

**REAL PROPERTY  
PURCHASE AND SALE AGREEMENT**

between

BOARDWALK AT PALM BLUFFS, LP,  
a California limited partnership

"SELLER"

and

FRESNO COUNTY EMPLOYEES' RETIREMENT ASSOCIATION,  
a California public agency

"BUYER"

Dated: \_\_\_\_\_

**REAL PROPERTY  
PURCHASE AND SALE AGREEMENT**

**THIS REAL PROPERTY PURCHASE AND SALE AGREEMENT** (this "**Agreement**") is dated for reference purposes as of \_\_\_\_\_, 2016, by and between BOARDWALK AT PALM BLUFFS, LP, a California limited partnership ("**Seller**"), and FRESNO COUNTY EMPLOYEES' RETIREMENT ASSOCIATION, a California public agency ("**Buyer**"), with reference to the following facts:

**RECITALS**

A. Seller owns that certain improved real property located in Fresno County, California, commonly known as (i) 7766 North Palm Avenue (aka Building D), Fresno, California, containing approximately 40,075 square feet of land and approximately 9,480 square feet of building improvements still to be constructed, bearing Assessor's Parcel No. 405-530-91; (ii) 7778 North Palm Avenue (aka Building E), Fresno, California, containing approximately 32,234 square feet of land and approximately 9,184 square feet of building improvements still to be constructed, bearing Assessor's Parcel No. 405-530-92; and (iii) 7772 North Palm Avenue (aka Building F), Fresno, California, containing approximately 30,927 square feet of land and approximately 9,184 square feet of building improvements still to be constructed, bearing Assessor's Parcel No. 405-530-93, all as described and/or depicted in Exhibit A attached hereto and made a part hereof (collectively, the "**Real Property**").

B. On the terms and conditions set forth in this Agreement, Buyer desires to purchase the Property (as defined in Section 1.1 below) from Seller and Seller desires to sell the Property to Buyer.

**AGREEMENT**

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement and in these Recitals, which are hereby incorporated by this reference, the receipt and sufficiency of which is hereby acknowledged, Buyer and Seller hereby agree as follows:

**ARTICLE 1**  
**PURCHASE AND SALE**

1.1 The Property. Seller agrees to sell and convey to Buyer and Buyer agrees to acquire and purchase from Seller, on the terms and subject to the conditions set forth in this Agreement, the entirety of the Real Property, together with and including any building fixtures and improvements located on the Real Property (collectively the "**Improvements**"); all permits, licenses, entitlements and approvals relating to the Real Property; all intangible and intellectual property rights associated with the operation or ownership of the Real Property, including without limitation building addresses, building names, plans and specifications; all manufacturer and contractor warranties and guaranties relating to the Real Property or Improvements; all mineral and water rights owned by Seller in connection with the Real Property; and all other rights appurtenant to the Real Property (said Real Property, Improvements, permits, licenses, entitlements,

approvals, intangibles, mineral and water rights, and other appurtenant rights being collectively referred to herein as the “**Property**”).

1.2 Effective Date. For purposes of this Agreement, the “**Effective Date**” shall be the date on which this Agreement is fully executed by both Buyer and Seller and a copy of this fully executed Agreement is delivered to the Title Company (as defined in Section 3.1 below).

## ARTICLE 2 PURCHASE PRICE

2.1 Amount. The total purchase price for the Property shall be the sum of (a) Six Million One Hundred Ninety-Six Thousand One Hundred Eighty Dollars (\$6,196,180.00) which is the base purchase price of the Real Property and completed Shell Improvements (as defined in Section 7.1.3 below) without taking into consideration the prevailing wage requirements of California Labor Code Section 1720, et seq. (the “**Prevailing Wage Laws**”), plus (b) increases in the purchase price required by the Prevailing Wage Laws (collectively, the “**Purchase Price**”) payable in cash or other immediately available funds at Closing (as defined in Section 3.1 below).

### 2.2 Deposit.

2.2.1 Initial Deposit. Within five (5) business days after the Effective Date, Buyer shall deposit or cause to be deposited into Escrow with the Title Company on account of and to be applied against the Purchase Price the sum of One Hundred Thousand Dollars (\$100,000.00) in immediately available funds (the “**Deposit**”).

2.2.2 Additional Deposit. Provided that Buyer has not previously terminated this Agreement during the Review Period (as defined in Section 8.2.1 below), Buyer shall deposit into Escrow (as defined in Section 3.1 below) with the Title Company on account of the Purchase Price an additional One Hundred Thousand Dollars (\$100,000.00) (the “**Additional Deposit**”) prior to the expiration of the Review Period, bringing the total of the Deposit and the Additional Deposit to Two Hundred Thousand Dollars (\$200,000.00). Buyer’s delivery of the Additional Deposit into Escrow will conclusively be deemed to constitute Buyer’s approval of the condition of the Property during the Review Period. Buyer’s failure to deliver the Additional Deposit into Escrow prior to the expiration of the Review Period shall conclusively be deemed to constitute Buyer’s disapproval of the condition of the Property and shall automatically terminate this Agreement, and, in such case, the Deposit shall be returned to Buyer (less applicable Escrow cancellation fees) and this Agreement shall be terminated without liability to either party.

2.2.3 Application of Deposit. The Deposit and all interest thereon (less any Escrow cancellation fees or charges) shall be fully refundable to Buyer during the Review Period. Upon expiration of the Review Period, the Deposit shall be nonrefundable to Buyer unless one of the following shall occur (in which case the Deposit, less any Escrow cancellation fees or charges, shall be promptly returned to Buyer: (a) if Buyer shall timely terminate or be deemed to terminate this Agreement during the Review Period (including, but not limited to, the failure of Buyer to make the Additional Deposit prior to the expiration of the Review Period), or (b) if the Closing fails

to occur and this Agreement is terminated due to a failure of any of the conditions precedent to Closing set forth in Section 8.2 hereof. Unless returned to Buyer as set forth in this Section, the Deposit and all interest thereon shall be deemed paid to Seller as part of the Purchase Price at the Closing or shall be paid to Seller upon default by Buyer in accordance with the provisions of Section 10.1 hereof.

2.3 Payment. The Purchase Price shall be payable as follows:

2.3.1 Delivery of Deposit. At the Closing, on the Closing Date (as defined in Section 3.2 below), the Title Company shall deliver to Seller any portion of the Deposit not previously released to Seller.

2.3.2 Delivery of Balance. At the Closing, on the Closing Date, Buyer shall deliver the balance of the Purchase Price into Escrow in cash or other immediately available funds.

### **ARTICLE 3** **COMPLETION OF SALE**

3.1 Escrow. The purchase and sale of the Property shall be completed in accordance with Article 9 hereof (the "**Closing**"). The Closing shall occur through an escrow (the "**Escrow**") with Placer Title Company, 7643 N. Ingram Avenue, Suite 101, Fresno, CA 93711, Attention: Darryl Evans (the "**Title Company**"), or at such other place as Seller and Buyer agree in writing. The Escrow shall be deemed open on the Effective Date.

3.2 Closing Date. The Closing shall occur on or before fifteen (15) calendar days after Shell Improvements are Complete (as defined in subsection 7.1.3(d) below), but not later than two hundred seventy (270) days after the expiration of the Review Period (the "**Outside Closing Date**"), unless extended by Buyer and Seller in writing. In addition, the Outside Closing Date shall be extended on a day-for-day basis as a result of the occurrence of force majeure events described in Section 11.3 below ("**Force Majeure**") or delays in the planning, approval or acceptance of the Improvements caused or contributed to by Buyer ("**Buyer Delays**"). In the event there exists a failed condition to Buyer's or Seller's obligation and Buyer and Seller do not agree to extend the Outside Closing Date (as extended for Force Majeure or Buyer Delays), or such failed condition exists after expiration of any such extension, then the party for whose benefit such condition exists may waive the condition or terminate this Agreement by written notice to the other party and to the Title Company. The Escrow shall be considered closed and the Closing shall be deemed to occur on the date (the "**Closing Date**") when the Deed (as defined in Section 5.1.1 below) is recorded in the Official Records of Fresno County, California.

3.3 Escrow Instructions. This Agreement shall constitute escrow instructions to and for the benefit of the Title Company to facilitate the Closing. Prior to the Closing Date, Seller and Buyer shall each give any additional written escrow instructions ("**Supplemental Escrow Instructions**") to the Title Company which are necessary for the Closing in accordance with this Agreement, provided that any such Supplemental Escrow Instructions must be consistent with the terms of this Agreement.

## ARTICLE 4 REVIEW OF THE PROPERTY

4.1 Delivery of Documents. Within three (3) business days after the Effective Date, Seller shall provide Buyer and its representatives with access to the materials described in Exhibit B (the “**Documents and Materials**”) by electronic or other means permitting Buyer and its representatives to review the Documents and Materials at any location Buyer deems appropriate with or without a representative of Seller being present during such review as contemplated by subsection 4.2.1(a) below. Seller acknowledges that any Documents and Materials retained by Buyer may become subject to disclosure under the California Public Records Act.

### 4.2 Access for Review.

4.2.1 Studies Generally. From the Effective Date to the Closing Date, Seller shall provide Buyer and Buyer's agents, consultants and representatives with access to the Property at all reasonable times following at least one (1) business days' advance written or telephonic notice to make such reasonable inspections, tests, copies, surveys, assessments, verifications, and studies (“**Studies**”) as Buyer considers reasonably necessary or desirable under the circumstances. Among other reasonable conditions, Seller may require a representative of Seller to be present during any entry on the Property by Buyer or its consultants. Said Studies may include, without limitation the following: (a) review of all Documents and Materials to be delivered by Seller to Buyer pursuant to the terms of this Agreement; (b) studies regarding zoning, building codes and other governmental regulations; soils, structural and engineering tests; economic feasibility and marketing studies; environmental assessments, studies, tests and reports (including without limitation a current Phase One Environmental Assessment of the Property [the “**Phase One Report**”]); Americans With Disabilities Act accessibility inspections; appraisals of value; and availability of permits, entitlements, and governmental approvals; (c) a survey of the Property; (d) ability of Buyer to use and improve the Property for Buyer's intended purposes, and (e) progress and status of the Completion of the Shell Improvements on the Property. Buyer shall not damage or alter the Property in any material respect as a result of such Studies, shall not conduct invasive or destructive testing on the Property without Seller's prior written consent, and shall otherwise conduct the same so as not to unreasonably interfere with present operations, if any, on the Property. Any such Studies shall be made at Buyer's sole cost and expense.

