



Board of Supervisors Memorandum

July 5, 2016

**Final Relocation of 97 E. Congress Tenants to Accommodate Caterpillar
Surface Mining and Technology Division and
Relocation and Second Amendment to the Lease, including Sale of 160 N. Stone, to the
American Indian Association of Tucson, Inc., doing business as the Tucson Indian Center**

Introduction

As you know, the County and other entities have negotiated with the Caterpillar Surface Mining and Technology Division to consolidate and relocate their operations to Tucson, Arizona. They have selected 97 E. Congress as their interim headquarters, pending development of a permanent facility located in the Rio Nuevo Multipurpose Facilities District within the next four years. The County has also made available office space in the Bank of America Building for additional staff relocations for Caterpillar, should this space be necessary. In total, approximately 60,000 square feet of County-owned downtown office space has been reserved for Caterpillar's use within the next 12 months.

Caterpillar will begin their relocation on September 1, 2016 into the top two floors of 97 E. Congress, while the bottom two floors continue with renovation and availability beginning January 1, 2017.

The 97 E. Congress building was originally occupied by the Regional Flood Control District (RFCD), Teen Court, Pima Vocational High School (PVHS), and the Tucson Indian Center (TIC). The County acquired 97 E. Congress primarily for County use. TIC was a building tenant at the time of County purchase, and the County has continued to lease office space to TIA.

The RFCD has been relocated to the Public Works Building; PVHS has been relocated to the El Pueblo Community Center, in a County-owned building; and Teen Court is in the process of relocating to 160 N. Stone Avenue with a simple transfer and continuation of their lease terms. Teen Court and PVHS's relocations should be completed this month.

Tucson Indian Center Relocation

The County has initially discussed relocating TIC to 160 N. Stone at our cost and simply continuing the terms of their existing lease with the County at 97 E. Congress. TIC, however, would prefer to own 160 N. Stone; and because the County has no continuing long-term use or need for this building, a sale would also benefit the County.

TIC is a nonprofit organization, providing important services to the entire community, with an emphasis on providing services to Native Americans. The County has had a positive long-

The Honorable Chair and Members, Pima County Board of Supervisors
Re: Final Relocation of 97 E. Congress Tenants to Accommodate Caterpillar Surface Mining and Technology Division; Relocation and Second Amendment to the Lease, including Sale of 160 N. Stone to the American Indian Association of Tucson, Inc., doing business as the Tucson Indian Center

July 5, 2016

Page 2

term relationship with TIC and believes continuation of their charitable community services is of significant benefit to the community and the Native American population. Hence, the County desires to sell the 160 N. Stone building to the nonprofit TIC with unanimous Board of Supervisors approval.

Second Amendment to Lease and Financial Terms and Conditions of Sale

The County purchased 160 N. Stone in August 2012 for \$635,000. The primary purpose of the acquisition was to provide for Justice Court courtrooms and support services during final construction and development of the Public Service Center. The Public Service Center was completed, and all Consolidated Justice Courts were relocated to the new facility in January 2015. Previously, Justice Courts and support services were housed in leased space within La Placita Village, at an annual rent of approximately \$382,000. Hence, over the 28 months 160 N. Stone was used in lieu of La Placita Village, the County saved \$890,000 in rent. Since acquisition of 160 N. Stone, the County has spent \$248,000 in maintenance and operating expenses, up to and through the current fiscal year. Therefore, our net savings of \$642,000 has essentially paid for 160 N. Stone.

The County had 160 N. Stone appraised by Valbridge Property Advisors. The appraisal, dated October 12, 2015, indicates the property's current estimated market value is \$1,375,000. TIC has agreed to purchase 160 N. Stone at a cost of \$1,507,500, which includes reimbursement to the County for an expenditure of up to \$270,000 to make certain tenant improvements to 160 N. Stone to adapt it for TIC's programming needs. Therefore, the net purchase price of the building is \$1,237,500, or 90 percent of the current appraised value as allowed by Statute.

The building will be paid for by TIC in a term purchase over eight years, with the unpaid balance of the purchase price earning the County interest at 3.5 percent. Based on our current fund balance and cash balances in other accounts, the current interest on County cash investments in the Arizona long-term Local Government Investment Pool is 1.4 percent; hence, it is financially advantageous to the County to finance the sale to TIC at the interest rate of 3.5 percent.

In addition to all of the terms and conditions of the Second Amendment to Lease, final sale will also require TIC to maintain their nonprofit status and continue to provide the same level of community social services and support currently provided.

