUTHORITY ACCEPTING THE QUITCLAIM DEED FOR THE PROPERTY LOCATED AT 331 FOOTHILL ROAD; AND,**

APPROVAL OF A MASTER LEASE BETWEEN THE CITY OF BEVERLY HILLS AS TENANT AND THE CITY OF BEVERLY HILLS PUBLIC FINANCING AUTHORITY AS LANDLORD FOR PROPERTY LOCATED AT 331 FOOTHILL ROAD

Attachments:

1. Resolution
2. Master Lease between the Authority (as landlord) and the City (as tenant)

RECOMMENDATION

Staff recommends that the Board of Directors adopt the resolution accepting the quitclaim deed for the property located at 331 Foothill Road and approve the master lease for the property between the City of Beverly Hills as tenant and the Public Financing Authority as landlord.

INTRODUCTION

On September 2, 2008, staff received approval from the City Council for the methodology and process to be used to provide the necessary financing for the acquisition and construction of certain public improvements by the City of Beverly Hills Public Financing Authority in connection with the 331 Foothill Road office building. Specifically, staff advised that the best option presently available to the City was a commercial real estate construction and real estate loan with City National Bank. Staff was directed to proceed with that financing option.

DISCUSSION

While the City cannot itself enter into a traditional real estate mortgage agreement, the City's Public Financing Authority does have the legal authority to enter into such a transaction. To accomplish this, the Public Financing Authority is accepting through this action the deeded property (i.e. 331 Foothill Road) from the City. Additionally, the Public Financing Authority is entering into a long term lease purchase agreement with the City. This lease requires the City to pay rent in an amount sufficient to pay the debt service on the loan, as well as ownership/operating costs for the property. The Lease is subordinated to the deed of trust securing the loan such that the lease would terminate if the deed of trust were ever foreclosed due to default of the Public Financing Authority. At the end of the lease period the Public Financing Authority will deed the property and building to the City.

FISCAL IMPACT

It is important to note that this commercial real estate transaction reduced the size of the financing by approximately $8.5 million dollars when compared to the size of a municipal bond issue that would have been needed to accomplish this project. The total cost of financing a principal loan amount of $32,000,000 and interest costs of $15,739,141 at 5.78% over 15 years is $47,739,141.

Noel Marquis
Finance Approval

Scott G. Miller
Approved By

RESOLUTION NO. PFA 09-R-___

RESOLUTION OF THE CITY OF BEVERLY HILLS PUBLIC FINANCING AUTHORITY ACCEPTING THE QUITCLAIM DEED FOR THE PROPERTY LOCATED AT 331 FOOTHILL ROAD

The Board of Directors of the Beverly Hills Public Financing Authority ("PFA") does hereby resolve as follows:

Section 1. That certain Quitclaim Deed attached hereto as Exhibit A, quitclaiming the property commonly knows as 331 Foothill Drive to the Public Financing Authority, is hereby accepted.

Section 2. Any officer of the PFA is authorized and directed to execute an appropriate certificate of acceptance pursuant to California Government Code Section 27281 and the City Clerk is directed to attest thereto.

Section 3. The Executive Director of the PFA is authorized and directed to execute any and all documents necessary to complete the transfer of land on behalf of the PFA.

Section 4. **Effective Date.** This Resolution shall take effect from and after its passage and adoption by the PFA.

Section 5. The PFA Secretary shall certify to the adoption of this Resolution and shall cause this Resolution and his certification to be entered in the Book of Resolutions of the PFA.

Adopted and approved this _____ day of_____, 200___.

_____
Barry Brucker, Chairman

ATTEST:

_____
Byron Pope, Secretary

Approved as to form:

_____
Laurence Wiener, Authority Counsel

Approved as to content:

_____
Roderick J. Wood, Executive Director

_____
Scott G. Miller, Chief Financial Officer

GROUND LEASE

THIS GROUND LEASE (the "Lease") is dated for reference purposes and entered into as of _____, 200__, by and between the CITY OF BEVERLY HILLS PUBLIC FINANCING AUTHORITY ("Landlord"), and the CITY OF BEVERLY HILLS, a California municipal corporation ("Tenant").

Recitals

A. Landlord owns the land more particularly described in Exhibit "A" attached hereto and the office building and other improvements thereon. Said land and improvements are hereinafter collectively referred to as the "Property".

B. Landlord desires to lease the Property to Tenant, and Tenant desires to Lease the Property from Landlord, upon the terms hereinafter set forth.

NOW THEREFORE, in consideration of the mutual promises contained herein, Landlord and Tenant agree as follows:

1. Lease of Property . Landlord hereby leases the Property to Tenant, and Tenant hereby leases the Property from Landlord, upon the terms contained in this Lease.