4.2.2 Insurance. In any case that Buyer or its representatives enters the Property for the purpose of conducting Studies, whether or not said Studies are intrusive as noted above, prior to any entry on to the Property, Buyer must deliver to Seller, at Buyer's election, either (1) proof of commercial general liability insurance of at least \$1,000,000.00 covering any and all parties entering the Property and listing Seller as additional insured or (2) evidence that Buyer has in place a program of self-insurance that provides at least the coverage described in Subsection 4.2.2(1) above.

4.2.3 Approval of Disclosures. Buyer's delivery of the Additional Deposit into Escrow prior to the expiration of the Review Period shall conclusively be deemed to constitute Buyer's approval of all disclosures contained in this Agreement and the Documents and Materials.

**ARTICLE 5**  
**TITLE TO THE PROPERTY**

5.1 Fee Title.

5.1.1 Deed. On the Closing Date, Seller shall convey good and marketable fee simple title to the Property to Buyer by means of a duly executed and acknowledged Grant Deed (the "**Deed**").

5.1.2 Permitted Exceptions.

(a) Buyer and Seller each shall use good faith, due diligence and reasonable efforts to cause the Title Company to deliver to Buyer within three (3) business days after the Effective Date, a current preliminary (title) report with respect to the Property (the "**Title Report**") and (by hard copy or functional hyperlink) one legible copy of each underlying recorded document shown as an exception in such Title Report (said Title Report and said underlying documents being referred to herein as the "**Title Documents**"). Buyer's title to the Property shall be insured by the Title Company by means of the Title Policy (as defined in Section 8.2.6 below).

(b) On or prior to expiration of the Review Period (said period commencing upon Buyer's receipt of the Title Documents and ending on expiration of the Review Period also being referred to herein as the "**Title Review Period**"), Buyer shall notify Seller in writing (the "**Buyer Title Notice**") of those exceptions indicated on the Title Report that Buyer approves and those exceptions that Buyer disapproves. If Buyer fails to deliver a Buyer Title Notice to Seller within the Title Review Period identifying any exceptions indicated on the Title Report approved by Buyer, then all such items shall be deemed approved by Buyer. The Declaration of Covenants, Conditions and Restrictions for Palm Bluffs Corporate Center, as amended, and the Declaration of Restrictions for Three Points at Palm Bluffs, as amended, shall be Permitted Exceptions, and Buyer will comply with the provisions thereof and all design guidelines associated with such documents following the Close of Escrow. Any exceptions indicated on the Title Report and approved by Buyer shall constitute permitted exceptions ("**Permitted Exceptions**") in connection with the issuance of the Title Policy. If Buyer disapproves any exceptions indicated on the Title Report ("**Disapproved Exceptions**"), then Seller shall have five (5) calendar days after receipt of a Buyer Title Notice to advise Buyer in writing of any such Disapproved Exceptions that Seller is unable or unwilling to remove at the close of Escrow (other than the lien of deeds of trust or other monetary obligations, which automatically shall be deemed Disapproved Exceptions and which Seller shall be required to remove at the close of Escrow) ("**Seller's Title Response**"). If Seller fails to deliver a written Seller's Title Response within said five (5) calendar days, then Seller shall be deemed to have provided Buyer with a Seller's Title Response that notifies Buyer that Seller is unable or unwilling to remove at the close of Escrow the Disapproved Exceptions. If Seller's Title Response indicates (or is deemed to indicate) that there are Disapproved Exceptions that Seller is unable or unwilling to remove at the Closing, then, after receiving Seller's Title Response up until the Outside Closing Date, Buyer shall either terminate this Agreement by written notice to Seller and the Title Company or waive Buyer's objections to such Disapproved Exceptions. If Buyer fails to timely terminate this

Agreement, then Buyer shall be deemed to have waived its objections to the Disapproved Exceptions. If Buyer does timely elect to terminate this Agreement, then the Deposit shall be returned to Buyer, and the parties shall thereafter have no obligations under this Agreement or additional liability to one another except as expressly set forth herein.

5.2 Contracts, Warranties and Permits. On the Closing Date, Seller shall assign to Buyer on a non-exclusive basis Seller's rights under any contracts, permits, licenses, warranties, guaranties, entitlements, approvals and other intangible personal property which is included within the Property, which assignment shall be pursuant to a general assignment substantially in the form attached hereto as Exhibit C (the "**General Assignment**").

## **ARTICLE 6** **REPRESENTATIONS AND WARRANTIES**

6.1 Seller. Buyer acknowledges that with the exception of those representations and warranties expressly made by Seller in this Agreement, Buyer is acquiring the Property "**AS-IS, WHERE-IS, IN ITS CURRENT CONDITION, WITH ALL FAULTS**" and in reliance upon its own Studies, investigations and due diligence and that no person acting on behalf of Seller is authorized to make any representations or warranties of any kind or character whatsoever with regard to the Property. The representations and warranties made by Seller in this Section 6.1 are a material inducement for Buyer to enter into this Agreement. Seller represents and warrants to Buyer as of the Effective Date as follows:

6.1.1 Power and Authority. Seller is a limited partnership, duly formed and organized and validly existing and in good standing under the laws of the State of California. Seller has full power and authority to enter into this Agreement and to perform this Agreement. The execution, delivery, and performance of this Agreement by Seller have been duly and validly authorized by all necessary partnership action on the part of Seller and all required consents or approvals by the partners of Seller have been duly obtained. This Agreement is a legal, valid, and binding obligation of Seller, enforceable against Seller in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, arrangement, moratorium, or other similar laws from time to time in effect which affect the rights of creditors generally or by limitations upon the availability of equitable remedies.

6.1.2 Documents Complete. All of the copies of the Documents and Materials delivered to Buyer pursuant to Section 4.1 above hereof are complete copies of all originals of such documents in Seller's possession or control. Seller makes no representation or warranty regarding the accuracy or contents of Documents and Materials not prepared by Seller.

6.1.3 Leases. There are currently no leases, rental agreements, or licenses in place or in force with respect to the Property which provide any tenant, lessee, licensee, occupant, or other party with any rights to use, occupy, or possess all or any portion of the Property, nor are there any contracts or agreements (excluding the Permitted Exceptions) in place which in any way encumber the Property that will survive the Closing Date.

6.1.4 Physical Condition of Property. To the best of Seller's knowledge, as of the Closing Date: (a) the Property and every part thereof shall be in good repair and working order and sound condition and there neither are nor shall be any physical, structural, or mechanical defects or deficiencies in the Property or any part thereof, including without limitation the roof, exterior walls, structural components, utilities, sprinklers, and other mechanical and electrical systems required to be constructed by Seller as part of the Shell Improvements; (b) the Improvements will be constructed in accordance with applicable plans and specifications; and (c) the Property has been and will be operated, maintained, and repaired in accordance with sound property management practice during Seller's period of ownership.

6.1.5 Law Compliance. To the best of Seller's knowledge, (a) the Property and every part thereof and the use and occupancy of the Property are in full compliance with all applicable building, zoning, land use, earthquake, environmental, antipollution, health, fire, safety, energy conservation, subdivision and similar laws, statutes, rules, regulations and ordinances and all covenants, conditions, and restrictions applicable to the Property, including without limitation Environmental Laws (defined below) (collectively herein, "**Laws**"); (b) Seller has received no notice, citation, or other claim alleging any violation of any Laws with respect to the Property; and (c) Seller has all permits, licenses, and approvals that are required to own, operate, use, and occupy the Property as it is presently owned, operated, used, and occupied. For purposes of this Agreement, "**Environmental Laws**" shall mean any law, statute, ordinance, or regulation pertaining to health, industrial hygiene, hazardous substances, or the environment. For purposes of this Agreement, "**Hazardous Substances**" shall mean any substance or material defined or designated as hazardous or toxic waste, hazardous or toxic material, a hazardous, toxic, or radioactive substance, hazardous or potentially hazardous to human health, or other similar term, by any federal, state or local environmental and/or health statute, regulation, or ordinance presently in effect.

6.1.6 Environmental Disclosures. Seller makes the following disclosures to Buyer:

(a) Post-Closure Land Use Plan. The Property is located within three-hundred (300) feet of a former landfill area. Buyer will be required, at Buyer's sole cost and expense, to comply with the requirements of the Post Closure Land Use Plan for Buyer's ownership, use and inspection of the Property, which Plan is included in the Documents and Materials. In addition, the Property is subject to compliance with the Landfill Gas Mitigation Plan ("**Plan**") prepared by Technicon Engineering on June 5, 2007, and approved by Fresno County Environmental Health System on October 4, 2007. The Plan is included in the Documents and Materials.

(b) DTSC Clearance. The Property has been subject to an environmental remedial investigation, undertaken pursuant to applicable Environmental Laws, including, but not limited to, the Comprehensive Environmental Response, Compensation, and Liability Act ("**CERCLA**") and the California Hazardous Waste Management Act ("**CHWMA**"). The California Environmental Protection Agency, Department of Toxic Substances Control ("**DTSC**") issued a formal letter of clearance for the Property. DTSC determined that all appropriate response actions have been completed, that all acceptable engineering practices were implemented, and that no



further removal/remedial action is necessary. DTSC also determined, based upon a remedial investigation or site characterization, that the site poses no significant threat to public health, welfare, or the environment and therefore implementation of removal/remedial measures is not necessary. Buyer may, at Buyer's sole expense, obtain a copy of said DTSC letter of clearance upon request.

