

# LEASE OPTION AGREEMENT

Peralta Site

July 25, 2013

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## 2.1 Duration of Option Term

Expires on the earlier of:

- 15 days following the Conditions Satisfaction Date (the "Option Expiration Date"); or
- July 31, 2015 ("Outside Option Expiration Date")

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## 2.1 Extension of Outside Option Expiration Term

- The Outside Option Expiration Date may be extended due to extraordinary governmental delays or as a result of force majeure.
- Extensions may be up to 6 months each, not to exceed 24 months total.

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## **2.2 Due Diligence Period**

- 75 days from Agreement Date to perform due diligence review.
- 60 days from receipt of Preliminary Title Report to notify Lessor of any disapproved title exceptions.

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## **2.4 Early Termination of Agreement**

- Lessee may terminate at any time with or without cause.
- Lessor may terminate the Agreement if Lessee does not submit an application for the general plan amendment ("GPA") and rezoning of the Premises within 6 months of the expiration of the Due Diligence Period.

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### **3. Option Conditions**

- Issuance of Entitlements
- Expiration/Resolution of Appeals
- No Litigation
- Representations and Warranties
- No Breach of Default
- Title to Premises
- No Encumbrances
- Title Policy

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### **4. Exercise of Option**

Lessee shall:

- Notify Lessor in writing of its exercise of the Option (“Option Exercise Notice”);
- Execute and deliver to Lessor the Lease; and
- Provide Evidence of Lessee Financial Capability

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## 5. Option Fee

- Year One Option Payment is \$75,000. Non-refundable after October 15, 2013.
- Year Two Option Payment is \$100,000. Non-refundable to Lessee.
- If the Option is exercised prior to the expiration of the Option Term, the Year Two Option Payment shall be credited on a pro rata basis to the monthly base rent due after the Lease becomes effective.

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## 6.1 Obtaining Entitlements

- During the Option Lessee will be seeking entitlements for the property.
- Lessor must cooperate with Lessee's efforts, but at no cost to Lessor.

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## 9. Default

- If Lessor defaults, Lessee may:
  - Waive default; or
  - Terminate the Agreement and receive Option Fees previously paid; or
  - Seek specific performance or other form or equitable relief with the court.
- If Lessee defaults, Lessor may terminate the Agreement and retain, as liquidated damages, any Option Fee(s) paid by Lessee.

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## 13.6 No Assignment

- No right to assign or transfer without the express written consent of Lessor, which consent may be withheld by Lessor in its sole and absolute discretion.
- Certain exceptions upon written notice.

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