

THIRD AMENDMENT TO LEASE

1275 HALL AVENUE, BUILDING A, RICHMOND, CALIFORNIA

This third amendment to lease ("**Third Amendment**") is dated December 1, 2012, and is between the COUNTY OF CONTRA COSTA, a political subdivision of the State of California, ("**County**"), and DVK REALTY VENTURES, INC., a California corporation ("**Lessor**").

RECITALS

- A. Lessor is the owner of that certain property in the County of Contra Costa that is commonly known as 1275 Hall Avenue, Richmond, California (the "**Property**").
- B. The County and Lessor are parties to a lease dated April 24, 2001, as amended on July 26, 2005, and December 1, 2009 (the "**Lease**") under which the County leases a portion of the Property from the Lessor.
- C. The parties desire that, upon the satisfaction of the Conditions Precedent, as defined in Section 3 below, the Lease be amended to (i) extend the term, (ii) modify the rent, (iii) modify the property management fees, (iv) modify the lease extension option, (v) modify the terms under which the County may assign the Lease or sublease the Premises, (vi) add a second remodeling allowance, and (vii) require a second leasing commission be paid to County by Lessor.
- D. The parties desire that this Third Amendment be null and void and of no effect if the Conditions Precedent are not satisfied by February 28, 2013.

The parties therefore agree as follows:

AGREEMENT

- 1. Capitalized terms used but not defined in this Third Amendment have the meanings ascribed to them in the Lease.
- 2. This Third Amendment is effective on the day that all of the following conditions (together, the "**Conditions Precedent**") have been satisfied:

- a. Lessor has paid the County the Second Remodeling Allowance, as defined in Section C.7.I of the Lease, Remodeling Allowance – 2013.
- b. Lessor has paid the County the Second Commission, as defined in Section C.12.B of the Lease, Second Leasing Commission.
3. If the Conditions Precedent are not satisfied by February 28, 2013, this Third Amendment is null and void and of no force or effect.
4. Section **A.4. TERM** is deleted in its entirety and replaced with the following:

A.4. TERM: The term of this lease (“**Term**”) begins February 1, 2002 (the “**Commencement Date**”) and ends January 31, 2033. Upon the commencement of an Extension Term, as defined in Section A.7, Extension, all references to the Term of this Lease will be deemed to mean the Term as extended pursuant to Section A.7.

At County’s election, Lessor and County shall execute a Memorandum of Lease in substantial conformity with Exhibit E, or as otherwise satisfactory in form and substance to County. At County’s election, the Memorandum of Lease is to be recorded in the office of the County Recorder of Contra Costa County. The Memorandum of Lease will be in lieu of recording the entire Lease document. At Lessor’s election, upon the expiration or termination of this Lease, County will execute a Quitclaim Deed to Lessor.

5. Section **A.5 RENT**, is deleted in its entirety and replaced with the following:

A.5 RENT:

- A. Except as provided in Subsection A.5.B. below, County shall pay to Lessor as rent the following amounts as rent (such amounts, the “**Monthly Rent**”), in advance on the first day of each month during the Term:

<u>Period</u>	<u>Monthly Rent</u>
February 1, 2002 – January 31, 2003	\$90,000
February 1, 2003 – January 31, 2004	\$93,600
February 1, 2004 – January 31, 2005	\$97,200

February 1, 2005 – January 31, 2006	\$100,800
February 1, 2006 – January 31, 2007	\$104,400
February 1, 2007 – January 31, 2008	\$108,000
February 1, 2008 – January 31, 2009	\$111,600
February 1, 2009 – January 31, 2010	\$115,200
February 1, 2010 – January 31, 2011	\$118,800
February 1, 2011 – January 31, 2012	\$122,400
February 1, 2012 – November 30, 2012	\$84,000
December 1, 2012 – January 31, 2015	\$80,000
February 1, 2015 – January 31, 2018	\$84,800
February 1, 2018 – January 31, 2021	\$89,890
February 1, 2021 – January 31, 2024	\$96,630
February 1, 2024 – January 31, 2027	\$103,880
February 1, 2027 – January 31, 2030	\$111,670
February 1, 2030 – January 31, 2033	\$120,040

- B. Notwithstanding the above, Monthly Rent for the month of December 2009 is \$57,600, and no Monthly Rent will be due for the following months:

January	2010
February	2010
May	2010
August	2010
November	2010
February	2011
May	2011
August	2011

All payments are to be mailed to: DVK Realty Ventures, Inc., c/o STG Asset Management, Inc., at 1260 N. Dutton Avenue, Suite 270, Santa Rosa, CA 95401, or to such other location designated by Lessor in writing.