The Honorable Chair and Members, Pima County Board of Supervisors
Re: Final Relocation of 97 E. Congress Tenants to Accommodate Caterpillar Surface Mining and Technology Division; Relocation and Second Amendment to the Lease, including Sale of 160 N. Stone to the American Indian Association of Tucson, Inc., doing business as the Tucson Indian Center

July 5, 2016

Page 3

Recommendation

I recommend the Board of Supervisors approve the Second Amendment to Lease with the American Indian Association of Tucson, Inc., doing business as Tucson Indian Center, to facilitate final improvements to 97 E. Congress for the Caterpillar Surface Mining and Technology Division and to provide for the American Indian Association of Tucson, Inc. to purchase the County-owned facility at 160 N. Stone Avenue in the amount of \$1,507,500 with the County providing, at a cost not to exceed \$270,000, tenant improvements to 160 N. Stone Avenue to accommodate the relocation of the Tucson Indian Center from 97 E. Congress to 160 N. Stone Avenue.

Respectfully submitted,



C.H. Huckelberry
County Administrator

CHH/anc – June 30, 2016

Attachment

c: Tom Burke, Deputy County Administrator for Administration
Regina Nassen, Deputy County Attorney
Lisa Josker, Director, Facilities Management

PIMA COUNTY FACILITIES MANAGEMENT DEPT. TENANT: AMERICAN INDIAN ASSOCIATION OF TUCSON, INC., d/b/a Tucson Indian Center, an Arizona nonprofit corporation ADDRESS OF CURRENT PREMISES: 97 E. Congress ADDRESS OF NEW PREMISES: 160 N. Stone Ave. LEASE AMENDMENT NO.: TWO (2) REVENUE CONTRACT NO: CTN-FM-CMS-141651-01	
--	--

ORIGINAL LEASE TERM: 1/1/2009 – 12/31/2013	ORIGINAL RENT: \$996,981.75
TERMINATION DATE PRIOR TO AMEND: 12/31/2018	RENT PRIOR AMEND: \$1,113,844.25
TERMINATION DATE THIS AMEND: N/A	RENT THIS AMEND: N/A

SECOND AMENDMENT TO LEASE

1. Background and Purpose.

- 1.1. Tenant has been occupying space in the building located at 97 E. Congress, Tucson, Arizona (the "Congress Building"), since 2003. Tenant's original lease was with the prior owner of the building, the James C. Olson Trust.
- 1.2. Upon expiration of that original lease, Tenant and Landlord entered into a lease dated January 6, 2009, which was subsequently amended by that certain First Amendment to Lease for 97 E. Congress Street, Suite #100 (collectively "the Lease"). The current term of the Lease ends December 31, 2018. Tenant has one remaining option to extend the Lease for a five-year period, to December 31, 2023. Tenant occupies approximately 9,829 rentable square feet of space in the Congress Building. Base Rent under the Lease is currently \$18,973.61 per month.
- 1.3. Landlord also owns a parcel of property improved with a three-story building located at 160 N. Stone Avenue, Tucson, Arizona (the "Stone Building"), which is described and depicted on the attached Exhibits A and A-1 (the "Property"). The Stone Building contains approximately 19,726 rental square feet of space. Landlord is leasing 2,947 rentable square feet of space on the third floor to Pima Prevention Partnership, an Arizona non-profit corporation ("PPP"), as illustrated on Exhibit B. The second floor of the Stone Building is shell space.
- 1.4. Landlord has agreed to lease the Congress Building to a new tenant. In order to induce Tenant to move out of the Congress Building, Landlord has offered to provide the remaining space in the Stone Building to Tenant as the new "Premises" under the Lease (the "new Premises"), make certain improvements to that space, and relocate Tenant at Landlord's expense.

