

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of  
The Securities Exchange Act of 1934

Date of Report (Date of Earliest Event Reported):  
**June 21, 2005**



**FRANKLIN COVEY CO.**

(Exact name of registrant as specified in its charter)

Commission File No. 1-11107

Utah  
(State or other jurisdiction of incorporation)

87-0401551  
(IRS Employer Identification Number)

**2200 West Parkway Boulevard**  
**Salt Lake City, Utah 84119-2099**  
(Address of principal executive offices)(Zip Code)

Registrant's telephone number, including area code: **(801) 817-1776**

Former name or former address, if changed since last report: **Not Applicable**

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

**Item 1.01                    Entry into a Material Definitive Agreement**

Contemporaneously with the sale of its corporate headquarters facility (refer to Item 2.01 below) located in Salt Lake City, Utah, Franklin Covey (the Company) entered into a 20-year master lease agreement with Franklin SaltLake LLC, an entity owned by Levy Affiliated Holdings, LLC (the purchaser), both of which are unrelated to the Company. The master lease requires initial rental payments totaling \$253,719 per month for the first five years of the agreement. Commencing with the sixth lease year and continuing every year thereafter during the 20-year lease term, the base monthly rent will be increased by two percent over the base monthly rent in effect at the time of the increase. The master lease agreement also contains six five-year options to renew the master lease agreement, thus allowing the Company to maintain its operations at the current location for up to 50 years.

**Item 2.01                    Completion of Disposition of Assets**

On June 21, 2005 the Company completed the sale and associated leaseback of its corporate headquarters facility, located in Salt Lake City, Utah to Levy Affiliated Holdings, LLC, an unrelated private investment group. The sale price was \$33.8 million in cash and after deducting customary closing costs, including commissions and retirement of the remaining mortgage on one of the buildings, the Company received net proceeds totaling \$32.4 million. The Company intends to use \$30.0 million of the proceeds from the sale of the corporate headquarters facility to redeem shares of preferred stock.

**Item 9.01                    Financial Statements and Exhibits**

(c) Exhibits

99.1 Master Lease Agreement between Franklin SaltLake LLC (Landlord) and Franklin Development Corporation (Tenant).

99.2 Purchase and Sale Agreement and Escrow Instructions between Levy Affiliated Holdings, LLC (Buyer) and Franklin Development Corporation (Seller) and Amendments.

**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

**FRANKLIN COVEY CO.**

Date: June 27, 2005

By: /s/ STEPHEN D. YOUNG  
Stephen D. Young  
Chief Financial Officer

**MASTER LEASE AGREEMENT**

**JUNE 12, 2005**

LANDLORD:

FRANKLIN SALT LAKE LLC

a Utah LIMITED LIABILITY COMPANY

TENANT:

FRANKLIN DEVELOPMENT CORPORATION,

a UTAH CORPORATION

**LEASE AGREEMENT**

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Exhibit "A" - Property List; Legal Descriptions of Properties

Exhibit "B" - Memorandum of Lease

## LEASE AGREEMENT

This LEASE AGREEMENT (this "Lease"), dated for reference purposes only as of June \_\_, 2005, is made by and between FRANKLIN SALT LAKE LLC, LLC, a Utah limited liability company ("Landlord"), and FRANKLIN DEVELOPMENT CORPORATION, a Utah corporation ("Tenant"), with reference to the recitals set forth below.

### RECITALS

A. Landlord is the owner of four (4) parcels of land in Salt Lake County, Utah, together with all improvements located thereon (including, but not limited to, five (5) office buildings) and appurtenances, gores, strips of land, easements, rights of way, usufructs, mineral rights, water rights, fixtures and personal property thereunto belonging, which real properties are identified on the "Property List," attached hereto and incorporated herein as Exhibit "A." The terms "Property" and "Properties" as used in this Lease shall mean certain or all (as the context may require) of the real properties identified on the Property List. Also attached as part of Exhibit "A" are legal descriptions of the Properties shown on the Property List.

B. Landlord and Tenant acknowledge and agree that this Lease is a master lease for all of the Properties, and further acknowledge and agree that such master lease was an inducement to Landlord and Tenant to enter into this Lease.

C. Landlord desires to lease the Properties to Tenant, and Tenant desires to lease the Properties from Landlord pursuant to the provisions of this Lease.

### 1. DEFINITIONS

The following terms, when used in this Lease, shall have the meaning set forth in this Section.

#### 1.1 Lease Year

The term "Lease Year" shall mean the first twelve (12) full calendar months after the Commencement Date (as defined in Section 3) and each subsequent twelve (12) month period thereafter during the term and any extensions. If the Commencement Date is other than the first day of the month, then the first Lease Year also will include the partial month in which the Commencement Date occurs and the partial month in which the twelfth month of the Term falls.

#### 1.2 Hazardous Material

The term "Hazardous Material" includes, but is not limited to, any and all hazardous or toxic substances, Wastes, or materials used, generated, stored or transported on or to the Property, including but not limited to asbestos or asbestos-containing materials, petroleum and petroleum products (including without limitation, gasoline and diesel), pollutants, pollution, contaminants or contamination as those terms are commonly used or as defined or designated under any Environmental Law present at levels in excess of those allowed under Environmental Laws.

#### 1.3 Wastes

The term "Wastes" includes any and all chemical, petroleum, or biological wastes, contaminants, emissions, discharges, or pollutants, whether hazardous or non-hazardous, liquid, solid or gaseous, chemically active or inert, and whether from any production, operation, maintenance, manufacturing, processing, storage, use or other activity, where such waste is regulated under federal, state, or local law which is designed to protect health, safety or the environment.

#### 1.4 Environmental Laws

The term "Environmental Laws" includes, but is not limited to all federal, state and local statutes, regulations or ordinances, all rules, policies, directives, orders or requirements of any government agency, and all common law requirements, regulating, relating to, affecting or imposing liability or other obligations concerning hazardous substances, hazardous wastes, Hazardous Materials, Pollutants, Waste, human health or the environment.

#### 1.5 Release

The term "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment of any Hazardous Material, Pollutants or Waste.

#### 1.6 Pollutants

The term "Pollutants" means any Hazardous Materials or Wastes arising out of Tenant's past, present or future use or occupancy of the Properties, Tenant's acts or omissions which include, but are not limited to, any Hazardous Materials or Wastes transported to or from the Properties, used, stored, spilled, released, discharged, disposed or emitted by Tenant or its invitees and any Hazardous Materials Released at, under, from, or to the Properties, including without limitation the migration of Hazardous Materials or Waste to or from the Properties, during or before the Lease term. As used herein, Tenant includes Tenant's employees, agents, successors, sublessees, assigns, contractors, subcontractors, or persons acting on behalf of Tenant.

### 2. CONDITION OF PROPERTIES

Landlord leases to Tenant and Tenant leases from Landlord the Properties in their "AS IS, WHERE IS, WITH ALL FAULTS" condition with no representations or warranties of conditions or suitability for use whatsoever and on the terms and conditions set forth in this Lease. By affixing its initials below, Tenant acknowledges and agrees that: (i) no representations have been or are made, or responsibility assumed by Landlord, with respect to the Properties or their operations, or the condition or repair of the Properties, or as to any fact, circumstance, thing or condition which may effect or relate to the Properties, except as expressly or specifically set forth in this Lease; (ii) the Properties are leased in their "AS IS, WHERE IS, WITH ALL FAULTS" condition as of the Commencement Date; and (iii) other than as specifically set forth in this Lease, Landlord shall have no obligation to alter, restore, improve, repair or develop the Properties, and further shall have no obligation to remove therefrom any parties or items of personal property, or other trade fixtures or equipment which may be upon the Properties on the Commencement Date.

TENANT'S INITIALS \_\_\_ LANDLORD'S INITIALS \_\_\_

### 3. TERM

#### 3.1 Primary Term

The effective date (the "Commencement Date") of this Lease shall be the date upon which escrow is deemed closed pursuant to that certain Purchase Agreement and Escrow Instructions of even date herewith by and between Tenant, as "Seller," and Landlord, as "Buyer" ("Purchase Agreement"). The expiration date of the primary term (the "Primary Term") of this Lease shall be the last day of the month twenty (20) years following the Commencement Date, unless extended as set forth in Section 3.2, Section 3.3, Section 3.4, Section 3.5, Section 3.6 and Section 3.7. References to the term of the Lease shall include extensions, if any. Except as otherwise expressly stated, the terms and conditions of this Lease shall remain in effect during any extension, renewal or holdover of the Primary Term.

#### 3.2 First Option to Extend

On or before one hundred and eighty (180) days prior to the expiration of the Primary Term, provided there are no material uncured Events of Default (as defined in Section 17) existing under the Lease, Tenant may extend the term of this Lease for an additional five (5) years by notifying Landlord of such intention in writing ("First Extension Period"). The maximum term of the Lease with one extension is twenty-five (25) years.

#### 3.3 Second Option to Extend

On or before one hundred and eighty (180) days prior to the expiration of the First Extension Period, provided there are no material uncured Events of Default existing under the extended Lease, Tenant may extend the term of this Lease for an additional five (5) years by notifying Landlord of such intention in writing ("Second Extension Period"). The maximum term of the Lease with two extensions is thirty (30) years.

#### 3.4 Third Option to Extend

On or before one hundred and eighty (180) days prior to the expiration of the Second Extension Period, provided there are no material uncured Events of Default existing under the extended Lease, Tenant may extend the term of this Lease for an additional five (5) years by notifying Landlord of such intention in writing ("Third Extension Period"). The maximum term of the Lease with three extensions is thirty-five (35) years.

#### 3.5 Fourth Option to Extend

On or before one hundred and eighty (180) days prior to the expiration of the Third Extension Period, provided there are no material uncured Events of Default existing under the extended Lease, Tenant may extend the term of this Lease for an additional five (5) years by notifying Landlord of such intention in writing ("Fourth Extension Period"). The maximum term of the Lease with four extensions is forty (40) years.

#### 3.6 Fifth Option to Extend

On or before one hundred and eighty (180) days prior to the expiration of the Fourth Extension Period, provided there are no material uncured Events of Default existing under the extended Lease, Tenant may extend the term of this Lease for an additional five (5) years by notifying Landlord of such intention in writing ("Fifth Extension Period"). The maximum term of the Lease with five extensions is forty-five (45) years.

#### 3.7 Sixth Option to Extend

On or before one hundred and eighty (180) days prior to the expiration of the Fifth Extension Period, provided there are no material uncured Events of Default existing under the extended Lease, Tenant may extend the term of this Lease for an additional five (5) years by notifying Landlord of such intention in writing ("Sixth Extension Period"). The maximum term of the Lease with six extensions is fifty (50) years.

The First Extension Period, Second Extension Period, Third Extension Period, Fourth Extension Period, Fifth Extension Period and Sixth Extension Period collectively shall be referred to as the "Extension Periods." If Tenant elects to exercise an option to extend, it may exercise said option with respect to any, some or all of the Properties subject to this Lease immediately prior to the commencement of the applicable Extension Period.

#### 3.8 Surrender of Properties; Holding Over

On the last day or sooner termination of the term of this Lease, Tenant shall quit and surrender the Properties, together with all alterations, vacant and free of all tenancies and any leasehold rights therein and in good condition and repair, normal wear and tear excepted, broom clean and free of violations and Pollutants, and shall surrender all keys for the Properties to Landlord at the place then fixed for the payment of rent and shall inform Landlord of all combinations of locks, safes, and vaults, if any, in the Properties. If Tenant does not do so, then after expiration of this Lease, it will be a tenant at will upon the applicable conditions of this Lease. In such event the rent payable shall be increased by ten percent (10%) over the rent payable during the last full month of the term of this Lease that just ended, prorated for any partial month. If the Properties are not surrendered as and when aforesaid, Tenant shall indemnify Landlord from and against loss or liability resulting from the delay by Tenant in so surrendering the Properties, including without limitation, any claims made by any succeeding occupant or purchaser founded on such delay, but excluding any consequential damages. Tenant's obligations under this Section shall survive the expiration or earlier termination of this Lease.

### 4. RENT AND DEPOSITS

#### 4.1 Net-Net-Net Lease

This is a net-net-net ("triple net") lease. It is the intention of Landlord and Tenant that the Base Monthly Rent (as defined below) and other sums and charges provided herein, including property taxes, repairs and routine maintenance, and insurance, shall be absolutely net to Landlord. Except as otherwise specifically set forth in this Lease, Tenant shall pay, as additional rent, all Property Taxes and Other Charges as those terms are defined in Section Eight hereunder, of every kind and nature against or relating to the use, occupancy, possession, operation, maintenance or repair of the Properties, which may arise or become due during the term hereof, whether or not now customary or within the contemplation of the parties hereto.

#### 4.2 Base Monthly Rent

The Base Monthly Rent to be allocated to each of the Properties (the "Individual Building Rents") is listed on Exhibit "A." The parties acknowledge and agree that the Individual Building Rents are included in Exhibit "A" solely for the convenience and use of the parties in making certain calculations as may be necessary from time to time pursuant to the provisions hereof. By way of example only, in the event: (i) this Lease is terminated or not extended pursuant to the terms hereof as to certain (but not all) of the Properties; or (ii) of a conveyance by Landlord of Landlord's interest in the Lease as to one or more of the Properties prior to



expiration or termination hereof; or (iii) an assignment by Tenant of Tenant's interest in this Lease as to one or more of the Properties pursuant to the terms hereof, Base Monthly Rent payable hereunder following said event shall be adjusted by the respective Individual Building Rents.

Base Monthly Rent shall be payable by Tenant to Landlord in advance in equal monthly installments commencing upon the Commencement Date and on the first day of each calendar month thereafter, without prior notice, invoice, demand, deduction or offset whatsoever. Landlord shall have the right to accept all rent and other payments, whether full or partial, and to negotiate checks and payments thereof without any waiver of rights, irrespective of any conditions to the contrary sought to be imposed by Tenant. All rent shall be paid to Landlord at the address to which notices to Landlord are given. The Base Monthly Rent for any partial month shall be prorated based upon the actual number of days in the period to be prorated.

#### 4.3 Base Monthly Rent During the Extension Periods

In the event Tenant exercises its option(s) to extend the term of this Lease as set forth above, the Base Monthly Rent shall be adjusted as follows:

- 4.3.1 First Extension Period: The Base Monthly Rent which is payable by Tenant during the first year of the First Extension Period shall be equal to the Base Monthly Rent payable by Tenant during the last month of the Primary Term multiplied by one hundred and five percent (105%).
- 4.3.2 Second Extension Period: The Base Monthly Rent which is payable by Tenant during the first year of the Second Extension Period shall be equal to the Base Monthly Rent payable by Tenant during the last month of the First Extension Period multiplied by one hundred and five percent (105%) .
- 4.3.3 Third Extension Period: The Base Monthly Rent which is payable by Tenant during the first year of the Third Extension Period shall be equal to the Base Monthly Rent payable by Tenant during the last month of the Second Extension Period multiplied by one hundred and five percent (105%).
- 4.3.4 Fourth Extension Period: The Base Monthly Rent which is payable by Tenant during the first year of the Fourth Extension Period shall be equal to the Base Monthly Rent payable by Tenant during the last month of the Third Extension Period multiplied by one hundred and five percent (105%).
- 4.3.5 Fifth Extension Period: The Base Monthly Rent which is payable by Tenant during the first year of the Fifth Extension Period shall be equal to the Base Monthly Rent payable by Tenant during the last month of the Fourth Extension Period multiplied by one hundred and five percent (105%).
- 4.3.6 Sixth Extension Period: The Base Monthly Rent which is payable by Tenant during the first year of the Sixth Extension Period shall be equal to the Base Monthly Rent payable by Tenant during the last month of the Fifth Extension Period multiplied by one hundred and five percent (105%).

### 5. RENT ESCALATIONS

Commencing with the sixth (6<sup>th</sup>) lease year and continuing every year thereafter during the Term, Base Monthly Rent shall be increased by two percent (2%) over the Base Monthly Rent in effect at the time of the increase. Commencing with the second (2<sup>nd</sup>) lease year of any Extension Period and continuing every year thereafter during said Extension Period, the Base Monthly Rent shall be increased by two percent (2%) over the Base Monthly Rent in effect at the time of the increase.

### 6. LANDLORD'S COVENANTS

#### 6.1 Easements.

During the term of this Lease, Landlord shall not unreasonably condition, withhold or delay its agreement to grant such utility, access or other similar easements on over and above any of the Properties as Tenant may reasonably request, provided, that such easements will not materially and adversely interfere with Landlord's ownership of, or the value of Landlord's interest in, such Properties.

### 7. USE OF THE PROPERTIES; COMPLIANCE

#### 7.1 Use.

Tenant may use the Properties for general office use, along with related or ancillary uses and parking ("Initial Use"), or for such other use as Tenant may determine in Tenant's reasonable business judgment, provided that such use: (i) is lawful; (ii) is in compliance with applicable environmental, zoning and land use Laws, restrictions, and requirements, and Tenant obtains all applicable permits for such uses prior to beginning the use; (iii) does not violate matters of record or covenants, conditions or restrictions affecting the Properties existing as of the date hereof or any matters of record or covenants, conditions or restrictions hereafter created by or consented to by Tenant applicable to the Properties; provided, however, Landlord shall not unreasonably withhold its consent to future matters of record or restrictions that do not (i) materially or adversely affect Tenant's use and enjoyment of the Properties, with materiality being determined based upon commercially reasonable standards, (ii) reduce, abate, diminish, lessen or limit any of Tenant's rights under the terms of, or reduce the value of Tenant's leasehold estate created by, this Lease, and (iii) otherwise result in any monetary impositions upon Tenant. A change in use that is prohibited by the lender holding an encumbrance or lien on the Properties is per se reasonably refused by the Landlord. In the event that Tenant believes that Landlord has wrongfully withheld a consent pursuant to the immediately preceding sentence, Tenant's sole remedy shall be to seek relief granting such consent. Tenant has satisfied itself, and represents to Landlord, that its Initial Use is lawful and materially conforms to applicable zoning and other use restrictions and regulations applicable to the Properties.

#### 7.2 Compliance

Tenant, at Tenant's sole expense, promptly shall comply with all applicable laws, statutes, ordinances, rules, regulations and orders and any covenants and restrictions of record hereafter created by or consented to by Tenant in effect during the term or any part of the term hereof, regulating the use by Tenant of the Properties, including, without limitation, the obligation at Tenant's cost, to alter, maintain, or restore the Properties in compliance and conformity with all laws relating to the condition, use or occupancy of the Properties during the term (including, without limitation, any and all requirements as set forth in the Americans

with Disabilities Act) and regardless of (i) whether such laws require structural or non-structural improvements, (ii) whether the improvements were foreseen or unforeseen, and (iii) the period of time remaining in the term.