6. Section **A.6. COMMON AREA MAINTENANCE EXPENSE**, is deleted in its entirety and replaced with the following:

A. 6. COMMON AREA MAINTENANCE EXPENSE: County shall pay to Lessor as additional rent, an amount equal to County's proportionate share of common area maintenance expenses ("**Common Area Maintenance Expenses**," or "**CAM Expenses**") described below and actually incurred by Lessor. For purposes of this Lease, "**County's**

Proportionate Share” means 64.52%.

A. Common Area Maintenance Expenses. Common Area Maintenance Expenses includes all costs of the following:

- (1) Routine maintenance and repair of the Building’s common exterior entrances, fire sprinklers, safety systems and monitoring minor repairs;
- (2) Janitorial, maintenance and repair, painting, restriping, cleaning, sweeping and lighting of the parking lot, driveways, perimeter pest control, and exterior walkways;
- (3) Cultivating, irrigating, maintaining and fertilizing landscaped areas, maintenance and minor repair of landscaping sprinkler system;
- (4) Maintenance, repair and replacement of signs identifying location of the Building, parking lot directional and safety signs, exterior lights, and light standards;
- (5) Tools and supplies, depreciation on owned maintenance equipment and rental paid for rented maintenance equipment, all as exclusively used on or for the Premises;
- (6) Insurance premiums and property taxes for the Premises as outlined in Section A.6.D. Property Taxes;
- (7) Costs of common area utilities, including but not limited to, water, sewer and refuse collection services, not separately metered in County’s name;
- (8) Costs of any Capital improvements (amortized over the useful life of those improvements in accordance with generally accepted accounting principles) made to Premises for the following reasons: (i) to reduce operating costs or (ii) to comply with any governmental laws or regulations that were not in force on the effective date of this lease;
- (9) Monitoring and maintenance of fire suppression systems;

- (10) Those ordinary and routine maintenance and repair items described in Section A.10 Maintenance and Repairs herein.
- (11) County will pay an annual property management fee (“**Property Management Fee**”) of \$45,000 for calendar years 2010, 2011, and 2012. Beginning January 1, 2013, and continuing throughout the remaining Term, the Property Management Fee is equal to one and one-half percent (1.5%) of the annual rent payable in the upcoming calendar year. For example, annual rent in calendar year 2013 is \$960,000. Therefore, the Property Management Fee in 2013 is \$14,400 ($\$960,000 \times .015\%$). Lessor may not charge County for any personnel charges, including but not limited to those charged by third parties, other than the Property Management Fee as just described.

B. Items Excluded from Common Area Maintenance Expenses:

- (1) Costs associated with the initial construction of the Building or any improvement located thereon, including costs of correcting any defects in initial design or construction;
- (2) Charges for depreciation, interest, amortization or penalties with the respect to the Building, the common area or any improvements located thereon;
- (3) Expenses which, in accordance with generally accepted accounting principles, would be capitalized, except those described in Section A.6.A.(8) above;
- (4) Expenses resulting from negligent acts or errors of Lessor;
- (5) Expenses associated with the operation of the business of Lessor such as personnel costs of employees, legal and accounting fees involving relations or disputes with employees, tenants or others, tax return preparation and administration, leasing commissions, advertising expenses, third-party property management services managing the Premises, costs of leasing and releasing the Premises, bad debts and other business losses; payments on loans or ground leases affecting the Building; depreciation on the Building or the Center; all costs and expenses associated with leasing to

other tenants, including tenant improvement allowances, attorneys' fees, brokerage commissions, and architectural fees.