2. Term of Lease; Extension Options; Possession.

2.1 Term. The term of this Lease (the "Term") shall commence on the date of this Lease and shall continue until the date that is fifteen (15) years after the date on which that certain permanent loan in the maximum amount of $32,000,000 by City National Bank to Landlord is disbursed.

2.2 Possession. Tenant shall be entitled to take possession of the Property upon the commencement of the Term. Tenant acknowledges that Tenant has inspected the Property and Tenant accepts the Property in its existing "AS IS" condition, without representation or warranty (express or implied).

3. Rent.

3.1 Base Rent. As used in this Lease, the term "Lease Year" means, in the first instance, the period from the date of this Lease and to but not including the anniversary thereof and thereafter, each 12-month period beginning on each subsequent anniversary of the date of this lease. Tenant shall pay to Landlord, without prior notice or demand and without abatement, deduction, offset or credit, as minimum base rent for the Property ("Base Rent"), in lawful money of the United States at the time of payment, the sum of $265,217.45 per calendar month on or before the 1st day of each calendar month.

3.2 Place for Payment. All sums payable to Landlord under this Lease (collectively, "Rent") shall be paid to Landlord in lawful currency of the United States at Landlord's offices located at 455 N. Rexford Drive, Beverly Hills, California 90210, Attention:

Treasurer, or at any other place or places that Landlord may designate by written notice to Tenant.

4. Utilities. Tenant shall obtain, at Tenant's expense, all electricity, gas, potable water, fire suppression water, sewer, waste water services and other utilities needed to operate the Improvements during the Term.

5. Net Lease. This Lease is a "triple-net" lease; all Rent shall be paid to Landlord absolutely net of all costs and expenses, except to the extent otherwise expressly provided in this Lease. Without limiting the generality of the foregoing, Tenant shall be responsible for all aspects of maintaining and operating the Property, including the payment when and as due of all real property taxes and assessments from time to time assessed against the Property or Tenant's possessory interest therein, and of all charges for gas, electricity, telephone service, water, sewer service, trash removal and other utilities and services furnished to the Property during the Term; provided, however, that Landlord may at any time, in its discretion, pay any such taxes, assessments and charges that Tenant fails to pay when and as due, including, in Landlord's discretion, any fees, penalties and charges assessed by reason of Tenant's failure to make timely payment, in which case Tenant shall reimburse Landlord within ten (10) business days after receipt of Landlord's written request for reimbursement.

6. Use; Hazardous Materials; Compliance with Laws; Inspection.

6.1 Use of Property; Compliance With Lease. (a) Tenant may use the Property as an office development; however, Tenant shall not use or permit the Property or any portion of the Property to be improved, developed, used, or occupied in any manner or for any purpose that is in any way in violation of any federal, state or local law, ordinance, or regulation.

(b) Tenant shall not violate the provisions of any loan document evidencing, securing or otherwise relating to any loan secured by the Property (the "Loan Documents").

6.2 Hazardous Materials.

(a) Definitions.

"Hazardous Materials" shall mean any substance that now or in the future requires investigation or remediation under, or is regulated or defined as a hazardous waste or hazardous substance, by any governmental authority or instrumentality or any law, regulation, rule or order, or any amendment thereto, including, without limitation, the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. § 9601 *et seq.* and the Resource Conservation and Recovery Act, 42 U.S.C. § 9601 *et seq.*, or that is otherwise toxic, explosive, corrosive, flammable, infectious, mutagenic, radioactive, carcinogenic, a pollutant or a contaminant, including gasoline, diesel, petroleum hydrocarbons, polychlorinated biphenyls (PCBs), asbestos, radon and urea formaldehyde foam insulation.

"Environmental Requirements" shall mean all present and future governmental laws, regulations, rules, orders, permits, licenses, approvals, authorizations and other requirements of

any kind applicable to Hazardous Materials, including common law tort principles (such as public and private nuisance and strict liability for conducting abnormally dangerous activities).

"Tenant's Representatives" shall mean all Tenant's officers, employees, contractors, representatives, assignees, sublessees (and their contractors), licensees, agents, invitees, and any trespassers on the Property.

