



County of Los Angeles CHIEF EXECUTIVE OFFICE

Kenneth Hahn Hall of Administration
500 West Temple Street, Room 713, Los Angeles, California 90012
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WILLIAM T FUJIOKA
Chief Executive Officer

Board of Supervisors
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First District

MARK RIDLEY-THOMAS
Second District

ZEV YAROSLAVSKY
Third District

DON KNABE
Fourth District

MICHAEL D. ANTONOVICH
Fifth District

March 3, 2009

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012

Dear Supervisors:

AMENDMENTS TO RANCHO BUSINESS CENTER - PHASE I, II AND IIIA GROUND LEASES AND DEVELOPMENT AGREEMENTS AND MUTUAL WAIVER AND RELEASE (FOURTH DISTRICT) (3 VOTES)

SUBJECT

Approval of the amendments to the Phase I, Phase II, and Phase IIIA Ground Leases and Development Agreements will clarify the ground lease language for agreements with FDC Partners, L.P. Approval of the Mutual Waiver and Release will allow the County and Tenant to resolve the percentage rent dispute, which has been going on since 1997.

IT IS RECOMMENDED THAT YOUR BOARD:

1. Find that these lease amendments are exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of the State CEQA Guidelines.
2. Approve and instruct the Chairman to sign the Fourth Amendment to the Rancho Business Center Phase I First Amended and Restated Ground Lease and Development Agreement (ground lease) to clarify the lease language.
3. Approve and instruct the Chairman to sign the Fourth Amendment to the Rancho Business Center Phase II First Amended and Restated Ground Lease and Development Agreement (ground lease) to clarify the lease language.
4. Approve and instruct the Chairman to sign the Second Amendment to the Rancho Business Center Phase IIIA Ground Lease and Development Agreement (ground lease) to clarify the lease language.

"To Enrich Lives Through Effective And Caring Service"

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Intra-County Correspondence Sent Electronically Only**

5. Approve and instruct the Chairman to sign the Mutual Waiver and Release between FDC Partners, L.P. and the County to waive and release each other from any claims or disputes arising out of the 2006 financial audit.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

The County owns property on the site of the Rancho Los Amigos Medical Center comprising approximately 210 acres located in the cities of Downey and South Gate. The County entered into several long-term leases with FDC Partners, L.P., formerly known as Fremont Rancho, Ltd., commencing in January 1990 (Phases I and II) and in December 1998 (Phase IIIA), to develop and sublease approximately 41 acres of the property that was not required for Medical Center operations. The County entered into these long-term ground leases of the surplus property as a long term revenue source.

The purpose of the recommended actions is to clarify the ground lease language by amending the definition of Gross Rents Received, the accounting of Percentage Rent, and the length of time for records retention. The existing language caused confusion and a dispute regarding how much rent was owed to the County. The recommended actions also waive and release the parties from rent disputes related to issues that occurred prior to June 30, 2006, other than the settlement amount, based on these issues. Signing the Mutual Waiver and Release will allow the parties to start calculating rent from an agreed-upon start point. Clarifying the ground lease language and releasing the parties from any prior disputes will avoid future confusion on the determination of rent to be paid to the County, as Ground Lessor.

IMPLEMENTATION OF STRATEGIC PLAN GOALS

The Countywide Strategic Plan directs that we strengthen the County's fiscal capacity or Fiscal Responsibility (Goal 4). The proposed ground lease amendments and Mutual Waiver and Release support this goal by providing a clear definition of the rental payments that are due to the County under the Rancho Business Center Phase I, II and IIIA ground leases.

FISCAL IMPACT/FINANCING

None to the County. Rental income will not change as a result of these amendments.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

The Auditor-Controller completed the first audit of the ground leases between the County and FDC Partners (Phase I, II and IIIA). It was requested that the outside auditors calculate FDC Partners' Minimum Rent, Adjusted Minimum Rent and Percentage Rent for each lease agreement from inception to June 30, 2006. The final audit report, that was received on July 9, 2007, covered the period of January 1, 1990

through June 30, 2006 for the Phase I and Phase II ground leases and covered the period of December 1, 1998 through June 30, 2006 for the Phase IIIA ground lease.

The independent Certified Public Accountant that conducted the audit determined that FDC Partners underpaid the County Minimum Rent and Adjusted Minimum Rent in the amount of \$9,111 from the inception of the contracts through June 30, 2006. FDC Partners have since reimbursed the County the Minimum Rent and Adjusted Minimum Rent underpayment. The outside auditor also determined that FDC Partners underpaid the County Percentage Rent in the amount of \$487,465. FDC Partners indicated that they underpaid Percentage Rent due to a misunderstanding of the ground lease language. Since the statute of limitations on enforcement of a contract is four years, the Mutual Waiver and Release provides that upon your Board's approval, the County will accept \$226,096 for the last four years of the audit period (July 2002 through June 2006) in compromise of the total amount owed for the underpaid Percentage Rent. To avoid future underpayment of Percentage Rent due to a misinterpretation of the lease language, we are recommending the lease amendments to clarify the definition of Gross Rents Received, the accounting of Percentage Rent, and to reduce the length of time for records retention to a maximum of seven years.

Furthermore, the attached amendments to the ground leases state that we will conduct an audit on a regular basis. Our intention is to conduct that audit every three years. Conducting an audit every three years will allow us time to determine in a timelier manner if there are any issues with regard to the calculation of the ground rent.

The lease amendments and Mutual Waiver and Release have been approved as to form by County Counsel.

ENVIRONMENTAL DOCUMENTATION

As the proposed ground lease amendments only clarify certain financial and recordkeeping provisions of the ground leases, pursuant to Section 15061(b)(3) of the State CEQA Guidelines, it can be seen with certainty that there is no possibility that the lease amendments will have a significant effect on the environment, and therefore, your approval of the proposed ground lease amendments is not subject to CEQA.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

The proposed ground lease amendments will clarify the interpretation of Gross Rents Received, the accounting of Percentage Rent, and the length of time the records need to be retained.

