

**SECOND AMENDMENT TO PROPERTY MANAGEMENT SERVICES
AGREEMENT
BETWEEN
THE COUNTY OF SAN MATEO
AND
ORCHARD COMMERCIAL, INC.**

THIS SECOND AMENDMENT, entered into this 5th day of November, 2013, by and between the COUNTY OF SAN MATEO, hereinafter called "County or "Owner"," and ORCHARD COMMERCIAL, INC., a California corporation, hereinafter called "Contractor" or "Manager";

W I T N E S S E T H:

WHEREAS, on September 11, 2012, County and Contractor entered into a Property Management Services Agreement (the "Agreement") for the purpose of providing the County with a full range of experienced and skilled management services and resources necessary and appropriate for the management of the real property and improvements commonly known as Circle Star Plaza, One and Two Circle Star Way, San Carlos, California (the "Property"); and

WHEREAS, on February 26, 2013, County and Contractor entered into an Amendment to the Property Management Services Agreement (the "Amendment") whereby the not-to-exceed amount was increased to maintain the property in a tenant-ready condition; and

WHEREAS, County has fully leased the Property increasing the ongoing operating expenses (the "OPEX") and obligated the County to make certain improvements to the Property, and the Agreement requires modification to increase the not-to-exceed amount, to authorize Orchard to provide construction management and coordination services and to clarify the calculation of fees, as set forth herein.

**NOW, THEREFORE, IT IS HEREBY AGREED BY THE PARTIES HERETO
AS FOLLOWS:**

- 1. Payments.** Section 3 (Payments) of the Agreement is hereby deleted in its entirety and replaced with the following:

In consideration of the services provided by Contractor in accordance with all terms, conditions and specifications set forth herein and in Exhibit "A", County shall make payment to Contractor based on the rates and in the manner specified in Exhibit "B-1". The County reserves the right to withhold payment if the County determines that the quantity or quality of the work performed is unacceptable. In no event shall the County's total fiscal obligation under this Agreement exceed \$2,500,000 for any calendar year, beginning on November 5, 2013. This contract may be amended, extended or renewed as may be agreed by the parties pursuant to applicable law.

2. **Services.** Exhibit A (Services) to the Agreement is hereby amended by adding the following:

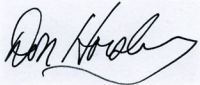
Section 3.14.1 (Tenant Improvement Coordination) Manager shall provide, on an as needed basis upon the written request from County, Tenant Improvement Coordination services for projects on the Property. Such Coordination services shall include but not be limited to coordination with tenants, contractors, municipal agencies, County and other parties in the completion of tenant improvement projects; plan review including change orders; tracking of tenant improvement allowance disbursement; and lien and stop payment notices releases. Coordination services shall be performed in accordance with all terms, conditions and specifications of this Management Agreement and subject to applicable law and regulation. County shall pay Manager in accordance with Section 3 of Exhibit B-1, except as limited by Section 3B of this Management Agreement.

Section 7.3.1 (Coordination Fee) If Manager is required to provide Tenant Improvement Coordination services as set forth in Section 3.14.1 of this exhibit, County shall pay Manager the Coordination Fee set forth in Section 3 of Exhibit B-1.

3. **Fees.** Exhibit B (Management Fee Calculation) to the Agreement is hereby deleted in its entirety and replaced with the attached Exhibit B-1 (Fees).
4. **Effective Date; Approval.** This Second Amendment shall become effective (the "Effective Date") when the Second Amendment is duly executed by the County and by the Contractor.
5. **Counterparts.** This Second Amendment may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.
6. **No Further Amendments; Conflicts.** All the terms and conditions of the Agreement remain in full force and effect except as expressly amended herein. The Agreement as amended by this Second Amendment constitutes the entire agreement between County and Contractor regarding the Agreement and may not be modified except by an instrument in writing duly executed by the parties hereto. In the event of any conflict between the terms of the Agreement and the terms of this Second Amendment, the terms of this Second Amendment shall control.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have affixed their hands.

COUNTY OF SAN MATEO

By: 
County Manager, San Mateo County

Date: November 5, 2013

ATTEST:

By: 
Clerk of Said Board

ORCHARD COMMERCIAL , INC.


Contractor's Signature

Date: 10/28/2013

Resolution #072873

Exhibit B-1

Fees

1. Management Fees Associated with Unoccupied Buildings

Beginning on the Effective date, Owner shall pay Manager, as a Management Fee, \$1,225 per month per unoccupied building, until the first day of occupancy by the County or the commencement date under a lease agreement between a tenant and the County; pro-rated by month so that payment to Manager is due on the 15th of the month.

2. Management Fees Associated with Occupied Buildings

- A. For buildings occupied by one or more tenants. On the lease commencement date, Owner shall pay Manager, as a Management Fee, 2.9% of gross monthly base rent actually received by Owner pursuant to said lease, unless such amount is less than the amount set forth in Section 1, in which case Owner shall pay Manager \$1,225 per month as specified. If there is a rent credit, rent holiday or forgiveness provided to the tenant, then the gross monthly base rent amount shall be deemed to be the base rent that would otherwise have been paid (pro-rated by month so that payment to Manager is due on the 15th of the month). In no instance shall the calculation of gross monthly base rent include monies paid for operating expenses, tenant improvements or unpaid rent.
- B. For Buildings occupied the County. Beginning upon occupancy by the County, County shall pay Manager, as a Management Fee, \$1,225 per month per floor occupied by the County; pro-rated by month so that payment to Manager is due on the 15th of the month. If the County and one or more tenants occupy a building, then the Management fee for the County's occupancy shall be as stated in the foregoing sentence and the management fee for the tenant(s)' occupancy shall be as stated in paragraph 2.A above.

3. Coordination Fee

As consideration for Tenant Improvement Coordination services provided by Manager, Owner shall see to it that Manager is paid the actual costs of providing said services, up to 3% of total project costs, including design, permitting, construction and construction management (the "Coordination Fee"). Payment of the Coordination Fee shall be made either directly by the tenant making the improvements or by the County; and unless otherwise agreed by the County, the Manager and the Tenant, shall be paid upon completion of the project and documentation of the total project costs.