- (6) Reserves for future expenses;
 - (7) Amounts for which recovery is obtained under warranties, insurance coverage, from a tenant or otherwise;
 - (8) Changes in property taxes associated with a change in ownership, which results in increased taxes. Penalties assessed in the late payment of property taxes by Lessor.
- C. Property Taxes. County's Proportionate Share of city and/or county taxes levied against Assessor's Parcel 560-260-043 in any year during the Term are to be included in County's monthly CAM Expense payments. However, County is not obligated to pay any share of any increase in property taxes resulting from a change in ownership of the property. During the first and last years of County's occupancy, property taxes will be prorated according to the number of days the County has possession of the Premises.
- D. Payment of Common Area Maintenance (CAM) Expenses: The County's obligation to pay County's Proportionate Share of CAM Expenses begins on the Commencement Date. Within a reasonable time after January 1 of each lease year, Lessor shall compute the total annual CAM expenses for the prior CAM Year (a "**CAM Year**" is January 1-December 31). These expenses and the associated supporting documentation will be submitted to County and any adjustment will be made retroactive to January 1 of each CAM Year. When the amount of the adjustment is known, the parties will calculate the difference between the estimated CAM expenses that County has already paid for the preceding CAM Year and the County's Proportionate Share of the actual CAM Expenses for such CAM Year (such difference, the "**Adjustment Amount**"). If the County has paid more than its Proportionate Share of the actual CAM Expenses for the preceding CAM Year, then Lessor shall give County a credit equal to the Adjustment Amount. If the County has paid less than its Proportionate Share of the actual CAM Expenses for the preceding CAM Year, then County shall pay the Adjustment Amount to Lessor. For example if in January 2003, Lessor provides County with documentation supporting actual CAM

Expenses of \$480,000 for the period January 1, 2002-December 31, 2002, and County made estimated payments for CAM Expenses totaling \$302,400 for that period, the Adjustment Amount would be calculated as follows:

2002-2003 Actual CAM Expenses	\$480,000.00
County's Share (64.52%)	\$309,696.00
Less Estimated Payments by County	<u>\$302,400.00</u>
Adjustment Amount Due to Lessor	\$ 7,296.00

A one-time only payment of \$7,296.00 would then be due to Lessor.

If County's Proportionate Share of actual CAM expenses exceeds the estimated payments made by County in any CAM Year by more than 15%, the estimated payments due from County for the subsequent CAM Year is to be recalculated by dividing County's share of actual CAM Expenses for the prior CAM Year by twelve and rounding to the nearest \$100. For example:

2002-2003 CAM Expenses	\$540,000.00
County's Share (64.52%)	\$348,408.00
Less Estimated Payments by County	<u>\$302,400.00</u>
Adjustment Amount Due to Lessor	\$ 46,008.00

In this example, a one-time payment of \$46,008.00 would then be due to Lessor and the monthly estimated payments of CAM Expenses would be recalculated to \$29,000.00 ($\$348,408 / 12 = \$29,034.00$, rounded to nearest \$100.00) for the period of January 1, 2003 - December 31, 2003.

All payments or credits are to be made within ninety days of the Adjustment Amount being determined.

- E. Records: For a period of three years after County's receipt of a notice from Lessor to pay any of the foregoing amounts (the "**Audit Period**"), County has the right to examine or audit ("**Audit**"), and to copy, at any reasonable time, all receipts, invoices, and records relating to the CAM charges made. Any such Audit will be conducted at Lessor's accounting office nearest to the County office identified in Section A.11. Notices, at County's sole expense. An

Audit will not obviate County's obligation to pay the CAM Expenses when due. If inaccuracies are found during the Audit, Lessor shall either (i) pay an amount equal to the sum of those inaccuracies, or (ii) credit such amount to County's future payment of CAM Expenses; provided, however, if the inaccuracies found during such Audit exceed five percent (5%) of the amounts billed, then Lessor shall, in addition to the payment or credit to County for the amount of the inaccuracy, reimburse County for County's costs related to the Audit.

7. Section A.7. **EXTENSION**, is deleted in its entirety and replaced with the following:

A.7. EXTENSION: County has two options to extend this Lease for a term of ten years for each option (each such period, an "**Extension Period**"), on the same terms and conditions set forth herein. County may exercise its first extension option by giving written notice of its election to exercise the option on or before January 31, 2032. County may exercise its second extension option by giving written notice of its election to exercise the option on or before January 31, 2042. Notwithstanding the above, in the event County does not give such written notice, its right to exercise any option before termination of the Lease will not expire until fifteen working days after receipt of Lessor's written demand to exercise or forfeit said option.

Monthly Rent during the first year of each Extension Period will be ninety percent (90%) of the fair market rent of the Premises as of the first day of such Extension Period. For example, if the fair market rent is determined to be \$125,000 per month at the beginning of an Extension Period, the Monthly Rent at the beginning of that Extension Period will be \$112,500 per month. ($\$125,000 \times .90\%$) Monthly Rent will increase by seven and one-half percent (7.5%) at the beginning of the fourth and seventh years of each Extension Period (i.e., beginning February 1, 2037, February 1, 2040, February 1, 2047, and February 1, 2050). For example, if the Monthly Rent is \$112,500 during the first three years of the Extension Period, the Monthly Rent will increase to \$120,937.50 on the first day of the fourth year of the Extension Period ($\$112,500 \times 1.075\%$) and to \$130,007.81 on the first day of the seventh year of the Extension Period ($\$130,007.81 \times 1.075\%$).