(b) Indemnification by Tenant. In addition to, and not in derogation of any other indemnification contained in this Lease, Tenant agrees to indemnify, defend and hold harmless Landlord, its successors and assigns, and its and their directors, officers, shareholders, employees, agents and affiliates from all costs, expenses, damages, liabilities, claims, fines, penalties, interest, judgments, and losses of any kind arising from or in any way related to Tenant's or Tenant's Representatives' handling of Hazardous Materials during the Term or failure to comply in full with this Section 6.2 (collectively, "Environmental Losses"), including consequential damages, damages for personal or bodily injury, property damage, damage to natural resources occurring on or off the Property, encumbrances, liens, costs and expenses of investigations, monitoring, clean up, removal or remediation of Hazardous Materials, defense costs of any claims (whether or not such claim is ultimately defeated), good faith settlements, attorneys' and consultants' fees and costs, and losses attributable to the diminution of value, loss or use or adverse effects on marketability or use of any portion of the Property, whether or not such Environmental Losses are contingent or otherwise, matured or unmatured, foreseeable or unforeseeable. If Landlord is ever made a party to any action or proceeding by reason of a matter for which Tenant is obligated to indemnify Landlord, then Tenant, upon notice from Landlord, shall, at Landlord's option, either defend that action or proceeding on behalf of Landlord at Tenant's expense with counsel satisfactory to Landlord or reimburse Landlord for all defense costs Landlord actually incurs in defending against such action or proceeding, whether or not the action or proceeding is ultimately defeated. This indemnity is intended by the parties to be as broad and comprehensive as possible under law and shall apply regardless of the fault (including active or passive negligence) of either Tenant or Landlord.

(c) Additional Delivery Requirements. Tenant shall deliver to Landlord prior to delivery to, or promptly after receipt from, any governmental authority or other person or entity copies of all permits, manifests, closure or remedial action plans, notices, investigations, inquiries, claims, citations, summons, complaints, writs, orders and all other communications or documents relating to (i) the handling of Hazardous Materials at or about the Property, (ii) the actual, alleged or threatened violation of Environmental Requirements or (iii) the liability of Tenant or Landlord for Environmental Losses.

(d) Landlord's Rights. Landlord and its representatives and consultants shall have the right, but not the obligation, to enter the Property at any reasonable time upon 24 hours' prior notice (except in the case of an emergency) (i) to confirm Tenant's compliance with the provisions of this Section 6.2, including the right to physically investigate the condition of the Property and review all permits, reports, plans, and other documents regarding the Handling of Hazardous Materials, and (ii) to perform Tenant's obligations under this Section 6.2 if Tenant has failed to timely do so. Tenant shall pay the costs of Landlord's consultants' fees and all other costs incurred by Landlord pursuant to clause (i) above if such investigation is undertaken because Tenant has failed to provide full and complete information

regarding any release, discharge or other Handling of Hazardous Materials and shall pay, in any case, all such costs incurred pursuant to clause (ii) above. Landlord shall use reasonable efforts to minimize any interference with Tenant's sublessees caused by Landlord's entry into the Property, but Landlord shall not be responsible for any interference caused thereby.

(e) Release of Hazardous Materials. In the event of any release, discharge or other event caused or contributed to by the acts or omissions of the Tenant or Tenant's Representatives which poses a threat of damage or contamination to the Property or the environment, whether discovered by Landlord or Tenant, Tenant shall fully document the facts relating to the event, including the circumstances existing prior to and after the occurrence of the event, the precise nature of the release, discharge or event, including specific compounds and quantities involved, and all actions Tenant has taken and will take to remediate the release, discharge or event. Tenant shall provide such documentation to Landlord promptly after the occurrence in question. Tenant shall pay the reasonable costs and fees charged by Landlord's environmental consultants to review such documentation and provide peer review confirming the adequacy of the measures, past and future, taken by Tenant to remediate the problem.

6.3 Compliance with Applicable Requirements. Tenant, shall, at Tenant's sole expense, fully, diligently and in a timely manner, comply with all applicable laws, building codes, regulations, ordinances, rules, directives, covenants, or restrictions of record, the requirements of any applicable fire insurance underwriter or rating bureau, and the recommendations of Landlord's engineers and/or consultants which relate in any manner to the Property (collectively, "Applicable Requirements"), without regard to whether such Applicable Requirements are now in effect or become effective hereafter. Tenant shall, within ten (10) days after receipt of Landlord's written request, provide Landlord with copies of all permits and other documents, and other information evidencing Tenant's compliance with any Applicable Requirements specified by Landlord, and shall immediately upon receipt, notify Landlord in writing (with copies of any documents involved) of any threatened or actual claim, notice, citation, warning, complaint or report pertaining to or involving the failure of Tenant or the Property to comply with any Applicable Requirements.