- 1.5. Tenant has expressed an interest in purchasing the Property. Landlord has authority, under A.R.S. § 11-251(9), to sell "any county property for a specific use to any solely charitable, social or benevolent nonprofit organization incorporated or operating in this state," without holding a public auction, with the unanimous consent of the Board of Supervisors. The value of the Property has been appraised at \$1,375,000.
2. **Tenant Improvements; Furnishings.** Landlord will make and pay for improvements ("Tenant Improvements") to the new Premises, at a cost not to exceed \$270,000 (the "TI Budget"), in order to configure the space to meet Tenant's programming needs.
 - 2.1. Phases. The Tenant Improvements will be done in phases as mutually agreed to by Landlord and Tenant, including improvements and reconfigurations to the existing improved space on the first and third floors of the Stone Building and the build-out of the second-floor space. The first phase will consist of changes necessary to accommodate Tenant's immediate programming needs to ensure that Tenant can vacate the Congress Building and move into the new Premises no later than September 1, 2016.
 - 2.2. Approval of Plans. Tenant and Landlord will work closely together and cooperate fully so that the Tenant Improvements can be designed and completed within the TI Budget, and as soon as reasonably possible, the goal being to complete as much of the Tenant Improvements as possible before Tenant moves into the new Premises. Landlord will prepare preliminary plans and specifications as soon as reasonably possible after meeting with Tenant to discuss Tenant's space needs. Tenant will review the plans immediately and either approve them or provide detailed comments regarding any desired changes.
 - 2.3. Construction. Once the preliminary plans are agreed upon, Landlord will cause the Tenant Improvements to be completed in a timely and workmanlike manner. It is anticipated that some of the work will need to be done after Tenant moves into the new Premises. Any remaining Tenant Improvement work done thereafter will be accomplished by Landlord as soon as possible and in a manner that creates as little disruption to Tenant's operations as reasonably practicable, but this will not require Landlord to confine the work to evenings or weekends or take other steps that would cause the total cost of the Tenant Improvements to exceed the TI Budget. Tenant may inspect the Tenant Improvement work as it is being carried out.
 - 2.4. Furnishings. There are some existing furnishings in the Stone Building, which are surplus property of Landlord. Landlord will remove any furnishings that Tenant does not wish to utilize. The remaining furniture will, upon Tenant's relocation, become the property of Tenant.
3. **Relocation.**
 - 3.1. Timing. Tenant will relocate to the new Premises upon substantial completion of the agreed-upon first phase of the Tenant Improvements. Every effort will be made to relocate Tenant by September 1, 2016. The move will be done at a time and in a manner that causes the least inconvenience to Tenant as reasonably practicable. Landlord shall provide the new Premises to Tenant in a clean, safe and good working order condition and repair.

- 3.2. Landlord's Expense. Landlord will move Tenant's property, including all supplies, furnishings, equipment, and any fixtures that Tenant is allowed under the Lease to remove, from the Congress Building to the Stone Building, at Landlord's sole expense. This includes uninstalling and reinstalling any fixtures, fixing any damage done to the Congress Building as a result of any fixture removal, and setting up equipment in the new Premises.
 - 3.3. Damage to Tenant's Property. If any item of Tenant's property is materially damaged in the move, Landlord will replace it. If the specific item or brand is not reasonably available, Landlord may substitute a different item or brand that is at least as valuable as the damaged item, and at least as functional.
 - 3.4. Rent Credit. Tenant will receive a credit of \$1,512.89 for each day that the relocation process prevents it from being able to conduct its full and normal business in either building.
4. **Amended Terms**. The following changes to the Lease will take effect as of the date that Tenant begins moving into the Stone Building.
 - 4.1. Redefined Terms. Capitalized terms in the Lease will have the following new meanings:
 - 4.1.1. The "Building" is the Stone Building.
 - 4.1.2. The "Premises" is the interior of the Stone Building, except for the area subject to the PPP Lease.
 - 4.1.3. "Tenant's Share" is 83.5%.
 - 4.2. Shared Space. The third floor of the Stone Building includes a conference room approximately 621 square feet in size. It is included in the new Premises, but Tenant must share the use of this space with PPP on an approximately equal basis. Tenant will use its best efforts to reach an agreement with PPP regarding the process for scheduling use of the conference room.
5. **Remaining Lease Terms Unchanged**. Except as modified above, all of the terms and conditions of the Lease will remain in full force and effect, including the amount of the Base Rent and the Base Year Expense, until such time as the Lease is extinguished by merger upon closing of the purchase and sale of the Property as provided below.
6. **Sale of Property**. Landlord and Tenant will negotiate in good faith towards entry into a purchase and sale contract, in a form reasonably acceptable to both, providing for the sale of the Property to Tenant and containing the material terms set forth in Exhibit C. If, however, no purchase and sale contract is entered into on or before August 1, 2016, then at the election of either party this Second Amendment will be null and void and of no force and effect, with Tenant retaining all of its rights under the current Lease with respect to its tenancy at the Congress Building. In addition, if the purchase and sale has failed, though no fault or delay on the part of Tenant, to close by November 1, 2016, then at Tenant's election this Second Amendment will be null and void, and of no force and effect, with Tenant retaining all of its rights under the current Lease with respect to its tenancy at the Congress Building.