## **8. PROPERTY TAXES, OTHER CHARGES, ASSESSMENTS AND UTILITIES**

### **8.1 Tenant's Required Payments**

Tenant shall (i) pay at least ten (10) days before delinquency and as additional rent, all Property Taxes and Other Charges (as such terms are defined herein) that accrue during or are otherwise allocable to the term of this Lease; and (ii) concurrently provide Landlord with evidence of payment thereof. Property taxes and Other Charges together are referred to herein as "Taxes."

8.1.1 "Property Taxes" shall mean all taxes, assessments, excises, levies, fees, and charges (and any tax, assessment, excise, levy, fee, or charge levied wholly or partly in lieu thereof or as a substitute therefor or as an addition thereto) of every kind and description, general or special, ordinary or extraordinary, foreseen or unforeseen, secured or unsecured, whether or not now customary or within the contemplation of Landlord and Tenant, that are levied, assessed, charged, confirmed, or imposed on or against, or otherwise with respect to, the Properties or any part thereof or any personal property used in connection with the Properties, which is levied on the value of said Properties or personal property. It is the intention of Landlord and Tenant that all new and increased taxes, assessments, levies, fees, and charges be included within the definition of Property Taxes for the purpose of this Lease, whether or not these taxes, assessments, levies, fees, and charges existed on the effective date of this Lease.

8.1.2 "Other Charges" shall mean all taxes, assessments, excises, levies, fees, and charges other than Property Taxes (including, without limitation, common area maintenance charges, charges relating to the cost of providing facilities or services, and charges relating to documents or instruments of record effecting or encumbering the Properties), whether or not now customary or within the contemplation of Landlord and Tenant, that are levied, assessed, charged, confirmed, or imposed upon, or measured by, or reasonably attributable to (a) the Properties; (b) the cost or value of Tenant's furniture, fixtures, equipment, or personal property located in the Properties or the cost or value of any leasehold improvements made in or to the Properties by or for Tenant, regardless of whether title to such improvements is vested in Tenant or Landlord; ; (c) the possession, leasing, operation, management, maintenance, alteration, repair, use, or occupancy by Tenant of the Properties; (d) any fees, charges, fines, costs, assessments, taxes, demands, orders, directives, or other requirements by any governmental agency asserting jurisdiction, or under any Environmental Laws which arise from or relate to Tenant's use of, or Tenant's activities at, the Properties, (e) this transaction or the recording or cancellation of recording of any document to which Tenant is a party creating or transferring an interest or an estate in the Properties, and it includes (f) insurance, maintenance, and other costs incurred by Tenant by which Landlord may benefit.

8.1.3 In addition to the foregoing, during the term of this Lease, Tenant acknowledges and agrees it is obligated to and shall perform all obligations of the owner of the Properties under, and pay all expenses which the owner of the Properties may be required to pay in accordance with, any reciprocal easement agreements or any other documents or instruments of record now (or of record in the future if created or filed by or with the consent of Tenant) affecting the Properties, herein referred to collectively as the "REAs." Tenant shall promptly comply with all of the terms and conditions of the REAs during the term of this Lease.

### **8.2 Payments Not Required by Tenant**

Notwithstanding anything to the contrary contained in this Section 8, Tenant shall not be required to pay any state or federal income, franchise or similar taxes of Landlord, or any state or federal estate, succession, inheritance, or transfer taxes of Landlord.

### **8.3 Assessments**

If any assessment for a capital improvement made by a public or governmental authority shall be levied or assessed against the Properties, and the assessment is payable either in a lump sum or on an installment basis, then Tenant shall have the right to elect the basis of payment; provided, however, throughout the entire term of this Lease, Tenant shall pay all assessments that become payable during or are otherwise allocable to the term of this Lease.

### **8.4 Utility Payments**

Tenant shall promptly pay when due all charges for water, gas, electricity, and all other utilities furnished to or used upon the Properties, including all charges for installation, termination, and relocations of such service. Landlord, at its option, may require Tenant to furnish Landlord with evidence of payment of such charges. Tenant shall have the right to select the utility providers for the Properties.

### **8.5 Tenant's Right to Contest Utility Charges, Contest Taxes and Seek Reduction of Assessed Valuation of the Properties**

Tenant, at Tenant's sole cost and expense, shall have the right, at any time, to seek a reduction in the assessed valuation of the Properties or to contest any Property Taxes or utility charges that are to be paid by Tenant; provided however, Tenant shall (i) give Landlord written notice of any such intention to contest at least thirty (30) days before any delinquency could occur; (ii) indemnify and hold Landlord harmless from all liability on account of such contest; (iii) take such action as is necessary to remove the effect of any lien which attached to any of the Properties or the improvements thereon due solely to such contest, or in lieu thereof, at Landlord's election, furnish Landlord with adequate security for the amount of the Property Taxes due plus interest and penalties, which may or may not be an escrow or impound account; and (iv) in the event of a final determination adverse to Tenant, prior to enforcement of a lien, foreclosure of a lien or sale to pay Property Taxes, pay the amount involved together with all penalties, fines, interest, costs, and expenses which may have accrued. Tenant may use any means allowed by law or statute to protest Taxes or utility charges as defined in this Section 8 as long as Tenant remains current as to all other terms and conditions of this Lease. If the protested Taxes have not been paid, then at Landlord's request Tenant shall furnish to Landlord a surety bond issued by an insurance company qualified to do business in the state where the Property is located. The amount of bond shall equal one hundred ten percent (110%) of the total amount of Taxes in dispute. The bond shall hold Landlord and the Property harmless from any damage arising out of the proceeding or contest and shall insure the payment of any judgment that may be rendered. If Tenant seeks a reduction or contests any Taxes or utility charges, the failure on Tenant's part to pay the Taxes or utility charges shall not constitute a default as long as Tenant complies with the provisions of this Section.

### **8.6 Landlord Not Required to Join in Proceedings or Contest Brought by Tenant**

Landlord shall not be required to join in any proceeding or contest brought by Tenant unless the provisions of the law require that the proceeding or contest be brought by or in the name of Landlord or the owner of the Property. In that case, Landlord shall join in the proceeding or contest or permit it to be brought in Landlord's name as long as Landlord is not required to bear any cost. Tenant, on final determination of the proceeding or contest, shall immediately pay or discharge any decision or judgment rendered, together with all costs, charges, interest, and penalties incidental to the decision or judgment.

## 8.7 Tax Period and Adjustment of Taxes

For the purpose of this Lease, the calculation of Taxes payable by Tenant for any particular Lease Year shall be based upon the Taxes actually due and payable in accordance with applicable law during such Lease Year even though such Taxes may relate to a different period of time (such as the taxing authority's fiscal year). [For example, if Taxes are payable on or before November 30 of each year with respect to the fiscal period beginning on the immediately preceding January 1 and ending on the immediately succeeding December 31, then, for all purposes of this Lease, Taxes for Lease Year "X" refers to the Taxes due and payable on November 30 of such Lease Year even though the same may relate in part to both such Lease Year and the succeeding Lease Year.] The parties hereby understand that, notwithstanding the foregoing, Taxes payable by Tenant in accordance with the terms of this Lease shall be appropriately adjusted for any partial Lease Year.

## 9. FURNITURE, FIXTURES AND EQUIPMENT

### 9.1 Furniture, Fixtures, and Equipment

During the term Tenant may, at Tenant's expense, place or install such machinery, appliances, furniture, equipment and other articles of personal property (collectively, "Tenant's Personal Property") on the Properties as may be needed for the conduct of Tenant's business.

### 9.2 Landlord's Waiver

Tenant may finance Tenant's Personal Property at any time and from time to time during the term of this Lease. Upon request of Tenant, Landlord shall execute and deliver to any lender a Landlord's Waiver in such form as shall be reasonably acceptable to Landlord. Tenant may replace or remove Tenant's Personal Property from time to time as Tenant may determine during the term of this Lease.

### 9.3 Removal of Tenant's Personal Property at Expiration of Lease

At the expiration or earlier termination of the Lease, Tenant's Personal Property may be removed at the option of Tenant. In the alternative, at the expiration or earlier termination of the Lease, Landlord may require Tenant to remove Tenant's Personal Property within a reasonable time following receipt of written notice from Landlord. Tenant immediately shall make such repairs and restoration of the Properties as are necessary to repair any damage to the Properties from the removal of Tenant's Personal Property. Any of Tenant's Personal Property not so removed shall be deemed abandoned, and Landlord may cause such property to be removed from the Properties and disposed of, but the cost of any such removal shall be borne by Tenant. The provisions of this paragraph shall survive the expiration or termination of this Lease.

### 9.4 Right to Affix Signs

Tenant shall have the right, without Landlord's consent, to affix signs customarily used in its business upon the windows, doors, interior, and exterior walls of the Properties, and such free-standing signs as may seem appropriate to Tenant and are authorized by any governmental authority having jurisdiction over the Properties and permitted by any covenants, conditions, and restrictions encumbering the Properties. Upon the expiration or earlier termination of the Lease, Tenant shall remove such signs within a reasonable time following receipt of written notice from Landlord. Tenant immediately shall make such repairs and restoration of the Properties as are necessary to repair any damage to the Properties from the removal of the signs.

## 10. MAINTENANCE OF THE PROPERTIES

### 10.1 Obligation to Maintain the Properties

During the term of this Lease, Tenant shall, at its own expense, keep and maintain the entirety of the Properties in good order and repair, including, but not limited to, the interior, exterior, foundations, floors, walls, roof and structure of the building; the sidewalks, curbs, trash enclosures, landscaping with sprinkler system (if installed), light standards, parking areas which are a part of the Properties, and any common areas required to be maintained by Landlord under a common area maintenance agreement or similar recorded document. Tenant shall make such repairs and replacements as may be necessary, regardless of whether the benefit of such repair or replacement extends beyond the term of this Lease. The Properties shall be returned to Landlord at the termination or expiration of this Lease in good condition, ordinary wear and tear excepted. In the event of destruction of the Properties by fire or other casualty, the condition of the Properties upon termination of this Lease shall be governed by Section 13. Landlord shall have no obligation whatsoever to alter, remodel, improve, repair, renovate, retrofit or maintain the Properties or any portion thereof.

### 10.2 Obligation to Keep the Properties Clear

Tenant shall keep the Properties, including sidewalks adjacent to the Properties and loading area allocated for the use of Tenant, clean and free from rubbish and debris at all times. Tenant shall store all trash and garbage within the Properties and arrange for regular pickup and cartage of such trash and garbage at Tenant's expense.

## 11. REPAIRS AND ALTERATIONS

### 11.1 Right to Make Alterations

At all times during the term of this Lease, except as provided in Section 16, Tenant shall have the right to make alterations, additions and improvements (collectively, "Alterations") to the interior or exterior of the Properties and parking areas adjacent to the Properties as more particularly set forth herein. Tenant shall have the right to make Alterations in its reasonable business judgment at any time to the extent such Alterations are non-structural or are structural in nature but shall cost less than the Alteration Threshold (as defined below), provided, as to structural alterations that are less than the Alteration Threshold but more than the Notice Threshold (as defined below), Tenant shall provide notice to Landlord of any such alterations no later than twenty (20) business days prior to beginning such alterations, such that the Landlord has sufficient time to post a notice of non-responsibility. Alterations that will cost in excess of the Alteration Threshold in the aggregate and that are structural in nature shall not be made by Tenant without the prior written consent of Landlord, which consent shall not be unreasonably withheld, delayed or conditioned. Any Alterations that may be made or installed by Tenant shall remain upon the Properties and, at the expiration or earlier termination of this Lease, shall be surrendered with the Properties to Landlord, except to the extent involving Tenant's Personal Property. All Alterations shall be accomplished by Tenant in a good workmanlike manner, in conformity with applicable laws, regulations and covenants, conditions and restrictions encumbering the Properties, and by a licensed contractor. At least twenty (20) days prior to commencement of any work that requires Landlord's approval, Tenant shall provide to Landlord copies of all required permits and governmental approvals, and within thirty (30) days following such work, Tenant shall provide to Landlord copies of all available completion of inspection reports and proof of payment of all labor and materials, including, without limitation, a copy of the general contractor's and subcontractors' final unconditional lien releases. Tenant shall pay when due all claims for such labor and materials and shall give Landlord at least twenty (20) days' prior written notice of the commencement of any such work the cost of which shall exceed the Notice Threshold. Landlord may enter upon the Properties, in such

case, for the purpose of posting appropriate notices, including, but not limited to, notices of non-responsibility. For purposes of this Section 11.1, the term "Alteration Threshold" shall initially mean Two Hundred Fifty Thousand Dollars (\$250,000.00) and the term "Notice Threshold" shall initially mean Fifty Thousand Dollars (\$50,000.00).

### 11.2 Tenant Shall Not Render Properties Liable For Any Lien

Tenant shall have no right, authority, or power to bind Landlord, or any interest of Landlord in the Properties, nor to render the Properties liable for any lien or right of lien for the payment of any claim for labor, material, or for any charge or expense incurred to maintain, to repair, or to make Alterations to the Properties. Tenant shall in no way be considered the agent of Landlord in the construction, erection, modification, repair, or alteration of the Properties. Notwithstanding the above, Tenant shall have the right to contest the legality or validity of any lien or claim filed against a Property. No contest shall be carried on or maintained by Tenant after the time limits in the sale notice of the Property for any such lien or claim unless Tenant (i) shall have duly paid the amount involved under protest prior to such time limits; (ii) shall have procured and recorded a lien release bond from a bonding company acceptable to Landlord in an amount not less than one hundred ten percent (110%) of the amount being contested; or (iii) shall have procured a stay of all proceedings to enforce collection. Upon a final adverse determination of any contest, Tenant shall pay and discharge the amount of the lien or claim determined to be due, together with any penalties, fines, interest, cost, and expense which may have accrued, and shall provide proof of payment to Landlord.

### 11.3 Payment of Liens.

Tenant shall pay or otherwise cause to be discharged and satisfied in full such that the Landlord obtains a complete release to its satisfaction of any and all liens, claims, demands, bills, costs, items, actions or impounds against the Properties which are caused by Tenant's construction, alteration, addition to, or improvement of the Properties, prior to foreclosure or other loss to the Landlord because of such liens, claims, demands, bills, costs, items, actions or impounds, in the event that the Tenant does not elect the protest procedures in paragraph 11.2.

## 12. INDEMNITY AND INSURANCE

### 12.1 Indemnification

Subject to the last sentence of this Section 12.1, Tenant shall indemnify, defend, and protect Landlord, and hold Landlord harmless from any and all loss, cost, damage, expense and/or liability (including, without limitation, court costs and reasonable attorneys' fees) incurred in connection with or arising at any time from any cause whatsoever in or about the Properties, other than damages proximately caused by reason of the gross negligence or willful misconduct of Landlord or its agents and employees, including, without limiting the generality of the foregoing: (i) any default by Tenant in the observance or performance of any of the terms, covenants, or conditions of this Lease on Tenant's part to be observed or performed; (ii) the use or occupancy of the Properties by Tenant, or any person claiming by, through, or under Tenant; (iii) the condition of the Properties or any occurrence or happening on the Properties from any cause whatsoever; or (iv) any acts, omissions, or negligence of Tenant or any person claiming by, through, or under Tenant, or of the contractors, agents, servants, employees, visitors, or licensees of Tenant or any such person, in, on, or about the Properties, either prior to or during the Lease term (including, without limitation, any holdovers in connection therewith), including, without limitation, any acts, omissions, or negligence in the making or performance of any alterations. Tenant further agrees to indemnify and hold harmless Landlord, Landlord's agents, and the landlord or landlords under all ground or underlying leases, from and against any and all loss, cost, liability, damage, and expense (including, without limitation, reasonable attorneys' fees) incurred in connection with or arising from any claims by any persons by reason of injury to persons or damage to property occasioned by any use, occupancy, condition, occurrence, happening, act, omission, or negligence referred to in the preceding sentence. The provisions of this Section shall survive the expiration or sooner termination of this Lease with respect to any claims or liability occurring prior to such expiration or termination, and shall not be limited by reason of any insurance carried by Landlord and Tenant. Notwithstanding anything to the contrary contained in this Section 12.1 or otherwise in this Lease, the foregoing indemnity by Tenant shall not cover actions, events, conditions or omissions to the extent (i) occurring after the termination of this Lease and the vacating of such Property or Properties at issue by Tenant unless otherwise caused by Tenant, or (ii) arising from the gross negligence or willful misconduct of Landlord or its employees or agents, except to the extent caused by Tenant; provided that said indemnification expressly applies to the Landlord's negligence, whether or not the court deems the negligence to be active or passive in nature.

### 12.2 Insurance Company Requirement

Insurance required by this Lease shall be issued by companies holding a general policyholder's rating of A-VIII or better as set forth in the most current issue of Best's Insurance Guide and authorized to do business in the state in which the Property is located. If this publication is discontinued, then another insurance rating guide or service generally recognized as authoritative shall be substituted by Landlord.

### 12.3 Insurance Certificate Requirements

- 12.3.1 Tenant shall deliver to Landlord evidence of the existence and amounts of the insurance with additional insured endorsements and loss payable clauses as required herein. Tenant shall deliver to Landlord an ACORD Form 25-S Certificate of Insurance in connection with Tenant's liability policy(ies), and an ACORD Form 27 Evidence of Property Insurance in connection with Tenant's property policy(ies). No policy shall be cancelable or subject to reduction of coverage or other modification except after thirty (30) days' prior written notice to Landlord. Neither the issuance of any insurance policy required hereunder, nor the minimum limits specified herein with respect to any insurance coverage, shall be deemed to limit or restrict in any way the liability of Tenant arising under or out of this Lease.
- 12.3.2 The insurance required to be maintained herein may be carried under blanket policies. The insurance shall provide for payment of loss jointly to Landlord and Tenant.
- 12.3.3 In connection with the subletting of one or more of the Properties, which subletting is approved by Landlord, subtenant's compliance with Tenant's insurance obligations shall fulfill Tenant's obligations with respect thereto.

### 12.4 Minimum Acceptable Insurance Coverage Requirements

- 12.4.1 Tenant shall, at Tenant's expense, obtain and keep in full force during the term of this Lease a policy of combined single limit bodily injury and property damage insurance written on an occurrence basis insuring Tenant (with Landlord as an additional insured) against any liability or damage arising out of ownership, use, occupancy, or maintenance of each of the Properties and all of their appurtenant areas. The insurance shall be in an amount not less than Five Million Dollars (\$5,000,000.00) per occurrence, and Ten million dollars (\$10,000,000) in the aggregate; provided however, following receipt of written notice from Landlord the limits of such insurance shall be increased from time to time during the term of the Lease to such amount as may be deemed commercially reasonable by Landlord; provided, however, that such increases shall not exceed those required of tenants in like properties in the Salt Lake City metropolitan area. The policy shall provide blanket contractual liability coverage. However, the limits of the insurance shall not limit the liability of Tenant. In addition, Tenant shall, at Tenant's expense, obtain and keep in full force during the term of this Lease an umbrella liability policy in an

amount not less than Thirty Million Dollars (\$30,000,000.00) in excess of primary insurance. The insurance to be maintained by Tenant pursuant to this Section 12.4.1 shall be primary and not contributory to any other insurance maintained by Landlord.