6.4 Inspection. Landlord's consultants shall have the right, but not the obligation, to enter into the Property at any time, in the case of an emergency, and otherwise at reasonable times, for the purpose of (a) inspecting the condition of the Property, (b) verifying compliance by Tenant with this Lease and (c) performing Tenant's obligations under Section 6.2 if Tenant has failed to timely do so. The cost of any such inspections shall be paid by Landlord, unless a violation of Applicable Requirements or a contamination is found to exist or be imminent, or the inspection is requested or ordered by a governmental authority. In such case, Tenant shall upon request reimburse Landlord for the reasonable cost of such inspections, so long as such inspection is reasonably related to the violation or contamination. Tenant shall pay, in any case, all such costs incurred pursuant to clause (c) above.

7. Maintenance and Repairs.

7.1 Maintenance by Tenant. At all times during the Term, Tenant shall, at Tenant's own cost and expense, keep and maintain the Property (including all structural, non-structural, interior, exterior, landscaped areas, systems, equipment, facilities, driveways, parking

lots, fences, and signs) in good order, condition and repair (whether or not the portion of the Property requiring repairs, or the means of repairing the same, are reasonably or readily accessible to Tenant, and whether or not the need for such repairs occurs as a result of Tenant's use, any prior use, the elements or the age of such portion of the Property). Tenant's maintenance obligations shall include restorations, replacements and renewals when necessary to keep the Property and all improvements thereon in good order, condition and repair. Tenant shall, during the Term, keep the exterior appearance of the Building in a first-class condition consistent with the exterior appearance of other similar facilities of comparable age and size in the vicinity, including, when necessary, exterior repainting. In keeping the Property in good order, condition and repair, Tenant shall exercise and perform good maintenance practices, specifically including the procurement and maintenance at Tenant's expense of service contracts for HVAC equipment, any boiler and pressure vessels, fire protection systems, landscaping and irrigation systems, the roof and drains, and asphalt and parking lots, each with a contractor specializing and experienced in the maintenance of the applicable equipment or improvements. Tenant shall provide Landlord with a complete and correct copy of each such service contract and any amendments thereto. Tenant's maintenance obligations under this Section shall not be construed as limiting any right or requirement expressly provided for elsewhere in this Lease for Tenant to alter, modify, demolish, remove or replace any improvement. No deprivation, impairment or limitation of use resulting from any event or work contemplated by this Section shall entitle Tenant to any offset, abatement or reduction in rent nor to any termination or extension of the Term.

7.2 Requirements of Governmental Agencies. At all times during the Term, Tenant shall, at Tenant's own cost and expense:

(a) make all alterations, additions, or repairs to the Property (including the improvements and facilities on the Property) required by any law, ordinance, statute, order, or regulation now or hereafter made or issued by any federal, county, local, or other governmental agency or entity;

(b) observe and comply with all laws, ordinances, statutes, orders, and regulations now or hereafter made or issued respecting the Property by any federal, county, local, or other governmental agency or entity; and

(c) indemnify, defend and hold Landlord and the property of Landlord, including the Property, free and harmless from any and all liabilities, losses, damages, fines, penalties, claims, and actions resulting from Tenant's failure to comply with the requirements of this Section 7.

7.3 Tenant's Duty to Restore Property. Should, at any time during the Term, any buildings or improvements now or hereafter on the Property be destroyed in whole or in part by fire, theft, the elements, or any other cause not the fault of Landlord, then to the extent required by the Loan Documents, and in accordance with the terms thereof Tenant shall repair and restore the damaged or destroyed buildings or improvements.

8. Indemnity and Insurance.

8.1 Exculpation of Landlord. Landlord shall not be liable to Tenant for any damage to Tenant or Tenant's property for any cause, except for any damage to Tenant or Tenant's property resulting from the gross negligence and willful misconduct of Landlord or its authorized representatives. Tenant waives all claims against Landlord for damage to person or property arising, or asserted to have arisen, for any reason, except that Landlord shall be liable to Tenant for any damage to Tenant resulting from the gross negligence or willful misconduct of Landlord, provided that under no circumstances shall Landlord be liable for any injury to Tenant's business or for any loss of income or profit. Subject to the foregoing provisions, Landlord agrees to, defend, indemnify and hold Tenant and its officers, directors, employees, agents and affiliates and their respective assets free and harmless against and from any and all liabilities, claims, losses, damages, and expenses (including attorneys' fees and court costs) resulting from or arising out of Landlord's failure to perform any of Landlord's obligations under this Lease when and as required by the terms hereof.