Honorable Board of Supervisors
March 3, 2009
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CONCLUSION

Please return two originals of each executed ground lease amendment, Mutual Waiver and Release, one adopted Board letter, and two certified copies of the Minute Order to the Chief Executive Office, Asset Planning and Strategy Section.

Respectfully submitted,



WILLIAM T FUJIOKA
Chief Executive Officer

WTF:DL:JSE
MV:SVG

Attachments (4)

c: County Counsel
FDC Partners, L.P.

**FOURTH AMENDMENT TO
RANCHO BUSINESS CENTER - PHASE I
FIRST AMENDED AND RESTATED GROUND LEASE
AND DEVELOPMENT AGREEMENT**

This **FOURTH AMENDMENT TO RANCHO BUSINESS CENTER PHASE I FIRST AMENDED AND RESTATED GROUND LEASE AND DEVELOPMENT AGREEMENT** (this "Amendment") is entered into and made effective as of this 3RD day of MARCH 2009 between the COUNTY OF LOS ANGELES ("Landlord") and FDC PARTNERS, L.P., a California limited partnership, formerly known as FREMONT RANCHO, LTD., a California limited partnership ("Tenant").

RECITALS:

WHEREAS, Landlord and Tenant executed that certain Rancho Business Center Phase I First Amended and Restated Ground Lease and Development Agreement, dated March 27, 1990, as amended by that Amendment to First Amended and Restated Ground Lease and Development Agreement for Rancho Business Center Phase I, dated July 1, 1991, and by that Second Amendment to First Amended and Restated Ground Lease and Development Agreement for Rancho Business Center Phase I, dated March 17, 1992, and by that Third Amendment to First Amended and Restated Ground Lease and Development Agreement, dated May 4, 1995 (Collectively, the "Lease") for Rancho Business Center Phase I, more particularly described on attached Exhibit A; and

WHEREAS, Landlord and Tenant now desire to clarify the lease language by amending: the definition of Gross Rents Received, the accounting of Percentage Rent, and the length of time for records retention;

NOW, THEREFORE, for valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree to amend the Lease as follows:

1. Past Due Percentage Rent. No later than thirty (30) days from the effective date of this Amendment, Tenant shall pay Landlord \$221,470. Landlord agrees to accept payment of the above-mentioned rent to resolve all past due Percentage Rent owed through June 30, 2006 for both Phase I and Phase II.

2. Section 3.04 (a) of the Lease is hereby deleted in its entirety and replaced with the following:

"Gross Rents Received" shall be defined as any and all revenues received by Tenant for occupancy of the Property or any portion thereof by a subtenant excluding, however, (i) security deposits received and held by Tenant to which subtenants may properly resort upon expiration of any

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SUPPLEMENT
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sublease except to the extent applied as rent payments; (ii) amounts received from subtenants, whether or not characterized as rent or additional rent, for operating expenses and/or services rendered or goods provided by or on behalf of Tenant to such subtenants or allocated to subtenants paying gross rent or otherwise allocated to leaseable areas (whether or not leased), including but not limited to the following payments or allocations: (w) in respect of reasonable common area maintenance costs, property management fees (which fees for purposes of this paragraph shall be limited to 2-1/2% of gross income from the Property) and operating expenses for the Property, (x) for real estate taxes and assessments and such other taxes and assessments as subtenants are obligated to reimburse Tenant under their respective subleases or which are included in the gross rent payment of subtenants or which are otherwise allocated on a pro rata basis to leaseable space, (y) for insurance premiums and deductible amounts, and (z) any other costs and expenses incurred by Tenant in connection with the ownership, operation and management of the Property to the extent reimbursed by subtenants under the terms of their respective subleases or which are included in the gross rent payment of subtenants or which are otherwise allocated on a pro rata basis to leaseable space; and (iii) insurance proceeds, other than rental or business interruption insurance proceeds, and condemnation proceeds received by Tenant for or on behalf of subtenants. In addition, to clarify this section further, there shall be no deduction from Gross Rents Received for Minimum Rent or Adjusted Minimum Rent due or paid to the Landlord, or for Tenant's internal administrative overhead, administrative cost or expense of Tenant's business operation, such as, but without limitation to, salaries, wages, interest, collection, credit card and bad debt charges paid by Tenant."

3. Section 16.14 of the Lease is hereby amended by adding to the end of the subparagraph starting "No Later than the 25th day of each calendar month . . ." the following:

"Notwithstanding the foregoing, commencing with July 2009, the detailed statement showing Gross Rents Received no longer needs to be submitted to Landlord on a monthly basis. Instead, no later than the 25th of January and the 25th of July beginning with July 2009, Tenant shall render to Landlord a detailed statement showing Gross Rents Received during the preceding six (6) month period (e.g., July through December, and January through June, respectively), together with the monthly amount payable to Landlord as Percentage Rent with respect to such Gross Rents Received as elsewhere herein provided, and shall accompany same with remittance of amount so shown to be due. Tenant shall use the most recent six month statement to determine the monthly Percentage Rent due for the succeeding six month period."

5. Except as expressly amended by this Amendment, the Lease shall remain in full force and effect and is hereby reaffirmed.

COUNTY OF LOS ANGELES

FDC PARTNERS, L.P., a California limited partnership

By: *Don Knabe*
DON KNABE
Chairman, Board of Supervisors

By: FDC Associates, LLC, a California limited liability company, its General Partner

By: *[Signature]*
Stephen G. Hoy, Manager

ATTEST:

SACHI A. HAMAI, Executive Officer-
Clerk of the Board of Supervisors

By: *[Signature]*
F. Michael Krotz, Manager

By: *[Signature]*
Deputy
"Landlord"

By: *[Signature]*
J. O. Oltmans II, Manager
"Tenant"

APPROVED AS TO FORM:

RAYMOND G. FORTNER, JR.
County Counsel



I hereby certify that pursuant to Section 25103 of the Government Code, delivery of this document has been made.