7. **Authority of Procurement Director.** Landlord's Procurement Director is hereby authorized to approve and execute the final form of purchase and sale agreement between Landlord and Tenant and any and all necessary or appropriate closing documents for consummation of the purchase and sale transaction.

REMAINDER OF PAGE INTENTIONALLY BLANK

SIGNATURE PAGE FOLLOWS

LANDLORD:

PIMA COUNTY, a political subdivision of
the State of Arizona

TENANT:

AMERICAN INDIAN ASSOCIATION OF
TUCSON, INC., an Arizona non-profit corporation

Sharon Bronson, Chair, Board of Supervisors

Date _____

Rodney Palimo Sr., Chairman

Date _____

ATTEST:

Robin Brigode, Clerk of the Board

APPROVED AS TO FORM:



Deputy County Attorney
REGINA NASSEN

APPROVED AS TO CONTENT:



Lisa Josker, Facilities Management Director

Exhibit A

All that part of Lot 5, in Block 194, CITY OF TUCSON, Pima County, Arizona, according to the official survey, field notes, and map as made and executed by S.W. Foreman and approved and adopted by the Mayor and Common Council of said city (then Village) of Tucson, on June 26, 1872, a certified copy of which map is of record in the office of the County Recorder of Pima County, Arizona, in Book 3 of Maps and Plats at page 70 thereof, described as follows, to-wit:

Beginning at the Northwest corner of said Lot 5 in said Block 194;
Run thence Southerly along the Westerly line of said Lot 5, a distance of 60.06 feet to a point;
Run thence Easterly parallel with the North line of said Lot 5, a distance of 62.91 feet, more or less, to a point in the East line of that certain property conveyed to the Arizona Trust Company by the Pioneer Hotel, Inc., by Deed dated April 2, 1937;
Run thence Northerly along the East line of said property as described in said Deed from Pioneer Hotel, Inc., to the Arizona Trust Company to a point in the North line of said Lot 5;
Run thence Westerly along the North line of said Lot 5 to the PLACE OF BEGINNING.

TOGETHER WITH An easement for the purpose of ingress and egress over that part of Lot 5 lying East of the property herein described.

AND

And all that part of Lot 6, in Block 194, CITY OF TUCSON, Pima County, Arizona, according to the official survey, field notes, and map as made and executed by S.W. Foreman and approved and adopted by the Mayor and Common Council of said city (then Village) of Tucson, on June 26, 1872, a certified copy of which map is of record in the office of the County Recorder of Pima County, Arizona, in Book 3 of Maps and Plats at page 70 thereof, described as follows, to-wit:

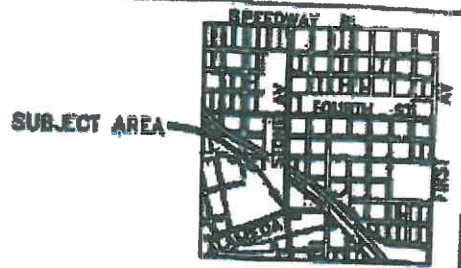
Beginning at the Northeast corner of said Lot 6;
Run thence South $9\frac{1}{4}$ degrees East, 60.06 feet to a point;
Run thence Westerly 71.94 feet to a point in the West line of said lot which point is South $6\frac{1}{4}$ degrees East, 60.06 feet from the Northwest corner of said lot;
Thence North $6\frac{1}{4}$ degrees West along the West line of said lot, 60.06 feet to the Northwest corner of said lot;
Thence Easterly along the North line of said lot, 69.3 feet to the PLACE OF BEGINNING.

Sometimes unofficially known as Subdivision 20 of said Lot 6 in said Block 194 of the City of Tucson and all right in and to that certain easement given by Arizona Trust Company to Robert H. Forbes, dated September 7, 1937, and recorded in the office of the County Recorder of Pima County, Arizona, in Book 62 of Miscellaneous Records at page 100.