8.2 Indemnity. Tenant agrees to, and does hereby defend, indemnify and hold Landlord and its officers, directors, employees, agents and affiliates and their respective assets, including the Property and all improvements now or hereafter on the Property, free and harmless against and from any and all liabilities, claims, losses, damages, and expenses (including attorneys' fees and court costs) resulting from or arising out of Tenant's occupation and use of the Property, specifically including any liability, claim, loss, damage, or expense arising by reason of:

(a) The death or injury of any person, including any person who is an employee or agent of Tenant, or the damage to or destruction of any property, including property owned by Tenant or by any person who is an employee or agent of Tenant, from any cause whatsoever while such person or property is on the Property;

(b) Any work performed on the Property or materials furnished to the Property at the instance or request of Tenant or any person or entity acting for or on behalf of Tenant; or

(c) Tenant's failure to comply with any requirement of law or any requirement imposed on Tenant or the Property by any governmental agency or authority;

(d) Tenant's failure to perform any of Tenant's obligations under this Lease when and as required by the terms hereof.

8.3 Insurance. Tenant shall, at Tenant's own cost and expense, secure and maintain during the entire Term all of the insurance required of Landlord under the Loan Documents.

9. Assignment and Subletting. Tenant shall not assign, encumber or otherwise transfer this Lease. Tenant may enter into subleases, and Landlord shall provide such nondisturbance agreements from lenders under the Loan Documents as may be required of the lenders under the Loan Documents, as well as reasonable nondisturbance agreements on Landlord's own behalf if required by subtenants.

10. Default and Remedies

10.1 Events of Default. Any of the following events shall constitute an "Event of Default" under this Lease:

(a) Tenant fails to make any payment of money called for by any provision of this Lease (whether to Landlord or any third party) when due, or to provide reasonable evidence of any insurance or bond required by the terms of this Lease, or to fulfill any other obligation under this Lease that, by not being fulfilled, endangers or threatens life or property, where such failure continues for a period of five (5) business days following written notice to Tenant; or

(b) Any violation by Tenant of any Loan Documents.

(c) Tenant fails to perform fully and when due any of its other covenants, conditions or obligations under this Lease and after written notice from Landlord specifying the nature of such failure of Tenant, Tenant (i) does not immediately commence taking all necessary and appropriate actions to remedy such failure, or (ii) does not thereafter diligently and continuously pursue all such remedial actions, or (iii) does not fully cure such failure within the minimum period of time reasonably required under the circumstances to achieve a cure, which minimum period shall be at least thirty (30) days after Landlord's written notice of such failure, in any event within ninety (90) days after Landlord's written notice of such failure, time being strictly of the essence; **provided, however**, that Tenant shall not be entitled to cure the breach of any covenant that is non-curable; or

(d) any voluntary or involuntary assignment, transfer or encumbrance of this Lease occurs in violation of Section 9; or

(e) any right or interest of Tenant is subjected to attachment, execution, or other levy, or to seizure under legal process, which is not released within sixty (60) days; or

(f) a receiver is appointed to take possession or control of Tenant's operations on the Property for any reason, including assignment for benefit of creditors or voluntary or involuntary bankruptcy proceedings; or

(g) Tenant makes a general assignment for the benefit of creditors or a voluntary or involuntary petition is filed by or against Tenant under any law for the purpose of adjudicating Tenant a bankrupt, or for extending time for payment, adjustment or satisfaction of Tenant's liabilities, or for reorganization, dissolution or arrangement on account of or to prevent bankruptcy or insolvency, unless such assignment or proceeding, and all consequent orders,

adjudications, custodies and supervisions are dismissed, vacated or otherwise permanently stayed or terminated within sixty (60) days after such assignment, filing or other initial event.

10.2 Remedies. Upon the occurrence of any Event of Default, and without the giving of any additional notice not otherwise required hereunder or by law, Landlord may exercise the following rights and remedies in addition to all other rights and remedies provided by law or equity, either cumulatively or in the alternative:

(a) Terminate Tenant's right to possession of the Property by any lawful means, in which case this Lease shall terminate and Tenant shall immediately surrender possession of the Property to Landlord. In such event Landlord shall be entitled to recover from Tenant: (i) the unpaid Rent that had been earned at the time of termination; plus (ii) the worth at the time of award of the amount by which the unpaid Rent that would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; plus (iii) the worth at the time of award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided; plus (iv) any other amounts necessary to compensate Landlord for all the detriment approximately 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 therefrom, including the cost of recovering possession of the Property, expenses of reletting, including necessary renovation and alteration of the Property, reasonable attorneys' fees, and that portion of any leasing commission paid by Landlord in connection with this Lease applicable to the unexpired Term. The worth at the time of award of the amount referred to in clause (iii) of the immediately preceding sentence shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%). If termination of this Lease is obtained through the provisional remedy of unlawful detainer, Landlord shall have the right to recover in such proceeding any unpaid Base Rent, Percentage Rent and damages as are recoverable therein, or Landlord may reserve the right to recover all or any part thereof in a separate suit. If any notice required under Section 13.1 was not previously given, a notice to pay rent or quit, or to perform or quit given to Tenant under the unlawful detainer statute shall also be deemed to constitute the notice required by Section 13.1. In such case, any applicable grace period required by Section 13.1 and the unlawful detainer statute shall run concurrently, and the failure of Tenant to cure the Event of Default within the greater of the two such grace periods shall constitute both an unlawful detainer and an Event of Default entitling Landlord to the remedies provided for in this Lease and/or by said statute.