(c) Existing Indemnity Agreement. The Property may benefit from an Indemnity Agreement executed by The Vendo Company, for the use and operation of underground water transmission pipeline(s) and/or groundwater extraction well(s) located on or in proximity to the Property. The Indemnity Agreement is included in the Documents and Materials.

(d) Disclosure and Acknowledgement. Buyer acknowledges that the Property is located within the Pinedale Industrial Area which has been associated with potential groundwater and soil contamination. Buyer further acknowledges that the Property is in the general area of the Kepco Pinedale Landfill and the inactive Pinedale Landfill, both of which have been associated with the presence of methane in the soil. The Documents and Materials include the Phase One Environmental Site Assessment for the Property and property to the north and west prepared by Technicon Engineering dated October 10, 2005.

(e) No Penetration of Membrane. Buyer acknowledges that if Buyer conducts, undertakes or permits any construction, remodeling, repair, alteration, or use of the Property which would result in the penetration of the landfill gas membrane improvements (the "**Membrane**"), Buyer will be required to comply with the "Repairs to Membrane" requirements and conditions described in the Landfill Gas Barrier, Venting, and Monitoring System and Membrane Repair information which is included in the Documents and Materials. Buyer will also be required to maintain the gas monitoring system and otherwise comply with the Site Specific Post Closure Maintenance Plan which will be completed on or following substantial completion of the Shell Improvements.

6.1.7 No Pending Actions. There are no actions, proceedings or investigations of any kind pending or, to the best knowledge of Seller, threatened or being contemplated against or involving Seller or the Property or any part of the Property and there are no valid bases for any such actions, proceedings or investigations. There is no condemnation or eminent domain action pending or, to the best knowledge of Seller, threatened or being contemplated with respect to the Property or any part thereof.

6.1.8 Utilities. All water, sewer, gas, electric, telephone, and drainage facilities, and all other utilities required by law or for the normal operation, use, and occupancy of the Property, are (or as of the Closing Date will be) installed to the boundary lines of the Property, connected with valid permits, and adequate to service the Property.

6.1.9 FIRPTA. Seller is not a "foreign person" as defined in the Internal Revenue Code of 1986, as amended, and the Income Tax Regulations thereunder (the "**Code**").

6.1.10 No Conflict. Neither the execution, delivery, or performance by Seller of this Agreement, nor compliance with the terms and provisions hereof, conflicts or will conflict with or will result in a breach or violation of any order, writ, injunction, or decree of any court or governmental authority against Seller, or any indenture, mortgage, or contract, or other agreement or instrument, to which Seller is a party or by which it or any of its properties is bound, or constitutes or will constitute a default thereunder.

6.2 Buyer. The representations and warranties of Buyer in this Section 6.2 are a material inducement for Seller to enter into this Agreement. Seller would not sell the Property to Buyer without such representations and warranties of Buyer. Buyer represents and warrants to Seller as follows:

6.2.1 Power and Authority. Buyer is a public agency. Buyer has full power and authority to enter into this Agreement on the terms and conditions set forth herein. Prior to the expiration of the Review Period: (a) Buyer will have all necessary authority to perform this Agreement and acquire the Property; (b) the execution, delivery, and performance of this Agreement by Buyer will have been duly and validly authorized by all necessary agency action on the part of Buyer; and (c) all required consents or approvals by the commissioners and/or directors of Buyer will have been duly obtained. This Agreement is a legal, valid, and binding obligation of Buyer, enforceable against Buyer in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, arrangement, moratorium, or other similar laws from time to time in effect which affect the rights of creditors generally or by limitations upon the availability of equitable remedies. Seller acknowledges that Buyer will be required to adopt a Resolution of Acceptance under California Government Code section 27281 as a condition to taking title to the Property.

6.2.2 Studies/Diligence. Buyer intends to conduct Studies and inspections of the Property and Buyer has entered into this Agreement based upon its rights and intentions to make Studies and inspections. Notwithstanding the foregoing, Buyer may not conduct any invasive or destructive testing of the Property without Seller's prior written consent. Seller reserves the right to have its representatives present during all on-site investigations on the Property. Buyer acknowledges that, with the exception of those representations and warranties expressly made by Seller in this Agreement, Seller has not made any representations or warranties with regard to the Property.

6.2.3 No Conflict. Neither the execution, delivery, or performance by Buyer of this Agreement, nor compliance with the terms and provisions hereof, conflicts or will conflict with or will result in a breach or violation of any order, writ, injunction, or decree of any court or governmental authority against Buyer, or any indenture, contract, or other agreement or instrument to which Buyer is a party.

6.2.4 No Bankruptcy. Within seven (7) years prior to the Effective Date, Buyer has not done any of the following: (a) filed a voluntary or involuntary petition under federal bankruptcy law; (b) been adjudicated as insolvent or bankrupt; (c) made an assignment of property for the benefit of creditors; (d) suffered the appointment of a receiver, trustee, or conservator of any substantial portion of assets; or (e) suffered the

seizure by a sheriff, receiver, trustee, or conservator of any substantial portion of assets.

## ARTICLE 7 COVENANTS

7.1 Seller. Seller covenants and agrees with Buyer as follows:

7.1.1 Statutory Disclosures. Not more than ten (10) calendar days after the Effective Date, Seller shall provide Buyer with (a) a Natural Hazards Disclosure Report (issued by the Title Company or other reputable service or provider) (the “**NHDS**”), and (b) if and to the extent required by law and not addressed by the NHDS, the disclosures described in Exhibit D attached hereto.

7.1.2 Cooperation. From the Effective Date through and until the Closing Date or any earlier termination of this Agreement, Seller shall use good faith and due diligence to reasonably cooperate with Buyer’s efforts to perform its Studies, as well as Buyer’s efforts to obtain any entitlements, permits, approvals, or other rights in connection with Buyer’s intended uses of the Property. Seller shall not have any obligation to incur third party costs or expenses in connection with providing the cooperation described in this Section 7.1.2.

7.1.3 Construction of Shell Improvements. Prior to the Outside Closing Date, Seller, at Seller’s sole cost and expense and without increase or adjustment to the Purchase Price, shall Complete construction of all those building shell and site improvements at the Property (collectively, the “**Shell Improvements**”) described in Exhibit E attached hereto and included in the Documents and Materials otherwise approved in writing by Buyer (the “**Shell Plans and Specifications**”), subject to the following:

(a) Detailed plans and specifications for the Shell Improvements have been prepared and approved by Buyer and Seller. The plans and specifications approved by Buyer shall be considered part of the Shell Plans and Specifications for purposes of this Agreement. The Shell Improvements shall be constructed by one or more third party licensed contractors, in a good and workmanlike manner, in conformity and accordance with and pursuant to the Shell Plans and Specifications (in all material respects), free from defects, and in a manner necessary to preserve all manufacturer’s warranties.

(b) Seller, at Seller’s sole cost, shall execute and perform all contracts and obtain all permits necessary to construct the Shell Improvements.

(c) There shall be no changes to the Shell Improvements or the Shell Plans and Specifications without the prior written consent of Seller and Buyer (other than so called minor non-material “field changes” necessary to comply with laws, permits or site conditions, provided that any such field changes are reflected in as-built plans), which consent shall not be unreasonably withheld. Notwithstanding the foregoing, the construction of the Shell Improvements shall be subject to: (i) changes required by any applicable governmental authority, which changes shall not materially revise the Shell Plans and Specifications; (ii) minor changes determined by Seller or its

general contractor (in their reasonable discretion and after consultation with Buyer) to be prudent during the course of construction; and (iii) substitution of materials determined by Seller or its general contractor (in their reasonable discretion and after consultation with Buyer) to be prudent, so long as only materials of like kind and quality are substituted.

(d) For purposes hereof, construction of the Shell Improvements shall be deemed "**Complete**" when: (i) construction has been substantially completed in accordance with applicable Shell Plans and Specifications (in all material respects) and all but minor punch-list items have been corrected; (ii) final inspection cards are signed by City of Fresno building inspectors for the Shell Improvements; (iii) copies of as-built plans, warranties, and other documents related to the Shell Improvements have been delivered to Buyer; and (iv) copies of all building permits for the Shell Improvements and final unconditional lien releases have been issued by all contractors and suppliers in connection with the Shell Improvements (or all lien periods have lapsed without the filing of a lien), or the Title Company shall have issued insurance against any mechanic's lien in lieu thereof. Minor punch list items that do not prevent the Shell Improvements from being Complete shall be completed promptly after Closing by Seller at Seller's sole cost and expense.

(e) If Seller does not Complete the Shell Improvements by the Outside Closing Date (subject to extension for events of Force Majeure or Buyer Delays), then either Buyer or Seller shall have the right to extend the Outside Closing Date by up to ninety (90) days, during which time Seller shall be obligated to use good faith, due diligence, and commercially reasonable efforts to Complete the Shell Improvements. If following such 90-day period the Shell Improvements are not Complete, Buyer shall, prior to the expiration of such extended completion period, elect in writing to either (i) extend the Outside Closing Date by an additional sixty (60) days, during which time Seller shall be obligated to use good faith, due diligence and commercially reasonable efforts to Complete the Shell Improvements, or (ii) go forward with the Closing and to accept the Property without the Shell Improvements being Complete, in which case Buyer shall be entitled to a credit against the Purchase Price at closing equal to the Closing Credit and Seller shall be released from any further obligation to Complete construction of the Shell Improvements. If Buyer elects option (i) above and the Shell Improvements still are not Complete by the Outside Closing Date as extended, then Buyer shall thereafter have the right to elect option (ii) above in this subsection (e) or to terminate this Agreement, in which case the entire Deposit will be returned to Buyer. If Buyer elects the option set forth in subsection 7.1.3(e)(ii) above, then the parties shall promptly, mutually and reasonably agree upon an estimate of the cost to Complete the Shell Improvements. For purposes hereof, the "**Closing Credit**" shall equal the amount of such estimate. If the parties are unable to agree upon said estimate, then the contractor constructing the Shell Improvements shall be asked for an estimate and the Closing Credit shall equal one hundred five percent (105%) of such estimate.