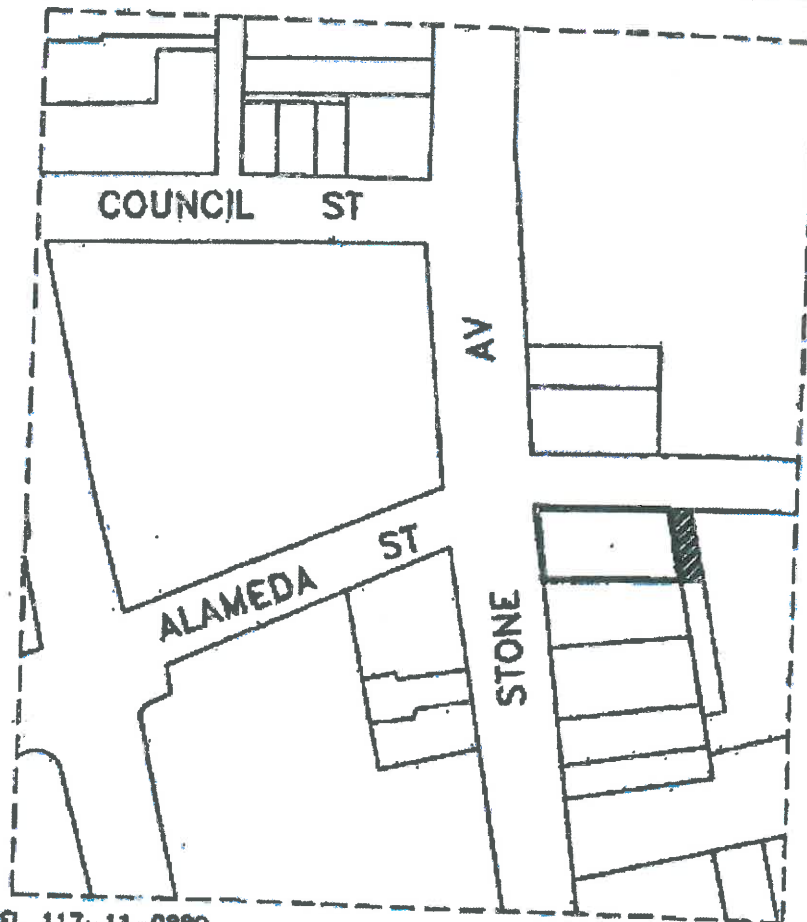
TOGETHER WITH an easement for the purpose of ingress and egress over that part of Lot 5 lying East of the property herein described as set forth in instrument recorded October 27, 1930 in Docket 295, page 190.