(b) Maintain this Lease and Tenant's right to possession of the Property in effect and continue to enforce all of Landlord's rights and remedies hereunder, including the remedy described in California Civil Code Section 1951.4 (granting the landlord the right to continue a lease in effect after a tenant's breach and abandonment and to recover all rent as it becomes due if the tenant has the right to sublet or assign, subject only to reasonable limitations) provided that upon Landlord's election of such remedy, Landlord may not unreasonably withhold its consent to any assignment or subletting. Acts of maintenance or preservation or efforts to relet the Property or the appointment of a receiver upon initiative of Landlord to protect Landlord's interest under this Lease shall not constitute a termination of this Lease or Tenant's right to possession unless written notice of termination is given by Landlord to Tenant.

(c) Pursue any other remedy now or hereafter available under the laws or judicial decisions of the State of California. The expiration or termination of this Lease and/or the termination of Tenant's right to possession shall not relieve Tenant from liability under any indemnity provisions of this Lease as to matters occurring or accruing during the Term or by reason of Tenant's occupancy of the Property.

10.3 Landlord's Performance of Tenant's Obligations. If Tenant fails to perform any affirmative duty or obligation under this Lease within five (5) business days after written notice (or in case of an emergency, without notice), the Landlord may, at its option, perform such duty or obligation on Tenant's behalf, including the obtaining of reasonably required bonds, insurance policies, or governmental permits, licenses and approvals. The costs and expenses of any such performance by Landlord shall be due and payable by Tenant upon Landlord's written demand. If any check given to Landlord by Tenant shall not be honored by the bank upon which it is drawn, Landlord, at its option, may require that all future payments by Tenant to Landlord be made by bank cashier's check.

10.4 Remedies Cumulative. The remedies given to Landlord in this Section shall not be exclusive but shall be cumulative with and in addition to all remedies now or hereafter allowed by law and elsewhere provided in this Lease.

10.5 Waiver of Breach. The waiver by Landlord of any breach of Tenant of any of the provisions of this Lease shall not constitute a continuing waiver or a waiver of any subsequent breach by Tenant either of the same or a different provision of this Lease. No waiver, benefit, privilege or service voluntarily given or performed by either party shall give the other any contractual right by custom, estoppel or otherwise. The subsequent acceptance of rent pursuant to this Lease shall not constitute a waiver of any preceding default by Tenant other than default in the payment of the particular rental payment so accepted, regardless of Landlord's knowledge of the preceding breach at the time of accepting the rent, nor shall acceptance of rent or any other payment after termination constitute a reinstatement, extension or renewal of the Term or revocation of any notice or other act by Landlord.

11. Miscellaneous

11.1 Tenant's Duty to Surrender Property. At the expiration or any earlier termination of the Term, Tenant shall surrender to Landlord the possession of the Property and all improvements and fixtures installed or constructed by or for Tenant thereon free and clear of all claims to or against them by Tenant or any third person or party. Tenant shall leave the surrendered property in good, safe and broom-clean condition. All property that Tenant is required to surrender shall become Landlord's property at termination of this Lease, or, if Landlord so elects and upon written notice to Tenant, shall be demolished and removed by Tenant at Tenant's sole expense, and all property that Tenant is not required to surrender but that Tenant does not remove shall become Landlord's property at termination of this Lease, or, if Landlord so elects and upon written notice to Tenant, shall be demolished and removed by Tenant at Tenant's sole expense. If Tenant fails to surrender the Property at the expiration or earlier termination of this Lease, Tenant shall defend and indemnify Landlord from all liability and expense resulting from the delay or failure to surrender, including claims made by any

succeeding tenant or any purchaser or prospective purchaser founded on or resulting from Tenant's failure to surrender.

11.2 Survival. Each obligation of Tenant's obligations under this Lease that, by its nature, is to be, or may need to be, performed after the expiration or any earlier termination of this Lease shall survive such expiration or termination. Without limiting the generality of the preceding sentence, Tenant's defense and indemnification obligations under this Lease shall survive the expiration or termination of this Lease.