(f) Seller shall assign to Buyer on a non-exclusive basis at Closing all warranties made by the contractor(s) constructing the Shell Improvements, it being understood that Seller has contracted for a one-year warranty with respect to the Shell Improvements.

(g) Within thirty (30) days of the Effective Date of this Agreement, but in all instances prior to the expiration of the Review Period (the “**Price Determination Date**”), the parties will determine the adjustment to the Purchase Price required by the Prevailing Wage Laws. If, by the Price Determination Date, the parties are unable to mutually agree on the adjustment to the Purchase Price required by Prevailing Wage Laws or if either party disapproves the adjustment to the Purchase Price or additional construction or administrative requirements imposed by the Prevailing Wage Laws, then either party may terminate this Agreement by written notice to the other party and the Deposit shall be returned to Buyer, and Buyer and Seller shall have no further obligations or rights to one another under this Agreement. If the adjustment to the Purchase Price required by the Prevailing Wage Laws is approved by the parties on or prior to the Price Determination Date, the parties will execute an addendum to this Agreement confirming the adjusted Purchase Price for the Property.

## **ARTICLE 8** **CONDITIONS PRECEDENT**

8.1 **Seller**. The obligations of Seller under this Agreement to close the sale and convey the Property to Buyer are subject to satisfaction of all of the conditions set forth in this Section 8.1. Seller may waive any or all of such conditions in whole or in part but any such waiver shall be effective only if made in writing. No such waiver shall constitute a waiver by Seller of any of its rights or remedies if Buyer defaults in the performance of any covenant or agreement to be performed by Buyer under this Agreement or if Buyer breaches any representation or warranty made by Buyer in this Agreement. If any condition set forth in this Section 8.1 is not fully satisfied or waived in writing by Seller within the time indicated, then Seller shall have the right to terminate this Agreement and be released from all obligations to Buyer under this Agreement. If Seller fails to notify Buyer of Seller's disapproval of any items requiring Seller's approval and Seller's termination of this Agreement within the time period specified below, then Seller shall be deemed to have approved such items.

8.1.1 **No Default**. On the Closing Date, Buyer shall not be in material default in the performance of any covenant or agreement to be performed by Buyer under this Agreement.

8.1.2 **Representations and Warranties True and Correct**. On the Closing Date, all representations and warranties made by Buyer in this Agreement shall be true and correct as if made on and as of the Closing Date, without exceptions.

8.1.3 **No Contest**. On the Closing Date, no suit, action, investigation, or other proceeding by any governmental body or other person shall have been instituted against Buyer or Seller or the Property which challenges the validity or legality of the transactions contemplated by this Agreement.

8.1.4 **Delivery of Documents**. On the Closing Date, Buyer shall have delivered into the Escrow each of the items to be delivered by Buyer pursuant to Section 9.1.2 below.

8.2 **Buyer**. The obligations of Buyer under this Agreement to purchase the Property and accept title from Seller are subject to satisfaction of all of the conditions

set forth in this Section 8.2. Buyer may waive any or all of such conditions in whole or in part but any such waiver shall be effective only if made in writing. No such waiver shall constitute a waiver by Buyer of any of its rights or remedies if Seller defaults in the performance of any covenant or agreement to be performed by Seller under this Agreement or if Seller breaches any representation or warranty made by Seller in this Agreement. If any condition set forth in this Section 8.2 is not fully satisfied or waived in writing by Buyer, then Buyer shall be released from all obligations to Seller under this Agreement. If Buyer fails to notify Seller of Buyer's disapproval of any items requiring Buyer's approval within the time period specified below, then Buyer shall be deemed to have approved such items.

8.2.1 Review Period. Prior to expiration of the period commencing on the Effective Date and expiring ninety (90) calendar days thereafter (herein, the "**Review Period**"), Buyer shall be deemed to have approved, in Buyer's sole discretion, the results of any and all Studies with respect to the Property as Buyer may elect to make or obtain by depositing the Additional Deposit into Escrow. The failure of Buyer to deposit the Additional Deposit into Escrow on or prior to expiration of the Review Period shall (1) be deemed Buyer's disapproval of its Studies and the condition of the Property, (2) constitute Buyer's irrevocable election to terminate this Agreement, and (3) give Buyer the right to a full return of its Deposit (less the applicable Escrow cancellation fees and charges). The cost of any such inspections, tests, and Studies shall be borne exclusively by Buyer.

8.2.2 No Contest. On the Closing Date, no suit, action, investigation, or other proceeding by any governmental body or other person shall have been instituted or threatened against Buyer, Seller, or the Property or any part thereof which challenges the validity or legality of the transactions contemplated by this Agreement or which would have material detrimental effect on the physical or legal condition of the Property or Buyer's use, development, or occupancy of the Property after Closing.

8.2.3 Condemnation; Casualty. On the Closing Date, the Property shall not have been damaged or destroyed in any material respect and no condemnation or eminent domain action or proceeding shall be pending or threatened against the Property.

8.2.4 No Default. On the Closing Date, Seller shall not be in material default in the performance of any covenant or agreement to be performed by Seller under this Agreement.

8.2.5 Representations and Warranties True and Correct. On the Closing Date, all representations and warranties made by Seller in this Agreement shall be true and correct as if made on and as of the Closing Date, without exceptions.

8.2.6 Title Policy. On the Closing Date, the Title Company shall be prepared to issue to Buyer an ALTA extended coverage owner's policy of title insurance together with any title endorsements reasonably required by Buyer (the "**Title Policy**"), with liability equal to the Purchase Price, insuring Buyer that fee simple absolute title to the Property is vested in Buyer subject only to real property taxes and assessments not yet due and payable, the Permitted Exceptions, standard printed exceptions and exclusions usual to such policies, and any additional matters approved in writing by

Buyer. The Title Policy shall be a standard owner's policy of title insurance together with title endorsements reasonably required by Buyer.

8.2.7 Delivery of Documents. On the Closing Date, Seller shall have delivered into the Escrow each of the items to be delivered by Seller pursuant to Section 9.1.1.

8.2.8 No Material Change. As of the Closing Date no material adverse change in the physical or legal condition of the Property shall have occurred since the Effective Date hereof, except for (a) construction of the Shell Improvements, and (b) matters caused by Buyer or its agents or expressly approved in advance in writing by Buyer.

8.2.9 Completion of Shell Improvements. On or before the Closing Date, Seller shall have caused construction of the Shell Improvements to be Complete.

8.3 Damage or Taking. If, before the Closing Date, the Property is damaged by any casualty or condemnation or eminent domain proceedings are commenced against the Property, then Buyer shall have the right, at its election, by giving notice to Seller, either to terminate this Agreement or to purchase the Property in accordance with this Agreement. If Buyer elects to terminate this Agreement pursuant to this Section 8.3, then all rights and obligations of Seller and Buyer shall terminate unless otherwise provided herein and the Deposit shall be returned to Buyer. If Buyer elects to purchase the Property in accordance with this Agreement, then all insurance proceeds or condemnation or eminent domain awards payable by reason of such damage or condemnation shall be paid to Buyer. Seller shall immediately give notice to Buyer upon the occurrence of any damage to the Property or any condemnation or eminent domain proceedings affecting the Property.

## ARTICLE 9 CLOSING

### 9.1 Procedure.

9.1.1 Deliveries by Seller. Not less than one (1) business day prior to the close of Escrow, subject to the satisfaction of the conditions to Seller's obligations set forth in this Agreement, Seller shall deliver into Escrow with the Title Company fully executed by Seller (and acknowledged and in recordable form where appropriate) the following: (a) the original Deed; (b) the General Assignment; (c) a Certificate of Non-Foreign Status in standard title company form in accordance with the Code to enable Buyer to determine that no withholding is required because Seller is not a foreign person; (d) a California form FTB 593-C ("**FTB Affidavit**") to enable Buyer and the Title Company to determine whether any withholding of the Purchase Price is required under California law; (e) Seller's Closing Certificate; (f) originals of all Documents and Materials in Seller's possession; and (g) all keys, passcodes, security cards, security codes, PINs necessary to access the Property.

9.1.2 Deliveries by Buyer. Not less than one (1) business day prior to the close of Escrow, subject to the satisfaction of the conditions to Buyer's obligations set forth in this Agreement, Buyer shall deposit into Escrow with the Title Company the full

Purchase Price (less any Deposit theretofore released to Seller), and cash in an amount sufficient to cover Buyer's portion of the prorations, charges, and closing costs allowed to Buyer pursuant to this Agreement.

9.1.3 Additional Deliveries. Buyer and Seller shall each deposit into Escrow such other instruments and items as are reasonably required by the Title Company or otherwise required to close the Escrow and to consummate the transactions contemplated by this Agreement.

9.1.4 Closing. Seller and Buyer shall cause the following to occur at the Closing on the Closing Date:

(a) The Deed conveying the Property to Buyer shall be recorded in the Official Records of Fresno County, California.

(b) The original of the General Assignment, Seller's FTB Affidavit, and Seller's Certificate of Non-Foreign Status shall be delivered to Buyer; along with all keys, passcodes, security cards, security codes, PINs necessary to access the Property.

(c) The Purchase Price (less Seller's share of the closing costs and charges allowed to Seller pursuant to this Agreement) shall be delivered to Seller.

(d) The Title Company shall issue to Buyer the Title Policy.

9.2 Possession; Condition. Seller shall transfer possession of the Property to Buyer on the Closing Date and in the following condition: On the Closing Date, (a) all owners, tenants, lessees and other occupants shall have fully and finally vacated the Property and shall have removed all of their respective personal property, furnishings, trade fixtures and similar equipment therefrom, and shall have repaired all damage to the Property resulting from the removal of same; and (b) the Property shall be in broom swept condition and free of debris; and (c) the Shell Improvements shall be Complete.