The fair market rental value of the Premises for each extension period will be determined using the following process: Lessor is to provide County

with written notice specifying the fair market rent as determined by Lessor (a "**Pricing Notice**") within thirty calendar days after Lessor's receipt of County's written notice to extend the Lease. If County accepts Lessor's determination of the fair market rent, no further negotiations are required. Monthly Rent during the applicable Extension Period will be ninety percent (90%) of that amount as described above.

In the event that County does not accept Lessor's determination of the fair market rent, Lessor and County shall negotiate in good faith to agree on an acceptable fair market rent. If Lessor and County cannot agree on a fair market rent within thirty calendar days after County's receipt of the Pricing Notice (the "**FMR Dispute Date**"), then, within fifteen calendar days of the FMR Dispute Date, Lessor and County shall each designate a real estate appraiser to provide an estimate of the fair market rent of the Premises. Each appraiser is to be instructed (i) to provide his or her determination of fair market rent as of the first day of the Extension Period, (ii) to provide their determinations of value within forty-five calendar days, and (iii) to take into consideration both the size, location, and condition of the Premises relative to other comparable office complexes in the Richmond, California area, and the terms and conditions of this Lease, except that each appraiser is to be instructed not to consider the ninety percent (90%) of fair market rent discount noted herein in their respective valuations.

Each party is to designate a real estate appraiser that (i) is licensed to do business in the State of California, (ii) has the designation of "**MAI**" from, and is in good standing with, the Appraisal Institute, and (iii) has at least ten years experience appraising commercial-flex office real estate in and around the City of Richmond, California.

Upon the completion of the appraisals, the appraisers are to work together in good faith to determine the fair market rent of the Premises based on their two appraisals. Such determination by the two appraisers is to be used to compute the Monthly Rent for the Premises during the Extension Period. If either Lessor or County fails to appoint an appraiser within fifteen days after the FMR Dispute Date, the appraiser appointed by the other party will be the sole appraiser for the purposes hereof.

If the two appraisers cannot agree on the fair market rent for the Premises within seventy-five calendar days after the FMR Dispute Date, then, within ten business days after the expiration of such seventy-five day period, the two appraisers are to select a third appraiser meeting the aforementioned criteria. Once the third appraiser (the "**Arbitrating Appraiser**") has been

selected, then, as soon thereafter as practicable, but in any case within twenty days, the Arbitrating Appraiser is to review the appraisals of the first two appraisers, and determine which of the two appraisals most closely reflects the fair market rental value of the Premises. The parties shall then use the fair market rent set forth in that appraisal to compute the Monthly Rent for the Premises.

If the Arbitrating Appraiser believes that expert advice would materially assist him or her, he or she may retain one or more qualified persons to provide such expert advice. The parties shall share equally in the costs of the Arbitrating Appraiser and of any experts retained by the Arbitrating Appraiser, and any fees of any appraiser engaged directly by Lessor or County. Any fees of counsel engaged directly by Lessor or County, however, are to be borne by the party retaining such counsel. Upon reaching a determination of the fair market rental value at any point in the process described in this Section above, County staff will then submit the determination of fair market rent to the County's Board of Supervisors (the "**Board**") for its consideration. If the Board approves the extension and the Monthly Rent, the Lease will be extended for the applicable extension period. If the Board does not approve of the proposed Monthly Rent, the Lease will terminate at the end of the applicable Term.

8. Section **C.1 ASSIGNMENT OR SUBLEASE**, is deleted in its entirety and replaced with the following:

C.1. ASSIGNMENT OR SUBLEASE:

a. Related Entity. County may assign this Lease or may sublease the Premises or any part thereof to any related entity or affiliate of County (a "**Permitted Assignee**") at any time during the Term, without Lessor's written approval or consent. Such assignment or sublease is effective upon delivery to Lessor of a written notice describing the assignment or sublease that is accompanied by a fully executed copy of the assignment or sublease.

b. Unrelated Entity. With Lessor's prior written consent, County may assign this Lease or sublease the Premises, or any part thereof, to an unrelated entity. Lessor may not unreasonably withhold or delay its consent to such assignment or sublease. Any such assignment or sublease will be effective upon the later to occur of (i) delivery to Lessor of written notice of such assignment or sublease, accompanied by a fully executed copy of such assignment

or sublease, (ii) Lessor's issuance of its written consent to the assignment or sublease, and (iii) a date to which County and Lessor mutually agree.