11.3 Force Majeure; Delays. Except as otherwise expressly provided in this Lease, should the performance of any act required by this Lease to be performed by either Landlord or Tenant be prevented or delayed by reason of any act of God, strike, war, lockout, labor trouble, or inability to secure materials (but not by reason of delay in the issuance of any required governmental permit, license or approval), the time for performance of the act will be extended for a period equivalent to the period of delay and performance of the act during the period of delay will be excused; **provided, however**, that nothing contained in this Section shall excuse the full payment when due of any Rent payable by Tenant or the performance of any act rendered difficult or impossible solely because of the financial condition of the party required to perform the act; and **provided further** that any such extension of the time for performance shall not affect the commencement or expiration of the Term.

11.4 Interest on Overdue Payments. All Rent and other sums of any nature that Tenant fails to pay to Landlord when due under any provision of this Lease or that Landlord pays to any third party on behalf of Tenant pursuant to any provision of this Lease shall bear interest from the date due to Landlord or paid by Landlord, as applicable (the "Due Date"), at the greater of the rate of six percent (6%) per annum or the default rate required to be paid under Loan Documents, accruing daily but not compounded. Such interest shall be payable immediately and without the necessity of any demand by Landlord. The fact that Landlord is entitled to interest under this Section shall not be construed to excuse or mitigate any default by Tenant.

11.5 Attorneys' Fees. In the event either party brings a suit, action or other proceeding against the other party that in any way relates to or arises out of this Lease, the prevailing party (meaning the party that obtains substantially the relief sought by it) shall be entitled to have and recover from the other party all costs and expenses of the suit, action or proceeding, including attorneys' fees, from the commencement of the suit, action or proceeding through the entry of judgment. The trial court shall determine which party is the prevailing party as well as the amount of attorneys' fees and costs to be awarded immediately following the entry of judgment (and without awaiting any appeal) in a post-trial proceeding such as is conducted when a cost bill is submitted. If an appeal is timely filed and if the awarding or amount of attorneys' fees and costs is at issue in the appeal, then the appellate court (or the trial court, acting pursuant to an order of the appellate court) shall determine such issue, and the recoverable attorneys' fees and costs shall include those incurred through the entry of final judgment following the appeal. In the event that Landlord shall be a party to any legal proceedings instituted in connection with or arising out of this Lease where Tenant is named as a defendant, Tenant agrees to pay to Landlord all sums paid or incurred by Landlord as costs and expenses in such legal proceedings, including Landlord's reasonable attorneys' fees.

11.6 Estoppel Certificates by Tenant. Tenant shall within ten (10) days after written notice from Landlord execute, acknowledge and deliver to Landlord an estoppel certificate in writing, which may be given by Landlord to any prospective encumbrancer of the Property, to the effect that (a) the terms and provisions of this Lease have not been changed except as otherwise represented by Landlord; (b) this Lease has not been canceled or terminated except as otherwise represented by Landlord; (c) not more than one month's rent has been paid in advance; and (d) Landlord is not in default under this Lease.

11.7 Limitation on Landlord's Liability. The obligations of Landlord under this Lease shall not constitute personal obligations of Landlord or its directors, officers, employees or affiliates, and Tenant shall look to the Property, and not to any other assets of Landlord, for the satisfaction of any liability of Landlord with respect to this Lease, and shall not seek recourse against Landlord or its individual directors, officers, employees or affiliates, or any of their personal assets for such satisfaction.

11.8 Reservations by Landlord. Landlord reserves to itself the right, from time to time and without the consent or joinder of Tenant, to grant such easements, rights and dedications as Landlord may deem necessary, and to cause the recordation of parcel maps and restrictions, so long as such easements, rights, dedications, maps and restrictions do not unreasonably interfere with the use of the Property by Tenant. Tenant agrees to sign any documents reasonably requested by Landlord to effectuate any such easement rights, dedication, map or restrictions.

11.9 Quiet Enjoyment. Tenant shall and may peacefully and quietly have, hold and enjoy the Property hereby demised, for the Term, on the terms and subject to the conditions contained in this Lease.