### 9.3 Closing Costs.

9.3.1 Seller shall pay: (a) one hundred percent (100%) of all documentary transfer taxes in respect of the conveyance of the Property; (b) fifty percent (50%) of the escrow fees charged by the Title Company; and (c) the premium for the Title Policy to the extent that it provides standard owner's coverage. Seller shall be responsible for its own document preparation, notary, recording, and delivery fees.

9.3.2 Buyer shall pay: (a) one hundred percent (100%) of any costs or premium to upgrade the Title Policy to an extended coverage policy; (b) one hundred percent (100%) of any fees for endorsements to the Title Policy; and (c) fifty percent (50%) of the escrow fees charged by the Title Company. Buyer shall be responsible for its own document preparation, notary, recording, and delivery fees.

9.3.3 The costs of any escrow cancellation shall be shared equally by Buyer and Seller unless such cancellation results from a default by Buyer or Seller hereunder, in which event the defaulting party shall pay all escrow fees.



#### 9.4 Prorations.

9.4.1 All current rent, additional rent, expense reimbursements, and other income and all current taxes, assessments, utilities, owner's association assessments and charges, and maintenance charges of the Property shall be prorated between Seller and Buyer as of the Closing Date on the basis of a thirty-day month and, to the extent of information then available, such prorations shall be made at the Closing. Buyer shall be solely responsible for all supplemental real property taxes for the Property and Improvements. Such prorations shall be adjusted, if necessary, and completed after the Closing as soon as final information becomes available. Seller and Buyer agree to cooperate and to use their best efforts to complete such prorations no later than thirty (30) days after the Closing Date. Seller and Buyer shall use good faith and due diligence prior to the Closing Date to prepare a schedule of prorations covering as many items to be prorated as practicable so such prorations can be made at the Closing.

9.4.2 Seller shall request each utility company providing utility service to the Property to cause all utility billings to be closed and billed as of the Closing Date in order that utility charges may be separately billed for the period prior to the Closing Date and the period on and after the Closing Date. In the event any such utility charges are not separately billed, the same shall be prorated. In connection with any such proration, it shall be presumed that utility charges were uniformly incurred during the billing period in which the Closing Date occurs.

9.5 Broker's Commission. Buyer and Seller each warrant and represent to the other that it has not retained, nor is it obligated to, any person for brokerage, finder's, or similar services in connection with the transactions contemplated by this Agreement, and that no commission, finder's fee or other brokerage or agent's compensation can be properly claimed by any person or entity based upon the acts of such party with regard to the transactions which are the subject matter of this Agreement, except for the following: Seller has been represented by Brett Fugman of Fortune Associates and Buyer is represented by Brian Decker and Beau Plumlee of Colliers International, Fresno ("**Brokers**"). Seller shall pay all commissions, fees, and/or other compensation due to the above-referenced Brokers pursuant to separate agreement (the "**Brokerage Fee**"). Each party shall indemnify the other party against and hold the other party harmless from all claims demands, liabilities, losses, damages, costs, and expenses (including, without limitation, reasonable attorneys' fees, costs of expert witnesses, court costs, and other litigation expenses) arising from or relating to any claim for a commission, fee, or other compensation made by any brokers or parties with which the indemnifying party has dealt in connection with this Agreement or the transactions contemplated hereby, including without limitation the Brokers and the Brokerage Fee. Seller discloses to Buyer that Brett Fugman and Larry Fortune are licensed California real estate brokers and that they are principals in and have a partnership interest in the partnership that constitutes Seller.

9.6 Exchange. If requested by Seller, then Buyer shall cooperate with Seller in reasonable ways to effect an exchange of the Property that qualifies for nonrecognition treatment pursuant to Section 1031 of the Code, and corresponding provisions of California law. Any such exchange shall not delay or postpone the Closing

Date except as may be expressly provided in Section 9.1 hereof; Buyer shall have no liability to Seller if the exchange fails to qualify for such nonrecognition treatment; Seller shall not be released from its obligations under this Agreement if the exchange fails for any reason; the exchange shall be at no expense to Buyer; Buyer shall not be required to acquire title to any proposed exchange properties to accommodate Seller's exchange; and Buyer shall not be required to assume any additional obligations or liabilities in connection with the exchange or attempted exchange. Seller shall indemnify Buyer against and hold Buyer harmless from all claims, demands, liabilities, losses, damages, costs and expenses (including, without limitation, reasonable attorneys' fees, costs of expert witnesses, court costs and other litigation expenses) arising from or related to any participation in the exchange or attempted exchange.

**ARTICLE 10**  
**DEFAULT; LIQUIDATED DAMAGES**

10.1 Effect of Default.

10.1.1 Seller's Rights; Liquidated Damages. If, after satisfaction of all conditions precedent to Buyer's obligations to purchase the Property under this Agreement, Buyer shall fail or refuse to consummate the transactions which are the subject of this Agreement within the time and in the manner specified in this Agreement (a "**Buyer Failure**"), then Seller may terminate Buyer's rights by giving prior written notice thereof to Buyer and to the Title Company, and upon receipt by Buyer of such notice, Seller shall be released from all obligations in law or in equity to convey the Property to Buyer. BUYER AND SELLER HEREBY AGREE THAT IT WOULD BE PROSPECTIVELY IMPRACTICAL OR EXTREMELY DIFFICULT TO FIX THE ACTUAL DAMAGES SUFFERED BY SELLER BECAUSE OF SUCH BUYER FAILURE; THAT THE PROSPECTIVE IMPRACTICABILITY OR EXTREME DIFFICULTY OF FIXING SELLER'S ACTUAL DAMAGES IS A RESULT OF, AMONG OTHER THINGS, MARKET FLUCTUATIONS AND THE LOSSES WHICH WOULD RESULT FROM REMOVING THE PROPERTY FROM THE MARKET FOR ANY LENGTH OF TIME; THAT THE SUM OF THE DEPOSIT DELIVERED BY BUYER PURSUANT TO SECTION 2.2 HEREOF (REFERRED TO HEREIN AS "**THE LIQUIDATED AMOUNT**") CONSTITUTES A REASONABLE ESTIMATE AND AGREED STIPULATION OF SUCH DAMAGES WHICH HAVE BEEN NEGOTIATED BY BUYER AND SELLER; THAT SELLER MAY RETAIN THE ENTIRETY OF THE DEPOSIT IN PAYMENT OF SAID LIQUIDATED AMOUNT IN THE EVENT OF A BUYER FAILURE; THAT THE RETENTION OF SAID DEPOSIT BY SELLER IS NOT INTENDED TO BE A FORFEITURE WITHIN THE MEANING OF CALIFORNIA CIVIL CODE SECTION 3275 OR 3369, BUT INSTEAD IS INTENDED TO CONSTITUTE PAYMENT FOR LIQUIDATED DAMAGES TO SELLER PURSUANT TO CALIFORNIA CIVIL CODE SECTIONS 1671, 1676 AND 1677; THAT SELLER IN RELIANCE THEREON HAS AGREED TO WAIVE ALL OTHER RIGHTS AND REMEDIES SELLER MAY HAVE AGAINST BUYER IN THE EVENT OF SUCH BUYER FAILURE; AND THAT IN THE EVENT OF SUCH BUYER FAILURE, THE TITLE COMPANY SHALL DELIVER THE DEPOSIT TO SELLER AND SELLER MAY RETAIN THE SAME AS PAYMENT FOR LIQUIDATED DAMAGES.

\_\_\_\_\_  
INITIALS OF SELLER

\_\_\_\_\_  
INITIALS OF BUYER

10.1.2 Buyer's Rights. In the event that Seller shall default in its obligation to convey the Property to Buyer in accordance with the terms hereof, then Buyer shall have all rights and remedies available at law or equity resulting therefrom, including without limitation the right to (a) terminate this Agreement, in which event the Deposit shall be returned to Buyer and the parties shall thereafter have no obligations under this Agreement or additional liability to one another, or (b) seek specific performance to compel Seller to convey the Property to Buyer.

10.1.3 Notice and Opportunity to Cure. Notwithstanding any other provision of this Agreement, neither Buyer or Seller shall have the right to terminate this Agreement based upon the breach or default of the other unless and until (a) the non-defaulting party shall have provided written notice ("**Notice of Default**") to the defaulting party describing the breach or default and demanding cure, and (b) five (5) business days have elapsed since the Notice of Default was received (or deemed received) by the defaulting party and the defaulting party shall have failed to cure the subject breach or default.

10.1.4 Limitations. Notwithstanding anything to the contrary in this Agreement, neither Buyer nor Seller shall be liable to the other for punitive damages as a result of a breach or default under this Agreement. No termination of this Agreement shall relieve either party of its obligation to the Title Company for payment of its fees and costs in accordance with this Agreement, or any liability it may have for its prior default under this Agreement.