By: *[Signature]*
Deputy County Counsel

SACHI A. HAMAI
Executive Officer
Clerk of the Board of Supervisors
By: *[Signature]*
Deputy

Exhibits:
A - Legal Description

ADOPTED
BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

#21

MAR 03 2009

Sachi A. Hamai
SACHI A. HAMAI
EXECUTIVE OFFICER

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SUPPLEMENT
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Exhibit A

LEGAL DESCRIPTION

PHASE I

Lot 1 of Tract No. 45367, in the City of Downey, County of Los Angeles, State of California, as per map recorded in book 1136, pages 54 through 60 inclusive of maps, in the Office of the County Recorder of said County.

**FOURTH AMENDMENT TO
RANCHO BUSINESS CENTER - PHASE II
FIRST AMENDED AND RESTATED GROUND LEASE
AND DEVELOPMENT AGREEMENT**

This **FOURTH AMENDMENT TO RANCHO BUSINESS CENTER PHASE II FIRST AMENDED AND RESTATED GROUND LEASE AND DEVELOPMENT AGREEMENT** (this "Amendment") is entered into and made effective as of this 320 day of MARCH 2009 between the COUNTY OF LOS ANGELES ("Landlord") and FDC PARTNERS, L.P., a California limited partnership, formerly known as FREMONT RANCHO, LTD., a California limited partnership ("Tenant").

RECITALS:

WHEREAS, Landlord and Tenant executed that certain Rancho Business Center Phase II First Amended and Restated Ground Lease and Development Agreement, dated March 27, 1990, as amended by that Amendment to First Amended and Restated Ground Lease and Development Agreement for Rancho Business Center Phase II, dated July 1, 1991, and by that Second Amendment to First Amended and Restated Ground Lease and Development Agreement for Rancho Business Center Phase II, dated March 17, 1992, and by that Third Amendment to First Amended and Restated Ground Lease and Development Agreement, dated May 4, 1995 (Collectively, the "Lease") for Rancho Business Center Phase II, more particularly described on attached Exhibit A; and

WHEREAS, Landlord and Tenant now desire to clarify the lease language by amending: the definition of Gross Rents Received, the accounting of Percentage Rent, and the length of time for records retention;

NOW, THEREFORE, for valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree to amend the Lease as follows:

1. Past Due Percentage Rent. No later than thirty (30) days from the effective date of this Amendment, Tenant shall pay Landlord \$221,470. Landlord agrees to accept payment of the above-mentioned rent to resolve all past due Percentage Rent owed through June 30, 2006 for both Phase I and Phase II.

2. Section 3.04 (a) of the Lease is hereby deleted in its entirety and replaced with the following:

"Gross Rents Received" shall be defined as any and all revenues received by Tenant for occupancy of the Property or any portion thereof by a subtenant excluding, however, (i) security deposits received and held by Tenant to which subtenants may properly resort upon expiration of any

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sublease except to the extent applied as rent payments; (ii) amounts received from subtenants, whether or not characterized as rent or additional rent, for operating expenses and/or services rendered or goods provided by or on behalf of Tenant to such subtenants or allocated to subtenants paying gross rent or otherwise allocated to leaseable areas (whether or not leased), including but not limited to the following payments or allocations: (w) in respect of reasonable common area maintenance costs, property management fees (which fees for purposes of this paragraph shall be limited to 2-1/2% of gross income from the Property) and operating expenses for the Property, (x) for real estate taxes and assessments and such other taxes and assessments as subtenants are obligated to reimburse Tenant under their respective subleases or which are included in the gross rent payment of subtenants or which are otherwise allocated on a pro rata basis to leaseable space, (y) for insurance premiums and deductible amounts, and (z) any other costs and expenses incurred by Tenant in connection with the ownership, operation and management of the Property to the extent reimbursed by subtenants under the terms of their respective subleases or which are included in the gross rent payment of subtenants or which are otherwise allocated on a pro rata basis to leaseable space; and (iii) insurance proceeds, other than rental or business interruption insurance proceeds, and condemnation proceeds received by Tenant for or on behalf of subtenants. In addition, to clarify this section further, there shall be no deduction from Gross Rents Received for Minimum Rent or Adjusted Minimum Rent due or paid to the Landlord, or for Tenant's internal administrative overhead, administrative cost or expense of Tenant's business operation, such as, but without limitation to, salaries, wages, interest, collection, credit card and bad debt charges paid by Tenant."

3. Section 16.14 of the Lease is hereby amended by adding to the end of the subparagraph starting "No Later than the 25th day of each calendar month . . ." the following:

"Notwithstanding the foregoing, commencing with July 2009, the detailed statement showing Gross Rents Received no longer needs to be submitted to Landlord on a monthly basis. Instead, no later than the 25th of January and the 25th of July beginning with July 2009, Tenant shall render to Landlord a detailed statement showing Gross Rents Received during the preceding six (6) month period (e.g., July through December, and January through June, respectively), together with the monthly amount payable to Landlord as Percentage Rent with respect to such Gross Rents Received as elsewhere herein provided, and shall accompany same with remittance of amount so shown to be due. Tenant shall use the most recent six month statement to determine the monthly Percentage Rent due for the succeeding six month period."

5. Except as expressly amended by this Amendment, the Lease shall remain in full force and effect and is hereby reaffirmed.

COUNTY OF LOS ANGELES

FDC PARTNERS, L.P., a California limited partnership

By: *Don Knabe*
DON KNABE
Chairman, Board of Supervisors

By: FDC Associates, LLC, a California limited liability company, its General Partner

By: *Stephen G. Hoy*
Stephen G. Hoy, Manager

ATTEST:

SACHI A. HAMAI, Executive Officer-
Clerk of the Board of Supervisors

By: *F. Michael Krotz*
F. Michael Krotz, Manager

By: *Samuel Bhana*
Deputy
"Landlord"

By: *J. O. Oltmans II*
J. O. Oltmans II, Manager
"Tenant"

APPROVED AS TO FORM:

RAYMOND G. FORTNER, JR.
County Counsel



I hereby certify that pursuant to Section 25103 of the Government Code, delivery of this document has been made.