- 12.4.2 Tenant shall, at Tenant's expense, obtain and keep in force during the term of this Lease a "Special Form" (as such term is used in the insurance industry) policy of insurance covering loss or damage to the Properties. The insurance shall be in an amount not less than the full guaranteed replacement cost of the building(s) (less slab, foundation, supports and other customarily excluded improvements). The policy shall contain only standard printed exclusions; include an agreed value endorsement waiving any co-insurance penalty, and an ordinance or law coverage endorsement covering increased costs resulting from changes in laws or codes, and demolition and removal of the damaged structure, and it will contain a changed conditions endorsement and an endorsement for insurance against acts of terrorism. In no event shall any deductible payable in connection with such policy, together with any other form of self-insurance, exceed One Hundred Thousand Dollars (\$100,000.00); provided, Tenant shall be permitted to maintain a self-insured retention program so long as an insurer, meeting the conditions described herein, is primarily liable for such deductible to all third parties, including Landlord. The records and books of such self-insured retention program shall be open to Landlord's inspection at all times. Landlord may disapprove of such self-insured retention program if at any time it deems the program to contain insufficient reserves to cover probable losses, under commercially objective standards. In addition, if any of the Properties are located in flood zone A or V (including any flood zone commencing with the letters A or V) as defined by the Federal Emergency Management Agency (FEMA), or earthquake zone 1, 2, or 3 as defined by the Insurance Services Office (ISO), Tenant shall, at Tenant's expense, obtain and keep in force during the term of this Lease a policy or policies of insurance covering loss or damage due to earthquake and flood with respect to such Properties.
- 12.4.3 Tenant shall also obtain and keep in force during the term of this Lease a policy of Business Interruption insurance covering a period of one (1) year. This insurance shall cover all Taxes and insurance costs for the same period in addition to one (1) year's lease rent amount. Such policy shall be maintained as an endorsement to the Tenant's property and casualty insurance policy to the extent that it is feasible to do so.
- 12.4.4 Tenant shall also obtain and keep in force during the term of this Lease a worker's compensation policy, insuring against and satisfying Tenant's obligations and liabilities under the worker's compensation laws of each state in which the Properties are located, including Employer's Liability insurance, in an amount of not less than One Million Dollars (\$1,000,000.00).

#### 12.5 Additional Insureds

Tenant shall name as additional insureds (by way of a CG 20 26 endorsement) and loss payees on all insurance (other than on the liability policy), Landlord, Landlord's officers and directors, subsidiaries or affiliates of, or any joint venture, partnership or corporation involving Landlord, and Landlord's successor(s) and assignee(s) with an insurable interest under this Lease, but solely as respects property leased by the Tenant from the Landlord.

#### 12.6 Mortgage Endorsement

If requested by Landlord, the policies of insurance required to be maintained hereunder shall bear a standard first mortgage endorsement in favor of any holder or holders of a first mortgage lien or security interest in the property with loss payable to such holder or holders as their interests may appear.

#### 12.7 Renewals, Lapses or Deficiencies

Tenant shall, at least thirty (30) days prior to the expiration of such policies, furnish Landlord with renewal certificates of insurance or renewal binders. Should Tenant fail to provide to Landlord the renewals or renewal binders, or in the event of a lapse or deficiency of any insurance coverage specified herein for any reason, Landlord may immediately replace the deficient insurance coverage with a policy of insurance covering the Properties of the type and in the limits set forth above. Upon written notice from Landlord of the placement of insurance, Tenant shall immediately pay to Landlord, as additional rent, an amount equal to the total cost of premiums and expense of such insurance placement. Tenant shall not do or permit to be done anything that shall invalidate the insurance policies. If Tenant does or permits to be done anything which shall increase the cost of the insurance policies, then upon Landlord's demand Tenant shall immediately pay to Landlord, as additional rent, an amount equal to the additional premiums attributable to any acts or omissions or operations of Tenant causing the increase in the cost of insurance.

#### 12.8 Waiver of Subrogation

Tenant hereby waives and releases any and all right of recovery against Landlord, including, without limitation, employees and agents, arising during the term of the Lease for any and all loss (including, without limitation, loss of rental) or damage to property located within or constituting a part of the Properties, which loss or damage arises from any type of peril which is covered or could be covered by a Special Form policy. This waiver is in addition to any other waiver or release contained in this Lease. Tenant shall have its insurance policies issued in such form as to waive any right of subrogation that might otherwise exist, and shall provide written evidence thereof to Landlord upon written request.

### 13. PARTIAL AND TOTAL DESTRUCTION OF THE PROPERTIES

In the event any part or all of the improvements on the Property shall at any time during the term of this Lease be damaged or destroyed, regardless of cause, Tenant shall give prompt notice to Landlord. Tenant shall repair and restore the Property to substantially the same use, function, quality and value as existed, in accordance with this Lease, immediately prior to such damage or destruction using new materials except as may otherwise be appropriate, to the extent commercially reasonably possible, including buildings and all other improvements on the Property, as soon as circumstances permit. Tenant shall hold Landlord free and harmless from any and all liability of any nature whatsoever resulting from such damage or destruction, and such repairs and restoration. Tenant, and not Landlord, shall be responsible for paying for any cost of repairs and restoration in excess of the proceeds available from insurance policies maintained by Tenant. Tenant is not entitled to any rent abatement during or resulting from any disturbance from partial or total destruction of the Properties, and in no event shall Tenant be entitled to terminate the Lease. Notwithstanding the foregoing, Tenant shall not be under any obligation to restore one or more buildings that may be wholly or substantially destroyed at any time during the last three (3) years of the Primary Term or during the last two (2) years of any applicable Extension Period. For this purpose "wholly or substantially" shall mean thirty-three and one - third percent (33 1/3%) or more of the Properties' insured replacement value.

### 14. CONDEMNATION

#### 14.1 Condemnation Damages

In the event of the taking or conveyance of the whole or any part of any of the Properties by reason of condemnation by any public or quasi-public body ("Condemnation"), Landlord and Tenant shall represent themselves independently in seeking damages before the condemning body. Landlord shall be entitled to the

entirety of the award from such condemning authority with the exception of such portion (to which portion Tenant shall be entitled) of the award attributable to or, if no portion of the award was attributed or allocated by the determining body, the value of:

- 14.1.1 Tenant's leasehold improvements made to the Property by Tenant in accordance with this Lease, which improvements Tenant has the right to remove from the Property upon the expiration or termination of the Lease pursuant to the provisions of this Lease, but elects not to remove;
- 14.1.2 Tenant's Personal Property installed in the Property in accordance with this Lease, which Tenant has the right to remove from the Property upon the expiration or termination of the Lease pursuant to the provisions of this Lease, but which are to remain in the Property as a result of such taking; and
- 14.1.3 the unexpired portion of Tenant's interest in the leasehold estate created by this Lease assuming the exercise of all remaining extension terms; provided that, Tenant can prove that this Leasehold has "bonus" value.

Notwithstanding the foregoing and provided the same does not reduce the amount awarded on account of the Properties pursuant to this Section 14.1, Tenant shall be entitled to seek, to the extent applicable, an award from the condemning authority with respect to (i) removal of Tenant's Personal Property; (ii) damage or loss to Tenant's business and good will, including without limitation, Tenant's lost profits, and (iii) Tenant's moving and relocation expenses.

#### 14.2 Termination of Lease Due to Condemnation

In the event the Condemnation materially adversely affects the use by Tenant of the Property ("Condemned Property"), Tenant may terminate the Lease as to the Condemned Property by giving Landlord written notice of its intention to terminate the Lease within sixty (60) days of receipt of written notice of the Condemnation, which notice substantially shall disclose the material nature, scope and extent of the Condemnation. The effective date of the termination shall be the date upon which fee simple interest is vested in the condemning authority, and Tenant shall be released from further obligations or liabilities arising under the Lease thereafter with respect to the Condemned Property; however Tenant shall not be released from liabilities, charges and items accruing under the Lease prior to the Termination. In the event of termination, Individual Building Rent, Property Taxes, Other Charges and any other items of additional rent (collectively, "Rent and Charges") shall be prorated based upon the actual number of days in the period to be prorated. Within thirty (30) days following the termination, Landlord shall refund to Tenant any Rent and Charges paid to Landlord in advance of the termination. Notwithstanding any termination of this Lease with respect to the Condemned Property, this Lease shall continue in full force and effect with respect to the remaining Properties; provided, however, Base Monthly Rent shall be adjusted by the Individual Building Rent allocated to the Condemned Property.

#### 14.3 Temporary Taking

In the event of a temporary condemnation or taking, Tenant shall be entitled to the amount awarded by such condemning authority or court making such allocation with respect to Tenant's leasehold estate under this Lease and Landlord shall be entitled to the amount awarded with respect to Landlord's interest as Landlord in this Lease or to Landlord's fee simple interest in the Properties to the extent such temporary taking or condemnation relates to a period after the expiration or termination of this Lease. Notwithstanding the foregoing and provided the same does not reduce the amount awarded on account of the Properties, Tenant shall be entitled to seek an award, to the extent applicable, with respect to the interruption of Tenant's business, the relocation of Tenant or its business, or Tenant's personal property.

### 15. ASSIGNMENT AND SUBLETTING

#### 15.1 Tenant's Right of Assignment and Subletting

Tenant may assign its interest in this Lease and may sublet the Properties in whole or in part, from time to time. Tenant shall provide Landlord with a copy of the assignment or sublease no later than thirty (30) days prior to the date that the assignee or subtenant assumes possession. Except as otherwise expressly provided in this Lease, in no event shall Tenant be released from any of its obligations or liabilities under this Lease following any such assignment or subletting. In connection with the sublease of one or more (or a portion of one or more) of the Properties, Landlord may, but is not required to, execute and deliver to such subtenant a non-disturbance or recognition agreement in form reasonably satisfactory to the proposed subtenant, which shall provide for the continuation of possessory and all other rights of the subtenant through a direct lease with Landlord in the event of a termination of this Lease.

The rights to renew this lease are personal, and do not inure to the benefit of an assignee or subtenant, except with the Landlord's prior written consent. In the event that Tenant subleases to a subtenant for a term longer than the term of this Lease as originally fixed by this Lease or the term of this Lease as actually renewed, the sublease shall be null, void and of no effect whatsoever; and the subtenant has no right to possession for the portion of the term of the sublease which is longer than the term of this Lease under the void sublease. Tenant may sublease to anyone for a term equal to the original term of this Lease with an option to renew which is coextensive with the option to renew of the Tenant, so long as the subtenant's option to renew is expressly conditioned upon the Tenant's exercise of its option to renew in this Lease.

#### 15.2 Landlord's Option to Preserve Subtenancies

In the event of Tenant's surrender of this Lease or the termination of this Lease in any other manner, Landlord may, at its option, either terminate any or all subtenancies or succeed to the interest of Tenant as sublandlord thereunder. No merger shall result from Tenant's sublease of the Properties under this Section, Tenant's surrender of this Lease, or the termination of this Lease in any other manner.

#### 15.3 Continuing Obligation of Tenant

Except as provided below in this Section 15.3, no transfer permitted by this Section 15 shall release Tenant or change Tenant's primary liability to pay the rent and to perform all other obligations of Tenant under this Lease. Landlord's acceptance of rent from any other person is not a waiver of any provision of this Section. Consent to one transfer is not a consent to any subsequent transfer. If Tenant's transferee defaults under this Lease, Landlord may proceed directly against Tenant without pursuing remedies against the transferee. Landlord shall not consent to subsequent assignments or modifications of this Lease by Tenant's transferee without first notifying Tenant and obtaining its written consent. Such action shall not relieve Tenant's liability under this Lease, except that Tenant shall not be liable for any extension of the term or increase in rentals made without Tenant's prior written consent. Notwithstanding the above, upon the assignment of this Lease to an entity or individual with a net worth equal to or greater than the net worth of Tenant on the date of execution of this Lease, Tenant shall be released and relieved of all further liability under this Lease from and after the effective date of such assignment. Each subsequent assignee, upon making a further assignment in compliance with the terms and conditions of this Section 15.3 shall be released and relieved of all further liability under this Lease from and after the effective date of such further assignment.

#### 15.4 Landlord's Right of Assignment

Subject to the terms of Section 27 below, Landlord shall be free at all times, without need of consent or approval by Tenant, to assign its interest in this Lease and/or to convey fee title to the Properties. Each conveyance by Landlord of Landlord's interest in the Lease or the Properties prior to expiration or termination hereof shall be subject to this Lease and shall relieve the grantor of any subsequent obligations or liability as Landlord, and Tenant shall look solely to Landlord's successor in interest for all future obligations of Landlord. Tenant hereby agrees to attorn to Landlord's successors in interest, whether such interest is acquired by sale, transfer, foreclosure, deed in lieu of foreclosure, or otherwise. The term "Landlord" as used in this Lease, so far as covenants and obligations on the part of Landlord are concerned, shall be limited to mean and include only the owner at the time in question of the fee title of the Properties. Without further agreement, the transferee of such title shall be deemed to have assumed and agreed to observe and perform any and all obligations of Landlord hereunder during its ownership of the Properties.

#### 15.5 Separate Leases

At Tenant's request, Landlord agrees to execute and deliver separate and independent leases for one or more of the Properties, containing terms and provisions consistent with this Lease, with appropriate prorations and adjustments, including without limitation, an adjustment in Tenant's rental obligations for a particular Property, but in no event shall Landlord be required to comply with more than one such request for each Property during the term of this Lease.

### 16. DEFAULT AND TERMINATION

#### 16.1 Event of Default

The occurrence of any of the following events (each an "Event of Default") shall constitute a default by Tenant:

- 16.1.1 Monetary Default: Failure by Tenant to pay rent or any other monetary obligation ("rent") within five (5) business days from the date of receipt of Landlord's written notification to Tenant that the rent is past due (a "Late Notice").
- 16.1.2 Non-monetary Default: Failure by Tenant to perform or comply with any provision of this Lease (other than as set forth in Subsection 16.1.1) if the failure is not cured within thirty (30) days after notice has been given to Tenant. If, however, the failure cannot reasonably be cured within the cure period, Tenant shall not be in default of this Lease if Tenant commences to cure the failure within the cure period and diligently and in good faith continues to cure the failure.
- 16.1.3 To the extent permitted by law, a general assignment by Tenant or any guarantor of the Lease for the benefit of creditors, or the filing by or against Tenant or any guarantor of any proceeding under any insolvency or bankruptcy law, unless in the case of a proceeding filed against Tenant or any guarantor the same is dismissed within ninety (90) days, or the appointment of a trustee or receiver to take possession of all or substantially all of the assets of Tenant or any guarantor, unless possession is restored to Tenant or such guarantor within sixty (60) days, or any execution or other judicially authorized seizure of all or substantially all of Tenant's assets located upon the Properties or of Tenant's interest in this Lease, unless such seizure is discharged within sixty (60) days.
- 16.1.4 Any notice delivered pursuant to this Section 16.1 shall be in lieu of, and not in addition to, any notice required by law.

#### 16.2 Landlord's Remedies

Landlord shall have any one or more of the following remedies after the occurrence of an uncured Event of Default by Tenant. These remedies are not exclusive; they are cumulative in addition to any remedies now or later allowed by law, in equity, or otherwise:

- 16.2.1 With respect to a default under subsection 16.1.2 above attributable to one or more Properties, terminate the Lease with respect to each affected Property, by giving written notice of termination to Tenant, in which event Tenant immediately shall surrender the affected Property to Landlord. If Tenant fails to so surrender the affected Property, then Landlord, without prejudice to any other remedy it has for possession of the affected Property or arrearages in rent or other damages, may re-enter and take possession of the affected Property and expel or remove Tenant and any other person or entity occupying the affected Property or any part thereof, without being liable for any damages, whether caused by negligence of Landlord or otherwise. If Landlord does terminate the Lease under this Paragraph, the Tenant is released from all future obligations hereunder, but it is not released from obligations accruing prior to the Termination.
- 16.2.2 With respect to all other defaults under the Lease, terminate the Lease in its entirety by giving written notice of termination to Tenant, in which event Tenant immediately shall surrender the Properties to Landlord. If Tenant fails to so surrender the Properties, then Landlord, without prejudice to any other remedy it has for possession of the Properties or arrearages in rent or other damages, may re-enter and take possession of the Properties in a manner consistent with applicable law and expel or remove Tenant and any other person or entity occupying the Properties or any part thereof.
- 16.2.3 No act by Landlord other than giving express notice of termination to Tenant shall terminate this Lease. Acts of maintenance, efforts to relet the Properties, or the appointment of a receiver on Landlord's initiative to protect Landlord's interest under this Lease shall not, without more, constitute a termination of this Lease. Subject to Section 16.2.1 of this Lease, on termination of the Lease, Landlord shall have the right to recover from Tenant:
  - (i) Those damages recoverable under Utah law following such termination; and
  - (ii) Any other amount, including, without limitation, attorneys' fees and court costs, necessary to compensate Landlord for all detriment proximately caused by Tenant's default.
- 16.2.4 At its election, Landlord may re-enter and take possession of the Properties in a manner consistent with applicable law without terminating this Lease and without being liable for any damages, except to the extent caused by the negligence or willful misconduct of Landlord. Landlord shall use commercially reasonable efforts to relet the Properties. Landlord may relet the Properties on whatever terms and conditions Landlord, in its reasonable discretion, deems advisable. Reletting can be for a period shorter or longer than the remaining term of this Lease. Landlord's action under this Subsection is not considered an acceptance of Tenant's surrender of the Properties unless Landlord so notifies Tenant in writing. Tenant shall be immediately liable to Landlord for all reasonable costs Landlord incurs in reletting the Properties, including brokers' commissions, expenses of remodeling the Properties required by the reletting, and like costs. Tenant shall pay to Landlord the rent due under this Lease on the dates the rent is due, less the rent Landlord receives from any reletting.

If Landlord elects to relet the Properties without terminating this Lease, any rent received will be applied to the account of Tenant, not to exceed Tenant's total indebtedness to Landlord; no reletting by Landlord is considered to be for its own account unless Landlord has notified Tenant in writing that the Lease has been terminated. If Landlord elects to relet the Properties, rent that Landlord receives from reletting will be applied to the payment of: (i) first, any indebtedness from Tenant to Landlord other than rent due from Tenant; (ii) second, all reasonable costs, including maintenance, incurred by Landlord in reletting; and (iii) third, rent due and unpaid under the Lease. After deducting the payments referred to in this Subsection, any sum remaining from the rent Landlord receives from reletting will be held by Landlord and applied in payment of future rent as rent becomes due under this Lease. If, on the date rent is due under this Lease, the rent received from the reletting is less than the rent due on that date, Tenant will pay to Landlord, in addition to the remaining rent due, all reasonable costs, including maintenance, Landlord incurred in reletting which remain after applying the rent received from the reletting. Tenant shall have no right to or interest in the rent or other consideration received by Landlord from reletting to the extent it exceeds Tenant's total indebtedness to Landlord.