## ARTICLE 11 GENERAL PROVISIONS

11.1 Notices. All notices, consents, approvals and other communications under this Agreement shall be in writing, shall be sent using only the methods described in this Section 11.1, and shall be deemed to have been duly given or made (a) upon delivery if hand delivered; (b) one (1) business day after delivery to any nationally recognized overnight courier service for next business day delivery, fee prepaid; (c) one (1) business day after facsimile transmission, with transmission verified and a hard copy of the transmission promptly sent by U. S. Mail; (d) one (1) business day after being sent by e-mail, provided that the sender does not receive notice that e-mail transmission or delivery has failed for any reason; or (e) three (3) days after deposit with the United States Postal Service as registered or certified mail, postage prepaid, and in each case addressed as follows:

To Buyer:      Fresno County Employees' Retirement Association  
                         1111 H Street  
                         Fresno, California 93721  
                         Attention: Mr. Donald Kendig  
                         Fax: (559) 457-0318  
                         E-Mail: [dkendig@co.fresno.ca.us](mailto:dkendig@co.fresno.ca.us)

with a  
copy to:          Kenneth J. Price, Esq.  
                         Baker Manock & Jensen, PC  
                         5260 W. Palm Avenue, Suite 421  
                         Fresno, California 93704

Fax: (559) 432-5620  
E-Mail: [kprice@bakermanock.com](mailto:kprice@bakermanock.com)

To Seller: Boardwalk at Palm Bluffs, LP  
680 West Shaw Avenue, Suite 200  
Fresno, California 93704-2450  
Attention: Mr. Larry Fortune  
Fax: (559) 490-2520  
E-Mail: [lfortune@fortuneassociates.com](mailto:lfortune@fortuneassociates.com)

with a  
copy to: Mr. Brett Fugman  
Fortune Associates  
680 West Shaw Avenue, Suite 200  
Fresno, California 93704-2450  
Fax: (559) 490-2520  
E-Mail: [bfugman@fortuneassociates.com](mailto:bfugman@fortuneassociates.com)

and to: Motschieder, Michaelides, Wishon, Brewer & Ryan, LLP  
1690 West Shaw Avenue, Suite 200  
Fresno, California 93711  
Attention: Phillip G. Michaelides, Esq.  
Facsimile: (559) 439-5654  
E-Mail: [pgm@mmwbr.com](mailto:pgm@mmwbr.com)

11.2 Merger/Entire Agreement. This Agreement is intended to be the entire agreement of the parties. All prior negotiations and written and contemporary oral agreements between the parties and their agents with respect to the transactions contemplated by this Agreement (including without limitation any letters of intent between the parties) are merged in this Agreement together with its exhibits.

11.3 Force Majeure. Specific dates for performance shall be extended for such periods of time as nonperformance, defective performance or late performance is due to reasons outside such party's reasonable control, including, but not limited to, acts of God, war, action or inaction of any governmental authority or utility service providers, riots, revolutions, fire, floods, explosions, sabotage, nuclear incidents, lightening, weather, inaccessible site conditions, earthquakes, storms, sinkholes, epidemics, or strikes. Neither party shall be liable to the other on account of such delays.

11.4 Time. Time is of the essence in the performance of the parties' respective obligations pursuant to this Agreement.

11.5 Attorneys' Fees.

11.5.1 If there is any legal action, arbitration, or proceeding between Seller and Buyer arising from or based on this Agreement or the interpretation or enforcement of any provisions hereof, then the unsuccessful party to such action, arbitration, or proceeding shall pay to the prevailing party all costs and expenses, including reasonable attorneys' fees, incurred by such prevailing party in such action, arbitration, or proceeding and in any appeal in connection therewith. If such prevailing party recovers a judgment in any such action, arbitration, proceeding, or appeal, then such costs, expenses and attorneys' fees shall be included in and as a part of such judgment.

For purposes hereof, the "prevailing party" shall be the party which recovers substantially the relief sought by said party, whether by judgment, settlement, dismissal, or otherwise, in connection with any such action, proceeding, or arbitration.

11.5.2 If the services of an attorney are required by any party to enforce a judgment rendered in connection with this Agreement, the judgment creditor shall be entitled to reasonable attorneys' fees, costs, and other expenses, and such fees, costs, and expenses shall be recoverable as a separate item. This provision shall be severable from all other provisions of this Agreement, shall survive any judgment, and shall not be deemed merged into the judgment.

11.6 Successors and Assigns. This Agreement and the rights and obligations hereunder shall not be assigned or conveyed by Buyer to any other entity or person without the prior written consent of Seller, which consent may not be unreasonably withheld, provided, however, that Buyer shall have the right without Seller's prior consent to nominate another person or entity to whom title to the Property shall be conveyed at the close of the Escrow provided that the exercise of this right of nomination shall not be deemed to be an assignment of Buyer's rights hereunder and shall not relieve Buyer of any of Buyer's duties or obligations to Seller hereunder. This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of Seller and the permitted successors and assigns of Buyer.

11.7 Amendments or Modifications. This Agreement is subject to amendment or modification only by means of a written instrument signed by all of the parties hereto.

11.8 Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA.

11.9 Construction. Seller and Buyer acknowledge that each party and its counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any document executed and delivered by either party in connection with the transactions contemplated by this Agreement. The captions in this Agreement are for convenience of reference only and shall not be used to interpret this Agreement.

11.10 Terms Generally. The defined terms in this Agreement shall apply equally to both the singular and the plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine, or neuter forms. The term "person" includes individuals, corporations, partnerships, trusts and other entities and associations. The words "include," "includes," and "including" shall be deemed to be followed by the phrase "without limitation." The words "approval," "consent" and "notice" shall be deemed to be preceded by the word "written."

11.11 Further Assurances. From and after the Effective Date, Seller and Buyer agree to do such things, perform such acts, and make, execute, acknowledge and deliver such documents as may be reasonably necessary or proper and usual to complete the transactions contemplated by this Agreement and to carry out the purpose of this Agreement in accordance with this Agreement.

11.12 Partial Invalidity. If any provision of this Agreement is determined by a proper court to be invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability shall not affect the other provisions of this Agreement and this Agreement shall remain in full force and effect without such invalid, illegal, or unenforceable provisions provided that the severance of such provision(s) does not result in a material failure of consideration under this Agreement to either party hereto.

11.13 Exhibits. The Exhibits attached to this Agreement are made a part of this Agreement.

11.14 Counterparts; Facsimile. This Agreement may be executed in one or more counterparts with the same effect as if the parties executing several counterparts had executed one counterpart and all such executed counterparts shall together constitute one and the same instrument. Facsimile and portable document format (PDF) signatures on this Agreement shall be binding as if original.

11.15 Holidays. In the event any date for performance of any obligation or the giving of any notice pursuant to this Agreement occurs on a California state or federal holiday or on a Saturday or Sunday, then the next business day shall be deemed the applicable date for performance or notice.

IN WITNESS WHEREOF, Seller and Buyer have executed this Agreement as of the date first hereinabove written.

**SELLER:**

BOARDWALK AT PALM BLUFFS, LP, a  
California limited partnership

By: \_\_\_\_\_  
Name: Larry Fortune  
Its: General Partner

**BUYER:**

FRESNO COUNTY EMPLOYEES'  
RETIREMENT ASSOCIATION, a  
California public agency

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Its: \_\_\_\_\_

## **LIST OF EXHIBITS**

- EXHIBIT A -- Description of Real Property
- EXHIBIT B -- List of Documents and Materials
- EXHIBIT C -- Form General Assignment
- EXHIBIT D -- Statutory Disclosures
- EXHIBIT E -- Description of Shell Improvements

**EXHIBIT A**  
**DESCRIPTION OF REAL PROPERTY**  
**Page 1 of 3**

That certain real property situated in the State of California, County of Fresno, City of Fresno, described as follows:

Parcel D of Parcel Map No. 2006-07, according to the Map thereof recorded September 2, 2008, in Book 69, Pages 3, 4, 5, and 6 of Parcel Maps, Fresno County Records.

APN: 405-530-91, 405-530-33

Parcel E of Parcel Map No. 2006-07, according to the Map thereof recorded September 2, 2008, in Book 69, Pages 3, 4, 5, and 6 of Parcel Maps, Fresno County Records.

APN: 405-530-92

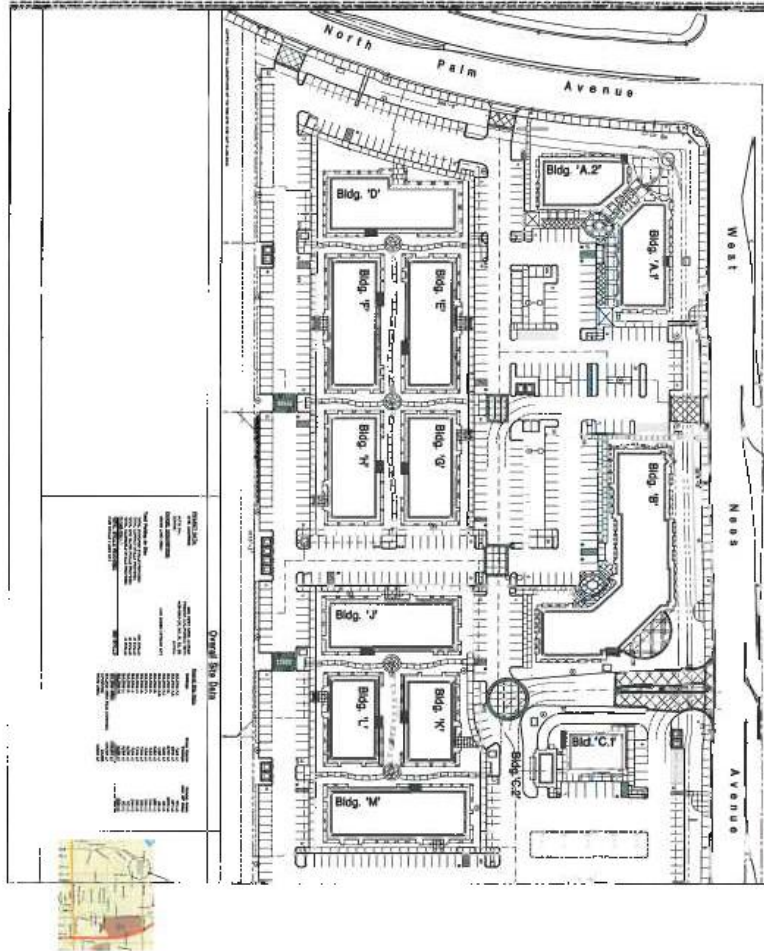
Parcel F of Parcel Map No. 2006-07, according to the Map thereof recorded September 2, 2008, in Book 69, Pages 3, 4, 5, and 6 of Parcel Maps, Fresno County Records.