SACHI A. HAMAI
Executive Officer
Clerk of the Board of Supervisors

By: *Raymond G. Fortner, Jr.*
Deputy County Counsel

By: *Samuel Bhana*
Deputy

Exhibits:

A - Legal Description

ADOPTED
BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

21

MAR 03 2009

Sachi A. Hamai
SACHI A. HAMAI
EXECUTIVE OFFICER

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SUPPLEMENT
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Exhibit A

LEGAL DESCRIPTION

PHASE II

Lot 1 of Tract 47470, partly in the City of Downey and partly within the City of Southgate, County of Los Angeles, State of California, as per map recorded in book 1156, pages 58 through 63 inclusive of maps, in the office of the County Recorder of said County.

**SECOND AMENDMENT TO
RANCHO BUSINESS CENTER - PHASE IIIA
GROUND LEASE AND DEVELOPMENT AGREEMENT**

This **SECOND AMENDMENT TO RANCHO BUSINESS CENTER PHASE IIIA GROUND LEASE AND DEVELOPMENT AGREEMENT** (this "Amendment") is entered into and made effective as of this 30 day of MARCH 2009 between the COUNTY OF LOS ANGELES ("Landlord") and FDC PARTNERS, L.P., a California limited partnership, formerly known as FREMONT RANCHO, LTD., a California limited partnership ("Tenant").

RECITALS:

WHEREAS, Landlord and Tenant executed that certain Rancho Business Center Phase IIIA Ground Lease and Development Agreement, dated June 4, 1995, as amended by that First Amendment to Rancho Business Center Phase IIIA Ground Lease and Development Agreement, dated June 30, 1998, (Collectively, the "Lease"), more particularly described on attached Exhibit A; and

WHEREAS, Landlord and Tenant now desire to clarify the lease language by amending: the definition of Gross Rents Received, the accounting of Percentage Rent, and the length of time for records retention;

NOW, THEREFORE, for valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree to amend the Lease as follows:

1. Past Due Percentage Rent. No later than thirty (30) days from the effective date of this Amendment, Tenant shall pay Landlord \$4,626. Landlord agrees to accept payment of the above-mentioned rent to resolve all past due Percentage Rent owed through June 30, 2006.

2. Section 3.4 (a) of the Lease is hereby deleted in its entirety and replaced with the following:

"Gross Rents Received' shall be defined as any and all revenues received by Tenant for occupancy of the Property or any portion thereof by a subtenant excluding, however, (i) security deposits received and held by Tenant to which subtenants may properly resort upon expiration of any sublease except to the extent applied as rent payments; (ii) amounts received from subtenants, whether or not characterized as rent or additional rent, for operating expenses and/or services rendered or goods provided by or on behalf of Tenant to such subtenants or allocated to subtenants paying gross rent or otherwise allocated to leaseable areas (whether or not leased), including but not limited to the following payments or allocations: (w) in respect of reasonable common area maintenance

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costs, property management fees (which fees for purposes of this paragraph shall be limited to 2-1/2% of gross income from the Property) and operating expenses for the Property, (x) for real estate taxes and assessments and such other taxes and assessments as subtenants are obligated to reimburse Tenant under their respective subleases or which are included in the gross rent payment of subtenants or which are otherwise allocated on a pro rata basis to leaseable space, (y) for insurance premiums and deductible amounts, and (z) any other costs and expenses incurred by Tenant in connection with the ownership, operation and management of the Property to the extent reimbursed by subtenants under the terms of their respective subleases or which are included in the gross rent payment of subtenants or which are otherwise allocated on a pro rata basis to leaseable space; and (iii) insurance proceeds, other than rental or business interruption insurance proceeds, and condemnation proceeds received by Tenant for or on behalf of subtenants. In addition, to clarify this section further, there shall be no deduction from Gross Rents Received for Minimum Rent or Adjusted Minimum Rent due or paid to the Landlord, or for Tenant's internal administrative overhead, administrative cost or expense of Tenant's business operation, such as, but without limitation to, salaries, wages, interest, collection, credit card and bad debt charges paid by Tenant."

3. Section 16.14 of the Lease is hereby amended by adding to the end of the subparagraph starting "No Later than the 25th day of each calendar month . . ." the following:

"Notwithstanding the foregoing, commencing with July 2009, the detailed statement showing Gross Rents Received no longer needs to be submitted to Landlord on a monthly basis. Instead, no later than the 25th of January and the 25th of July beginning with July 2009, Tenant shall render to Landlord a detailed statement showing Gross Rents Received during the preceding six (6) month period (e.g., July through December, and January through June, respectively), together with the monthly amount payable to Landlord as Percentage Rent with respect to such Gross Rents Received as elsewhere herein provided, and shall accompany same with remittance of amount so shown to be due. Tenant shall use the most recent six month statement to determine the monthly Percentage Rent due for the succeeding six month period."

4. Section 16.14 of the Lease is hereby further amended by deleting the first two sentences in the subparagraph starting "Books of account and records . . ." and substituting the following:

"Books of account and records hereinabove required shall be kept or made available at the Property or at such other location as is agreeable to Landlord, from the end date of the last audit period where a final audit

5. Except as expressly amended by this Amendment, the Lease shall remain in full force and effect and is hereby reaffirmed.