c. Rent Sharing. In the event County assigns the Lease or subleases all or any portion of the Premises as provided herein, Lessor and County shall each receive fifty percent (50%) of the amount by which the rent received from the assignee or subtenant over a specified period exceeds the sum of the following amounts paid or payable by County over the same period: (i) the Monthly Rent, (ii) Lessor's Operating Expenses, (iii) the cost of reasonable brokerage commissions and reasonable attorneys' fees related to the sublease or assignment, (iv) the cost of improvements, if any, required as a result of a sublessee's occupancy, and (v) other reasonable and customary expenses incurred in connection with the sublease or assignment.

No sublease or assignment by County will relieve the County of any obligation under this Lease.

9. Section C.7 **ACCOMPLISHMENT OF IMPROVEMENTS** is amended by deleting Paragraph H in its entirety and replacing it with the following:

H. Remodeling Allowance – 2012. On February 1, 2012, Lessor shall pay to County, by check or money order, the sum of Two Hundred Fifty Thousand Dollars (\$250,000) as a remodeling allowance (the "**First Remodeling Allowance**"). County's use of the First Remodeling Allowance is at County's sole discretion.

10. Section C.7 **ACCOMPLISHMENT OF IMPROVEMENTS** is amended by adding Paragraph I as follows:

I. Remodeling Allowance – 2013. Upon the close of escrow of a financing that causes payment in full of all sums secured by the Deed of Trust, Lessor shall pay to County, by check, money order, or wire transfer, the sum of Two Hundred Fifty Thousand Dollars (\$250,000) as a remodeling allowance (the "**Second Remodeling Allowance**"). For purposes of this Lease, the "**Deed of Trust**" is the deed of trust recorded against the Property on August 27, 2007, as Instrument No. 2007-0243704-00, as modified by Instrument No. 2010-0106469,

recorded May 28, 2010. County's use of the Second Remodeling Allowance is at the County's sole discretion.

11. Section **C.12 COUNTY'S LEASING COMMISSION**: is deleted in its entirety and replaced with the following:

C.12 COUNTY'S LEASING COMMISSION:

- A. First Leasing Commission. In negotiating the Second Lease Amendment, Lessor acted as its own real estate broker and the County represented itself. These direct negotiations afforded Lessor considerable savings. As consideration for the County's willingness to work directly with Lessor, and in further consideration of the terms and conditions contained in the Second Lease Amendment, Lessor shall pay to County by check or money order, on or before October 1, 2009, the sum of Two Hundred Fifty Thousand Dollars (\$250,000), as a real estate commission (the "**Commission**").
- B. Second Leasing Commission. In negotiating the Third Lease Amendment, CRE Capital, Inc. and Herman Commercial represented the Lessor and the County represented itself. In consideration for the County's willingness to work directly with Lessor and its representatives, and in further consideration of the terms and conditions contained in the Third Lease Amendment, Lessor shall pay to County the sum of Two Hundred Thousand Dollars (\$200,000), as a real estate commission (the "**Second Commission**"). Lessor shall pay County the Second Commission by check or money order upon the close of escrow of the Deed of Trust.
12. Except for the amendments agreed to herein, the Lease as previously amended remains in full force and effect.

Lessor and the County are causing this Third Amendment to be executed as of the date set forth in the introductory paragraph.

COUNTY

COUNTY OF CONTRA COSTA, a
political subdivision of the State of
California

LESSOR

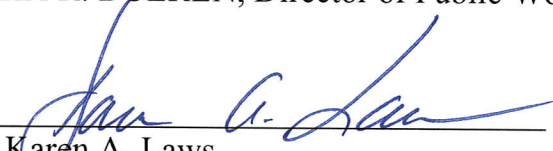
DVK REALTY VENTURES, INC., a
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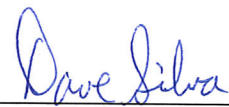
By _____
Julia R. Bueren, Public Works Director

By _____
John Zeigler, President

RECOMMENDED FOR APPROVAL:


JULIA R. BUEREN, Director of Public Works

By  _____
Karen A. Laws
Principal Real Property Agent

By:  _____
Dave Silva
Senior Real Property Agent

APPROVED AS TO FORM:

SHARON L. ANDERSON, County Counsel

By:  _____
Kathleen M. Andrus
Deputy County Counsel