APN: 405-530-93





**EXHIBIT A**  
**DESCRIPTION OF REAL PROPERTY**  
**Page 3 of 3**



## **EXHIBIT B**

- Site Plan
- Landmark monument signing and monument signing
- Declaration of Covenants, Conditions, and Restrictions for Palm Bluffs Corporate Center, dated December 11, 1998
- First Amendment to Declaration of Covenants, Conditions and Restrictions for Palm Bluffs Corporate Center, dated April 20, 2001
- Declaration of Restrictions for Three Points at Palm Bluffs, dated July 23, 2008
- First Amendment to Declaration of Restrictions for Three Points at Palm Bluffs, dated August 31, 2015
- Geotechnical Investigation Report Proposed Commercial Buildings Lots 105 Through 108, Palm Bluffs Park Sec of Palm and Noes Avenues, Fresno, California, dated August 16, 2007
- Update and Supplement to Geotechnical Investigation Report, dated October 5, 2015
- Agreement on Development Issues, dated August 14, 1998
- Indemnification Agreement, dated January 5, 2007
- Shell Building Description
- Three Points at Palm Bluffs Association Budget
- Sign Criteria
- Landfill Gas Mitigation Plan, dated March 28, 2007
- Correspondence from Technicon Engineering Services, Inc., regarding Proposed Building M – Boardwalk at Palm Bluffs, dated October 16, 2015
- Correspondence from County of Fresno regarding Landfill Gas Mitigation Plan, dated May 25, 2007
- Correspondence from County of Fresno regarding Landfill Gas Mitigation Plan – Addendum, dated October 4, 2007
- Preliminary Title Report, dated October 29, 2015
- Phase One Environmental Site Assessment, dated October 10, 2005
- Landfill Gas Barrier, Venting & Monitoring System and Membrane Repair
- Permitted Plans and Specifications for Shell Improvements for Building D, E and F
- Remedial Action Certification Form, dated January 24, 1996
- Assignment, Delegation, and Assumption of Parcel Map Agreement No. 2006-07
- Subdivision Agreement Parcel Map No. 2006-07
- Building T-sheet
- Bldg Tax bill 2015-2016
- Gas mitigation update letter
- Landfill mitigation plan

**EXHIBIT C**  
**FORM GENERAL ASSIGNMENT**

**GENERAL ASSIGNMENT**

This GENERAL ASSIGNMENT (this “**Assignment**”) is dated as of \_\_\_\_\_, 2016, by and between BOARDWALK AT PALM BLUFFS, LP, a California limited partnership (“**Assignor**”), and FRESNO COUNTY EMPLOYEES’ RETIREMENT ASSOCIATION, a California public agency (“**Assignee**”), with reference to the following facts:

**W I T N E S S E T H :**

Assignor, as seller, and Assignee, as buyer, entered into that certain Real Property Purchase and Sale Agreement dated \_\_\_\_\_ (“**Agreement**”), regarding the purchase and sale of that certain improved real property located in Fresno County, California, commonly known as 7766 North Palm Avenue (aka Building \_\_\_\_), Fresno, California, containing approximately 40,075 square feet of land and approximately 9,480 square feet of building improvements still to be constructed, bearing Assessor’s Parcel No. 405-530-91; 7778 North Palm Avenue (aka Building \_\_\_\_), Fresno, California, containing approximately 32,234 square feet of land and approximately 9,184 square feet of building improvements still to be constructed, bearing Assessor’s Parcel No. 405-530-92; and 7772 North Palm Avenue (aka Building \_\_\_\_), Fresno, California, containing approximately 30,927 square feet of land and approximately 9,184 square feet of building improvements still to be constructed, bearing Assessor’s Parcel No. 405-530-93, all as described and/or depicted in Exhibit A attached hereto and made a part hereof (collectively, the “**Real Property**”), together with certain fixtures and equipment used in connection with the operation of the Real Property. Under the Agreement, Assignor is obligated to assign to Assignee, all of Assignor’s right, title and interest in and to certain intangibles and rights appurtenant to or associated with the Real Property.

**AGREEMENT**

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Assignor hereby assigns, sells, transfers, sets over and delivers unto Assignee, all of Assignor’s estate, right, title and interest, if any, in and to the following: all permits, licenses, entitlements and approvals relating to the Real Property; all intangible property rights associated with the operation or ownership of the Real Property, including without limitation building addresses, building names, plans and specification; all manufacturer and/or contractor warranties and guaranties relating to the Real Property and/or improvements or fixtures thereon conveyed to Assignee (on a non-exclusive basis); all mineral and water rights owned by Assignor in connection with the Real Property; and all other rights appurtenant to the Real Property.

Except as expressly set forth in the Agreement, Assignor makes no representations or warranties, express or implied, of any kind or nature whatsoever with

respect to the items assigned hereby (including any implied warranty of merchantability or of fitness for a particular purpose), it being expressly understood that Assignee has made its own investigation of the items assigned hereby, if any, and is acquiring the items assigned hereby "**AS-IS, WHERE-IS, IN THEIR CURRENT CONDITION, WITH ALL FAULTS**".

If there is any legal action, arbitration or proceeding between the parties hereto arising from or based on this Assignment or the interpretation or enforcement of any provisions hereof, then the unsuccessful party to such action, arbitration or proceeding shall pay to the prevailing party all costs and expenses, including reasonable attorneys' fees, incurred by such prevailing party in such action, arbitration or proceeding and in any appeal in connection therewith. This Assignment shall be binding upon and inure to the benefit of the successors, assignees, personal representatives, heirs and legatees of all the respective parties hereto. This Assignment shall be governed by, interpreted under, and construed and enforceable in accordance with, the laws of the State of California. Assignor and Assignee each agree to execute such other documents and perform such other acts as may be necessary or desirable to effectuate this Assignment. This Assignment may be executed in counterparts with all such counterparts together constituting one (1) original of this Assignment. Facsimile or portable document format (PDF) signatures on this Assignment shall be binding as if original.

IN WITNESS WHEREOF, Seller and Buyer have executed this Agreement as of the date first hereinabove written.

**ASSIGNOR:**

BOARDWALK AT PALM BLUFFS, LP, a  
California limited partnership

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

Name: Larry Fortune

Its: General Partner

**ASSIGNEE:**

FRESNO COUNTY EMPLOYEES'  
RETIREMENT ASSOCIATION, a  
California public agency

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

Printed Name: \_\_\_\_\_

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

**EXHIBIT D**  
**STATUTORY DISCLOSURES**

1. Transfer Disclosure Statement. If the Property is deemed residential property pursuant to applicable law, all those matters contained in California Civil Code Section 1102.6, as contained in a standard form Real Estate Transfer Disclosure Statement (TDS).
2. Geologic, Earthquake and Seismic Hazard Zones Disclosure. If the Property is located in an Earthquake Fault Zone (Special Studies Zone) ("EFZ") (Public Resources Code Sections 2621-2625), a Seismic Hazard Zone ("SHZ") (Public Resources Code Sections 2690-2699.6), or in a locally designated geologic, seismic or other hazard zone where disclosure is required by law. C.A.R. Form GFD-14 shall satisfy this requirement. Disclosure of EFZs and SHZs is required only if maps or information contained in such maps is "reasonably available" (Public Resources Code Section 2621.9(c)(1) and 2694(c)(1)).
3. Special Flood Hazard Areas. If the Property is located in a Special Flood Hazard Area designated by the Federal Emergency Management Agency (FEMA). C.A.R. Form GFD-14 shall satisfy this requirement. [California Government Code Sections 8589.3 or 8589.4]
4. State Fire Responsibility Areas. If the Property is located in a State Fire Responsibility Area or wildland fire area. This disclosure may be made in the TDS if C.A.R. Form TDS-14 is used. [Public Resources Code Section 4136; California Government Code Section 51183.5]
5. Earthquake Safety. Written notice of all seismic deficiencies if the Property was built prior to 1960 [Government Code Sections 8897-8897.5]. Notice that the Property is in an earthquake fault zone or seismic hazard zone. [California Public Resources Code Sections 2621.9, 2694 or 4136]
6. Lead Based Paint. For residential property constructed prior to 1978, when effective, Buyer and Seller are required to sign a lead-based paint disclosure form. C.A.R. Form LPD-14 when applicable, shall satisfy this requirement.
7. Mello Roos Notice. The Property is included within the boundaries of Community Facilities District No. 3 for the City of Fresno. The Property was subject to an assessment for the purpose of repayment of Public Facilities Improvement Bonds issued for Community Facilities District No. 3. The bonds have been paid in full.

**EXHIBIT E**  
**DESCRIPTION OF SHELL IMPROVEMENTS**

1. Type V-N, sprinklered building.
2. Cal Green compliant shell.
3. Reinforced concrete waffle slab with methane barrier and venting system.
4. Wood frame exterior walls and roof structure.
5. 60 mil single ply roof membrane.
6. Low E rated exterior glass system
7. R-19 exterior wall insulation and R-30 roof insulation.
8. One entry door in Cal Green compliant glass and glazing system.
9. Gas stubbed into building.
10. 4" Sewer and 2" water main run through building.
11. Mechanical platforms set on roof ready to receive hvac units.
12. Fire sprinkler system for shell, ready for future tenant improvement ceiling drops.
13. 1000 amp electrical main service in enclosed electrical room.
14. Shell exterior soffit lighting wired to building house panel.
15. 5kw solar system installed on the roof.
16. Four (4) HD security cameras mounted on the exterior of the building connected to an 8 channel NVR system



Building On A Foundation Of Excellence!

March 9, 2016

Brett Fugman  
Fortune Associates  
680 W. Shaw Ave., #200  
Fresno, CA 93704

Re: Boardwalk at Palm Bluffs – Buildings D, E & F Prevailing Wage

Dear Mr. Fugman,

A probable cost for performing the above referenced buildings at Boardwalk at Palm Bluffs amounted to an add of \$807,776.00 based on the State of CA prevailing wage rates. Please keep in mind that this is for planning purposes only and that some subcontractors would and/or could change depending on the trade. The addition only encompasses the labor and not materials associated with each trade.

If this option is chosen, revised bids would have to be acquired in order to properly reflect the associated change.

If you have any questions please do not hesitate to contact me at (559) 449-9090 or by email at [jonwebb@targetconstructors.com](mailto:jonwebb@targetconstructors.com).