EXHIBIT A-1

SECTION 12
TOWNSHIP 14 SOUTH
RANGE 13 EAST



SECTION 12
TOWNSHIP 14 SOUTH
RANGE 13 EAST
PIMA COUNTY, ARIZONA



PARCEL 117-11-0880



INGRESS/EGRESS. EASEMENT



12011

PIMA COUNTY DEPARTMENT OF TRANSPORTATION
ENGINEERING INFORMATION MANAGEMENT

DRAWING NOT TO SCALE

DRAWN BY: L. SAGARNAGA

DATE: JUNE 2012

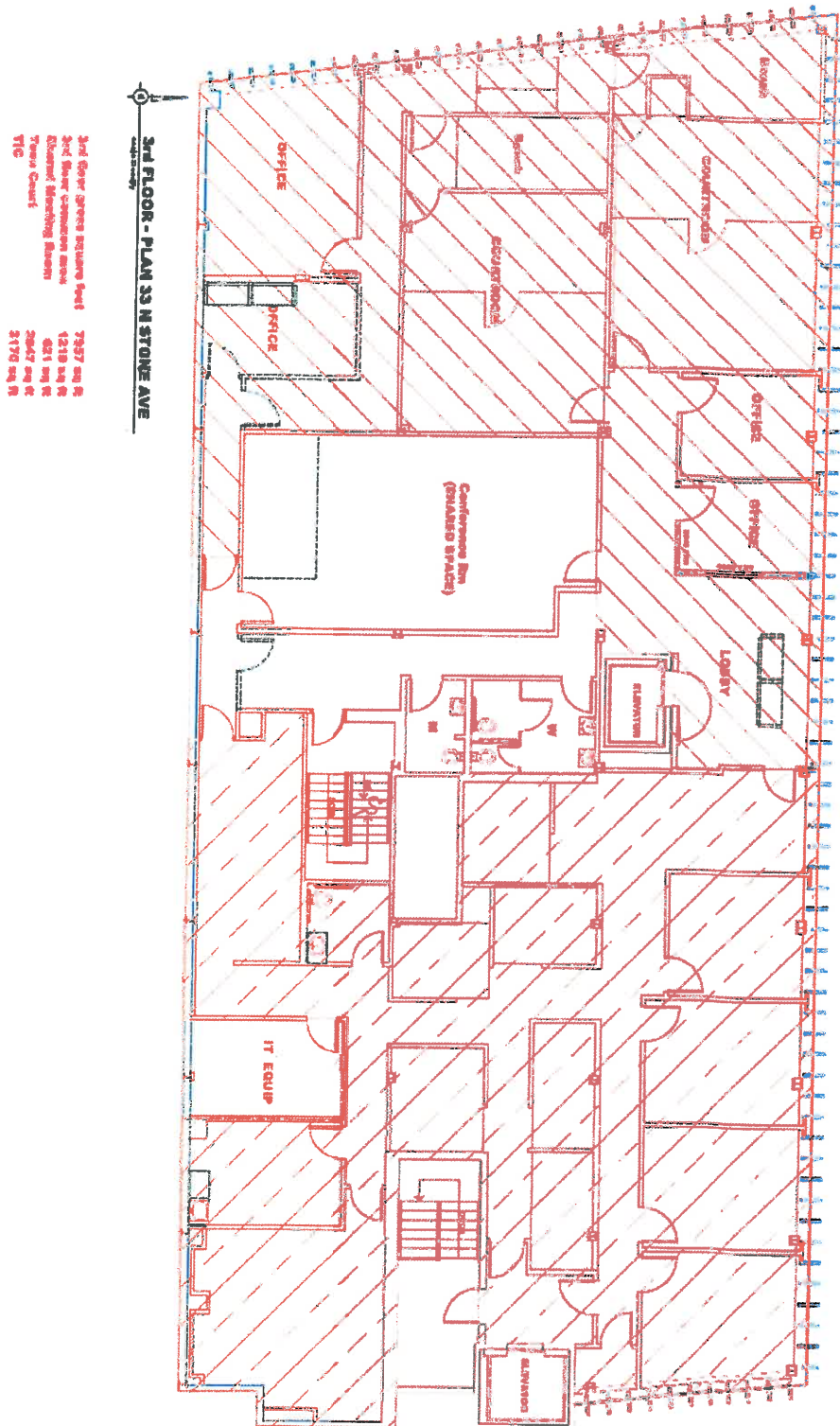
EXHIBIT B

EXHIBIT C

- Purchase Price:** \$1,507,500
- Title:** Conveyance will be by special warranty deed, subject to all matters of record and all matters that an inspection of the Property would reveal, but free of any monetary lien or encumbrance other than the Deed of Trust referenced below.
- Title Review:** Landlord will cause the Title Company to issue a preliminary title report for Tenant's review and will cause to be removed prior to Closing any material exceptions to title to which Tenant objects.
- Lease and License:** The sale will be subject to the PPP Lease and to a license in favor of Lutheran Social Services of the Southwest for maintenance of a directional sign on the east-facing wall of the Stone Building. Copies of these two agreements have been provided to Tenant.
- Inspections:** Landlord will provide Tenant access to the Property to conduct any desired inspections of its physical and environmental condition at any time after execution of the Second Amendment and prior to Tenant's relocation into the Stone Building as provided in the Second Amendment. If such inspections reveal a material adverse environmental condition on the property, a material structural defect in the Building, or a material inadequacy in a major building system, and Landlord does not agree to cause the condition or defect to be cured, Tenant may terminate the purchase and sale agreement and declare the Second Amendment to be null and void.
- Carryback Financing:** Tenant will execute and deliver at closing a promissory note, in favor of Landlord, in the principle amount of the Purchase Price (the "Note"), with interest accruing at the annual rate of 3.5%. The Note will provide for quarterly interest-only payments for a period of 5 years, monthly principal and interest payments for the next 3 years based on a 30-year amortization, and a balloon payment for the entire principal amount remaining on the 8th year anniversary of the Note. The Note shall be freely prepayable by Tenant.
- Security:** The Note will be secured by a non-recourse deed of trust.
- Representations:** The contract will contain standard representations and warranties from the Landlord as seller based on the actual knowledge of Landlord. In addition, Landlord will warrant all in-place equipment and systems to be in good and working condition and repair for a period of 120 days from and after the Closing Date, but taking into account the age of the equipment and normal wear and tear.
- Closing & Title Policies:** Closing will take place no later than 15 days after the later to occur of (1) Tenant's relocation to the new Premises and (2) completion of the Tenant Improvements. Fidelity National Title will act as escrow agent and title company and will issue a standard owner's policy of title

insurance to Tenant, and a lender's policy to Landlord, both in the amount of the Purchase Price, at Closing.

Closing Costs: The parties will split customary closing costs. Landlord will pay for the title policies. Rents and assessments will be prorated as of Closing per customary practice.

Broker Fees: Neither party will retain a broker or pay broker fees.