- 16.2.5 Re-enter the Properties in a manner consistent with applicable law without terminating this Lease and without being liable for any damages, except to the extent caused by the negligence or willful misconduct of Landlord, and do whatever Tenant is obligated to do under the terms of this Lease. The reasonable expenses incurred by Landlord in affecting compliance with Tenant's obligations under this Lease immediately shall become due and payable to Landlord as additional rent.
- 16.2.6 In all events, Tenant is liable for all damages of whatever kind or nature, direct or indirect, suffered by Landlord as a result of the occurrence of an Event of Default. If Tenant fails to pay Landlord in a prompt manner for the damages suffered, Landlord may pursue a monetary recovery from Tenant. Included among these damages are all reasonable expenses incurred by Landlord in repossessing the Properties (including, but not limited to, increased insurance premiums resulting from Tenant's vacancy), all reasonable expenses incurred by Landlord in reletting the Properties (including, but not limited to, those incurred for advertisements, brokerage fees, repairs, remodeling, and replacements), all concessions granted to a new tenant on a reletting, all losses incurred by Landlord as a result of Tenant's default (including, but not limited to, any unamortized commissions paid in connection with this Lease), and all reasonable attorneys' fees incurred by Landlord in enforcing any of Landlord's rights or remedies against Tenant.
- 16.2.7 Pursuit of any of the foregoing remedies does not constitute an irrevocable election of remedies nor preclude pursuit of any other remedy provided elsewhere in this Lease or by applicable law, and none is exclusive of another unless so provided in this Lease or by applicable law. Likewise, forbearance by Landlord to enforce one or more of the remedies available to it on an Event of Default does not constitute a waiver of that default or of the right to exercise that remedy later or of any rent, damages, or other amounts due to Landlord hereunder.
- 16.2.8 Whether or not Landlord elects to terminate this Lease or Tenant's right to possession of the Properties on account of any default by Tenant, Landlord shall have all rights and remedies at law or in equity, including, but not limited to, the right to re-enter the Properties in a manner consistent with applicable law and, to the maximum extent provided by law, Landlord shall have the right to terminate any and all subleases, licenses, concessions, or other consensual arrangements for possession entered into by Tenant and affecting the Properties (subject to the terms of any applicable non-disturbance or recognition agreement) or, in Landlord's sole discretion, may succeed to Tenant's interest in such subleases, licenses, concessions, or arrangements. In the event of Landlord's election to succeed to Tenant's interest in any such subleases, licenses, concessions, or arrangements, Tenant shall have no further right to or interest in the rent or other consideration receivable thereunder as of the date of notice by Landlord of such election.
- 16.2.9 If Landlord retakes possession of the Property, either with or without termination of this Lease, Landlord agrees to use commercially reasonable efforts to mitigate its damages.
- 16.2.10 Notwithstanding anything to the contrary contained herein, in the case of a default under Section 16.1.2 above attributable to one or more Properties, the rights contained in Sections 16.2.4 through and including 16.2.8 shall be limited to those affected Properties only.

### 16.3 Late Charge

If Tenant fails to pay when due any payment of rent or other charges which Tenant is obligated to pay to Landlord under this Lease and which are unpaid after any notice and cure period allowed, there shall be a late charge, immediately payable by Tenant as additional rent, in the amount of three percent (3%) of each such obligation. Landlord and Tenant agree that this sum is reasonable to compensate Landlord for accounting and administrative expenses incurred by Landlord. In addition to the late charge, any and all rent or other charges which Tenant is obligated to pay to Landlord under this Lease which are unpaid shall bear interest at the rate set forth in Section 16.6 from the date said payment was due until paid, said interest to be payable by Tenant as additional rent. Landlord and Tenant agree that this sum is reasonable to compensate Landlord for the loss of the use of funds. Notwithstanding the foregoing, Tenant shall not be obligated to pay the late charge and interest otherwise due pursuant to this Section 16.3 unless ten (10) days shall have lapsed following Tenant's receipt of notice pursuant to Section 16.1.1, if such notice is required thereunder and the delinquent amount(s) shall not have been paid.

### 16.4 Right of Landlord to Re-Enter

In the event of any termination of this Lease, Landlord shall have the immediate right to enter upon and repossess the Properties, and any personal property of Tenant may be removed from the Properties and stored in any public warehouse at the risk and expense of Tenant.

### 16.5 Surrender of Properties

No act or thing done by Landlord or any agent or employee of Landlord during the Lease term shall be deemed to constitute an acceptance by Landlord or a surrender of any or all of the Properties unless such intent is specifically acknowledged in a writing signed by Landlord. The delivery of keys to any of the Properties to Landlord or any agent or employee of Landlord shall not constitute a surrender of the Properties or effect any partial or full termination of this Lease, whether or not the keys are thereafter retained by Landlord and, notwithstanding such delivery, Tenant shall be entitled to the return of such keys at any reasonable time upon request until this Lease shall have been terminated properly. The voluntary or other surrender of this Lease by Tenant, whether accepted by Landlord or not, or a mutual termination hereof, shall not work a merger, and at the option of Landlord shall operate as an assignment to Landlord of all subleases or subtenancies affecting the Properties.

### 16.6 Interest Charges

Any amount not paid by one party to the other when due to the other party will bear interest from the date due at the lesser of (i) the "prime rate" identified in the "Money Rates" section of the Wall Street Journal in effect on the date due plus two percent (2%) per annum; or (ii) the maximum rate permitted by law.

### 16.7 Default by Landlord



Landlord shall be in default if Landlord fails to perform any provision of this Lease required of it and the failure is not cured within thirty (30) days after prior written notice has been given to Landlord. If, however, the failure cannot reasonably be cured within the cure period, Landlord shall not be in default of this Lease if Landlord commences to cure the failure within the cure period and diligently and in good faith continues to cure the failure. Notices given under this Section 16.7 shall specify the alleged breach and the applicable Lease provisions. If Landlord shall at any time default beyond the applicable notice and cure period, Tenant shall have the right to cure such default on Landlord's behalf. Any sums expended by Tenant in doing so, and all reasonably necessary incidental costs and expenses incurred in connection therewith, shall be payable by Landlord to Tenant within thirty (30) days following demand therefor by Tenant.

## 17. RIGHT OF INSPECTION

Landlord and Landlord's authorized representatives shall have the right after prior written notice to Tenant, to enter upon the Properties during Tenant's usual business hours for the purpose of inspecting the Properties or, if Landlord is otherwise permitted to do so under this Lease, of making repairs, additions or alterations in or upon the Properties, and for the purpose of exhibiting the Properties to prospective tenants (during the last six (6) months of the term of this Lease as the same may be extended) or purchasers. Provided no Event of Default is continuing and Tenant has not vacated the Property, Landlord shall not exhibit any "for sale" signs during the term of the Lease. The exercise of Landlord's right of inspection shall be conducted so as to minimize any interference with Tenant's business operations at the Properties, and shall be subject to compliance with Tenant's reasonable instructions and security requirements.

## 18. WAIVER OF BREACH

No waiver by Landlord of any breach of any one or more of the terms, covenants, conditions, or agreements of this Lease shall be deemed to imply or constitute a waiver of any succeeding or other breach. Failure of Landlord to insist upon the strict performance of any of the terms, conditions, covenants, and agreements of this Lease shall not constitute or be considered as a waiver or relinquishment of Landlord's rights to subsequently enforce any default, term, condition, covenant, or agreement, which shall all continue in full force and effect. The rights and remedies of Landlord under this Lease shall be cumulative and in addition to any and all other rights and remedies which Landlord has or may have.

## 19. NOTICES

### 19.1 Notice Requirements

All notices, requests, or demands herein provided to be given or made, or which may be given or made by either party to the other, shall be given or made only in writing and shall be deemed to have been duly given: (i) when delivered personally at the address set forth below, or to any agent of the party to whom notice is being given, or if delivery is rejected when delivery was attempted; or (ii) on the date delivered when sent via Overnight Mail, properly addressed and postage prepaid; or (iii) on the date sent via facsimile transmission; or (iv) upon delivery, or if delivery is rejected when delivery was attempted of properly addressed first class mail, postage prepaid with return receipt requested. The proper address to which notices, requests, or demands may be given or made by either party shall be the address set forth at the end of this Section or to such other address or to such other person as any party shall designate. Such address may be changed by written notice given to the other party in accordance with this Section.

#### **If to Landlord: Franklin Saltlake LLC**

c/o Platinum Realty Management  
201 Wilshire Bl., Second Floor  
Santa Monica, CA 90401  
Attention: Shaoul J. Levy  
Telephone: (310) 395-5200  
Fax Number: (310) 917-1101

With a copy to: Jeffrey G. Thomas  
Thomas Law Company  
201 Wilshire Bl., Second Floor  
Santa Monica, CA 90401  
Telephone: (310) 208-8326  
Fax Number: (310) 388-1555

#### **If to Tenant:**

Franklin Development Corporation  
2200 Parkway Blvd.  
Salt Lake City, UT 84119  
Attention: Robert Whitman  
Telephone: (801) 817-7117  
Fax Number: (801) 817-8197

#### **With a copy to:**

Val John Christensen, Esquire  
2200 West Parkway Blvd.  
Salt Lake City, UT 84119  
Phone Number: (801) 817-7102  
Fax Number: (801) 817-8197

### 19.2 Payments Under Lease

Rent and all other payments due to Landlord under this Lease shall be paid in lawful money of the United States of America without offset or deduction to the name and at the address first given above or to such other persons or parties or at such other places as Landlord may from time to time designate in writing.

## 20. RELATIONSHIP OF THE PARTIES

This Lease shall not be deemed or construed by the parties, nor by any third party, as creating the relationship of (i) principal and agent, (ii) partnership, or (iii) joint venture between the parties. Neither the method of computation of rent nor any other provision of this Lease, nor any acts of the parties are other than in the relationship of Landlord and Tenant.

## 21. SUBORDINATION, ATTORNMENT AND ESTOPPEL

### 21.1 Subordination and Non-Disturbance

Subject to the provisions of this Section, this Lease and the leasehold estate created hereby shall be, at the option and upon written declaration of Landlord, subject, subordinate, and inferior to the lien and estate of any mortgage, trust deeds, and similar encumbrances ("Mortgages"), and all renewals, extensions, or replacements thereof, now or hereafter imposed by Landlord upon the Properties; provided, however, that this Lease shall not be subordinate to any Mortgage, or any renewal, extension, or replacement thereof, unless and until Landlord provides Tenant with an agreement ("Non-Disturbance Agreement"), signed and acknowledged by each holder of any such interest setting forth that so long as Tenant is not in default hereunder after all applicable notice and cure periods, Landlord's and Tenant's rights and obligations hereunder shall remain in full force and effect and Tenant's right to possession shall be upheld and undisturbed. The Non-Disturbance Agreement may contain additional provisions as are customarily requested by secured lenders with liens encumbering real property security similar to the Properties, including, without limitation, Tenant's agreement to attorn as set forth in Section 21.2 below, provided, the same are reasonably acceptable to Tenant. Tenant shall, promptly following a request by Landlord and after receipt of the Non-Disturbance Agreement, execute and acknowledge any subordination agreement or other documents required to establish of record the priority of any such encumbrance over this Lease, so long as such agreement does not otherwise increase Tenant's obligations or diminish Tenant's rights hereunder.

### 21.2 Attornment

In the event of foreclosure of any Mortgage, whether superior or subordinate to this Lease, then (i) this Lease shall continue in force; (ii) Tenant's quiet possession shall not be disturbed if Tenant is not in default hereunder after all applicable notice and cure periods; (iii) Tenant shall attorn to and recognize the mortgagee or purchaser at private or public foreclosure sale ("Successor Landlord") as Tenant's landlord for the remaining term of this Lease; and (iv) the Successor Landlord shall not be bound by (a) any payment of rent for more than one month in advance not otherwise delivered to such Successor Landlord; (b) any amendment, modification, or ending of this Lease without the Successor Landlord's consent after the Successor Landlord's name is given to Tenant, unless the amendment, modification, or ending is specifically authorized by the original Lease and does not require Landlord's prior agreement or consent; and (c) any liability for any act or omission of a prior Landlord. At the request of the Successor Landlord, Tenant shall execute a new lease for the Properties, setting forth all of the provisions of this Lease except that the term of the new lease shall be for the balance of the term of this Lease with the same extension rights to the extent remaining.

### 21.3 Attornment of Subtenants.

In any Subleases executed by Tenant, the Sublease shall contain an express clause that in case of default hereunder by Tenant whereby the Landlord exercises its right to terminate the Lease or to repossess the Property in accordance with Paragraphs 16.2.2, 16.2.3 and/or 16.2.4, the Subtenants shall attorn to, and recognize the Landlord as their Landlord who is solely entitled to the rent from the Sublease. At the request of Landlord, upon exercise of its right to terminate this Lease, the Subtenants shall execute a Lease for the Property or Properties with Landlord as Landlord, setting forth all of the provisions of the Sublease for the Property or Properties, except that the term of the new Lease executed by the Subtenants shall be the same as the balance of the term of the Sublease with any extension rights therein remaining in effect.

### 21.4 Estoppel Certificate

Each party shall execute and deliver to the other, within twenty (20) days after receipt of Landlord's request, any estoppel certificate or other statement to be furnished to Landlord, any prospective purchaser of or any lender against the Properties or to Tenant or any assignee or sublessee of Tenant. Such estoppel certificate shall acknowledge and certify each of the following matters, to the extent each may be true: that the Lease is in effect and not subject to any rental offsets, claims, or defenses to its enforcement; the commencement and expiration dates of the term; that Tenant is paying rent on a current basis; that any improvements required to be furnished under the Lease have been completed in all respects; that the Lease constitutes the entire agreement between Tenant and Landlord relating to the Properties; that Tenant has accepted the Properties and is in possession thereof; that the Lease has not been modified, altered, or amended except in specified respects by specified instruments; that Tenant has no notice of any prior assignment, hypothecation, or pledge of rents or the Lease; that no default exists under the Lease; and such other matters as reasonably may be requested. Tenant shall also, upon request of Landlord, certify and agree for the benefit of any lender against the Properties or the building ("Lender") that Tenant will not look to such Lender as being liable for any act or omission of Landlord; as being obligated to cure any defaults of Landlord under the Lease which occurred prior to the time Lender, its successors or assigns, acquired Landlord's interest in the Properties by foreclosure or otherwise except to the extent the same continues after such time, as being bound by any payment of rent or additional rent by Tenant to Landlord for more than one (1) month in advance; or as being bound by Landlord to any amendment or modification of the Lease without Lender's written consent. Failure to deliver the documents required under this Section 21 in the time period required shall constitute an Event of Default if such failures continues for five (5) business days after written notice of the same.

## 22. TENANT'S FINANCIAL STATEMENTS

During the term of the Lease, Tenant shall provide Landlord with current financial statements as follows: within one hundred twenty (120) days of the end of each fiscal year, Tenant's profit and loss statement, balance sheet, statement of changes in financial position, and notes to the financial statements as reviewed or audited by an independent certified public accountant or accounting firm; provided, to the extent Tenant ever becomes subject to the reporting requirements of the Securities and Exchange Act of 1934 (the "Act"), such annual financial reports filed pursuant to the Act shall be provided to Landlord in lieu of the foregoing statements. Tenant covenants to provide the foregoing information which is in unaudited form as soon as it is reasonably available to Tenant, upon request from Landlord. Landlord agrees to hold all information provided to Landlord under or in connection with this Lease, including, without limitation, this Section 22, in confidence and shall not disclose any such information to any third party without first obtaining a confidentiality agreement reasonably acceptable to Tenant, except to the extent such disclosure is by order of a court or as otherwise required by law and except with respect to information otherwise made public by Tenant.

## 23. ATTORNEYS' FEES

### 23.1 Recovery of Attorneys' Fees and Costs of Suit

Tenant shall reimburse Landlord, upon demand, for any reasonable costs or expenses incurred by Landlord in connection with any breach or default under this Lease, whether or not suit is commenced or judgment entered. Such costs shall include legal fees and costs incurred for the negotiation of a settlement, enforcement of rights, or otherwise. Furthermore, if any action for breach of or to enforce the provisions of this Lease is commenced, the court in such action shall award to the party in whose favor a judgment is entered, a reasonable sum as attorneys' fees and costs. Such attorneys' fees and costs shall be paid by the losing party in such action.

### 23.2 Party to Litigation

Except to the extent arising from Landlord's negligence or willful misconduct, Tenant shall indemnify Landlord against and hold Landlord harmless from all costs, expenses, demands, and liability incurred by Landlord if Landlord becomes or is made a party to any claim or action (i) instituted by Tenant, or by any third party against Tenant, or by or against any person holding any interest under or using the Properties by license of or agreement with Tenant; (ii) for foreclosure of any lien for labor or material furnished to or for Tenant or such other person; (iii) otherwise arising out of or resulting from any action or transaction of Tenant or such other person; or (iv) necessary to protect Landlord's interest under this Lease in a bankruptcy proceeding, or other proceeding under Title 11 of the United States Code, as amended. Tenant shall defend Landlord against any such claim or action at Tenant's expense with counsel reasonably acceptable to Landlord or, at Landlord's election, Tenant shall reimburse Landlord for any reasonable legal fees or costs incurred by Landlord in any such claim or action.

### 23.3 Landlord's Consent

Tenant shall pay Landlord's reasonable attorneys' fees and other costs incurred in an action or proceeding in connection with Tenant's request for Landlord's consent in connection with any act which Tenant proposes to do and which requires Landlord's consent, with respect to which Tenant and Landlord are not adversarial parties, up to a maximum of Twenty Thousand Dollars (\$20,000.00).

## 24. CONSENT

Landlord shall have no liability for damages resulting from, nor may Tenant terminate this Lease as a result of, Landlord's failure to give any consent, approval, or instruction reserved to Landlord. Tenant's sole remedy in any such event shall be an action for declaratory or injunctive relief. Notwithstanding anything to the contrary contained in this Lease, unless otherwise expressly provided for herein, Landlord's consent shall not be unreasonably withheld, conditioned or delayed and shall be deemed granted if Landlord does not respond to a written request for consent within twenty (20) days of such request.

## 25. AUTHORITY TO MAKE LEASE; COVENANT OF QUIET ENJOYMENT

### 25.1 Full Power and Authority to Enter Lease

The parties covenant and warrant that each has full power and authority to enter into this Lease.

### 25.2 Quiet Enjoyment

Landlord covenants and warrants that Tenant shall have and enjoy full, quiet, and peaceful possession of the Properties, their appurtenances and all rights and privileges incidental thereto during the term, as against all persons claiming by, through, or under Landlord, subject to the provisions of this Lease and any title exceptions or defects in existence on the Commencement Date.