Sincerely,  
TARGET CONSTRUCTORS, INC.

Jonathan Webb  
Estimator

Attached: TCI Spreadsheet

40405 Brickyard Drive, #110  
Madera, CA 93636  
Phone: 559/449-9090 FAX: 559/449-9191  
License Number: 520198



# TARGET CONSTRUCTORS, INC.

## PROBABLE COST

PROJECT: BOARDWALK AT PALM BLUFFS (BLDGS D, E, F)

LOCATION: FRESNO, CA

DATE: 3/9/2016

CODE	CATEGORY	ADD Prevailing Wage \$
	Survey	2,800
	Building Venting	7,043
	Building Concrete/Reinforcing Steel	6,750
	Structural Steel / Misc Metals	0
	Rough Carpentry	339,300
	Finish Carpentry	10,000
	Insulation	5,372
	Roofing (single ply 60 mil w/1/4" dens deck)	23,720
	Roof Consulting	0
	Sheet Metal	18,000
	Metal Roofing	6,000
	Caulking	1,250
	Roof Hatch / Ladder-Up	0
	Doors, Frames & Hardware	0
	Aluminum Storefront	10,195
	Lath & Plaster	183,333
	Drywall	2,250
	Painting	5,706
	Address Signs	0
	Signs Code Required	0
	Fire Extinguishers	0
	Knox Box	0
	Plumbing	50,000
	HVAC (Curbs)	5,000
	Fire Sprinklers	22,708
	Electrical	26,618
	Solar	15,147
	Sub Total	741,192
	Fixed Cost	20,502
	Overhead & Profit	38,085
	General Liability Insurance	7,998
	Total	807,776

Brian Decker BRE #01029450  
President | Fresno/Bakersfield/Central California Coast  
Beau Plumlee BRE #01269167  
Senior Vice President/Principal  
7485 North Palm Avenue, Suite 110  
Fresno, CA 93711

**Colliers  
International**

# Memo

**To:** Donald Kendig, Retirement Administrator

**From:** Brian Decker and Beau Plumlee

**Date:** March 10, 2016

**Re: Boardwalk Purchase Analysis**

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Don-

You have asked us to give you a general analysis of costs and/or cash outlays as they relate to the purchase of the 3 buildings in the Boardwalk at Palm Bluffs development. This analysis follows the receipt of the attached estimate from the developer's contractor, Target Construction, when factoring in California prevailing wage

The added cost for this is \$807,776. With the added prevailing wage cost, the total purchase price for the 3 buildings would be \$7,003,956.00, or \$251.50 per square foot of building shell.

As we have discussed, the 3 buildings would include two to occupy for FCERA's current office needs and 1 for future growth, which would initially be leased out to a tenant or multiple tenants for investment purposes. Buildings E and F, both 9,184 square feet, for a total square footage of 18,368 square feet, would be FCERA occupied buildings, and Building D (9,480 square feet) would be leased to a Tenant.

While we can pinpoint the shell costs inclusive of the prevailing wage premium, we can only estimate the tenant improvement costs since we don't have final floor plans for the FCERA occupied buildings and a hard bid from a contractor. This should be done prior to the end of the due diligence period, but for now we'll use \$100.00 per square foot as the number for our cost analysis.

Purchase and development costs for the FCERA occupied buildings are estimated as follows:

<b>Shell Buildings Purchase (18,368 square feet x \$251.50/sf)</b>	<b>\$4,619,550</b>
<b>Tenant Improvement Cost (18,368 sf x \$100.00)</b>	<b><u>\$1,836,800</u></b>
<b>Total Purchase and Development Cost for Buildings E&amp;F</b>	<b>\$6,456,350</b>

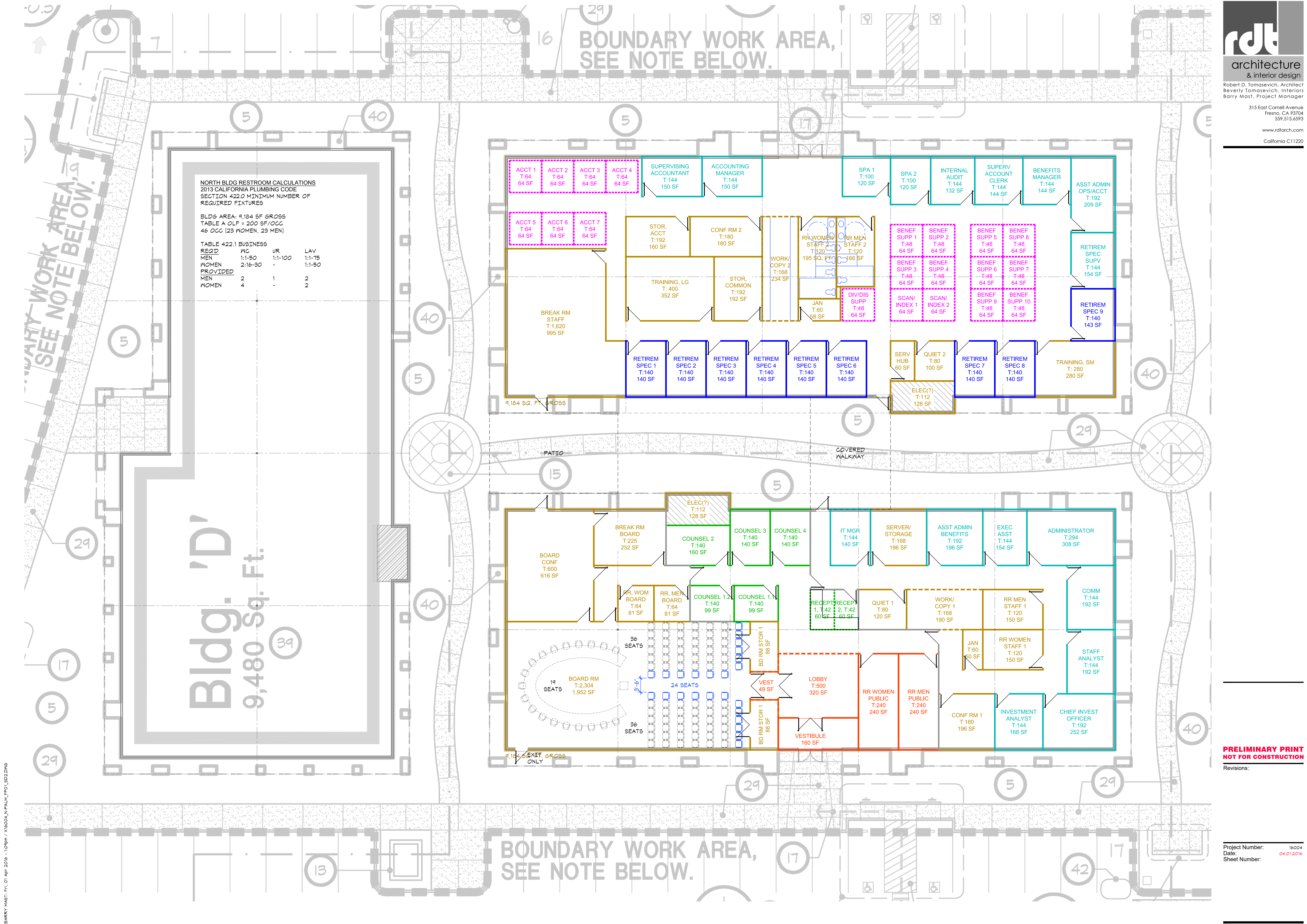
Operating expenses (or occupancy costs) will vary, but our estimation would be somewhere in the \$.55 per square foot range, or \$10,100 per month, or \$176,332 per year. This estimated total would include all operating expenses, including premises utilities and janitorial, but does not include property taxes, which we understand FCERA to be exempt from.

The third building, for future growth, would be leased to an outside Tenant or multiple tenants. While the shell cost would remain the same, we would be providing the tenant or tenants an improvement allowance consistent with what is being offered with other buildings in the market. We would anticipate this allowance being \$50.00 per square foot. Therefore, the purchase and development cost of Building D are estimated to be:

<b>Shell Building Purchase (9,480 square feet x \$251.50/sf)</b>	<b>\$2,384,220</b>
<b>Tenant Improvement Cost (9,480 square feet x \$50/sf)</b>	<b><u>\$474,000</u></b>
<b>Total Purchase and Development Cost for Building D</b>	<b>\$2,858,220</b>

Market rents for this area and this type of office building would typically be in the \$1.75 per square foot range on a Triple Net basis, whereby the Tenant is responsible for all operating expenses. Based upon this rent number, the building would generate \$199,100 in annual rent for an estimated 6.97% cash on cash return if the lease is an absolute triple net lease, with no cost obligations or capital improvements that would be FCERA's responsibility. It would be expected that the lease would include annual rental increases between 2 and 3%, so that return would increase each year of the lease.

**Total Purchase and Development Costs for Buildings D, E and F \$9,314,570**



**NORTH BLDG RESTROOM CALCULATIONS**  
 2013 CALIFORNIA PLUMBING CODE  
 SECTION 422.0 MINIMUM NUMBER OF  
 REQUIRED FIXTURES

BLDG AREA: 9,184 SF GROSS  
 TABLE A OLF = 200 SF/OCC  
 46 OCC (23 WOMEN, 23 MEN)

TABLE 422.1 BUSINESS			
REQ'D	AC	UR	LAV
MEN	1:1-50	1:1-100	1:1-75
WOMEN	2:16-30	-	1:1-50
PROVIDED			
MEN	2	1	2
WOMEN	4	-	2

PRIMARY WORK AREA, SEE NOTE BELOW.

BOUNDARY WORK AREA, SEE NOTE BELOW.

**PRELIMINARY PRINT**  
 NOT FOR CONSTRUCTION

Revisions:

Project Number: 16004  
 Date: 04.01.2016  
 Sheet Number:

BARRY.MAST: FRI, 01 Apr 2016 - 1:09pm // X:\16004\_N\PAK\_FF01\_BPD2.DWG