COUNTY OF LOS ANGELES

FDC PARTNERS, L.P., a California limited partnership

By: *Don Knabe*
DON KNABE
Chairman, Board of Supervisors

By: FDC Associates, LLC, a California limited liability company, its General Partner

By: *Stephen G. Hoy*
Stephen G. Hoy, Manager

ATTEST:

SACHI A. HAMAI, Executive Officer-
Clerk of the Board of Supervisors

By: *F. Michael Krotz*
F. Michael Krotz, Manager

By: *Samuel Bhana*
Deputy
"Landlord"

By: *J. O. Oltmans II*
J. O. Oltmans II, Manager
"Tenant"

APPROVED AS TO FORM:

RAYMOND G. FORTNER, JR.
County Counsel



I hereby certify that pursuant to Section 25103 of the Government Code, delivery of this document has been made.

SACHI A. HAMAI
Executive Officer
Clerk of the Board of Supervisors

By: *Raymond G. Fortner, Jr.*
Deputy County Counsel

By: *Samuel Bhana*
Deputy

Exhibits:

A - Legal Description

ADOPTED
BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

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MAR 03 2009

Sachi A. Hamai
SACHI A. HAMAI
EXECUTIVE OFFICER

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SUPPLEMENT
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Exhibit A

LEGAL DESCRIPTION

PHASE IIIA

Lot 1 of Parcel Map No. 25086, in the City of Downey, County of Los Angeles, State of California, as per parcel map recorded in book 284, pages 98 through 100 inclusive of maps, in the Office of the County Recorder of said County.

MUTUAL WAIVER AND RELEASE

This Mutual Waiver and Release ("**Release**") is entered into as of MARCH 3, 2009 between FDC Partners, L.P., a California Limited Partnership, formerly known as Fremont Rancho, Ltd., a California Limited Partnership ("**Fremont**"), and the COUNTY OF LOS ANGELES ("**County**"), with respect to the following facts:

A. Fremont and County are parties to the following ground leases (collectively, the "**Ground Leases**"): (a) that certain Rancho Business Center Phase I First Amended and Restated Ground Lease and Development Agreement, dated March 27, 1990, as amended by that Amendment to First Amended and Restated Ground Lease and Development Agreement for Rancho Business Center Phase I, dated July 1, 1991, and by that Second Amendment to First Amended and Restated Ground Lease and Development Agreement for Rancho Business Center Phase I, dated March 17, 1992, and by that Third Amendment to First Amended and Restated Ground Lease and Development Agreement, dated May 4, 1995 for Rancho Business Center Phase I, (b) that certain Rancho Business Center Phase II First Amended and Restated Ground Lease and Development Agreement, dated March 27, 1990, as amended by that Amendment to First Amended and Restated Ground Lease and Development Agreement for Rancho Business Center Phase II, dated July 1, 1991, and by that Second Amendment to First Amended and Restated Ground Lease and Development Agreement for Rancho Business Center Phase II, dated March 17, 1992, and by that Third Amendment to First Amended and Restated Ground Lease and Development Agreement, dated May 4, 1995 for Rancho Business Center Phase II; and (c) that certain Rancho Business Center Phase IIIA Ground Lease and Development Agreement, dated June 4, 1995, as amended by that First Amendment to Rancho Business Center Phase IIIA Ground Lease and Development Agreement, dated June 30, 1998.

B. Pursuant to the terms of the Ground Leases, Fremont is obligated to pay to County a percentage of "Gross Rents Received" (as defined in the Ground Leases). The County Auditor-Controller conducted an audit (issued on February 7, 2007 by Moss, Levy & Hartzheim, LLP) of the Ground Leases for the periods January 1, 1990 through June 30, 2006 for Phases I and II of the Ground Leases and for the period December 1, 1998 through June 30, 2006 for Phase IIIA of the Ground Leases (the "**Audit**"). The County contends that based on the Audit, Fremont underpaid percentage rent for Gross Rents Received during and after the audited periods; however, Fremont disputes this contention, and maintains that all percentage rent for Gross Rents Received during the terms of the Ground Leases through June 30, 2006, has been duly paid (the "**Dispute**").

C. Fremont and County desire to enter into this Release to resolve the Dispute in order to avoid the costs and expenses of litigation.

THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Fremont and County agree as follows:

1. AMENDMENTS TO GROUND LEASES. Fremont and County shall enter into amendments to the Ground Leases, in the forms of attached Exhibits A, B, and C, pursuant to which, among other things, the definition of "Gross Rents Received" shall be modified to avoid future disputes as to the amounts due thereunder (collectively, the "**Amendments**").

2. RETROACTIVE PERCENTAGE RENT PAYMENTS. As complete satisfaction for all claims for underpayment of percentage rent for Gross Rents Received Fremont shall pay to County the amount of \$226,096.00 (the "**Settlement Payment**"). The Settlement Payment represents settlement for payment of all percentage rent for Gross Rents Received through June 30, 2006; from and after June 30, 2006, Fremont shall commence payments of percentage rent for Gross Rents Received pursuant to the terms of the Amendments.

3. RELEASE. Each party to this Release hereby waives and releases any claims, losses, damages, judgments, liabilities, costs and expenses, including, without limitation, attorneys' fees, whether known or unknown (collectively, "**Claims**"), which either party may have or owe to the other party arising out of, incurred in connection with, or relating to the Dispute. With respect to Fremont, the foregoing release includes the release of its constituent partners (including, without limitation, FDC Associates, LLC), directors, affiliates, members, employees, agents, successors and assigns (collectively, the "**Fremont Parties**"). With respect to County, the foregoing release includes the release of the County's Board of Supervisors, affiliated County agencies, employees and agents (collectively, the "**County Parties**").