### 25.3 No Violation of Covenants and Restrictions

Tenant leases the Properties subject to all encumbrances, covenants, conditions, restrictions, easements, rights of way, and all other matters of record affecting the Properties as of the date hereof or future ones agreed to by Tenant in accordance with the terms of this Lease. Tenant shall not violate, permit a violation, or cause Landlord to violate any recorded covenants and restrictions affecting the Properties as of the date hereof or future ones agreed to by Tenant in accordance with the terms of this Lease. Tenant shall defend, indemnify, and hold harmless Landlord from any costs or expenses incurred from such a violation.

### 25.4 Common Areas.

Landlord reserves the right to close the Common Areas to Tenant or the public as necessary to make repairs or capital improvements. Unless it is an emergency, Landlord covenants that it will provide five (5) days prior written notice of the closure to Tenant.

## 26. HAZARDOUS MATERIAL

### 26.1 Environmental Compliance

Tenant shall comply with all laws, including Environmental Laws, relating to the use, storage, transportation, dispensing, sale or Release of Pollutants at the Properties. Tenant shall not use, store, transport, dispense or sell Pollutants at the Properties, or surrounding areas, except as is customary for the operation of Tenant's business at the Properties in accordance with the terms of this Lease, and is otherwise permitted by Environmental Laws. Tenant shall not Release, nor shall Tenant permit any employee, contractor, agent or invitee to Release, any Pollutants on the Properties, into the air or the surrounding land, surface water or ground water except as expressly permitted by law, including Environmental Laws. Tenant shall provide Landlord with copies of all reports, studies, complaints, claims, directives, citations, demands, inquiries, notices of violation, or orders relating to Pollutants at or emanating from or to the Properties, or any alleged non-compliance with Environmental Laws at the Properties, reasonably promptly (and in no event later than thirty (30) days) after such documents are provided to or generated by Tenant. Tenant also shall promptly notify Landlord of any Release of Pollutants at, on, under or from the Properties and promptly shall address any such Releases as required by Environmental Laws. All reporting, investigation and/or remediation requirements under any Environmental Law with respect to any and all Releases of Pollutants at, on, from or near the Properties are the responsibility of Tenant.

### 26.2 Tenant's Responsibility for Hazardous Materials

At Tenant's cost, Tenant shall be responsible for (i) permitting, reporting, assessment, testing, investigation, treatment, removal, remediation, transportation and disposal of Pollutants as directed by any governmental agency, as required by Environmental Laws; (ii) damages, costs, expenditures and claims for injury to persons, property, the Properties and surrounding air, land, surface water, and ground water resulting from such Pollutants; (iii) claims by any governmental agency or third party associated with injury to surrounding air, land, surface water and ground water or other damage resulting from such Pollutants; (iv) damages for injury to the buildings, fixtures, appurtenances, equipment and other personal property of Landlord to the extent caused by such Pollutants; (v) fines, costs, fees, assessments, taxes, demands, orders, directives or any other requirements imposed in any manner by any governmental agency asserting jurisdiction, or under any Environmental Laws, with respect to such Pollutants; (vi) damages, costs and expenditures for injury to natural resources to the extent caused by such Pollutants as

directed by any governmental agency or otherwise as required by applicable law, including Environmental Laws; (vii) compliance with Environmental Laws regarding the use, storage, transportation, release, disposal, dispensing or sale of Pollutants; and (viii) any other liability or obligation related to such Pollutants, except to the extent such Pollutants (i) arose after the expiration of the term of this Lease and the vacating of the affected Property or Properties by Tenant unless due to Tenant or its employees or agents, or (ii) to the extent caused solely by Landlord or its employees or agents.

### 26.3 Tenant's Environmental Indemnification

Tenant shall indemnify, defend, and hold Landlord harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities, or losses which arise during or after the term of the Lease as a result of Pollutants present at the Properties, provided, Tenant shall have no liability to the extent such Pollutants (i) arose after the expiration or termination of this Lease unless due to Tenant or its employees or agents, or (ii) to the extent caused by Landlord or its employees or agents. This indemnification of Landlord by Tenant includes, without limitation, costs incurred in connection with any investigation or site conditions or any cleanup, remedial, removal, or restoration work required by any federal, state, or local governmental agency or political subdivision because of Pollutants present in the soil or ground water on or under the Properties, provided, Tenant shall have no liability to the extent such Pollutants (i) arose after the expiration of the term of this Lease unless due to Tenant or its employees or agents, or (ii) were caused solely by Landlord or its employees or agents. Without limiting the foregoing, if the presence of any Pollutants on the Properties results in any contamination of the Properties, Tenant shall promptly take all actions at its sole expense as are required to bring such Properties into compliance with Environmental Laws.

### 26.4 Tenant's Notification Obligation

Tenant shall promptly notify Landlord of Tenant obtaining actual knowledge of any of the following: (i) any correspondence or communication from any governmental entity regarding the application of Environmental Laws to the Properties or Tenant's operation of the Properties; (ii) any correspondence, communication or notifications as are required by either the Federal or State Emergency Planning and Community Right to Know Acts; (iii) any change in Tenant's operations on the Properties that will change or has the potential to change Tenant's obligations or liabilities under the Environmental Laws; (iv) any Releases or suspected Releases of any and all Pollutants at, from or near the Properties.

### 26.5 Landlord's Right of Entry

Following receipt of a notice described in Section 26.4 above and Tenant's failure to comply with the terms of this Section 26, Landlord, or its representatives or consultants, shall have the right to enter upon the Properties and make any inspection, tests, borings, measurements, investigation or assessment Landlord deems necessary in the exercise of its reasonable judgment in order to determine the presence of Pollutants or other Hazardous Materials. Landlord shall select a qualified environmental consultant to complete such tasks. Nothing herein shall be deemed to require Landlord to conduct any such testing, measurement, investigation or assessment. Landlord shall give Tenant a minimum of five (5) days written notice prior to conducting any such inspection, tests, borings, measurements, investigation or assessment except no such notice is required under emergency conditions. Landlord's right of entry and inspection shall include the right to inspect Tenant's records required to be maintained pursuant to Environmental Laws. If any Pollutants present on or released from the Properties are detected requiring remedial action as required by Section 26 of this Lease, Landlord's reasonable expenses incurred in performing the tests, measurements, investigation or assessment shall be treated as an advance from Landlord to Tenant, and shall be promptly paid by Tenant on demand by Landlord. This is in addition to Tenant's obligation to conduct all required testing, investigation, assessment, cleanup and remediation at Tenant's sole cost of any suspected or actual Pollutants.

In the event that Landlord has a reasonable basis to believe that Pollutants or other Hazardous Materials are present at a Property in violation of any Environmental Law or that Tenant has not otherwise complied with any Environmental Law, Landlord shall provide written notice to Tenant of such belief along with a description of, and any supporting documentation for, the basis for such belief. If after a reasonable period of time following such notice, Tenant has failed to demonstrate to the reasonable satisfaction of Landlord that no such Pollutants or other Hazardous Materials are present at the Property or that Tenant is in compliance with all Environmental Laws. Landlord shall have the right to enter the Properties upon reasonable notice to Tenant for the purpose of conducting an environmental audit or assessment to assure that the Properties are in compliance with any applicable Environmental Laws.

### 26.6 Survival

Provisions of this Section 26 shall survive expiration or termination of the tenancy.

## 27. **RIGHT OF FIRST OFFER**

### 27.1 Right of First Offer

Landlord grants to Tenant a right of first offer with respect to each Property; provided that this right of first offer is null, void and of no effect whatsoever if at the time of the Landlord's intent to sell a Property the Tenant is in default of any of the provisions of this Lease. If Landlord intends to sell a Property ("Sale Property"), Landlord shall submit to Tenant a proposal ("Proposal") setting forth the proposed purchase price and other material terms of the proposed sale.

Tenant shall have five (5) business days to elect to accept the terms of the Proposal, in which case Landlord and Tenant shall enter into a purchase agreement providing for a closing within ninety (90) days of Tenant's acceptance of the Proposal and such other terms as are mutually acceptable to the parties; provided, however, Tenant acknowledges and agrees:

- (i) Landlord shall deliver to Tenant a special warranty deed in the form customarily used in connection with commercial real property transactions in the state in which the Sale Property is situated, which shall be subject only to: (i) matters of record; (ii) such additional matters as specifically consented to by Tenant; (iii) anything of record or not of record that in any way affects title to the Sale Property resulting from the acts or omissions of Tenant and matters that would be shown by a then current inspection or survey of the Sale Property. Landlord shall execute such documents as shall be required to deliver good and marketable title to the Sale Property (subject to the foregoing matters) to Tenant in form and substance reasonably satisfactory to the title company;
- (ii) The Sale Property shall be conveyed by Landlord to Tenant "AS IS, WHERE IS, WITH ALL FAULTS," in such condition as the same may be on the closing of the transaction, without any representations or warranties by Landlord except customary representations and warranties pertaining to Landlord's quality of title, Landlord not having encumbered or sold, or granted any option or other rights with respect to the sale of, the Property and the due authorization, execution and delivery of such documents; and
- (iii) This Lease shall be amended to delete the Sale Property from the Property List effective on the date upon which fee simple

interest is vested in Tenant, and the parties thereafter shall be released from all liabilities and obligations under this Lease with respect to the Sale Property, with the exception of those obligations that survive the expiration or earlier termination of the Lease. This Lease shall continue in full force and effect with respect to the remaining Properties; provided, however, Base Monthly Rent shall be adjusted by the Individual Building Rent allocated to the Sale Property.

If Tenant elects not to accept the Proposal or fails to make an election within such thirty (30) days, Landlord may sell the Sale Property in accordance with the terms of the Proposal. If Landlord fails to sell the Sale Property within one (1) year following Tenant's election or deemed election to not purchase the Sale Property, or if Landlord intends to sell the Sale Property on terms that are materially less favorable to Landlord (it being agreed that any price lower than ninety-five percent (95%) of the price set forth in the Proposal shall be deemed materially less favorable), Landlord shall re-offer the Sale Property to Tenant on such less favorable terms pursuant to the terms of this right of first offer.

## 28. GENERAL PROVISIONS

### 28.1 Recitals

The Recitals set forth above are hereby incorporated by this reference.

### 28.2 Gender; Number

The use of (i) the neuter gender includes the masculine and feminine and (ii) the singular number includes the plural, whenever the context requires.

### 28.3 Captions

Captions in this Lease are inserted for the convenience of reference only and do not define, describe, or limit the scope or the intent of this Lease or any of its terms.

### 28.4 Exhibits

All attached exhibits are a part of this Lease and are incorporated in full by this reference. Except as specifically provided herein, if any provision contained in any exhibit hereto is inconsistent or in conflict with any provisions of this Lease, the provisions of this Lease shall supersede the provisions of such exhibit and shall be paramount and controlling.

### 28.5 Entire Agreement

This Lease contains the entire agreement between the parties relating to the transactions contemplated hereby and all prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged into this Lease.

### 28.6 Drafting

This Lease shall not be construed more strictly against one party than the other because it may have been drafted by one of the parties or its counsel, each having contributed substantially and materially to the negotiation and drafting hereof.

### 28.7 Modification

No modification, waiver, amendment, discharge, or change of this Lease shall be valid unless it is in writing and signed by the party against which the enforcement of the modification, waiver, amendment, discharge, or change is or may be sought.

### 28.8 Joint and Several Liability

If any party consists of more than one person or entity, the liability of each such person or entity signing this Lease shall be joint and several.

### 28.9 Enforceability

Tenant warrants and represents that the terms of this Lease are fully enforceable in the localities in which the Properties are located. In the event any provision contained in this Lease is inconsistent or in conflict with local law, custom, or practice, the provisions of this Lease shall supersede and shall be paramount and controlling.

### 28.10 Attorneys' Fees

With respect to Section 23 and any other provision in this Lease providing for payment or indemnification of attorneys' fees, such fees shall be deemed to include reasonable fees incurred through any applicable appeal process, and shall include fees attributable to legal services provided by any in-house counsel and staff to the prevailing or indemnified party. For purposes hereof, the services of in-house counsel and their staff shall be valued at rates for independent counsel prevailing in the metropolitan area in which such counsel and staff practice.

### 28.11 Time of Essence

Time is of the essence of every provision of this Lease.

### 28.12 Severability

In the event any term, covenant, condition, or provision of this Lease is held to be invalid, void, or otherwise unenforceable by any court of competent jurisdiction, the fact that such term, covenant, condition, or provision is invalid, void, or otherwise unenforceable shall in no way affect the validity or enforceability of any other term, covenant, condition, or provision of this Lease.

### 28.13 Successors and Assigns

Except as otherwise provided herein, all terms of this Lease shall be binding upon, inure to the benefit of, and be enforceable by the parties and their respective legal representatives, successors, and assigns.

#### 28.14 Independent Covenants

This Lease shall be construed as though the covenants herein between Landlord and Tenant are independent and not dependent, and Tenant hereby expressly waives the benefit of any statute to the contrary and agrees that if Landlord fails to perform its obligations set forth herein, Tenant shall not be entitled to make any repairs or perform any acts hereunder at Landlord's expense or to any offset of the rent or other amounts owing hereunder against Landlord; provided, however, the foregoing shall in no way impair the right of Tenant to commence a separate action against Landlord for any violation by Landlord of the provisions hereof so long as notice is first given to Landlord and any holder of a mortgage or deed of trust covering the Properties (of whose address Tenant has theretofore been notified) and an opportunity is granted to Landlord and such holder to correct such violation as provided above.

#### 28.15 Applicable Law

This Lease shall be governed by and construed in accordance with the laws of the State of Utah, without regard to its conflicts of law principles.

#### 28.16 Limitation of Landlord's Liability

Notwithstanding anything contained in this Lease to be contrary, Landlord shall not incur any liability beyond Landlord's interest in the Properties upon a breach of this Lease, and Tenant shall look exclusively to such interest in the Properties for the payment and discharge of any obligations imposed upon Landlord under this Lease.

#### 28.17 No Lease Until Accepted

Landlord's delivery of unexecuted copies or drafts of this Lease is solely for the purpose of review by the party to whom delivered and is in no way to be construed as an offer by Landlord nor in any way implies that Landlord is under any obligation to lease the Properties. When this Lease has been executed by both Landlord and Tenant, it shall constitute a binding agreement to lease the Properties upon the terms and conditions provided herein and Landlord and Tenant agree to execute all instruments and documents and take all actions as may be reasonably necessary or required in order to consummate the lease of the Properties as contemplated herein.

#### 28.18 Counterparts

This Lease may be executed in any number of counterparts, each of which shall be deemed an original. The counterparts shall together constitute but one agreement. Any signature on a copy of this Lease or any document necessary or convenient thereto sent by facsimile shall be binding upon transmission by facsimile and the facsimile copy may be utilized for the purposes of this Lease.

IN WITNESS WHEREOF, Landlord and Tenant, intending to be legally bound, have executed this Land and Building Lease Agreement the day and year first set forth above.

**LANDLORD:**

FRANKLIN SALT LAKE LLC, a Utah limited liability company

By:  
Its:

Date:

**TENANT:**

FRANKLIN DEVELOPMENT CORPORATION, a Utah corporation

By:  
Its:

Date:

**Exhibit A**

**to**

**Lease Agreement**

Base Monthly Rent: Two Hundred and Fifty-Three Thousand and Six Hundred and Sixty-Seven Dollars (\$253,719.25)

Franklin Building \$12.00  
Patrick Henry Building \$9.00  
Adams Building \$9.00  
Washington Building \$9.00  
Jefferson Building \$9.00

Property List; Legal Descriptions of Properties

**Parcel 1**  
**Garden Area Parcel**

Beginning at a point on the Easterly Right of Way line of Decker Lake Boulevard, said point being due West 3067.40 feet and due South 1207.42 feet from the Center of Section 22, Township 1 South, Range 1 West, Salt Lake Base and Meridian, said point also being on a 167.00 foot radius curve to the right, the radius point of which bears North 05°50'30" East; thence along said Easterly line the following three (3) courses: Northerly along the arc of said curve 245.29 feet through a central angle of 84°09'27" (Chord to said curve bears North 42°04'54" West 223.84 feet); thence North 173.73 feet to the point of an 1974.03 foot radius curve to the right, thence Northerly along the arc of said curve 46.54 feet; thence East 149.44 feet; thence South 386.13 feet to the point of beginning.

**Parcel 2**  
**Franklin Building**

Beginning at a point on the Westerly Right of Way line of Decker Lake Boulevard, said point being South 00°03'10" East 540.23 feet and West 1279.14 feet and South 25°00'00" West 1380.87 feet and South 52°59'27" West 368.44 feet and North 37°00'33" West 60.00 feet and South 52°59'27" West 40.00 feet and North 37°00'03" West 282.82 feet from the Center of Section 22, Township 1 South, Range 1 West, Salt Lake Base and Meridian, said point also being due West 2394.73 feet and due South 1763.83 feet from said Center Section Monument, said point also being on a 368.22 foot radius curve to the left, the radius point of which bears South 41°50'56" West; thence Northwesterly along the arc of said curve 268.95 feet, through a central angle of 41°50'56" (Chord bears North 69°04'32" West 263.01 feet); thence West 29.97 feet; thence South 30°00'00" East 195.52 feet; thence South 45°03'09" West 129.64 feet; thence North 44°56'51" West 44.17 feet; thence West 177.02 feet; thence South 45°00'00" West 109.13 feet; thence North 45°00'00" West 78.37 feet; thence North 251.40 feet; thence West 45.24 feet to a point of a 233.00 foot radius curve to the right; thence Northerly 366.00 feet along the arc of said curve, through a central angle of 90°00'00" (Chord to said curve bears North 45°00'00" West 329.51 feet); thence North 395.61 feet to a point on the Westerly right-of-way line of Decker Lake Boulevard, said point also being on a curve to the left, the radius point of which bears East 233.00 feet; thence Southeasterly 366.00 feet along the arc of said curve and said Westerly line through a central angle of 90°00'00" (Chord bears South 45°00'00" East 329.51 feet); thence along said Westerly line the following six(6) courses: East 291.65 feet to a point of a 268.56 foot radius curve to the right, the radius point of which bears South; thence Southeasterly 383.17 feet along the arc of said curve through a central angle of 81°44'53" (Chord bears South 49°07'34" East 351.49 feet); thence South 08°15'07" East 61.35 feet to a point of a 334.56 foot radius curve to the left, the radius point of which bears North 81°44'53" East; thence Southeasterly along the arc of said curve 167.92 feet through a central angle of 28°45'26" (Chord bears South 22°37'50" East 166.16 feet); thence South 52°59'27" West 7.00 feet; thence South 37°00'33" East 51.64 feet to the point of beginning.