11.10 Notices. All notices required or permitted by this Lease shall be in writing and may be delivered in person (by hand or by overnight courier) or may be sent by regular, certified or registered mail or U.S. Postal Service Express Mail, with postage prepaid, and shall be deemed sufficiently given if served in a manner specified in this Section. Until changed by a notice given in accordance with the provisions of this Section, the respective addresses of Landlord and Tenant for the purpose of receiving notices required or permitted by this Lease are as follows:

Landlord:

City of Beverly Hills Public Financing Authority
455 North Rexford Drive
Beverly Hills, California 90210
Attention: Executive Director

Tenant:

City of Beverly Hills
455 North Rexford Drive
Beverly Hills, California 90210
Attention: City Manager

A copy of all notices to Landlord shall be concurrently transmitted to such party or parties at such addresses as Landlord may from time to time hereafter designate in writing. Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, the postmark thereon. If sent by regular mail the notice shall be deemed given on the third business day after the same is addressed as required herein and mailed with postage prepaid. Notices delivered by United States Express Mail or overnight courier that guarantee next day delivery shall be deemed given on the next business day after delivery of the same to the Postal Service or courier. Notices transmitted by facsimile transmission or similar means shall be deemed delivered upon telephone confirmation of receipt, provided a copy is also delivered via delivery or mail. If notice is received on a Saturday, Sunday or legal holiday, it shall be deemed received on the next business day.

11.11 Binding on Heirs and Successors. This Lease shall be binding on and enforceable by, and shall inure to the benefit of, Landlord and Tenant and their respective successors and assigns, subject to the provisions of Section 9.

11.12 Time of Essence. Time is expressly declared to be the essence of this Lease.

11.13 Counterparts. This Lease may be executed in counterparts, all of which together shall constitute one and the same document.

11.14 Partial Invalidity. Should any provision of this Lease be held by a court of competent jurisdiction to be either invalid, void, or unenforceable, the remaining provisions of this Lease shall remain in full force and effect unimpaired by the holding.

11.15 Entire Agreement. This instrument constitutes the sole and only agreement between Landlord and Tenant respecting the Property, the leasing of the Property to Tenant, and the other subject matter of this Lease, and correctly sets forth the obligations of Landlord and Tenant to each other as of its date. Any agreements or representations respecting the Property, their leasing to Tenant by Landlord, or any other matter discussed in this Lease not expressly set forth in this instrument are hereby superseded and are null and void.

11.16 Amendments. This Lease may be modified only by a written instrument signed by the parties in interest at the time of the modification.

[Signatures begin on next page]

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the date first above written.

Tenant:

CITY OF BEVERLY HILLS,
a municipal corporation

By: _____
Barry Brucker,
Mayor

ATTEST:

_____
Byron Pope, City Clerk

APPROVED AS TO CONTENT:

_____
Roderick J. Wood, City Manager, CCM

_____
Scott G. Miller, Chief Financial Officer

APPROVED AS TO FORM:

_____
Laurence S. Wiener, City Attorney

Landlord:

CITY OF BEVERLY HILLS PUBLIC FINANCING AUTHORITY

By: _____
Name: Barry Brucker
Title: Chairman

ATTEST:

_____
Byron Pope, Secretary

APPROVED AS TO CONTENT:

_____
Roderick J. Wood, Executive Director

_____
Scott G. Miller, Treasurer

APPROVED AS TO FORM:

_____
Laurence S. Wiener, Authority Counsel

EXHIBIT "A"

DESCRIPTION OF LAND

(Attached.)

EXHIBIT "A"

LEGAL DESCRIPTION OF LAND

A PORTION OF LOT 1 OF TRACT NO. 13349, IN THE CITY Of BEVERLY HILLS, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA AS PER MAP RECORDED IN BOOK 311, PAGE 14 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY AND A PORTION OF LOT 1 OF BLOCK 17 OF TRACT NO. 5647, IN SAID CITY, AS PER MAP RECORDED IN BOOK 60, PAGE 88 OF MAPS, IN SAID OFFICE OF THE COUNTY RECORDER OF SAID COUNTY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE EAST LINE OF SAID LOT 1 OF TRACT NO. 13349, DISTANT THEREON SOUTH 0°09'01" EAST 263.51 FEET FROM THE NORTHEASTERLY CORNER OF SAID LOT 1; THENCE SOUTH 89°51'04" WEST 120.00 FEET; THENCE SOUTH 0°09'01" EAST 240.00 FEET TO THE NORTH LINE OF 3RD STREET, 60.00 FEET WIDE, AS SHOWN ON SAID TRACT NO. 13349; THENCE EASTERLY ALONG SAID NORTH LINE, NORTH 88°42'51" EAST 120.00 FEET TO THE EAST LINE OF SAID LOT 1 OF SAID TRACT NO. 5647; THENCE NORTHERLY ALONG SAID EAST LINE, NORTH 0°09'01" WEST 237.62 FEET TO THE POINT OF BEGINNING.