4. WAIVER OF UNKNOWN CLAIMS. With respect to the Claims waived and released under Paragraph 3, above, Fremont on behalf of itself and all Fremont Parties and County on behalf of itself and all County Parties each expressly and specifically release each other from and against any and all existing Claims arising out of or related to the Dispute which either may have, now or in the future. Accordingly, each party hereby waives, with respect to the Claims waived and released hereunder, any rights and benefits which it may have, now or in the future, under Section 1542 of the California Civil Code, which provides as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

SIGNATURE BLOCKS TO MUTUAL WAIVER AND RELEASE
BETWEEN FDC PARTNERS, L.P. AND THE COUNTY OF LOS ANGELES
DATED FEBRUARY 3, 2009
MARCH

COUNTY:

COUNTY OF LOS ANGELES

By: 
DON KNABE
Chairman, Board of Supervisors

ATTEST:

SACHI A, HAMAI, Executive Officer-
Clerk of the Board of Supervisors

By: 
Deputy

FREMONT:

FDC PARTNERS, L.P., a California
limited partnership

By: FDC Associates, LLC, a California
limited liability company, its General
Partner

By: 
F. Michael Krotz, Manager

By: 
J. O. Oltmans II, Manager

APPROVED AS TO FORM:

RAYMOND G. FORTNER, JR.,
County Counsel

By: 
Deputy County Counsel



EXHIBIT A

FOURTH AMENDMENT TO RANCHO BUSINESS CENTER - PHASE I FIRST AMENDED AND RESTATED GROUND LEASE AND DEVELOPMENT AGREEMENT

This **FOURTH AMENDMENT TO RANCHO BUSINESS CENTER PHASE I FIRST AMENDED AND RESTATED GROUND LEASE AND DEVELOPMENT AGREEMENT** (this "Amendment") is entered into and made effective as of this _____ day of _____ 2009 between the COUNTY OF LOS ANGELES ("Landlord") and FDC PARTNERS, L.P., a California limited partnership, formerly known as FREMONT RANCHO, LTD., a California limited partnership ("Tenant").

RECITALS:

WHEREAS, Landlord and Tenant executed that certain Rancho Business Center Phase I First Amended and Restated Ground Lease and Development Agreement, dated March 27, 1990, as amended by that Amendment to First Amended and Restated Ground Lease and Development Agreement for Rancho Business Center Phase I, dated July 1, 1991, and by that Second Amendment to First Amended and Restated Ground Lease and Development Agreement for Rancho Business Center Phase I, dated March 17, 1992, and by that Third Amendment to First Amended and Restated Ground Lease and Development Agreement, dated May 4, 1995 (Collectively, the "Lease") for Rancho Business Center Phase I, more particularly described on attached Exhibit A; and

WHEREAS, Landlord and Tenant now desire to clarify the lease language by amending: the definition of Gross Rents Received, the accounting of Percentage Rent, and the length of time for records retention;

NOW, THEREFORE, for valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree to amend the Lease as follows:

1. Past Due Percentage Rent. No later than thirty (30) days from the effective date of this Amendment, Tenant shall pay Landlord \$221,470. Landlord agrees to accept payment of the above-mentioned rent to resolve all past due Percentage Rent owed through June 30, 2006 for both Phase I and Phase II.

2. Section 3.04 (a) of the Lease is hereby deleted in its entirety and replaced with the following:

"Gross Rents Received" shall be defined as any and all revenues received by Tenant for occupancy of the Property or any portion thereof by a subtenant excluding, however, (i) security deposits received and held by Tenant to which subtenants may properly resort upon expiration of any

sublease except to the extent applied as rent payments; (ii) amounts received from subtenants, whether or not characterized as rent or additional rent, for operating expenses and/or services rendered or goods provided by or on behalf of Tenant to such subtenants or allocated to subtenants paying gross rent or otherwise allocated to leaseable areas (whether or not leased), including but not limited to the following payments or allocations: (w) in respect of reasonable common area maintenance costs, property management fees (which fees for purposes of this paragraph shall be limited to 2-1/2% of gross income from the Property) and operating expenses for the Property, (x) for real estate taxes and assessments and such other taxes and assessments as subtenants are obligated to reimburse Tenant under their respective subleases or which are included in the gross rent payment of subtenants or which are otherwise allocated on a pro rata basis to leaseable space, (y) for insurance premiums and deductible amounts, and (z) any other costs and expenses incurred by Tenant in connection with the ownership, operation and management of the Property to the extent reimbursed by subtenants under the terms of their respective subleases or which are included in the gross rent payment of subtenants or which are otherwise allocated on a pro rata basis to leaseable space; and (iii) insurance proceeds, other than rental or business interruption insurance proceeds, and condemnation proceeds received by Tenant for or on behalf of subtenants. In addition, to clarify this section further, there shall be no deduction from Gross Rents Received for Minimum Rent or Adjusted Minimum Rent due or paid to the Landlord, or for Tenant's internal administrative overhead, administrative cost or expense of Tenant's business operation, such as, but without limitation to, salaries, wages, interest, collection, credit card and bad debt charges paid by Tenant."

3. Section 16.14 of the Lease is hereby amended by adding to the end of the subparagraph starting "No Later than the 25th day of each calendar month . . ." the following:

"Notwithstanding the foregoing, commencing with July 2009, the detailed statement showing Gross Rents Received no longer needs to be submitted to Landlord on a monthly basis. Instead, no later than the 25th of January and the 25th of July beginning with July 2009, Tenant shall render to Landlord a detailed statement showing Gross Rents Received during the preceding six (6) month period (e.g., July through December, and January through June, respectively), together with the monthly amount payable to Landlord as Percentage Rent with respect to such Gross Rents Received as elsewhere herein provided, and shall accompany same with remittance of amount so shown to be due. Tenant shall use the most recent six month statement to determine the monthly Percentage Rent due for the succeeding six month period."

5. Except as expressly amended by this Amendment, the Lease shall remain in full force and effect and is hereby reaffirmed.