**Parcel 3**  
**Jefferson, Adams & Washington Buildings**

Beginning at a point on the Westerly Right of Way line of Decker Lake Boulevard, said point being South 00°03'10" East 540.23 feet and West 1279.14 feet and South 25°00'00" West 1380.87 feet and South 52°59'27" West 368.44 feet and North 37°00'33" West 60.00 feet and South 52°59'27" West 40.00 feet from the Center of Section 22, Township 1 South, Range 1 West, Salt Lake Base and Meridian, said point also being due West 2224.50 feet and due South 1989.67 feet from said Center Section Monument and running thence South 07°59'27" West 28.03 feet to the Northerly right-of-way line of Parkway Boulevard said point also being on a 1102.87 foot radius curve to the right, the radius point of said curve bears North 35°59'21" West; thence Westerly along the arc of said curve and said right-of-way line 691.27 feet, through a central angle of 35°54'45" (Chord to said curve bears South 71°58'01" West 680.01 feet); thence South 89°55'56" West 115.06 feet; thence North 83°32'31" West 75.29 feet; thence North 06°27'29" East 57.95 feet; thence North 45°00'00" West 199.09 feet; thence North 77.78 feet; thence North 45°00'00" West 95.35 feet; thence North 45°00'00" East 105.79 feet; thence North 59°22'26" West 127.77 feet; thence North 40°01'24" East 157.77 feet to a point on a 233 foot radius curve to the left, the radius point of which bears North 40°01'24" East; thence Easterly 162.76 feet along said curve through a central angle of 40°01'24" (Chord to said curve bears South 69°59'18" East 159.47 feet); thence East 45.24 feet; thence South 251.40 feet; thence South 45°00'00" East 78.37 feet; thence North 45°00'00" East 109.13 feet; thence East 177.02 feet; thence South 44°56'51" East 44.17 feet; thence North 45°03'09" East 129.64 feet; thence North 30°00'00" West 195.52 feet; thence East 29.97 feet to a point of a 368.22 foot radius curve to the right; thence along the arc of said curve 268.95 feet, through a central angle of 41°50'56" to a point of non-tangency said point also being on said Westerly right-of-way line; thence South 37°00'33" East along said right-of-way line 282.82 feet to the point of beginning.

**Parcel 4**  
**Patrick Henry Building**

Beginning at a point on the Easterly Right of Way line of Decker Lake Boulevard, said point being South 00°03'10" East 540.23 feet and West 1279.14 feet and South 25°00'00" West 1380.87 feet and South 52°59'27" West 368.44 feet and North 37°00'33" West 60.56 feet and North 52°59'27" East 40.00 feet from the Center of Section 22, Township 1 South, Range 1 West, Salt Lake Base and Meridian, said point also being due West 2160.95 feet and due South 1941.07 feet from said Center Section Monument, and running thence along said Easterly line the following five(5) courses: North 37°00'33" West 333.90 feet; thence South 52°59'27" West 7.00 feet to a point on a 268.56 foot radius curve to the right, the radius point of which bears North 52°59'27" East; thence Northerly 134.79 feet along the arc of said curve, through a central angle of 28°45'26" (Chord to said curve bears North 22°37'50" West 133.38 feet); thence North 08°15'07" West 61.35 feet to a point of a 334.56 foot radius curve to the left, the radius of said curve bears South 81°44'53" West; thence Northwesterly 477.34 feet along the arc of said curve, through a central angle



of  $81^{\circ}44'53''$  (Chord to said curve bears North  $49^{\circ}07'33''$  West 437.87 feet); thence East 284.95 feet; thence South  $36^{\circ}58'23''$  East 775.35 to a point on the Northerly right-of-way line of Parkway Boulevard, said point also being on a 1438.24 foot radius curve, the radius point of which bears North  $46^{\circ}14'40''$  West; thence Southwesterly 172.48 feet along the arc of said curve, through a central angle of  $06^{\circ}52'16''$  to a point on said Easterly line; thence North  $82^{\circ}00'33''$  West along said Easterly line 27.34 feet to the point of beginning.

**PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS**

**BUYER:**

LEVY AFFILIATED HOLDINGS, LLC,  
A CALIFORNIA LIMITED LIABILITY COMPANY, OR ITS ASSIGNEE

**SELLER:**

FRANKLIN DEVELOPMENT CORPORATION  
A UTAH CORPORATION

# PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS

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## PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS

THIS PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS (this "Agreement"), dated \_\_\_\_\_, 2005 for reference purposes only, is made by and between FRANKLIN DEVELOPMENT CORPORATION, a Utah corporation ("Seller"), and LEVY AFFILIATED HOLDINGS, LLC, a California limited liability company ("Buyer"), or assignee, and is made with reference to the recitals set forth below, and constitutes (i) a contract of purchase and sale between the parties, and (ii) escrow instructions to FIRST AMERICAN TITLE INSURANCE COMPANY (the "Escrow Agent").

### RECITALS

A. Seller owns four (4) parcels of certain real property, together with all improvements located thereon and appurtenances thereunto belonging, which real property is more particularly identified in Exhibit "A" attached hereto and incorporated herein. The Property is a business office complex consisting of five (5) improved buildings. The term "Property" as used in this Agreement shall mean all of the real property identified in Exhibit "A" and the fixtures ("Fixtures") set forth on Exhibit "A-1" attached hereto, but excludes Seller's personal property, including artwork and collectibles on display therein.

B. Seller desires to sell all of Seller's right, title and interest in and to the Property upon the terms and conditions set forth below. Buyer desires to purchase all of Seller's right, title, and interest in and to the Property upon the terms and conditions set forth below.

C. Concurrently with the Closing (as defined in Section 8), Buyer, as landlord, shall lease the entire Property back to Seller, as tenant, pursuant to a certain Lease Agreement (the "Lease"), substantially in the form of Exhibit "B," attached hereto and incorporated herein. The parties hereby acknowledge that the lease is a material inducement to concluding this purchase and sale agreement, and that if the parties fail to mutually execute a lease, that this contract for purchase and sale shall be null, void and of no effect whatsoever.

NOW, THEREFORE, in consideration of the above recitals, the mutual covenants set forth below in this Agreement, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Seller and Buyer agree as follows

### 1. PURCHASE PRICE

In consideration of the covenants contained in this Agreement, Seller shall sell and Buyer shall purchase the Property for a total purchase price of THIRTY-FOUR MILLION THREE HUNDRED THIRTY THOUSAND AND NO/100 DOLLARS (\$34,330,000) ("Purchase Price). Buyer shall pay for all closing and escrow costs, fees and charges of the transaction contemplated hereby in connection with the Property acquired by Buyer, as are customary for the Buyer in the locality and any costs relating to any financing obtained by Buyer. The Purchase Price shall be delivered by Buyer to Escrow Agent on or before the Closing in Cash (defined as (i) United States currency, (ii) cashier's or certified check(s) currently dated, payable to Escrow Agent, and honored upon presentation for payment, (iii) an amount credited by wire transfer into Escrow Agent's bank account, or (iv) if monies are deposited with Escrow Agent within twenty (20) days prior to the Closing, funds in such form as Escrow Agent in its sole discretion requires).

### 2. OPENING OF ESCROW

Within five (5) business days following the execution of this Agreement, (i) Buyer and Seller shall open an escrow (the "Escrow") with Escrow Agent for the Properties and shall deposit with Escrow Agent fully executed counterparts of this Agreement for use as escrow instructions and (ii) Buyer shall deposit with the Escrow Agent a forfeitable earnest money deposit in the amount of TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000) (the "Earnest Money"), which amount shall become totally non-refundable in the event Buyer, not being excused from performance pursuant to Section 4 of this Agreement, fails or refuses to close on the date specified in Section 8 below. Buyer and Seller may provide Escrow Agent with supplemental escrow instructions in connection with the Closing.

### 3. TITLE TO PROPERTY

At Closing, Seller shall convey to Buyer fee simple title to the Property by execution and delivery of a special warranty deed ("Deed") for the Property and, free of any financial liens, bills of sale for the Fixtures ("Bills of Sale"), in the forms customarily used in connection with commercial real property transactions in the State of Utah. At the Closing, Buyer shall receive from First American Title Insurance Company ("Title Company") an ALTA Owner's Extended Policy of Title Insurance (the "Title Policy") with liability in the full amount of the Purchase Price insuring fee simple title to the Property in Buyer, subject only to exceptions approved by Buyer as provided in Section 4.1 below, together with such endorsements as may be reasonably requested by Buyer. The Title Policy shall provide survey coverage and shall provide full coverage against mechanics' and materialmen's liens arising out of the construction, repair or alteration of any improvements located on the Property. The cost of the Title Policy, including all endorsements, shall be paid by Buyer.

### 4. CONDITIONS TO BUYER'S OBLIGATION TO PURCHASE

Buyer's obligation to purchase the Property is expressly conditioned upon each of the following conditions:

#### 4.1 Approvals by Buyer

Buyer's receipt and approval for the Property of the following prior to the Closing:

4.1.1 ALTA Commitment for Policy of Title Insurance. As soon as reasonably possible after execution of this Agreement by Seller and Buyer, Seller shall cause the issuance of a Utah ALTA commitment for policy of title insurance, together with complete and legible copies of all encumbrances and liens of record (the "Commitment"), with respect to the Property to be forwarded to Buyer for approval. If no written disapproval of any items in the Commitment is received from Buyer on or before ten (10) days after the later of delivery of the Commitment to Buyer or delivery of the respective Survey (as defined in Section 4.1.2), the Commitment shall be deemed approved by Buyer.

4.1.2 Survey. As soon as reasonably possible after execution of this Agreement by Seller and Buyer, Seller shall deliver to Buyer all surveys and plat maps of the Property, or any portion thereof, which Seller has in its possession. Buyer may, at its own expense, obtain a current ALTA/ACSM Land Title Survey of the Property. All such surveys shall be referred to herein as the "Survey", whether one or more. If no

written disapproval of the Survey is received from Buyer on or before ten (10) days after the later of delivery of the Survey or the respective Commitment, the Survey shall be deemed approved by Buyer.

4.1.3 Environmental and Other Studies. As soon as reasonably possible after execution of this Agreement by Seller and Buyer, Seller shall deliver to Buyer all environmental studies and assessments, geotechnical and other studies of the Property, or any portion thereof, which Seller has in its possession. Buyer shall also have the right to obtain its own environmental assessments, structural and engineering assessments and other studies of the Property, at its own expense. Buyer and its agents shall have the right to enter upon the Property for such purpose. In the event that any of the environmental assessments, engineering reports or other studies obtained by Buyer (from Seller or otherwise) suggest the need for further tests or studies to be undertaken with respect to the Property, Buyer shall have a reasonable time to have such tests or studies performed and reviewed. All such studies and assessments shall be referred to in this Agreement as the "Studies." If no written disapproval of the Studies is received from Buyer on or before ten (10) days after delivery of same, the Studies shall be deemed approved by Buyer.

4.1.4 Plans and Specifications. As soon as reasonably possible, Seller shall submit complete final as-built plans and specifications to the extent in its possession for the Property to Buyer.

#### 4.2 Utilities

Buyer's satisfaction that all water, sewer, gas, electric, telephone, and drainage facilities and all other utilities required by law or by the normal use and operation of the Property are and at the time of Closing will be installed to the property lines of the Property, are and at the time of Closing will be connected and operating pursuant to valid permits, and are and at the time of Closing will be adequate to service the Property and to permit full compliance with all requirements of law and normal usage of the Property.

#### 4.3 Physical Characteristics of the Property.

Buyer's review and approval, prior to the Closing, of the structural, mechanical, electrical and other physical characteristics of the Property.

#### 4.4 Accuracy of Representations

All of Seller's representations and warranties contained in or made pursuant to this Agreement shall have been true and correct when made and shall be true and correct as of the Closing, and Seller shall have complied with all of Seller's covenants and agreements contained in or made pursuant to this Agreement.

#### 4.5 Foreign Investments

Buyer's receipt of the affidavit, certification, or notice required by Section 1445 of the Internal Revenue Code of 1954, as amended and the Regulations pursuant thereto, in a form sufficient to relieve Buyer of any potential transferee withholding liability under such Section.

#### 4.6 Lease

Execution by Buyer and Seller of the Lease for the Property.

#### 4.7 Change in Conditions

If any of the conditions in this Section 4 materially change after having been satisfied or waived by Buyer and before the transaction contemplated herein is closed, then such condition(s) shall be reinstated as if having never been satisfied or waived by Buyer.

#### 4.8 Failure of Conditions

4.8.1 The foregoing conditions contained in this Section 4 are intended solely for the benefit of Buyer. If any of the foregoing conditions are not satisfied or approved by Buyer, Buyer shall have the right at its sole election either (i) to waive the condition in question and proceed with the purchase of the Property pursuant to all of the other terms of this Agreement, or (ii) to terminate this Agreement in its entirety.

4.8.2 By written agreement by Seller and Buyer, the Closing may be extended for a reasonable time if required to allow the conditions contained in this Section 4 to be satisfied, subject to Buyer's or Seller's further rights to terminate this Agreement upon the expiration of the period of any extension if all such conditions have not then been satisfied.

#### 4.9 Property Approval Period.

Buyer shall complete its review and investigation of the matters identified in Sections 4.1, 4.2 and 4.3, above, prior to the date thirty (30) days after the date of execution of this Agreement (the "Property Approval Deadline"). If prior to the Property Approval Deadline, Buyer determines in good faith that the Property is not acceptable based upon its review, then Buyer shall have the right, by giving notice to Seller, to terminate this Agreement. If Buyer exercises the right to terminate this Agreement in accordance with this Section 4.9 this Agreement shall terminate as of the date such termination notice is given by Buyer and Buyer shall have the right to receive the Earnest Money from the Escrow Agent.

If prior to the Closing, a Lease is not executed for the property between Buyer and Seller, then Buyer shall have the right at any time prior to the Closing, by giving notice to Seller, to terminate this Agreement. If Buyer exercises the right to terminate this Agreement in accordance with this Section 4.9 this Agreement shall terminate as of the date such termination notice is given by Buyer and Buyer shall have the right to receive the Earnest Money from the Escrow Agent.

#### 4.10 Loan Contingency.

Buyer shall have obtained third-party financing for sixty percent (60%) of the Purchase Price upon terms and conditions reasonably acceptable to Buyer (the "Financing").

#### 4.11 Loan Contingency Period.

Buyer shall obtain the Financing on or before the date sixty (60) days after the date of execution of this Agreement (the "Loan Contingency Period"). If prior to expiration of the Loan Contingency Period, Buyer determines in good faith that it will not be successful in obtaining the Financing, then Buyer shall have the right, by giving notice to Seller, to either (a) terminate this Agreement, (b) waive the requirements of Section 4.10, or (c) increase the deposit set forth in Section 2 by depositing an additional \$100,000 in Escrow, in which event the Closing date as set forth in Section 8.1 below shall be extended by thirty (30) days. If Buyer exercises the right to terminate this Agreement in accordance with this Section 4.11(a) this Agreement shall terminate as of the date such termination notice is given by Buyer and Buyer shall have the right to receive the Earnest Money from the Escrow Agent. If Buyer elects to continue with the transaction pursuant to either subsection (b) or (c) of this Section 4.11, the Earnest Money shall become non-refundable on the 60<sup>th</sup> day of the Loan Contingency Period.

## 5. CONDITIONS TO SELLER'S OBLIGATION TO SELL

Seller's obligation to sell is expressly conditioned upon each of the following:

### 5.1 Board Approval.

Seller's Board of Directors has passed a resolution authorizing the sale of the Property to Buyer pursuant to the terms and conditions contained in this Agreement.

### 5.2 Performance by Buyer

Timely performance of each obligation, covenant, and delivery required of Buyer.

### 5.3 Declaration of Easements, Covenants, Conditions and Restrictions.

Execution and recordation of a Declaration of Easements, Covenants, Conditions and Restrictions ("Declaration") for certain cross-easements for access and parking with the owner of certain real property located adjacent to the Property ("Adjacent Property Owner"). The Adjacent Property Owner must utilize certain parts of the Property owned by Seller for vehicular and pedestrian access. In order to effectuate the common use and operation of the Property for the mutual benefit of the Adjacent Property Owner, future owners of any parcel in the Property and holders of leasehold interests in any parcel in the Property, it is necessary to create certain mutual rights to use the Property and the adjacent property to facilitate the operation of an integrated business park.

### 5.4 Accuracy of Representations

All of Buyer's representations and warranties contained in or made pursuant to this Agreement shall have been true and correct when made and shall be true and correct at the Closing, and Buyer shall have complied with all of Buyer's covenants and agreements contained in or made pursuant to this Agreement.

### 5.5 Payment of Purchase Price

Payment of the Purchase Price at the Closing in the manner provided in this Agreement.

## 6. BUYER'S DELIVERIES TO ESCROW AGENT AND SELLER

### 6.1 Purchase Price

Buyer shall deliver in Cash to Escrow Agent the Purchase Price as set forth in Section 1, less or plus the adjustments, if any, made pursuant to Section 9. Escrow Agent shall deposit the Purchase Price in an interest bearing account, the interest upon which shall accrue to the benefit of Buyer.

### 6.2 Lease and Memorandum of Lease

On or before the Closing, Buyer shall deliver to Escrow Agent the Lease for the Property executed by Buyer. On or before the Closing, Buyer shall deliver to Escrow Agent the Memorandum of Lease for the Property, executed and acknowledged by Buyer.

### 6.3 Failure to Deliver

The failure of Buyer to make any required delivery within the specified time shall constitute a material breach by Buyer; however, if the Buyer fails to deliver the Lease because it disapproves of the Lease, the breach shall be excused, and the agreement shall terminate in accordance with Section 4.9 of this Agreement.

## 7. SELLER'S DELIVERIES TO ESCROW AGENT AND BUYER

### 7.1 Deed, Bills of Sale

On or before the Closing, Seller shall deliver to Escrow Agent the Deed for the Property and the Bill of Sale for the Fixtures executed and, in the case of the Deed, acknowledged by Seller.

### 7.2 Lease and Memorandum of Lease

On or before the Closing, Seller shall deliver to Buyer the Lease for the Property executed by Seller. In addition, on or before the Closing, Seller shall deliver to Buyer the Memorandum of Lease for the Property executed and acknowledged by Seller.

### 7.3 Failure to Deliver

The failure of Seller to make any required delivery within the specified time shall constitute a material breach by Seller.

## 8. THE CLOSING

### 8.1 Date and Manner of Closing

Escrow Agent shall close the Escrow (the "Closing") on or before the date which is ninety (90) days following the date Escrow was opened pursuant to Section 2 above (the "Scheduled Closing Date"), provided that all of the conditions to Buyer's obligation to purchase have been either satisfied or waived. The Escrow shall be deemed closed when (i) all documents required to be delivered to Buyer and Escrow Agent pursuant to this Agreement have been delivered or delivery of such document(s) has been waived; (ii) the Declaration described in paragraph 5.3 has been executed by the appropriate parties; (iii) the Title Company is irrevocably committed to issuing the Title Policy; and (iv) all funds required to be delivered to Escrow Agent pursuant to this Agreement have been delivered and are ready to be disbursed subject only to the closing of escrow.

### 8.2 Time is of the Essence; Delay in Closing; Authority to Close

Time is of the essence in the performance of the covenants and conditions herein. Nevertheless, if Escrow Agent cannot close the Escrow on or before the Scheduled Closing Date, it will nevertheless close when all conditions have been satisfied or waived, notwithstanding that one or more of such conditions was not timely performed, unless after the Scheduled Closing Date and prior to the close of the delayed Escrow, Escrow Agent receives a written notice to terminate the Escrow and this Agreement, from a party who, at the time such notice is delivered, is not in default. Neither (i) the exercise of the right of termination, (ii) delay in the exercise of the right of termination, nor (iii) the return of monies and documents, shall affect the right of the party giving notice of termination to pursue legal or equitable remedies for the other party's breach of this Agreement. Nor shall (i) the giving of such notice, (ii) the failure to object to termination of the Escrow, or (iii) the return of monies and documents affect the right of the other party to pursue legal or equitable remedies for the breach of the party who gives notice.

## 9. PRORATION, COSTS AND EXPENSES

### 9.1 Prorations and Apportionments

Contemporaneously with the Closing, Seller intends to lease the Property from Buyer. Therefore, the parties do not anticipate the need to prorate revenues or expenses. However, in the event an item of expense or revenue must be prorated, it shall be prorated and apportioned as of 12:01 a.m. on the date of the Closing so that Seller shall bear all expenses with respect to the Property and shall have the benefit of all income with respect to the Property through and including the period preceding the date of the Closing. Any taxes or other amounts which cannot be ascertained with certainty as of the Closing shall be prorated on the basis of the parties' reasonable estimates of such amount(s) and shall be the subject of a final proration thirty (30) days after the Closing or as soon thereafter as the precise amounts can be ascertained.

### 9.2 Payment of Adjustments to Proration

Either party owing the other party a sum of money based on adjustments made to prorations after the Closing shall promptly pay that sum to the other party, together with interest thereon at the rate of twelve percent (12%) per annum to the date of payment if payment is not made within ten (10) days after mutual agreement of the amount due, or within thirty (30) days of the Closing, if that date is earlier.

### 9.3 Seller's Costs and Expenses

Seller shall pay Seller's own attorneys' fees. Seller shall pay for the costs of the Closing as are customarily paid for by Seller in the locality.

### 9.4 Buyer's Costs and Expenses

Buyer shall pay for Buyer's own attorneys' fees or any costs related to any mortgage loan obtained by Buyer. Buyer shall pay for the costs of the Closing as are customarily paid for by Buyer in the locality.

## 10. DISTRIBUTION OF FUNDS AND DOCUMENTS

### 10.1 Form of Distributions

All disbursements by Escrow Agent shall be made by checks of Escrow Agent or by wire transfers to the account of, and as directed by, the receiving party.

### 10.2 Recorded Documents

Escrow Agent shall cause the County Recorder of Salt Lake County to mail the Deed (and any other documents which are required by this Agreement to be, or by general usage are, recorded) after recordation, to the grantee, beneficiaries, or person (i) acquiring rights under the documents or (ii) for whose benefit the documents were recorded. Additionally, Escrow Agent shall cause the County Recorder of Salt Lake County to mail the Declaration after recordation to Seller and Buyer.

### 10.3 Non-Recorded Documents

Escrow Agent shall, at the Closing, deliver by United States mail (or shall hold for personal pickup, if requested), each non-recorded document received by Escrow Agent to the payee or person (i) acquiring rights under the document or (ii) for whose benefit the documents were acquired.

### 10.4 Cash Disbursements

At the Closing, Escrow Agent shall hold for personal pickup or shall arrange for wire transfer (i) to Seller, or order, the Purchase Price plus any proration or other credits to which Seller shall be entitled for the Property and less any appropriate proration or other charges and (ii) to Buyer, or order, any excess funds previously delivered to Escrow Agent by Buyer.

### 10.5 Copies of Documents



Following the Closing, Escrow Agent shall deliver to Buyer and to Seller a copy of the Deed, the Declaration, (conformed to show recording data) and each other recorded document for the Property.

## **11. RETURN OF DOCUMENTS AND FUNDS UPON TERMINATION**

### **11.1 Return of Seller's Documents**

In the event the Escrow is terminated for any reason (other than the default of Seller), Buyer shall, within fifteen (15) calendar days following the termination, deliver to Seller all documents and materials, if any, relating to the Property previously delivered to Buyer by Seller. Escrow Agent shall deliver all documents and materials relating to the Property previously deposited by Seller and then in Escrow Agent's possession to Seller.

### **11.2 Return of Buyer's Documents**

In the event the Escrow is terminated for any reason (other than the default of Buyer), Seller shall, within fifteen (15) calendar days following termination, deliver to Buyer all funds and documents, if any, relating to the Property, previously delivered to Seller by Buyer. Escrow Agent shall deliver all documents, materials, and funds relating to the Property previously deposited by Buyer and then in Escrow Agent's possession to Buyer.

### **11.3 No Effect on Rights of Parties**

The return of documents and monies as set forth above shall not affect the right of either party to seek the legal or equitable remedies that the party may have with respect to the enforcement of this Agreement.

### **11.4 Payment of Termination Fee**

Escrow Agent may condition its deliveries upon payment of a reasonable title commitment termination fee by the party requesting delivery. Notwithstanding the foregoing, any termination fee shall be paid (or reimbursed) by the defaulting party, or paid equally if neither party is then in default.

## **12. DEFAULT**

### **12.1 Seller's Remedy**

In the event that the transaction fails to close on account of Buyer's fault or Buyer's breach of this Agreement, Seller shall be entitled to such remedies for breach of contract as may be available under applicable law, including, without limitation, the remedy of specific performance.

### **12.2 Buyer's Remedies**

In the event that the transaction fails to close on account of Seller's fault or Seller's breach of this Agreement, Buyer shall be entitled to such remedies for breach of contract as may be available under applicable law, including, without limitation, the remedy of specific performance.

## **13. REPRESENTATIONS AND WARRANTIES OF SELLER**

The following representations and warranties by Seller are now and shall, at the Closing, be true and correct. If during the period between the execution of this Agreement and the Closing, Seller learns of or has a reason to believe that any of the following representations and warranties may cease to be true, Seller covenants to give notice thereof to Buyer immediately.

### **13.1 Authority of Seller**

Seller is a corporation duly organized and validly existing and in good standing under the laws of the State of Utah and has the authority to own and convey the Property. This Agreement and all documents executed by Seller which are to be delivered to Buyer are, or at the time of the Closing will be, duly authorized, executed, and delivered by Seller and do not, and at the time of the Closing will not, violate any provisions of any agreement or judicial order to which Seller is a party or to which Seller or the Property is subject.

### **13.2 Condition of Property**

To Seller's actual knowledge (in contrast to constructive, implied or imputed knowledge) and without inquiry or investigation, there are now, and at the Closing there will be, no material, physical or mechanical defects of the Property, including, without limitation, the plumbing, heating, air conditioning, ventilating, emergency safety systems, and electrical systems, and all such items are in good operating condition and repair and in compliance with all applicable governmental laws, ordinances, regulations, and requirements, including, but not limited to, the Americans with Disabilities Act. In addition, there are no existing leases of the Property or any portion thereof.

### **13.3 Use and Operation**

To Seller's actual knowledge (in contrast to constructive, implied or imputed knowledge) and without inquiry or investigation, the use and operation of the Property now is, and at the time of Closing will be, in substantial compliance with applicable building codes, safety, fire, environmental, zoning, and land use laws, and other applicable local, state, and federal laws, ordinances, regulations, and requirements.

### **13.4 Land Use Regulation**

To Seller's actual knowledge (in contrast to constructive, implied or imputed knowledge) and without inquiry or investigation, there are no condemnation, environmental, zoning or other land use regulation proceedings contemplated or instituted which could detrimentally affect the use or operation of the Property or the value of the Property, nor has Seller received notice of any special assessment proceedings affecting the Property.

### 13.5 Absence of Fraud and Misleading Statements

No representation, warranty, or statement of Seller in this Agreement or in any document, certificate, or schedule furnished or to be furnished to Buyer pursuant thereto, contains or will contain any knowingly untrue statement of a material fact or knowingly omits or will omit to state a material fact necessary to make the statements or facts not misleading. All representations, warranties, or statements of Seller are based upon current, accurate, and complete information as of the time of their making (without any duty of inquiry or investigation on the part of the Seller) and, to Seller's actual knowledge, there has been no subsequent material change in the information.

### 13.6 Litigation

To Seller's actual knowledge (in contrast to constructive, implied or imputed knowledge) and without inquiry or investigation, there is no litigation, pending or threatened, against Seller or any basis therefor that arises out of the ownership of the Property, or that might detrimentally affect the use or operation of the Property for its intended purpose or the value of the Property, or adversely affect the ability of Seller to perform its obligations under this Agreement.

### 13.7 Other Contracts to Convey

Seller has not committed nor obligated itself in any manner whatsoever to sell the Property to any party other than Buyer. Seller has not hypothecated or assigned any rents or income from the Property in any manner.

### 13.8 Property Tax Assessment

Seller has not received written evidence of special assessments levied against the Property except as appear on the last available tax statement

### 13.9 Confidentiality

Seller and Buyer shall hold as confidential all information concerning the other and this transaction. Seller and Buyer shall not release any such information to third parties without the other's prior written consent, except, in the case of Buyer, with respect to customary disclosures to rating agencies and lenders and, in the case of both Buyer and Seller, customary disclosures to accountants and disclosures pursuant to a court order requiring such release or as otherwise may be required by law. The foregoing agreement shall survive Closing or the termination of this Agreement.

### 13.10 Use Permits and Other Approvals

Seller has obtained all licenses, permits, approvals, easements, and rights of way required from all governmental authorities having jurisdiction over the Property or from private parties for the normal use and operation of the Property and to ensure free and unimpeded vehicular and pedestrian ingress to and egress from the Property as required to permit the normal intended usage of the Property. Seller has materially complied with all licenses and permits and has not received any notice that any licenses or permits will not be renewed upon expiration, or of any material conditions which will be imposed in order to receive any renewal.

### 13.11 Survival

The representations and warranties of Seller contained herein shall survive the Closing and delivery of the Deed for a period of one (1) year from the date of Closing.

### 13.12 No Broker

Seller warrants to Buyer that other than the commissions payable to American Commercial Real Estate Specialists, Inc., a Utah corporation doing business as NAI UTAH and Terra Marketing, Inc., an Arizona corporation doing business as NAI INVESTMENT PROPERTY CENTER (the cost of which shall be paid for by Seller according to the terms of a separate agreement) there are no brokerage commissions or finder's fees payable as a result of the Closing herein or as a result of any agreements with Seller or actions of Seller. Seller shall indemnify and hold harmless Buyer from any claims, costs, damages, or liability based on any statement, representations, or agreement by Seller with respect to the payment of any brokerage commissions or finders' fees.

## 14. REPRESENTATIONS & WARRANTIES OF BUYER

Buyer hereby represents and warrants to Seller as follows:

### 14.1 Authority of Buyer

Buyer is a limited liability company duly organized and validly existing under the laws of the State of California. This Agreement and all documents executed by Buyer which are to be delivered to Seller at the Closing are, or at the time of Closing will be, duly authorized, executed, and delivered by Buyer, and are, or at the Closing will be, legal, valid, and binding obligations of Buyer, and do not, and at the time of Closing will not, violate any provisions of any agreement or judicial order to which Buyer is a party or to which it is subject.

### 14.2 Absence of Fraud and Misleading Statements

No representation, warranty, or statement of Buyer in this Agreement or in any document, certificate, or schedule furnished or to be furnished to Seller pursuant thereto contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary to make the statements or facts not misleading. All representations, warranties, or statements of Buyer are based upon current, accurate, and complete information as of the time of their making and there has been no subsequent material change in the information.

### 14.3 Litigation

There is no litigation pending or, to Buyer's knowledge, threatened, against Buyer or any basis therefore before any court or administrative agency that might adversely affect the ability of Buyer to perform its obligations under this Agreement.

### 14.4 Financial Condition

Buyer has adequate financial resources to make timely payment of all sums due from Buyer hereunder and to perform all of its obligations hereunder.

#### 14.5 Survival

The representations and warranties of Buyer contained herein shall survive the Closing.

#### 14.6 No Broker

Buyer warrants that other than the commission payable to Sperry Van Ness, 11999 San Vicente Boulevard, Suite 100, Los Angeles, California (the cost of which shall be paid by Buyer), there are no brokerage commissions payable as a result of the Closing herein or as a result of any agreements with Buyer or actions of Buyer. Buyer shall indemnify and hold harmless Seller from any claims, costs, damages, or liability based on any statement, representations, or agreement by Buyer with respect to the payment of any brokerage commissions or finders' fees.

### 15. COVENANTS

Matters as to which Escrow Agent need not be concerned, Seller and Buyer covenant and agree with one another as follows:

#### 15.1 Indemnification by Parties

Each party shall indemnify the other party and hold the other party harmless from and against any and all claims, demands, liabilities, liens, costs, expenses, penalties, damages, and losses, including, without limitation, reasonable attorneys' fees and costs, suffered as a direct or indirect result of:

15.1.1 Any misrepresentation, breach of warranty, or breach of covenant made pursuant to this Agreement or in any document, certificate, or exhibit given or delivered pursuant to or in connection with this Agreement; and

15.1.2 Any and all obligations, liabilities, claims, liens, or encumbrances, whether direct, contingent, or consequential, but excluding lost profits, and no matter how arising or accruing, which are in any way related to or arising from any act, conduct, omission, contract, or commitment of such party (or any of its agents or employees) at any time or times before the Closing. The provisions of this Section shall survive the execution and delivery of this Agreement, the delivery of the Deed and transfer of title.

#### 15.2 Maintenance

Between the Seller's execution of this Agreement and the Closing, Seller shall, at Seller's sole cost and expense, maintain the Property in good order, condition, and repair, reasonable wear and tear and casualty excepted, and shall operate the Property in the same manner as before the making of this Agreement as though Seller were retaining the Property.

#### 15.3 Other Agreements

Seller shall not enter into or terminate any contracts or agreements pertaining to the Property which will be binding on Buyer after Closing without in each case obtaining Buyer's prior written consent thereto.

### 16. LOSS BY FIRE OR OTHER CASUALTY; CONDEMNATION

#### 16.1 Damage or Destruction

In the event that any of the improvements on the Property are damaged or destroyed by fire or other casualty prior to the Closing, then Seller may terminate this Agreement as to each damaged or destroyed Property, or may agree to restore and repair such damage, either before or after the Closing. Termination shall be by written notice to Buyer within five (5) days after the occurrence of the damage or destruction. Buyer shall have no obligation to accept Seller's offer to restore or repair such damage if such restoration and repair would cause the Scheduled Closing Date to be extended. If the restoration or repair shall take place after the Closing, a portion of the proceeds of sale equal to the estimated cost of such restoration or repair, shall be held in escrow by Title Company until Seller has completed the restoration or repair to the reasonable satisfaction of Buyer. Seller shall pay escrow and related costs, if any, that exist as a result of terminating this Agreement under this Section.

#### 16.2 Condemnation

In the event that prior to the Closing a governmental entity shall commence any eminent domain proceeding to take any portion of the Property, Seller or Buyer shall have the option to make either of the following elections:

16.2.1 Terminate this Agreement with respect to the Property by written notice to the other party within five (5) days of its receiving notice of such action of condemnation; or

16.2.2 Proceed with the transaction in which case the Purchase Price shall not be reduced and Buyer shall be entitled, subject to the terms of the Lease, to the net award paid to Seller or Seller's mortgagee for the taking, if any, and Seller shall assign and transfer to Buyer all right, title, and interest in and to any awards. Notwithstanding the foregoing, any portion of any award granted for the restoration or repair of the Property shall be paid over to Seller upon Seller's completion of such restoration and repairs.

### 17. POSSESSION

Possession of the Property shall be delivered to Buyer at the Closing, subject to the Lease.

### 18. NOTICES

All notices, requests, or demands herein provided to be given or made, or which may be given or made by either party to the other, shall be given or made only in writing and shall be deemed to have been duly given: (i) when delivered personally at the address set forth below, or to any agent of the party to whom notice is being given, or (ii) on the date delivered when sent via overnight mail, properly addressed and postage prepaid, or (iii) on the date sent via facsimile transmission, or (iv) seventy-two (72) hours after the time the same is deposited in the United States mail, properly addressed and first class postage prepaid, return receipt requested. The proper address to which notices, requests, or demands may be given or made by either party shall be the address set forth at the end of this Section or to such other address or to such other person as any party shall designate. Such address may be changed by written notice given to the other party in accordance to this Section.

**If to Buyer:**

Levy Affiliated Holdings, LLC  
Attn: Shaoul Levy  
201 Wilshire Bl., Second Floor  
Santa Monica, California 90401  
(310) 917-9114  
(310) 917-1101 (Fax number)

**With a copy to:**

Jeffrey G. Thomas, Esquire  
P.O. Box 24539  
Los Angeles, California 90024  
(310) 208-8326  
(310) 388-1555 (Fax number)

**If to Seller:**

FRANKLIN DEVELOPMENT CORPORATION  
Attn: Val J. Christensen  
2200 West Parkway Blvd.  
Salt Lake City, Utah 84119  
(801) 817-7102  
(801) 817-8197 (Fax number)

**With a copy to:**

Steven D. Peterson, Esquire  
Ballard Spahr Andrews & Ingersoll, LLP  
201 South Main Street, Suite 600  
Salt Lake City, UT 84111  
(801) 531-3000  
(801) 531 3001 (Fax number)

**If to Escrow:**

First American Title Insurance Company  
Attn:  
\_\_\_\_\_  
\_\_\_\_\_  
( )  
( ) (Fax number)

**19. GENERAL PROVISIONS**

19.1 Recitals

The Recitals set forth above commencing on Page 1 of this Agreement are incorporated herein by reference.

19.2 Right to Assign

Buyer shall have the right to assign Buyer's rights hereunder provided Buyer obtains Seller's prior written consent which consent shall not be unreasonably withheld, but any such assignment shall not relieve Buyer of Buyer's obligations herein unless Seller expressly relieves Buyer. Seller hereby gives its prior written consent to the one time assignment of this Agreement prior to closing to a limited liability company or partnership or corporate entity under common control or common management with Buyer.

19.3 Gender; Number

The use of (i) the neuter gender includes the masculine and feminine and (ii) the singular number includes the plural whenever the context requires.

19.4 Captions

Captions in this Agreement are inserted for the convenience of reference only and do not define, describe, or limit the scope or the intent of this Agreement or any of its terms.

19.5 Exhibits

All attached exhibits are a part of this Agreement and are incorporated in full by this reference.

#### 19.6 Entire Agreement

This Agreement contains the entire agreement between the parties relating to the transactions contemplated hereby and all prior or contemporaneous agreements, understandings, representations, and statements, oral or written, are merged into this Agreement.