COUNTY OF LOS ANGELES

FDC PARTNERS, L.P., a California limited partnership

By: _____
DON KNABE
Chairman, Board of Supervisors

By: FDC Associates, LLC, a California limited liability company, its General Partner

By: _____
Stephen G. Hoy, Manager

ATTEST:

SACHI A. HAMAI, Executive Officer-
Clerk of the Board of Supervisors

By: _____
F. Michael Krotz, Manager

By: _____
Deputy
"Landlord"

By: _____
J. O. Oltmans II, Manager
"Tenant"

APPROVED AS TO FORM:

RAYMOND G. FORTNER, JR.
County Counsel

By: _____
Deputy County Counsel

Exhibits:
A – Legal Description

LEGAL DESCRIPTION

PHASE I

Lot 1 of Tract No. 45367, in the City of Downey, County of Los Angeles, State of California, as per map recorded in book 1136, pages 54 through 60 inclusive of maps, in the Office of the County Recorder of said County.

EXHIBIT B

FOURTH AMENDMENT TO RANCHO BUSINESS CENTER - PHASE II FIRST AMENDED AND RESTATED GROUND LEASE AND DEVELOPMENT AGREEMENT

This **FOURTH AMENDMENT TO RANCHO BUSINESS CENTER PHASE II FIRST AMENDED AND RESTATED GROUND LEASE AND DEVELOPMENT AGREEMENT** (this "Amendment") is entered into and made effective as of this _____ day of _____ 2009 between the COUNTY OF LOS ANGELES ("Landlord") and FDC PARTNERS, L.P., a California limited partnership, formerly known as FREMONT RANCHO, LTD., a California limited partnership ("Tenant").

RECITALS:

WHEREAS, Landlord and Tenant executed that certain Rancho Business Center Phase II First Amended and Restated Ground Lease and Development Agreement, dated March 27, 1990, as amended by that Amendment to First Amended and Restated Ground Lease and Development Agreement for Rancho Business Center Phase II, dated July 1, 1991, and by that Second Amendment to First Amended and Restated Ground Lease and Development Agreement for Rancho Business Center Phase II, dated March 17, 1992, and by that Third Amendment to First Amended and Restated Ground Lease and Development Agreement, dated May 4, 1995 (Collectively, the "Lease") for Rancho Business Center Phase II, more particularly described on attached Exhibit A; and

WHEREAS, Landlord and Tenant now desire to clarify the lease language by amending: the definition of Gross Rents Received, the accounting of Percentage Rent, and the length of time for records retention;

NOW, THEREFORE, for valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree to amend the Lease as follows:

1. Past Due Percentage Rent. No later than thirty (30) days from the effective date of this Amendment, Tenant shall pay Landlord \$221,470. Landlord agrees to accept payment of the above-mentioned rent to resolve all past due Percentage Rent owed through June 30, 2006 for both Phase I and Phase II.

2. Section 3.04 (a) of the Lease is hereby deleted in its entirety and replaced with the following:

"Gross Rents Received" shall be defined as any and all revenues received by Tenant for occupancy of the Property or any portion thereof by a subtenant excluding, however, (i) security deposits received and held by Tenant to which subtenants may properly resort upon expiration of any

sublease except to the extent applied as rent payments; (ii) amounts received from subtenants, whether or not characterized as rent or additional rent, for operating expenses and/or services rendered or goods provided by or on behalf of Tenant to such subtenants or allocated to subtenants paying gross rent or otherwise allocated to leaseable areas (whether or not leased), including but not limited to the following payments or allocations: (w) in respect of reasonable common area maintenance costs, property management fees (which fees for purposes of this paragraph shall be limited to 2-1/2% of gross income from the Property) and operating expenses for the Property, (x) for real estate taxes and assessments and such other taxes and assessments as subtenants are obligated to reimburse Tenant under their respective subleases or which are included in the gross rent payment of subtenants or which are otherwise allocated on a pro rata basis to leaseable space, (y) for insurance premiums and deductible amounts, and (z) any other costs and expenses incurred by Tenant in connection with the ownership, operation and management of the Property to the extent reimbursed by subtenants under the terms of their respective subleases or which are included in the gross rent payment of subtenants or which are otherwise allocated on a pro rata basis to leaseable space; and (iii) insurance proceeds, other than rental or business interruption insurance proceeds, and condemnation proceeds received by Tenant for or on behalf of subtenants. In addition, to clarify this section further, there shall be no deduction from Gross Rents Received for Minimum Rent or Adjusted Minimum Rent due or paid to the Landlord, or for Tenant's internal administrative overhead, administrative cost or expense of Tenant's business operation, such as, but without limitation to, salaries, wages, interest, collection, credit card and bad debt charges paid by Tenant."

3. Section 16.14 of the Lease is hereby amended by adding to the end of the subparagraph starting "No Later than the 25th day of each calendar month . . ." the following:

"Notwithstanding the foregoing, commencing with July 2009, the detailed statement showing Gross Rents Received no longer needs to be submitted to Landlord on a monthly basis. Instead, no later than the 25th of January and the 25th of July beginning with July 2009, Tenant shall render to Landlord a detailed statement showing Gross Rents Received during the preceding six (6) month period (e.g., July through December, and January through June, respectively), together with the monthly amount payable to Landlord as Percentage Rent with respect to such Gross Rents Received as elsewhere herein provided, and shall accompany same with remittance of amount so shown to be due. Tenant shall use the most recent six month statement to determine the monthly Percentage Rent due for the succeeding six month period."

5. Except as expressly amended by this Amendment, the Lease shall remain in full force and effect and is hereby reaffirmed.

COUNTY OF LOS ANGELES

FDC PARTNERS, L.P., a California limited partnership

By: _____
DON KNABE
Chairman, Board of Supervisors

By: FDC Associates, LLC, a California limited liability company, its General Partner

By: _____
Stephen G. Hoy, Manager

ATTEST:

SACHI A. HAMAI, Executive Officer-Clerk of the Board of Supervisors

By: _____
F. Michael Krotz, Manager

By: _____
Deputy
"Landlord"

By: _____
J. O. Oltmans II, Manager
"Tenant"

APPROVED AS TO FORM:

RAYMOND G. FORTNER, JR.
County Counsel

By: _____
Deputy County Counsel

Exhibits:
A – Legal Description

LEGAL DESCRIPTION

PHASE II

Lot 1 of Tract 47470, partly in the City of Downey and partly within the City of Southgate, County of Los Angeles, State of California, as per map recorded in book 1156, pages 58 through 63 inclusive of maps, in the office of the County Recorder of said County.

EXHIBIT C

SECOND AMENDMENT TO RANCHO BUSINESS CENTER - PHASE IIIA GROUND LEASE AND DEVELOPMENT AGREEMENT

This **SECOND AMENDMENT TO RANCHO BUSINESS CENTER PHASE IIIA GROUND LEASE AND DEVELOPMENT AGREEMENT** (this "Amendment") is entered into and made effective as of this _____ day of _____ 2009 between the COUNTY OF LOS ANGELES ("Landlord") and FDC PARTNERS, L.P., a California limited partnership, formerly known as FREMONT RANCHO, LTD., a California limited partnership ("Tenant").

RECITALS:

WHEREAS, Landlord and Tenant executed that certain Rancho Business Center Phase IIIA Ground Lease and Development Agreement, dated June 4, 1995, as amended by that First Amendment to Rancho Business Center Phase IIIA Ground Lease and Development Agreement, dated June 30, 1998, (Collectively, the "Lease"), more particularly described on attached Exhibit A; and

WHEREAS, Landlord and Tenant now desire to clarify the lease language by amending: the definition of Gross Rents Received, the accounting of Percentage Rent, and the length of time for records retention;

NOW, THEREFORE, for valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree to amend the Lease as follows:

1. Past Due Percentage Rent. No later than thirty (30) days from the effective date of this Amendment, Tenant shall pay Landlord \$4,626. Landlord agrees to accept payment of the above-mentioned rent to resolve all past due Percentage Rent owed through June 30, 2006.

2. Section 3.4 (a) of the Lease is hereby deleted in its entirety and replaced with the following:

"Gross Rents Received" shall be defined as any and all revenues received by Tenant for occupancy of the Property or any portion thereof by a subtenant excluding, however, (i) security deposits received and held by Tenant to which subtenants may properly resort upon expiration of any sublease except to the extent applied as rent payments; (ii) amounts received from subtenants, whether or not characterized as rent or additional rent, for operating expenses and/or services rendered or goods provided by or on behalf of Tenant to such subtenants or allocated to subtenants paying gross rent or otherwise allocated to leaseable areas (whether or not leased), including but not limited to the following payments or allocations: (w) in respect of reasonable common area maintenance

costs, property management fees (which fees for purposes of this paragraph shall be limited to 2-1/2% of gross income from the Property) and operating expenses for the Property, (x) for real estate taxes and assessments and such other taxes and assessments as subtenants are obligated to reimburse Tenant under their respective subleases or which are included in the gross rent payment of subtenants or which are otherwise allocated on a pro rata basis to leaseable space, (y) for insurance premiums and deductible amounts, and (z) any other costs and expenses incurred by Tenant in connection with the ownership, operation and management of the Property to the extent reimbursed by subtenants under the terms of their respective subleases or which are included in the gross rent payment of subtenants or which are otherwise allocated on a pro rata basis to leaseable space; and (iii) insurance proceeds, other than rental or business interruption insurance proceeds, and condemnation proceeds received by Tenant for or on behalf of subtenants. In addition, to clarify this section further, there shall be no deduction from Gross Rents Received for Minimum Rent or Adjusted Minimum Rent due or paid to the Landlord, or for Tenant's internal administrative overhead, administrative cost or expense of Tenant's business operation, such as, but without limitation to, salaries, wages, interest, collection, credit card and bad debt charges paid by Tenant."

3. Section 16.14 of the Lease is hereby amended by adding to the end of the subparagraph starting "No Later than the 25th day of each calendar month . . ." the following:

"Notwithstanding the foregoing, commencing with July 2009, the detailed statement showing Gross Rents Received no longer needs to be submitted to Landlord on a monthly basis. Instead, no later than the 25th of January and the 25th of July beginning with July 2009, Tenant shall render to Landlord a detailed statement showing Gross Rents Received during the preceding six (6) month period (e.g., July through December, and January through June, respectively), together with the monthly amount payable to Landlord as Percentage Rent with respect to such Gross Rents Received as elsewhere herein provided, and shall accompany same with remittance of amount so shown to be due. Tenant shall use the most recent six month statement to determine the monthly Percentage Rent due for the succeeding six month period."

4. Section 16.14 of the Lease is hereby further amended by deleting the first two sentences in the subparagraph starting "Books of account and records . . ." and substituting the following:

"Books of account and records hereinabove required shall be kept or made available at the Property or at such other location as is agreeable to Landlord, from the end date of the last audit period where a final audit

5. Except as expressly amended by this Amendment, the Lease shall remain in full force and effect and is hereby reaffirmed.

COUNTY OF LOS ANGELES

FDC PARTNERS, L.P., a California limited partnership

By: _____
DON KNABE
Chairman, Board of Supervisors

By: FDC Associates, LLC, a California limited liability company, its General Partner

By: _____
Stephen G. Hoy, Manager

ATTEST:

SACHI A. HAMAI, Executive Officer-
Clerk of the Board of Supervisors

By: _____
F. Michael Krotz, Manager

By: _____
Deputy
"Landlord"

By: _____
J. O. Oltmans II, Manager
"Tenant"

APPROVED AS TO FORM:

RAYMOND G. FORTNER, JR.
County Counsel

By: _____
Deputy County Counsel

Exhibits:
A – Legal Description

Exhibit A

LEGAL DESCRIPTION

PHASE IIIA

Lot 1 of Parcel Map No. 25086, in the City of Downey, County of Los Angeles, State of California, as per parcel map recorded in book 284, pages 98 through 100 inclusive of maps, in the Office of the County Recorder of said County.