#### 19.7 Modification

No modification, waiver, amendment, discharge, or change of this Agreement shall be valid unless it is in writing and signed by the party against which the enforcement of the modification, waiver, amendment, discharge, or change is or may be sought.

#### 19.8 Attorneys' Fees

Should any party employ an attorney for the purpose of enforcing or construing this Agreement, or any judgment based on this Agreement, in any legal proceeding whatsoever, including insolvency, bankruptcy, arbitration, declaratory relief, or other litigation, the prevailing party shall be entitled to receive from the other party or parties, reimbursement for all attorneys' fees and all costs, including, but not limited to, service of process, filing fees, court and court reporter costs, investigative costs, expert witness fees, and the cost of any bonds, whether taxable or not, and that such reimbursement shall be included in any judgment or final order issued in that proceeding. The "prevailing party" means the party determined by the court to most nearly prevail and not necessarily the one in whose favor a judgment is rendered.

#### 19.9 Joint and Several Liability

If any party consists of more than one person or entity, the liability of each such person or entity signing this Agreement shall be joint and several.

#### 19.10 Governing Law

This Agreement shall be construed and enforced in accordance with the laws of the State of Utah, without regard to its conflicts of law principles.

#### 19.11 Time of Essence

Time is of the essence of this Agreement and every provision hereof.

#### 19.12 Severability

In the event any term, covenant, condition, or provision of this Agreement is held to be invalid, void, or otherwise unenforceable by any court of competent jurisdiction, the fact that such term, covenant, condition, or provision is invalid, void, or otherwise unenforceable shall in no way affect the validity or enforceability of any other term, covenant, condition, or provision of this Agreement.

#### 19.13 Successors and Assigns

All terms of this Agreement shall be binding upon, inure to the benefit of, and be enforceable by the parties and their respective legal representatives, successors, and permitted assigns.

#### 19.14 Drafting

This Agreement shall not be construed more strictly against one party than the other because it may have been drafted by one of the parties or its counsel, each having contributed substantially and materially to the negotiation and drafting hereof.

#### 19.15 No Agreement Until Accepted

Seller's delivery of unexecuted copies or drafts of this Agreement is solely for the purpose of review by the party to whom delivered and is in no way to be construed as an offer by Seller nor in any way implies that Seller is under any obligation to sell the Property. When this Agreement has been executed by both Buyer and Seller, it shall constitute a binding agreement to purchase and sell the Property upon the terms and conditions provided herein and Buyer and Seller agree to execute all instruments and documents and take all actions as may be reasonably necessary or required in order to consummate the purchase and sale of the Property as contemplated herein.

#### 19.16 No Recording

Buyer shall not record this Agreement or a Memorandum of Agreement in the official records of Salt Lake County, Utah.

#### 19.17 Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original. The counterparts shall together constitute but one agreement. Any signature on a copy of this Agreement or any document necessary or convenient thereto sent by facsimile shall be binding upon transmission by facsimile and the facsimile copy may be utilized for the purposes of this Agreement.

19.18 Secondary Market Transactions. Buyer shall have the right to arrange for financing for the purchase which will allow the Lender to sell, assign, dispose of, transfer, pledge, participate, syndicate or otherwise transfer the Loan, and/or securitize all or any portion of Lender's interest in the Loan at any time, or to cause the note and deed of trust to be split into two or more notes, parts or interests, in whatever proportion Lender deems appropriate, which may be in the form of pari passu interests, senior and junior interests, or other interests, and thereafter to sell, assign, participate, syndicate or securitize all or any part of either such severed or split note and deed of trust (any of the foregoing, a "**Secondary Market Transaction**"). Seller agrees to cooperate with Buyer and Lender to facilitate any such

action, the transfer or disposition of the Loan, the rating of the Loan or of a securitization in which the Loan is included. Seller's cooperation obligation shall continue until the Loan has been repaid in full, and shall include, without limitation, the following as each may be reasonably required from time to time by Lender, Servicer, or any holder of the note evidencing Purchaser's obligations pursuant to the Loan:

- (i) Consenting to subordination of its right to possession to the Property as Lessee, or executing any tenant estoppels or other documents necessary to complete said Secondary Market Financing; and
- (ii) Provision of information, reports, copies of notices and reasonable access to the collateral properties and to personnel of Borrower's property manager and of Borrower's constituent members.

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BUYER:  
LEVY AFFILIATED HOLDINGS, LLC,  
a California limited liability company

By:  
Date:

SELLER:  
FRANKLIN DEVELOPMENT CORPORATION, a Utah corporation

By:  
Date:

ESCROW AGENT:

FIRST AMERICAN TITLE INSURANCE COMPANY

By:  
Its: \_\_\_\_\_

Date:

**Exhibit A**

to

**Purchase And Sale Agreement And Escrow Instructions**

Legal Description of Property.

**Garden Area Parcel**

Beginning at a point on the Easterly Right of Way line of Decker Lake Boulevard, said point being due West 3067.40 feet and due South 1207.42 feet from the Center of Section 22, Township 1 South, Range 1 West, Salt Lake Base and Meridian, said point also being on a 167.00 foot radius curve to the right, the radius point of which bears North 05°50'30" East; thence along said Easterly line the following three (3) courses: Northerly along the arc of said curve 245.29 feet through a central angle of 84°09'27" (Chord to said curve bears North 42°04'54" West 223.84 feet); thence North 173.73 feet to the point of an 1974.03 foot radius curve to the right, thence Northerly along the arc of said curve 46.54 feet; thence East 149.44 feet; thence South 386.13 feet to the point of beginning.

**Franklin Building**

Beginning at a point on the Westerly Right of Way line of Decker Lake Boulevard, said point being South 00°03'10" East 540.23 feet and West 1279.14 feet and South 25°00'00" West 1380.87 feet and South 52°59'27" West 368.44 feet and North 37°00'33" West 60.00 feet and South 52°59'27" West 40.00 feet and North 37°00'03" West 282.82 feet from the Center of Section 22, Township 1 South, Range 1 West, Salt Lake Base and Meridian, said point also being due West 2394.73 feet and due South 1763.83 feet from said Center Section Monument, said point also being on a 368.22 foot radius curve to the left, the radius point of which bears South 41°50'56" West; thence Northwesterly along the arc of said curve 268.95 feet, through a central angle of 41°50'56" (Chord bears North 69°04'32" West 263.01 feet); thence West 29.97 feet; thence South 30°00'00" East 195.52 feet; thence South 45°03'09" West 129.64 feet; thence North 44°56'51" West 44.17 feet; thence West 177.02 feet; thence South 45°00'00" West 109.13 feet; thence North 45°00'00" West 78.37 feet; thence North 251.40 feet; thence West 45.24 feet to a point of a 233.00 foot radius curve to the right; thence Northerly 366.00 feet along the arc of said curve, through a central angle of 90°00'00" (Chord to said curve bears North 45°00'00" West 329.51 feet); thence North 395.61 feet to a point on the Westerly right-of-way line of Decker Lake Boulevard, said point also being on a curve to the left, the radius point of which bears East 233.00 feet; thence Southeasterly 366.00 feet along the arc of said curve and said Westerly line through a central angle of 90°00'00" (Chord bears South 45°00'00" East 329.51 feet); thence along said Westerly line the following six(6) courses: East 291.65 feet to a point of a 268.56 foot radius curve to the right, the radius point of which bears South; thence Southeasterly 383.17 feet along the arc of said curve through a central angle of 81°44'53" (Chord bears South 49°07'34" East 351.49 feet); thence South 08°15'07" East 61.35 feet to a point of a 334.56 foot radius curve to the left, the radius point of which bears North 81°44'53" East; thence Southeasterly along the arc of said curve 167.92 feet through a central angle of 28°45'26" (Chord bears South 22°37'50" East 166.16 feet); thence South 52°59'27" West 7.00 feet; thence South 37°00'33" East 51.64 feet to the point of beginning.

**Jefferson, Adams & Washington Buildings**

Beginning at a point on the Westerly Right of Way line of Decker Lake Boulevard, said point being South 00°03'10" East 540.23 feet and West 1279.14 feet and South 25°00'00" West 1380.87 feet and South 52°59'27" West 368.44 feet and North 37°00'33" West 60.00 feet and South 52°59'27" West 40.00 feet from the Center of Section 22, Township 1 South, Range 1 West, Salt Lake Base and Meridian, said point also being due West 2224.50 feet and due South 1989.67 feet from said Center Section Monument and running thence South 07°59'27" West 28.03 feet to the Northerly right-of-way line of Parkway Boulevard said point also being on a 1102.87 foot radius curve to the right, the radius point of said curve bears North 35°59'21" West; thence Westerly along the arc of said curve and said right-of-way line 691.27 feet, through a central angle of 35°54'45" (Chord to said curve bears South 71°58'01" West 680.01 feet); thence South 89°55'56" West 115.06 feet; thence North 83°32'31" West 75.29 feet; thence North 06°27'29" East 57.95 feet; thence North 45°00'00" West 199.09 feet; thence North 77.78 feet; thence North 45°00'00" West 95.35 feet; thence North 45°00'00" East 105.79 feet; thence North 59°22'26" West 127.77 feet; thence North 40°01'24" East 157.77 feet to a point on a 233 foot radius curve to the left, the radius point of which bears North 40°01'24" East; thence Easterly 162.76 feet along said curve through a central angle of 40°01'24" (Chord to said curve bears South 69°59'18" East 159.47 feet); thence East 45.24 feet; thence South 251.40 feet; thence South 45°00'00" East 78.37 feet; thence North 45°00'00" East 109.13 feet; thence East 177.02 feet; thence South 44°56'51" East 44.17 feet; thence North 45°03'09" East 129.64 feet; thence North 30°00'00" West 195.52 feet; thence East 29.97 feet to a point of a 368.22 foot radius curve to the right; thence along the arc of said curve 268.95 feet, through a central angle of 41°50'56" to a point of non-tangency said point also being on said Westerly right-of-way line; thence South 37°00'33" East along said right-of-way line 282.82 feet to the point of beginning.

**Patrick Henry Building**

Beginning at a point on the Easterly Right of Way line of Decker Lake Boulevard, said point being South 00°03'10" East 540.23 feet and West 1279.14 feet and South 25°00'00" West 1380.87 feet and South 52°59'27" West 368.44 feet and North 37°00'33" West 60.56 feet and North 52°59'27" East 40.00 feet from the Center of Section 22, Township 1 South, Range 1 West, Salt Lake Base and Meridian, said point also being due West 2160.95 feet and due South 1941.07 feet from said Center Section Monument, and running thence along said Easterly line the following five(5) courses: North 37°00'33" West 333.90 feet; thence South 52°59'27" West 7.00 feet to a point on a 268.56 foot radius curve to the right, the radius point of which bears North 52°59'27" East; thence Northerly 134.79 feet along the arc of said curve, through a central angle of 28°45'26" (Chord to said curve bears North 22°37'50" West 133.38 feet); thence North 08°15'07" West 61.35 feet to a point of a 334.56 foot radius curve to the left, the radius of said curve bears South 81°44'53" West; thence Northwesterly 477.34 feet along the arc of said curve, through a central angle of 81°44'53" (Chord to said curve bears North 49°07'33" West 437.87 feet); thence East 284.95 feet; thence South 36°58'23" East 775.35 to a point on the Northerly right-of-way line of Parkway Boulevard, said point also being on a 1438.24 foot radius curve, the radius point of which bears North 46°14'40" West; thence Southwesterly 172.48 feet along the arc of said curve, through a central angle of 06°52'16" to a point on said Easterly line; thence North 82°00'33" West along said Easterly line 27.34 feet to the point of beginning



**Exhibit A-1**

**to**

**Purchase And Sale Agreement And Escrow Instructions**

Fixtures List

- A. All heating, ventilating, incinerating, lighting, plumbing, electrical and air conditioning fixtures and equipment, hot water heaters, furnaces, heating controls, motors, boiler systems, elevators, and all other equipment and fixtures integral to the operation of the Property.

**Exhibit B**

**to**

**Purchase And Sale Agreement And Escrow Instructions**

Lease Agreement

(Attached)

**AMENDMENT NO 1.  
TO  
PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS**

This Amendment is made and entered into as of June 27, 2005, by and between FRANKLIN DEVELOPMENT CORPORATION ("Seller"), a Utah corporation, and LEVY AFFILIATED HOLDINGS, LLC ("Buyer"), a California limited liability company, and amends that certain Purchase and Sale Agreement and Escrow Instructions dated February 18, 2005 ("Purchase Agreement") previously entered into between the parties. Capitalized terms used herein and not otherwise defined are defined in the Purchase Agreement and are used herein as defined therein. In the event of any inconsistency between the terms of this Addendum and the terms of the Purchase Agreement, the terms of this Addendum shall control.

1. Section 4.10 of the Purchase Agreement is hereby deleted and replaced with the following:

4.10 Loan Contingency

Buyer shall have obtained, within the Loan Contingency Period (as defined in Section 4.11 below), third-party financing for sixty percent (60%) of the Purchase Price upon terms and conditions reasonably acceptable to Buyer (the "Financing"). If in order to obtain Financing a lender requires the posting of a letter of credit or deposit in an amount not to exceed \$3,500,000, Buyer shall obtain and post the letter of credit and Seller agrees to pay the annual cost of the letter of credit (approximately 1.5% of the total amount of the letter of credit) each year for a term of up to three (3) years. If such a letter of credit is required, it shall not be deemed reasonably unacceptable to Buyer under the terms of this Agreement.

2. Section 4.11 of the Purchase Agreement is hereby deleted and replaced with the following:

4.11 Loan Contingency Period.

Buyer shall obtain the Financing on or before the date ninety (90) days after the date of execution of this Agreement (the "Loan Contingency Period"). If prior to expiration of the Loan Contingency Period, Buyer determines in good faith that it will not be successful in obtaining the Financing, then Buyer shall have the right, by giving notice to Seller, to either (a) terminate this Agreement, or (b) waive the requirements of Section 4.10. If Buyer exercises the right to terminate this Agreement in accordance with this Section 4.11(a) this Agreement shall terminate as of the date such termination notice is given by Buyer and Buyer shall have the right to receive the Earnest Money from the Escrow Agent. If Buyer elects to continue with the transaction pursuant to subsection (b) of this Section 4.11, the Earnest Money shall become non-refundable on the 90<sup>th</sup> day of the Loan Contingency Period.

3. The first sentence of Section 8.1 is hereby deleted and replaced with the following:

Escrow Agent shall close the Escrow (the "Closing") on or before the date which is ninety-five (95) days following the date Escrow was opened pursuant to Section 2 above (the "Scheduled Closing Date"), provided that all of the conditions to Buyer's obligation to purchase have been either satisfied or waived.

4. Consistent with the Purchase Agreement, Seller's obligation to sell the Property is subject to its Board of Directors' approval of the Purchase Agreement and this Amendment. Seller and Buyer hereby approve, affirm and ratify the Purchase Agreement and the on-going rights and obligations provided by said Purchase Agreement.

IN WITNESS WHEREOF, the parties have signed and entered into the Agreement as of the date first mentioned above.

BUYER:  
LEVY AFFILIATED HOLDINGS, LLC,  
a California limited liability company

SELLER:  
FRANKLIN DEVELOPMENT CORPORATION, a Utah corporation

By:  
Date:

By:  
Date:

ESCROW AGENT:

FIRST AMERICAN TITLE INSURANCE COMPANY

By:  
Its: \_\_\_\_\_

Date:

**AMENDMENT NO. 2  
TO  
PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS**

This Amendment is made and entered into as of June 27, 2005, by and between FRANKLIN DEVELOPMENT CORPORATION ("Seller"), a Utah corporation, and LEVY AFFILIATED HOLDINGS, LLC ("Buyer"), a California limited liability company, and amends that certain Purchase and Sale Agreement and Escrow Instructions dated February 18, 2005 ("Purchase Agreement") previously entered into between the parties. Capitalized terms used herein and not otherwise defined are defined in the Purchase Agreement and are used herein as defined therein. In the event of any inconsistency between the terms of this Addendum and the terms of the Purchase Agreement, the terms of this Addendum shall control.

1. The last sentence of Section 3 of the Purchase Agreement is hereby deleted and replaced with the following:

The cost of the Title Policy shall be paid by Seller. The cost of any additional endorsements to the Title Policy requested by Buyer shall be paid by Buyer.

2. Seller and Buyer hereby approve, affirm and ratify the Purchase Agreement and the on-going rights and obligations provided by said Purchase Agreement.

IN WITNESS WHEREOF, the parties have signed and entered into the Agreement as of the date first mentioned above.

**BUYER:**  
LEVY AFFILIATED HOLDINGS, LLC,  
a California limited liability company

**SELLER:**  
FRANKLIN DEVELOPMENT CORPORATION, a Utah corporation

By:  
Date:

By:  
Date:

**ESCROW AGENT:**

FIRST AMERICAN TITLE INSURANCE COMPANY

By:  
Its: \_\_\_\_\_

Date:

**AMENDMENT NO. 3  
TO  
PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS**

This Amendment is made and entered into as of June 27, 2005, by and between FRANKLIN DEVELOPMENT CORPORATION (“Seller”), a Utah corporation, and LEVY AFFILIATED HOLDINGS, LLC (“Buyer”), a California limited liability company, and amends that certain Purchase and Sale Agreement and Escrow Instructions dated February 18, 2005, as amended on March 8, 2005 and on March 21, 2005 (collectively, the “Purchase Agreement”) previously entered into between the parties. Capitalized terms used herein and not otherwise defined are defined in the Purchase Agreement and are used herein as defined therein. In the event of any inconsistency between the terms of this Addendum and the terms of the Purchase Agreement, the terms of this Addendum shall control.

1. The Purchase Price, as defined in Article 1 of the Purchase Agreement, is hereby reduced to THIRTY-THREE MILLION, EIGHT HUNDRED THIRTY THOUSAND DOLLARS (\$33,830,000.00).
2. The Earnest Money, as defined in Article 2 of the Purchase Agreement, is non-refundable as of April 22, 2005, and shall be released to the Seller upon Escrow Agent’s execution hereof.
3. Section 4.10 of the Purchase Agreement is hereby deleted and replaced with the following:

4.10 Loan Contingency

Buyer shall have obtained, within the Loan Contingency Period (as defined in Section 4.11 below), third-party financing for sixty percent (60%) of the Purchase Price upon terms and conditions reasonably acceptable to Buyer (the “Financing”).

4. Seller and Buyer hereby approve, affirm and ratify the Purchase Agreement and the on-going rights and obligations provided by said Purchase Agreement.

IN WITNESS WHEREOF, the parties have signed and entered into the Agreement as of the date first mentioned above.

BUYER:  
LEVY AFFILIATED HOLDINGS, LLC,  
a California limited liability company

SELLER:  
FRANKLIN DEVELOPMENT CORPORATION, a Utah corporation

By:  
Date:

By:  
Date:

ESCROW AGENT:

FIRST AMERICAN TITLE INSURANCE COMPANY

By:  
Its:  
  
Date: