

**\$1,655,034.73**  
**CITY OF FORT BRAGG**  
**REFINANCING LEASE**  
**PURCHASE AGREEMENT**

**September 15, 2005**

# Lofton & Jennings

Attorneys at Law

225 Bush Street, 16th Floor  
San Francisco, California 94104

Telephone: (415) 772-1900

Facsimile: (415) 772-1909

November 30, 2005

## MEMORANDUM TO INTERESTED PARTIES

Re: City of Fort Bragg Refinancing Lease Purchase Agreement

Enclosed for your files is the transcript of documents for the above-referenced transaction.

Please feel free to call Bill Lofton at 415-394-8296 with any questions.

Sincerely,



Deanna L. Altman  
Assistant to  
William M. Lofton

:da

Enclosure

City of Fort Bragg  
Lease/Purchase Agreement 2005-01  
15 Year Lease/Purchase Agreement (non-COP)

SAVINGS SCHEDULE (Updated 9-12-05)

Total Net Savings: \$ 453,464.77  
Present Value of Savings (@ 4.15%): \$ 322,036.94  
PV Savings as % of Refunded Issue: 18.04%  
PV Savings as % of Refunding Issue: 19.46%

Payment Number	Payment Date	Net Existing COP Payments	New 2005 Lease Payments	Semiannual Savings	Fiscal Year Savings	Present Value Savings
1	12/01/05	\$ 57,162.00	73,784.51	\$ (16,622.51)	\$ -	\$ (16,478.99)
2	06/01/06	197,162.00	73,784.51	123,377.49	106,754.98	119,825.87
3	12/01/06	52,542.00	73,784.51	(21,242.51)	-	(20,211.62)
4	06/01/07	202,542.00	73,784.51	128,757.49	107,514.98	120,018.55
5	12/01/07	47,592.00	73,784.51	(26,192.51)	-	(23,918.48)
6	06/01/08	207,592.00	73,784.51	133,807.49	107,614.98	119,706.44
7	12/01/08	42,312.00	73,784.51	(31,472.51)	-	(27,583.48)
8	06/01/09	92,312.00	73,784.51	18,527.49	(12,945.02)	15,907.98
9	12/01/09	40,587.00	73,784.51	(33,197.51)	-	(27,924.44)
10	06/01/10	90,587.00	73,784.51	16,802.49	(16,395.02)	13,846.28
11	12/01/10	38,862.00	73,784.51	(34,922.51)	-	(28,193.28)
12	06/01/11	88,862.00	73,784.51	15,077.49	(19,845.02)	11,924.77
13	12/01/11	37,137.00	73,784.51	(36,647.51)	-	(28,395.26)
14	06/01/12	92,137.00	73,784.51	18,352.49	(18,295.02)	13,930.83
15	12/01/12	35,239.50	73,784.51	(38,545.01)	-	(28,663.60)
16	06/01/13	90,239.50	73,784.51	16,454.99	(22,090.02)	11,987.84
17	12/01/13	33,342.00	73,784.51	(40,442.51)	-	(28,864.36)
18	06/01/14	98,342.00	73,784.51	24,557.49	(15,885.02)	17,170.72
19	12/01/14	31,099.50	73,784.51	(42,685.01)	-	(29,238.86)
20	06/01/15	106,099.50	73,784.51	32,314.99	(10,370.02)	21,685.51
21	12/01/15	28,512.00	73,784.51	(45,272.51)	-	(29,763.28)
22	06/01/16	103,512.00	73,784.51	29,727.49	(15,545.02)	19,146.31
23	12/01/16	25,924.50	73,784.51	(47,860.01)	-	(30,198.14)
24	06/01/17	100,924.50	73,784.51	27,139.99	(20,720.02)	16,776.36
25	12/01/17	23,337.00	73,784.51	(50,447.51)	-	(30,549.80)
26	06/01/18	98,337.00	73,784.51	24,552.49	(25,895.02)	14,566.15
27	12/01/18	20,749.50	73,784.51	(53,035.01)	-	(30,824.25)
28	06/01/19	100,749.50	73,784.51	26,964.99	(26,070.02)	15,353.62
29	12/01/19	17,989.50	73,784.51	(55,795.01)	-	(31,123.36)
30	06/01/20	107,989.50	73,784.51	34,204.99	(21,590.02)	18,692.24
	12/01/20	14,884.50	0.00	14,884.50	-	7,968.68
	06/01/21	109,884.50	0.00	109,884.50	124,769.00	57,632.76
	12/01/21	11,607.00	0.00	11,607.00	-	5,963.94
	06/01/22	111,607.00	0.00	111,607.00	123,214.00	56,180.51
	12/01/22	8,157.00	0.00	8,157.00	-	4,022.59
	06/01/23	113,157.00	0.00	113,157.00	121,314.00	54,668.46
	12/01/23	4,534.50	0.00	4,534.50	-	2,146.18
	06/01/24	119,534.50	0.00	119,534.50	124,069.00	55,425.54
	12/01/24	567.00	0.00	567.00	-	257.56
	06/01/25	(136,708.00)	0.00	(136,708.00)	(136,141.00)	(60,837.56)
		\$ 2,667,000.00	\$ 2,213,535.23	\$ 453,464.77	\$ 453,464.77	\$ 322,036.94

City of Fort Bragg  
Lease/Purchase Agreement 2005-01  
15 Year Lease/Purchase Agreement (non-COP)

PAYMENT SCHEDULE (Updated 9-12-05)

Borrower (Lessee):	City of Fort Bragg
Outstanding COP Principal:	\$ 1,785,000.00
Plus: Interest through 12/1/05:	60,907.50
Less: Reserve Fund & Interest:	(265,366.77)
Plus: Prepayment Premium:	35,700.00
Plus: Costs of Issuance:	38,794.00
Total Refinancing Amount:	\$ 1,655,034.73
Closing Date:	9/15/2005
Term of Agreement:	15 years
Interest Rate:	4.15%
Structure:	Semiannual in Arrears
Total Number of Payments:	30
Payment Per Period:	Varies
Semi-Annual Payment Amount:	\$ 73,784.51

Payment Number	Payment Date	Principal Component	Coupon	Interest Component	Total Payment	Prepayment Price (in \$)
1	12/01/05	\$ 59,284.56	4.15%	14,499.94	\$ 73,784.51	\$ 1,611,707.67
2	06/01/06	40,672.69	4.15%	33,111.82	73,784.51	1,570,628.25
3	12/01/06	41,516.65	4.15%	32,267.86	73,784.51	1,528,696.43
4	06/01/07	42,378.12	4.15%	31,406.39	73,784.51	1,485,894.53
5	12/01/07	43,257.47	4.15%	30,527.04	73,784.51	1,442,204.49
6	06/01/08	44,155.06	4.15%	29,629.45	73,784.51	1,397,607.88
7	12/01/08	45,071.28	4.15%	28,713.23	73,784.51	1,352,085.89
8	06/01/09	46,006.51	4.15%	27,778.00	73,784.51	1,305,619.32
9	12/01/09	46,961.14	4.15%	26,823.37	73,784.51	1,258,188.57
10	06/01/10	47,935.58	4.15%	25,848.92	73,784.51	1,209,773.63
11	12/01/10	48,930.25	4.15%	24,854.26	73,784.51	1,160,354.08
12	06/01/11	49,945.55	4.15%	23,838.96	73,784.51	1,109,909.07
13	12/01/11	50,981.92	4.15%	22,802.59	73,784.51	1,058,417.33
14	06/01/12	52,039.79	4.15%	21,744.71	73,784.51	1,005,857.14
15	12/01/12	53,119.62	4.15%	20,664.89	73,784.51	952,206.32
16	06/01/13	54,221.85	4.15%	19,562.65	73,784.51	897,442.25
17	12/01/13	55,346.96	4.15%	18,437.55	73,784.51	841,541.83
18	06/01/14	56,495.41	4.15%	17,289.10	73,784.51	784,481.47
19	12/01/14	57,667.69	4.15%	16,116.82	73,784.51	726,237.11
20	06/01/15	58,864.29	4.15%	14,920.22	73,784.51	666,784.17
21	12/01/15	60,085.72	4.15%	13,698.78	73,784.51	606,097.59
22	06/01/16	61,332.50	4.15%	12,452.00	73,784.51	544,151.76
23	12/01/16	62,605.15	4.15%	11,179.36	73,784.51	480,920.56
24	06/01/17	63,904.21	4.15%	9,880.30	73,784.51	416,377.31
25	12/01/17	65,230.22	4.15%	8,554.29	73,784.51	350,494.79
26	06/01/18	66,583.75	4.15%	7,200.76	73,784.51	283,245.20
27	12/01/18	67,965.36	4.15%	5,819.15	73,784.51	214,600.19
28	06/01/19	69,375.64	4.15%	4,408.87	73,784.51	144,530.79
29	12/01/19	70,815.19	4.15%	2,969.32	73,784.51	73,007.45
30	06/01/20	72,284.60	4.15%	1,499.91	73,784.51	-
		\$ 1,655,034.73		\$ 558,500.50	\$ 2,213,535.23	



City of Fort Bragg  
Lease/Purchase Agreement 2005-01  
15 Year Lease/Purchase Agreement (non-COP)

ORIGINAL COP PAYMENT SCHEDULE (Updated 9-12-05)

Borrower (Lessee): City of Fort Bragg  
Total COP Amount: \$ 1,785,000  
Accrue From 6/1/2005  
Remaining Term of Agreement: 20 years  
Structure: Semiannual in Arrears  
Total Number of Payments: 40  
Payment Per Period: Varies  
Average Annual Payment: \$ 133,350.00

Payment Number	Payment Date	Principal Component	Coupon	Interest Component	less: Reserve Fund Earnings	plus: Trustee Fees	Estimated Total Payment	Fiscal Year Net Total
1	12/01/05			60,907.50	\$ (5,245.50)	\$ 1,500.00	\$ 57,162.00	\$ -
2	06/01/06	140,000.00	6.60%	60,907.50	(5,245.50)	1,500.00	197,162.00	254,324.00
3	12/01/06			56,287.50	(5,245.50)	1,500.00	52,542.00	-
4	06/01/07	150,000.00	6.60%	56,287.50	(5,245.50)	1,500.00	202,542.00	255,084.00
5	12/01/07			51,337.50	(5,245.50)	1,500.00	47,592.00	-
6	06/01/08	160,000.00	6.60%	51,337.50	(5,245.50)	1,500.00	207,592.00	255,184.00
7	12/01/08			46,057.50	(5,245.50)	1,500.00	42,312.00	-
8	06/01/09	50,000.00	6.90%	46,057.50	(5,245.50)	1,500.00	92,312.00	134,624.00
9	12/01/09			44,332.50	(5,245.50)	1,500.00	40,587.00	-
10	06/01/10	50,000.00	6.90%	44,332.50	(5,245.50)	1,500.00	90,587.00	131,174.00
11	12/01/10			42,607.50	(5,245.50)	1,500.00	38,862.00	-
12	06/01/11	50,000.00	6.90%	42,607.50	(5,245.50)	1,500.00	88,862.00	127,724.00
13	12/01/11			40,882.50	(5,245.50)	1,500.00	37,137.00	-
14	06/01/12	55,000.00	6.90%	40,882.50	(5,245.50)	1,500.00	92,137.00	129,274.00
15	12/01/12			38,985.00	(5,245.50)	1,500.00	35,239.50	-
16	06/01/13	55,000.00	6.90%	38,985.00	(5,245.50)	1,500.00	90,239.50	125,479.00
17	12/01/13			37,087.50	(5,245.50)	1,500.00	33,342.00	-
18	06/01/14	65,000.00	6.90%	37,087.50	(5,245.50)	1,500.00	98,342.00	131,684.00
19	12/01/14			34,845.00	(5,245.50)	1,500.00	31,099.50	-
20	06/01/15	75,000.00	6.90%	34,845.00	(5,245.50)	1,500.00	106,099.50	137,199.00
21	12/01/15			32,257.50	(5,245.50)	1,500.00	28,512.00	-
22	06/01/16	75,000.00	6.90%	32,257.50	(5,245.50)	1,500.00	103,512.00	132,024.00
23	12/01/16			29,670.00	(5,245.50)	1,500.00	25,924.50	-
24	06/01/17	75,000.00	6.90%	29,670.00	(5,245.50)	1,500.00	100,924.50	126,849.00
25	12/01/17			27,082.50	(5,245.50)	1,500.00	23,337.00	-
26	06/01/18	75,000.00	6.90%	27,082.50	(5,245.50)	1,500.00	98,337.00	121,674.00
27	12/01/18			24,495.00	(5,245.50)	1,500.00	20,749.50	-
28	06/01/19	80,000.00	6.90%	24,495.00	(5,245.50)	1,500.00	100,749.50	121,499.00
29	12/01/19			21,735.00	(5,245.50)	1,500.00	17,989.50	-
30	06/01/20	90,000.00	6.90%	21,735.00	(5,245.50)	1,500.00	107,989.50	125,979.00
31	12/01/20			18,630.00	(5,245.50)	1,500.00	14,884.50	-
32	06/01/21	95,000.00	6.90%	18,630.00	(5,245.50)	1,500.00	109,884.50	124,769.00
33	12/01/21			15,352.50	(5,245.50)	1,500.00	11,607.00	-
34	06/01/22	100,000.00	6.90%	15,352.50	(5,245.50)	1,500.00	111,607.00	123,214.00
35	12/01/22			11,902.50	(5,245.50)	1,500.00	8,157.00	-
36	06/01/23	105,000.00	6.90%	11,902.50	(5,245.50)	1,500.00	113,157.00	121,314.00
37	12/01/23			8,280.00	(5,245.50)	1,500.00	4,534.50	-
38	06/01/24	115,000.00	6.90%	8,280.00	(5,245.50)	1,500.00	119,534.50	124,069.00
39	12/01/24			4,312.50	(5,245.50)	1,500.00	567.00	-
40	06/01/25	125,000.00	6.90%	4,312.50	(267,520.50)	1,500.00	(136,708.00)	(136,141.00)
		\$ 1,785,000.00		\$ 1,294,095.00	\$ (472,095.00)	\$ 60,000.00	\$ 2,667,000.00	\$ 2,667,000.00

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# A. M. PECHÉ & ASSOCIATES LLC

1025 Morton Street  
Alameda, California 94502-3904

Phone: (510) 521-2077  
Fax: (510) 521-2078  
APeche@PeccheAssociates.com  
www.PeccheAssociates.com

## CITY OF FORT BRAGG

Lease & Option to Purchase #2005-01  
Final Distribution List

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### CITY OF FORT BRAGG

Mr. Andy Whiteman  
City Manager

(707) 961-2825  
awhiteman@ci.fort-bragg.ca.us

Mr. Mark Johnson  
Finance Director/Treasurer

(707) 961-1586  
mjohnson@ci.fort-bragg.ca.us

Ms. Cindy VanWormer  
City Clerk

(559) 659-1476 ext. 1311  
cvanwormer@ci.fort-bragg.ca.us

#### **City of Fort Bragg**

416 North Franklin  
Fort Bragg, CA 95437

(707) 961-2913 Fax

Mr. Michael Gogna, Esq., (City Attorney)

#### **Meyers Nave Riback Silver & Wilson**

401 Mendocino Avenue, Suite 100  
Santa Rosa CA 95401

(707) 545-8009  
mgogna@meyersnave.com

(707) 545-6617 Fax

### FINANCIAL ADVISOR

Mr. Albert M. Peché, Manager  
**A. M. Peché & Associates LLC**  
1025 Morton Street  
Alameda, CA 94501-3904

(510) 521-2077  
APeche@PeccheAssociates.com

(510) 521-2078 Fax

### PLACEMENT AGENT

Karl E. Yoder  
**Delta Managed Solutions, LLC**  
2005 N Street  
Sacramento, CA 95814

(916) 452-1440  
Karl.Yoder@DeltaManaged.com

(916) 244-0307 Fax

### SPECIAL COUNSEL

Mr. William M. Lofton, Esq.

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BLofton@LoftonJennings.com

Jacquelynne M. Jennings, Esq.

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JJennings@LoftonJennings.com

Deana Altman, Legal Assistant

#### **Lofton & Jennings**

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(415) 772-1909 Fax

**LENDER**

David L. Hicks  
Vice President/Credit Administrator  
Credit Administration Department (A-2D)

(707) 863-6002  
WABCAD@westamerica.com

**WestAmerica Bank**

4550 Mangels Blvd., Fairfield CA 94534-4082  
P.O. Box 1200 Suisun City, CA 94585-1200

(707) 862-6868 Fax

**TRUSTEE FOR 1995 CERTIFICATES**

Ms. Francine Rockett  
Vice President & Account Manager  
**U.S. Bank National Association**  
Corporate Trust Services  
One California Street, Suite 2100  
San Francisco, CA 94111

(415) 273-4517  
francine.rockett@usbank.com

(415) 273-4590 Fax

**TITLE COMPANY**

Gary Bates  
**First American Title Company**  
551 South Orchard Avenue  
Ukiah, CA 95482

(707) 462-1446 Ext 108  
gabates@firstam.com  
(707) 462-0947 Fax  
Policy #2306-2042784

(Rev. November 2000)

Department of the Treasury  
Internal Revenue Service

Caution: If the issue price is under \$100,000, use Form 8038-GC.

<b>Part I Reporting Authority</b>		If Amended Return, check here <input type="checkbox"/>	
1 Issuer's name <b>City of Fort Bragg</b>	2 Issuer's employer identification number <b>94 6000335</b>		
3 Number and street (or P.O. box if mail is not delivered to street address) <b>416 North Franklin</b>	Room/suite	4 Report number <b>3 2005-1</b>	
5 City, town, or post office, state, and ZIP code <b>Fort Bragg, California 95437</b>		6 Date of issue <b>September 15, 2005</b>	
7 Name of issue <b>Refinancing Lease/Purchase Agreement</b>		8 CUSIP number <b>N/A</b>	
9 Name and title of officer or legal representative whom the IRS may call for more information <b>Mark Johnson, Finance Director</b>		10 Telephone number of officer or legal representative <b>( 707 ) 961-1586</b>	

<b>Part II Type of Issue (check applicable box(es) and enter the issue price)</b> See instructions and attach schedule	
11 <input type="checkbox"/> Education	11
12 <input type="checkbox"/> Health and hospital	12
13 <input type="checkbox"/> Transportation	13
14 <input checked="" type="checkbox"/> Public safety	14 <b>1,655,035</b>
15 <input type="checkbox"/> Environment (including sewage bonds)	15
16 <input type="checkbox"/> Housing	16
17 <input type="checkbox"/> Utilities	17
18 <input type="checkbox"/> Other. Describe ►	18
19 If obligations are TANs or RANs, check box <input type="checkbox"/> If obligations are BANs, check box <input type="checkbox"/>	
20 If obligations are in the form of a lease or installment sale, check box <input checked="" type="checkbox"/>	

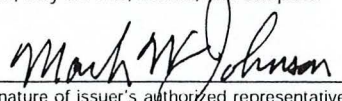
<b>Part III Description of Obligations.</b> Complete for the entire issue for which this form is being filed.				
(a) Final maturity date	(b) Issue price	(c) Stated redemption price at maturity	(d) Weighted average maturity	(e) Yield
21 <b>June 1, 2020</b>	<b>\$ 1,655,035</b>	<b>\$ 1,655,035</b>	<b>8 years</b>	<b>4.15 %</b>

<b>Part IV Uses of Proceeds of Bond Issue (including underwriters' discount)</b>	
22 Proceeds used for accrued interest	22
23 Issue price of entire issue (enter amount from line 21, column (b))	23 <b>1,655,035</b>
24 Proceeds used for bond issuance costs (including underwriters' discount)	24 <b>38,794</b>
25 Proceeds used for credit enhancement	25
26 Proceeds allocated to reasonably required reserve or replacement fund	26
27 Proceeds used to currently refund prior issues	27 <b>1,616,241</b>
28 Proceeds used to advance refund prior issues	28
29 Total (add lines 24 through 28)	29 <b>1,655,035</b>
30 Nonrefunding proceeds of the issue (subtract line 29 from line 23 and enter amount here)	30

<b>Part V Description of Refunded Bonds (Complete this part only for refunding bonds.)</b>	
31 Enter the remaining weighted average maturity of the bonds to be currently refunded	<b>5 years</b>
32 Enter the remaining weighted average maturity of the bonds to be advance refunded	<b>years</b>
33 Enter the last date on which the refunded bonds will be called	<b>December 1, 2005</b>
34 Enter the date(s) the refunded bonds were issued	<b>June 22, 1995</b>

<b>Part VI Miscellaneous</b>	
35 Enter the amount of the state volume cap allocated to the issue under section 141(b)(5)	35
36a Enter the amount of gross proceeds invested or to be invested in a guaranteed investment contract (see instructions)	36a
b Enter the final maturity date of the guaranteed investment contract	37a
37 Pooled financings: a Proceeds of this issue that are to be used to make loans to other governmental units	
b If this issue is a loan made from the proceeds of another tax-exempt issue, check box <input type="checkbox"/> and enter the name of the issuer	
38 If the issuer has designated the issue under section 265(b)(3)(B)(i)(III) (small issuer exception), check box <input checked="" type="checkbox"/>	
39 If the issuer has elected to pay a penalty in lieu of arbitrage rebate, check box <input type="checkbox"/>	
40 If the issuer has identified a hedge, check box <input type="checkbox"/>	

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete.

Sign  
Here  
Signature of issuer's authorized representative**11-15-05**  
Date**Mark Johnson, Finance Director**  
Type or print name and title



## CITY OF FORT BRAGG

*Incorporated August 5, 1889*  
416 N. Franklin St.  
Fort Bragg, CA 95437  
Phone: (707) 961-2823  
Fax: (707) 961-2802  
[ci.fort-bragg.ca.us](http://ci.fort-bragg.ca.us)

November 15, 2005

Internal Revenue Service  
Ogden, Utah 84201

Re: City of Fort Bragg Refinancing Lease/Purchase Agreement

Dear Sir or Madam:

Enclosed for filing is an executed original of the Information Return for Tax-Exempt Government Obligations (8038-G) for the above-referenced issue.

Also enclosed is a copy of the Information Return. Please date-stamp this copy to evidence your receipt and return it to me in the envelope provided.

Thank you for your cooperation.

Sincerely,

Mark W. Johnson  
Finance Director/Treasurer

MJ

Enclosures (2)



**Information Return for Tax-Exempt Governmental Obligations**

► Under Internal Revenue Code section 149(e)

► See separate instructions.

Caution: If the issue price is under \$100,000, use Form 8038-GC.

OMB No. 1545-0720

<b>Part I Reporting Authority</b>		If Amended Return, check here <input type="checkbox"/>	
1 Issuer's name <b>City of Fort Bragg</b>	2 Issuer's employer identification number <b>94 : 6000335</b>		
3 Number and street (or P.O. box if mail is not delivered to street address) <b>416 North Franklin</b>	Room/suite	4 Report number <b>3 2005-1</b>	
5 City, town, or post office, state, and ZIP code <b>Fort Bragg, California 95437</b>		6 Date of issue <b>September 15, 2005</b>	
7 Name of issue <b>Refinancing Lease/Purchase Agreement</b>		8 CUSIP number <b>N/A</b>	
9 Name and title of officer or legal representative whom the IRS may call for more information <b>Mark Johnson, Finance Director</b>		10 Telephone number of officer or legal representative <b>( 707 ) 961-1586</b>	

<b>Part II Type of Issue (check applicable box(es) and enter the issue price)</b> See instructions and attach schedule	
11 <input type="checkbox"/> Education	11
12 <input type="checkbox"/> Health and hospital	12
13 <input type="checkbox"/> Transportation	13
14 <input checked="" type="checkbox"/> Public safety	14 <b>1,655,035</b>
15 <input type="checkbox"/> Environment (including sewage bonds)	15
16 <input type="checkbox"/> Housing	16
17 <input type="checkbox"/> Utilities	17
18 <input type="checkbox"/> Other. Describe ►	18
19 If obligations are TANs or RANs, check box <input type="checkbox"/> If obligations are BANs, check box <input type="checkbox"/>	
20 If obligations are in the form of a lease or installment sale, check box <input checked="" type="checkbox"/>	

<b>Part III Description of Obligations.</b> Complete for the entire issue for which this form is being filed.				
(a) Final maturity date	(b) Issue price	(c) Stated redemption price at maturity	(d) Weighted average maturity	(e) Yield
21 <b>June 1, 2020</b>	<b>\$ 1,655,035</b>	<b>\$ 1,655,035</b>	<b>8</b> years	<b>4.15 %</b>

<b>Part IV Uses of Proceeds of Bond Issue (including underwriters' discount)</b>				
22 Proceeds used for accrued interest	22			
23 Issue price of entire issue (enter amount from line 21, column (b))	23	<b>1,655,035</b>		
24 Proceeds used for bond issuance costs (including underwriters' discount)	24	<b>38,794</b>		
25 Proceeds used for credit enhancement	25			
26 Proceeds allocated to reasonably required reserve or replacement fund	26			
27 Proceeds used to currently refund prior issues	27	<b>1,616,241</b>		
28 Proceeds used to advance refund prior issues	28			
29 Total (add lines 24 through 28)	29	<b>1,655,035</b>		
30 Nonrefunding proceeds of the issue (subtract line 29 from line 23 and enter amount here)	30			

<b>Part V Description of Refunded Bonds (Complete this part only for refunding bonds.)</b>	
31 Enter the remaining weighted average maturity of the bonds to be currently refunded	<b>5</b> years
32 Enter the remaining weighted average maturity of the bonds to be advance refunded	years
33 Enter the last date on which the refunded bonds will be called	<b>December 1, 2005</b>
34 Enter the date(s) the refunded bonds were issued	<b>June 22, 1995</b>

<b>Part VI Miscellaneous</b>	
35 Enter the amount of the state volume cap allocated to the issue under section 141(b)(5)	35
36a Enter the amount of gross proceeds invested or to be invested in a guaranteed investment contract (see instructions)	36a
b Enter the final maturity date of the guaranteed investment contract	
37 Pooled financings: a Proceeds of this issue that are to be used to make loans to other governmental units	37a
b If this issue is a loan made from the proceeds of another tax-exempt issue, check box <input type="checkbox"/> and enter the name of the issuer and the date of the issue	
38 If the issuer has designated the issue under section 265(b)(3)(B)(i)(III) (small issuer exception), check box	<input checked="" type="checkbox"/>
39 If the issuer has elected to pay a penalty in lieu of arbitrage rebate, check box	<input type="checkbox"/>
40 If the issuer has identified a hedge, check box	<input type="checkbox"/>

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete.

**Sign Here**

Signature of issuer's authorized representative	Date	Mark Johnson, Finance Director	Type or print name and title
---	------	--------------------------------	------------------------------





**First American Title Company**  
551 South Orchard Avenue  
Ukiah, CA 95482  
Phone: (707)462-1446 / Fax: (707)462-0947

PR: 06243

Ofc: 2306 (1368)

### Invoice

**To:** Delta Managed Solutions c/o Karl Yoder  
2005 N. Street  
Sacramento, CA 95814

**Invoice No.:** 23061685  
**Date:** 09/16/2005  
**Our File No.:** 2306-2042784  
**Title Officer:** /  
**Escrow Officer:** Rosanne Burlesci / RBURLESCI  
**Customer ID:** AD4240171

**Attention:**

**Your Reference No.:**

**RE: Property:**  
Town Hall, Fort Bragg, CA 95437

**Liability Amounts**  
**Owners:**  
**Lenders:**

**Buyers:** , et al  
**Sellers:** City of Fort Bragg

Description of Charge	Invoice Amount
CLTA Standard Coverage 1084 1990	\$3,794.00

**INVOICE TOTAL** **\$3,794.00**

**Comments:**

**Thank you for your business!**

*To assure proper credit, please send a copy of this Invoice and Payment to:  
Attention: Accounts Receivable Department*

**\$1,655,034.73**  
**CITY OF FORT BRAGG**  
**Refinancing Lease Purchase Agreement**  
**CLOSING MEMORANDUM**

---

<b>SECTION I: DEPOSIT FROM DISTRICT</b>
---

DATE OF DEPOSIT: **Thursday, September 15, 2005**  
TIME: **9:00 a.m. PST**

**WIRE OF NET PROCEEDS:**

On September 15, 2005, WestAmerica Bank, as Lessor under the Agreement, will wire the net proceeds of the Agreement as follows:

**1. \$1,616,240.73** to the Trustee for the 1995 COPs, which when combined with funds on hand, will be sufficient to prepay all outstanding 1995 COPs in full.

**TRUSTEE FOR THE 1995 COPS:**

U.S. BANK, NATIONAL ASSOCIATION  
ABA#: 091000022  
FBO: U.S. BANK NATIONAL ASSOCIATION  
Acct: 180121167365  
Ref: Fort Bragg 1995 Trust Account # 94811390  
Attn: Francine Rockett 415-273-4517

**ADDITIONAL PAYMENTS:**

Also on September 15, 2005, WestAmerica Bank is requested to wire costs of issuance as follows:

**1. \$12,096.39** to A.M. Peche & Associates, LLC representing the financial advisory fee and related out-of-pocket expenses, according to the following wire instructions:

**A.M. PECHE & ASSOCIATES:**

Mellon Bank  
ABA# 043000261  
For credit to: Merrill Lynch Account 1011730  
Further credit to: A. M. Peche & Associates LLC  
Account # 6CA-07356

**2. The title insurance fee of \$3,794.00** to First American Title per the following wire instructions:

(to come)



**\$1,655,034.73**  
**CITY OF FORT BRAGG**  
**Refinancing Lease Purchase Agreement**  
**CLOSING MEMORANDUM**

---

3. The Placement Agent fee (including out-of-pocket expenses) of **\$11,451.81** to Delta Managed Solutions, LLC, per the following wire instructions:

WELLS FARGO BANK  
ABA: 121-000-248  
Account: 7056-281962  
Account Name: Delta Managed Solutions, LLC

4. The Special Counsel fee (including out-of-pocket expenses) of **\$11,451.81** to Lofton & Jennings, Attorneys at Law, per the following wire instructions:

BANK OF AMERICA NT&SA  
ABA No. 121000358  
San Francisco Main Branch #0033  
Account No. 00334-14510  
Reference: 218-04026

**SUMMARY OF LEASE PROCEEDS:**

**Sources**

Principal Amount of Agreement **\$1,655,034.73**

**Uses**

Net Proceeds to prepay 1995 COPs: **\$1,616,240.73**

Costs of Issuance:

Wire to A.M. Peche & Associates:	12,096.39
Wire to First American Title:	3,794.00
Wire to Delta Managed Solutions:	11,451.81
Wire to Lofton & Jennings:	<u>11,451.81</u>

38,794.00

**Total Uses of Proceeds:** **\$1,655,034.73**

# Lofton & Jennings

Attorneys at Law  
225 Bush Street, 16th Floor  
San Francisco, California 94104  
Telephone: (415) 772-1900  
Facsimile: (415) 772-1909

September 15, 2005

## STATEMENT FOR SERVICES RENDERED

City of Fort Bragg  
Fort Bragg, California  
Attention: Mark Johnson, Finance Director

Re: City of Fort Bragg Refinancing Lease/Purchase Agreement

FOR SERVICES RENDERED, in acting as special counsel in connection with the above-referenced transaction, including preparation of all operative legal documentation and the rendering of an approving legal opinion, including disbursements.

TOTAL DUE: **\$11,451.81**

Wire Instructions:

BANK OF AMERICA NT&SA  
ABA No. 121000358  
San Francisco Main Branch #0033  
Account No. 00334-14510  
Reference: 230-05031

772  
1909

Bill - I could not get Certificates of Coverage today since our "risk manager" (City Clerk) is out. But I did get REMIF to send general coverage info, plus listing of fire/extended coverage on facilities (\$1,402,065 on Corp Yard and \$746,080 on Town Hall) plus Certificate provided last year for 1995 COP issue (liability). Hope this is sufficient for West America to close - the lease requires insurance but does not specify certificates with additional insureds.

**Fax**

To: ~~Mark Johnson~~

From: Leigh Townsend

Fax: 961-2913

Pages: 3 (includes cover)

Phone:

Date: 9/14/05

Re: Trs. Coverage

CC:

☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

Hi Mark,

Please let me know if you need something else.

Thanks,  
Leigh

409  
1592

**SUMMARY OF POLICIES  
2004-2005**

COMPANY	LIMITS/COVERAGE	COST
<b><u>LIABILITY</u></b>		
California Joint Powers Risk Management Authority*	\$4,500,000 xs \$500,000. Bodily injury, property damage, errors and omissions, personal injury. (7/1/04 – 7/1/05)	\$771,397
American Reinsurance #9391646	\$10,000,000 x \$5,000,000	
American Reinsurance #9391720	\$10,000,000 xs \$15,000,000. Bodily injury, property damage, personal injury, errors & omissions, employment practices, liability reinsurance. (7/1/04 – 7/1/05)	
<b><u>WORKERS' COMPENSATION</u></b>		
Continental #W128587841A	Statutory xs \$1,000,000 S.I.R. (7/1/04 – 7/1/05)	\$484,163
	\$2,000,000 xs \$1,000,000 S.I.R. for employers liability (7/1/04 – 7/1/05)	
<b><u>PROPERTY</u></b>		
Discover Property & Casualty #D0003Z00030	\$4,975,000 xs \$25,000 S.I.R. (excludes earthquake and flood) (7/1/04 – 7/1/06)	
Federal Insurance Company (CHUBB) #660-74-94	\$195,000,000 xs \$5,000,000 all risk (excludes terrorism, mold, and computer virus) (7/1/04 – 7/1/05)	\$232,187
Hartford Steam Boiler Ins. Company #FBP4909988	\$19,995,000 xs \$5,000 S.I.R., <u>Boiler/Machinery</u> - Mechanical breakdown to boilers and other pressure vessels. Fixed rate per city** \$21,250,000 limit for equipment breakdown. (7/1/04 – 7/1/05)	\$28,344
Fireman's Fund #S 95 MXX 80828850	\$1,490,000 xs \$10,000 S.I.R., <u>Automobile Physical Damage</u> Vehicles valued in excess of \$25,000. Damage to vehicles off premises. (7/1/04 – 7/1/05)	\$85,268
<b><u>BONDS</u></b>		
Fidelity & Deposit Company of Maryland #CCCP 0044417	\$1,975,000 xs \$25,000 S.I.R., <u>Public Employee Blanket Bond</u> , loss of money, securities, and other property through employee dishonesty. (10/1/04 – 10/1/05)	
	\$1,975,000 xs \$25,000 S.I.R., <u>Honesty Blanket Bond</u> , coverage for a forgery or alteration loss by a third party. (10/1/04 – 10/1/05)	
	\$975,000 xs \$25,000 S.I.R., <u>Faithful Performance</u> loss of money, securities, and other property through failure to properly supervise. (10/1/04 – 10/1/05)	\$29,282
	\$990,000 xs \$10,000 <u>REMIF Treasurer/CEO Bond</u> , <u>Honesty Blanket Bond</u> , forgery or alteration, public employee dishonesty, and faithful performance coverage.	\$1,572

\* Risk Sharing Self-Funded Pool

\*\* SIR and limits different for Healdsburg and Ukiah

Note: Earthquake/Blind Coverage is not included in this summary.

# **Difference in Conditions 2004 - 2005**

<b>Insurers</b>	<b>Participation</b>	<b>Premium</b>
Great American Assurance Company CPP 56644111	11/17/04-11/17/05 Renewal - DIC CIGNA - DIC \$2,500,000 part of \$5,000,000 Primary	\$110,000.00 <u>\$5,000.00</u> \$115,000.00
Greenwich Insurance Company ACG 33644111	11/17/04-11/17/05 Renewal -- DIC \$2,500,000 part of \$5,000,000 Primary	\$110,000.00
Landmark American Insurance Co LHD 410460	11/17/04-11/17/05 Renewal - DIC Taxes - DIC Stamping Fee -- DIC \$5,000,000 xs \$5,000,000	\$85,000.00 \$2,550.00 <u>\$191.25</u> \$87,741.25
Mt. Hawley Insurance Company MCD 0300166	11/17/04-11/17/05 Renewal -- DIC Taxes -- DIC Policy Fee -- DIC Stamping Fee -- DIC \$10,000,000 xs \$10,000,000	\$80,000.00 \$2,404.50 \$150.00 <u>\$180.34</u> \$82,734.84
Clarendon America Insurance Company 303583EQ1	11/17/04-11/17/05 Renewal -- DIC Policy Fee -- DIC Taxes -- DIC Stamping Fee -- DIC \$5,000,000 xs \$20,000,000	\$43,000.00 \$300.00 \$1,299.00 <u>\$97.43</u> \$44,696.43
	<b>Premiums</b>	<b><u>\$440,172.52</u></b>

## FORT BRAGG PROPERTY AND DIC COVERAGE FY05

#	SITE	DESCRIPTION	VALUE BUILDINGS	SQ FT	COST/ SQ FT	CONTRACT EQUIP	IN THE OPEN	TOTALS	DIC NOT COVERED	DIC COVERAGE	ADD/ DELETE DATES
1	1-001	CITY HALL	3,781,580	17,189	220	468,681	1,557	4,251,818	-	4,251,818	
2	2-001	FIRE STATION	2,796,640	12,712	220	-		2,796,640	-	2,796,640	
3	3-001	GUEST HOUSE	2,369,250	17,550	135	142,198		2,511,448	2,511,448	0	
4	3-002	GH STORAGE	36,100	361	100	4,900		41,000	41,000		
5	4-001	FORT MUSEUM	92,800	928	100	20,000		112,800	112,800		
6	5-001	CORP YARD	1,015,000	8,120	125	237,065	150,000	1,402,065	-	1,402,065	
7	5-002	CY HAZ MAT	19,200	192	100	10,000		29,200	29,200		
8	6-001	TOWN HALL	696,080	3,164	220	50,000		746,080	-	746,080	
9	7-001	RIVER INTAK BS	12,100	121	100	103,508		115,608	115,608		
10	7-002	RIBS EFB PRES	33,600	336	100	78,000		111,600	-	111,600	
11	8-001	WATER TP BLDG	300,000	2,400	125	1,125,000		1,425,000	-	1,425,000	
12	8-002	WTP PUMP H	137,500	1,100	125	220,000		357,500	-	357,500	
13	8-003	WTP CHLORINE	12,600	126	100	8,438		21,038	21,038		
14	8-005	WTP TANK		reservoir		-	1,500,000	1,500,000	1,500,000		
15	8-006	WTP TANK		reservoir		-	1,500,000	1,500,000	1,500,000		
16	8-007	WTP RESERVOIR		reservoir		-	491,862	491,862	491,862		
17	8-008	WTP RESERVOIR		reservoir		-	491,862	491,862	491,862		
18	9-001	ELM LIFT STAT	64,600	646	100	99,000		163,600	163,600		
19	10-001	PUDDING CR LIFT	32,300	323	100	49,392		81,692	81,692		
20	11-001	S HARBOR NOYO	24,000	240	100	21,609		45,609	45,609		
21	12-001	N HARBOR NOYO	24,000	240	100	21,609		45,609	45,609		
22	13-001	WWTP CONTROL	223,000	1,784	125	70,000		293,000	-	293,000	
23	13-002	WWTP CHLORINE	74,600	746	100	35,000		109,600	109,600		
24	13-003	WWTP WELL	55,000	550	100	15,000		70,000	70,000		
25	13-004	WWTP SLUDGE	33,900	339	100	25,000		58,900	58,900		
26	13-005	WWTP FILTER	80,000	800	100	80,000		160,000	160,000		
27	13-006	WW TREAT PLANT				785,000	3,190,000	3,975,000	-	3,975,000	
28	13-007	WWTP GENERATOR	90,000	900	100	60,000		150,000	-	150,000	
29	14-001	POLICE DEPT	1,826,000	8,300	220	684,000		2,510,000	-	2,510,000	
30	15-001	WATER TANK				-	300,000	300,000	-	300,000	
31	17-001	CBD				-	35,000	35,000	35,000		
32	18-001	PELICAN STORAGE				250,000		250,000	250,000		
33	90-001	HWY#20	753,125	6,025	125	40,000		793,125	793,125		
TOTALS			14,582,975	85,192	171.18	4,703,400	150,000	7,510,281	26,946,656	8,627,953	18,318,703



# CALIFORNIA JOINT POWERS RISK MANAGEMENT AUTHORITY

## CERTIFICATE OF COVERAGE

### **Certificate Holder and**

**Additional Covered Party:** City of Fort Bragg Joint Powers Financing Authority, c/o City of Fort Bragg  
416 N. Franklin Street  
Fort Bragg, CA 95437  
Attention: Ms. Connie Jackson, City Manager

### **This certifies that the coverage**

**Described herein has been issued to:** REMIF - City of Fort Bragg

**Description of Activity:** Certificates of Participation for Landfill Closure Financing Program

**Date(s) of Activity:** Ongoing

**Location of Activity:** City of Fort Bragg

Entity Providing Coverage	Excess Coverage	Certificate Expiration Date
California Joint Powers Risk Management Authority	\$ 2,500,000 excess of \$ 500,000	6/30/2005

The following coverage is in effect and is provided through participation in a risk sharing joint powers authority: comprehensive general liability, automobile liability, and public officials errors and omissions, as defined in the Memorandum of Coverage on file with the entity and which will be made available upon request.

The coverage being provided is limited to the activity and the time period indicated herein and is subject to all the terms, conditions and exclusions of the Memorandum of Coverage of the California Joint Powers Risk Management Authority.

Pursuant to Section II, subsection 8, relating to the definition of a covered party, the certificate holder named herein is only an additional covered party for covered claims arising out of the activity described herein and is subject to the limits stated herein.

Coverage is in effect at this time and will not be cancelled, limited or allowed to expire at a date other than that indicated herein except upon 30 days written notice to the certificate holder.

7/1/2004

Date

Authorized Signature

**Robert J. German, General Manager**

Name and Title (Print or type)

**CALIFORNIA DEBT AND INVESTMENT ADVISORY COMMISSION**

915 CAPITOL MALL, ROOM 400  
P.O. BOX 942809  
SACRAMENTO, CA 94209-0001  
TELEPHONE: (916) 653-3269  
FAX: (916) 654-7440

August 22, 2005

**TO:** William M Lofton  
Lofton & Jennings  
225 Bush St 16th Fl  
San Francisco, CA 94104



**FROM:** Executive Director

**RE: ACKNOWLEDGEMENT OF REPORT OF PROPOSED DEBT ISSUANCE**

Section 8855(k) of the California Government Code requires written notice to be given to the California Debt and Investment Advisory Commission (CDIAC) no later than 30 days prior to the proposed sale of any public agency debt issue.

The Commission acknowledges your written notice of the following proposed debt issuance:

<b>CDIAC Nbr:</b>	2005-1502
<b>Issuer:</b>	Fort Bragg
<b>Project:</b>	Multiple capital improvements, public works
<b>Proposed Amount:</b>	\$2,000,000.00
<b>Proposed Sale Date:</b>	September 15, 2005
<b>Date Notice Received:</b>	August 19, 2005

Please submit the **Report of Final Sale** and the Official Statement (or offering circular) on this issue within 45 days of sale date. Any questions regarding reporting requirements may be directed to the CDIAC staff at (916) 653-3269.

Cc: Mark Johnson  
Finance Dir/Treasurer



**Johnson, Mark**

---

**From:** Karl Yoder [karl.yoder@deltamanaged.com]  
**Sent:** Wednesday, August 10, 2005 1:58 PM  
**To:** Mark Johnson  
**Cc:** APeche@PecheAssociates.com; blofton@loftonjennings.com  
**Subject:** Lease/Purchase Agreement Bid Results

Hi Mark -

Attached is a summary sheet of the received bids for the Lease/Purchase Agreement. I was very pleased with the end result, a 4.15% from WestAmerica, and I don't think any of the other bidders could have come close to that level - I think WestAmerica is valuing the existing relationship and known credit.

Albert and I look forward to discussing the bid results with you further at your convenience, and please let me know if anything more than the one-page summary is needed for your internal discussions.

Thanks,

Karl Yoder

---

Karl Yoder  
Delta Managed Solutions, LLC  
2005 N Street  
Sacramento, CA 95814  
916-452-1440  
916-244-0307 fax

8/10/2005

**City of Fort Bragg**  
**Refinancing Lease/Purchase Agreement No. 2005-01**  
**SUMMARY OF BIDS**

The bids for the City's Refinancing Lease/Purchase Agreement No. 2005-01 went very well, with an aggressive winning bid of 4.15% from WestAmerica Bank and a cover bid of 4.81% from LaSalle Bank. The national leasing arms of two local banks, Bank of America and Wells Fargo, also expressed interest in the financing but in the end decided not to submit a bid. The leasing arms of the large national banks generally focus on equipment leases, making the long term and real property structure of the City's offering less attractive. WestAmerica and LaSalle, on the other hand, have a strong appetite for longer term real property lease agreements such as this, although WestAmerica is often more competitive on Northern California offerings within its home market (LaSalle is based in Minneapolis).

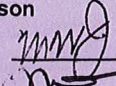
Bidder	Lease Bid	Semiannual Payment	Net Savings to City (PV)
WestAmerica Bank	4.150%	\$ 73,894	\$ 307,995
LaSalle Bank N.A.	4.820%	77,148	227,476
Bank of America	Declined to Bid		
Wells Fargo Bank	Declined to Bid		

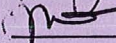


MEETING DATE: September 12, 2005

DEPARTMENT: Finance

PREPARED BY: M. Johnson

DEPT. DIR. APPROVAL: 

CITY MGR. APPROVAL: 

PRESENTED BY: M. Johnson

## AGENDA ITEM SUMMARY REPORT

**RECEIVE REPORT ON AND ADOPT (1) CITY COUNCIL RESOLUTION APPROVING, AUTHORIZING AND DIRECTING THE REFINANCING OF THE CITY'S 1995 CERTIFICATES OF PARTICIPATION AND AUTHORIZING RELATED ACTIONS, AND (2) RESOLUTION OF THE GOVERNING BOARD OF THE CITY OF FORT BRAGG JOINT POWERS FINANCING AUTHORITY AUTHORIZING THE EXECUTION AND DELIVERY OF A GROUND LEASE AND A REFINANCING LEASE/PURCHASE LEASE AGREEMENT, BY AND BETWEEN THE AUTHORITY AND THE CITY OF FORT BRAGG, AND AN ASSIGNMENT AGREEMENT ASSIGNING THE AUTHORITY'S RIGHTS TO RENTAL PAYMENTS UNDER SUCH REFINANCING LEASE/PURCHASE AGREEMENT**

### **BACKGROUND**

In 1995, the City entered into a \$2,790,000 "Certificates of Participation" (COP) lease-purchase financing by the City of Fort Bragg Joint Powers Financing Authority to fund Caspar landfill closing costs and refund prior COP financing for the Police Station. The 1995 COPs are 30 year obligations at an interest cost of 7% with the budgeted FY06 rent payment level of \$264,815 for use of premises (City Hall, Town Hall and Fire Station). \$1,785,000 remains outstanding.

### **SUMMARY**

Several financial firms have proposed various refundings to reduce interest and debt service costs. A team consisting of A. M. Peche & Associates, Delta Managed Solutions LLC, and Lofton & Jennings proposed a lease-purchase alternative involving competitive bidding and direct placement with a single bank to avoid the securities underwriting costs of another COP. A low bid of 4.15% has been submitted by WestAmerica Bank, which if accepted will reduce the remaining term from 20 years to 15 years, reduce the annual level rent payment to \$148,000 and produce savings of \$450,000 having a present value (discounted) of \$300,000 to the City.

To implement the refunding proposal the City must adopt a Resolution authorizing the new lease-purchase structure and the Financing JPA must adopt a Resolution terminating the 1995 COP. The new structure substitutes the Corporation Yard for City Hall and the Fire Station but leaves Town Hall in place. Due to 1995 Indenture requirements, opportunities to refund occur in September and March of each year.



## **FISCAL IMPACT**

FY05/06 savings are calculated at \$106,535.76 and can be allocated to the benefit of both the General Fund and the Redevelopment Fund. The RDA contributes \$62,000 to pay rent on the 1995 COPs and the General Fund is loaning the RDA \$168,000 to cover the rent contribution and the ERAF payment. Following closing of the refunding scheduled for early September, staff will recommend budget revisions. Both the General Fund and RDA Fund operating deficits will be materially reduced.

## **ALTERNATIVES**

1. Authorize staff to implement the lease-purchase refunding proposal with WestAmericia Bank and the financing team.
2. Reject the WestAmerica offer and proceed with a traditional COP refunding.
3. Reject the WestAmerica offer and wait for the next refunding "window of opportunity" occurring in March, 2006.

## **RECOMMENDATIONS**

1. That the City Council adopts the attached Resolution authorizing the refinancing of the 1995 Certificates of Participation; and
2. That the Governing Board of JPFA adopts attached Resolution authorizing the refinancing of the 1995 Certificates of Participation.

## **ATTACHMENTS**

1. Resolution of the City Council approving, authorizing, and directing the refinancing of the City's 1995 Certificates of Participation and authorizing related actions.
2. Resolution of the Governing Board of the City of Fort Bragg Joint Powers Financing Authority authorizing the execution and delivery of a Ground Lease and a Refinancing Lease/Purchase Agreement, by and between the Authority and the City of Fort Bragg, and an Assignment Agreement assigning the Authority's rights to rental payments under such Refinancing Lease/Purchase Agreement.
3. Savings report.

## **AGENDA & SUMMARY REPORT TO:**

1. Albert M. Peche, A. M. Peche & Associates LLC



## **RESOLUTION NO. \_\_\_\_-2005**

### **RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FORT BRAGG APPROVING, AUTHORIZING AND DIRECTING THE REFINANCING OF THE CITY'S 1995 CERTIFICATES OF PARTICIPATION AND AUTHORIZING RELATED ACTIONS**

WHEREAS, the City of Fort Bragg (the "City") has determined that substantial net dollar savings can be realized through the refinancing of the outstanding amount of the City's Certificates of Participation (1995 Refunding and Landfill Closure Program) dated June 1, 1995 (the "1995 COPs"); and

WHEREAS, the Council has determined that it is in the best interests and for the common benefit of the residents and landowners of the City for the City to refinance the 1995 COPs through the execution and delivery of: (i) a Ground Lease dated, for reference purposes, as of September 1, 2005 (the "Ground Lease") pursuant to which the City will lease the sites of the City's Town Hall (363 N. Main Street) and the City's Corporation Yard (831 Cedar Street) (collectively, the "Sites") to the City of Fort Bragg Joint Powers Financing Authority (the "Authority"); and (ii) a Refinancing Lease/Purchase Agreement dated, for reference purposes, as of September 1, 2005 (the "Lease"), between the City and Authority, which provides for the payment by the City of Rental Payments for the improvements on the Sites, said Rental Payments to be made by the City from any lawfully available revenues of the City; and

WHEREAS, Delta Managed Solutions, LLC, on behalf of the City, solicited bids from financial institutions to accept an assignment of the lease, which bids set forth an interest rate to be used to determine the lease payments to be made by the City under the Lease; and

WHEREAS, WestAmerica Bank ("WestAmerica") submitted the lowest bid of 4.15%, effective through September 15, 2005, which produces savings in General Fund lease/rent payments of approximately \$450,000 in nominal terms or \$300,000 in discounted presented value terms and also eliminates City lease/rent payments for five fiscal years 2021 through 2025.

NOW THEREFORE, the City Council of Fort Bragg does hereby RESOLVE, DETERMINE AND ORDER, as follows:

Section 1. The above recitals are all true and correct.

Section 2. The Council hereby authorizes and directs the execution and delivery of the Ground Lease and the Lease, which Lease shall have principal components aggregating not more than an amount of \$2,000,000, as shall be approved by the City Manager, Finance Director or other authorized executing official of the City, such approval to be conclusively evidenced by the execution thereof as herein authorized. The right to receive lease payments under the lease will be assigned to WestAmerica pursuant to an Assignment to be approved and executed by the Authority. Substantially final forms of the Ground Lease and the Lease are on file with the City Clerk.

Section 3. The Council hereby authorizes and directs the City Manager or the Finance Director to execute and deliver a termination agreement or any other appropriate documents deemed necessary by Special Counsel (defined below) to terminate the leases entered by the City in connection with the 1995 COPs.

**ATTACHMENT 1**

Section 4. In connection with the refinancing of the 1995 COPs contemplated by this resolution, the City hereby retains the following firms and authorizes and directs the Finance Director to pay costs incidental to the refinancing authorized hereby, including the fees of the following firms: Delta Managed Solutions, LLC (Financial Advisor); A. M. Peche and Associates, LLC (Finance Advisor) and Lofton & Jennings (Special Counsel).

Section 5. The Council hereby authorizes and directs:

(a) The City Manager, Finance Director or other authorized executing official to execute and deliver said Ground Lease and said Lease, and all closing documents in connection therewith, as appropriate, for and in the name of and on behalf of the City;

(b) The appropriate officers of the City, jointly and severally, for and in the name of and on behalf of this City, to execute and deliver any and all things and to take any and all actions which may be necessary or advisable in their discretion to fulfill the actions and consummate the transactions heretofore approved by this Council; and

(c) The appropriate officers of the City to make such additional filings, amendments, consents, undertakings or agreements as may be required to affect and maintain the qualifications and exemptions existing or to be obtained under the laws of the State of California and the laws of the United States of America.

Section 6. The Council hereby ratifies and confirms all actions heretofore taken in connection with the authorization, execution and delivery of the Ground Lease and the Lease and other documents related thereto.

Section 7. The City hereby designates the Lease for purposes of Section 265(b) of the Code as a "Qualified Tax-Exempt Obligation" and covenants that the Lease does not constitute a private activity bond as defined in Section 141 of the Code and that the aggregate face amount of all tax-exempt obligations issued by the City (including all subordinate entities of the City and all entities which may issue obligations on behalf of the City) during the calendar year 2005 is not reasonably expected to exceed \$10,000,000, excluding, however, private activity bonds, as defined in Section 141 of the Code (other than qualified 501(c)(3) bonds as defined in Section 145 of the Code) and current refinancing obligations having a principal amount not in excess of the refunded obligation.

Section 8. This resolution shall take effect immediately upon adoption.

ADOPTED, signed and approved this 12th day of September, 2005.

ATTEST:

CITY OF FORT BRAGG

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

AYES:

NOES:

ABSTAIN:

ABSENT:

STATE OF CALIFORNIA     )  
  )ss  
COUNTY OF MENDOCINO    )

I, \_\_\_\_\_, City Clerk of the City of Fort Bragg, California, do hereby certify that the foregoing is a full, true, and correct copy of a resolution duly adopted by the City Council of the City of Fort Bragg at a regular meeting thereof on the date and by the vote above stated, which resolution is on file and of record in the office of said City.

\_\_\_\_\_  
City Clerk



## RESOLUTION NO. \_\_\_\_-2005

A RESOLUTION OF THE GOVERNING BOARD OF THE CITY OF FORT BRAGG  
JOINT POWERS FINANCING AUTHORITY AUTHORIZING THE EXECUTION  
AND DELIVERY OF A GROUND LEASE AND A REFINANCING  
LEASE/PURCHASE LEASE AGREEMENT, BY AND BETWEEN THE  
AUTHORITY AND THE CITY OF FORT BRAGG, AND AN ASSIGNMENT  
AGREEMENT ASSIGNING THE AUTHORITY'S RIGHTS TO RENTAL  
PAYMENTS UNDER SUCH REFINANCING LEASE/PURCHASE AGREEMENT

WHEREAS, the City of Fort Bragg Joint Powers Financing Authority (the "Authority") is empowered to assist the City of Fort Bragg (the "City") in financing and refinancing certain public capital improvement obligations and certain public capital improvement projects pursuant to Article 4 of Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California and pursuant to that certain Joint Exercise of Powers Agreement by and between the City and the Redevelopment Agency of the City of Fort Bragg dated as of April 12, 1993; and

WHEREAS, the Authority has determined to enter into a Ground Lease and a Refinancing Lease/Purchase Agreement, each dated, for reference purposes, as of September 1, 2005 by and between the Authority and the City in order to assist the City in refinancing the City's Certificates of Participation (1995 Refunding and Landfill Closure Program) (the "1995 COPs"); and

WHEREAS, the Authority has determined to enter into an Assignment Agreement, dated as of September 1, 2005, pursuant to which the Authority will assign to a financial institution the Authority's entitlement to receive the Rental Payments and other moneys from the City;

NOW, THEREFORE, BE IT RESOLVED, BY THE GOVERNING BOARD OF THE CITY OF FORT BRAGG JOINT POWERS FINANCING AUTHORITY, AS FOLLOWS:

Section 1. The foregoing recitals are true and correct and this Board hereby so finds and determines.

Section 2. The forms of Ground Lease, Refinancing Lease/Purchase Agreement, and Assignment Agreement are hereby approved. The President or Treasurer of the Authority is hereby authorized and directed to execute and deliver the forms of Ground Lease, Refinancing Lease/Purchase Agreement and Assignment Agreement in substantially the forms on file with the Secretary of the Authority, with such changes, additions, amendments or modification which are approved by the President or Treasurer in the interest of the Authority, such approval to be conclusively evidenced by said execution and delivery.

Section 3. The President, the Treasurer and the Secretary and any and all other officers, agents and employees of the Authority are hereby authorized and directed to take any and all actions and execute and deliver any and all documents necessary or convenient to accomplish the purposes of this Resolution, including but not limited to the execution, sale and delivery of the Certificates and the execution and delivery of a termination agreement or any other appropriate documents to terminate the lease entered into by the Authority in connection with the 1995 COPs.

Section 4. This resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED this 12th day of September, 2005 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

---

President

STATE OF CALIFORNIA     )  
  )ss  
COUNTY OF MENDOCINO   )

I, \_\_\_\_\_, Secretary to the Governing Board of the Fort Bragg Joint Powers Authority, do hereby certify that the foregoing is a full, true, and correct copy of a resolution duly adopted by said Governing Board at a regular meeting thereof on the date and by the vote above stated.

\_\_\_\_\_  
Secretary



City of Fort Bragg  
Lease/Purchase Agreement 2005-01  
15 Year Lease/Purchase Agreement (non-COP)

SAVINGS SCHEDULE (Updated 8-10-05)

Total Net Savings: \$ 450,176.36  
Present Value of Savings (@ TIC): \$ 307,995.17  
PV Savings as % of Refunded Issue: 17.25%  
PV Savings as % of Refunding Issue: 18.61%

Payment Number	Payment Date	Net Existing COP Payments	New 2005 Lease Payments	Semiannual Savings	Fiscal Year Savings	Present Value Savings
1	12/01/05	\$ 57,162.00	73,894.12	\$ (16,732.12)	\$ -	\$ (16,362.93)
2	06/01/06	197,162.00	73,894.12	123,267.88	106,535.76	117,888.19
3	12/01/06	52,542.00	73,894.12	(21,352.12)	-	(19,969.70)
4	06/01/07	202,542.00	73,894.12	128,647.88	107,295.76	117,663.94
5	12/01/07	47,592.00	73,894.12	(26,302.12)	-	(23,525.65)
6	06/01/08	207,592.00	73,894.12	133,697.88	107,395.76	116,946.07
7	12/01/08	42,312.00	73,894.12	(31,582.12)	-	(27,015.48)
8	06/01/09	92,312.00	73,894.12	18,417.88	(13,164.24)	15,407.11
9	12/01/09	40,587.00	73,894.12	(33,307.12)	-	(27,247.63)
10	06/01/10	90,587.00	73,894.12	16,692.88	(16,614.24)	13,354.67
11	12/01/10	38,862.00	73,894.12	(35,032.12)	-	(27,408.07)
12	06/01/11	88,862.00	73,894.12	14,967.88	(20,064.24)	11,452.03
13	12/01/11	37,137.00	73,894.12	(36,757.12)	-	(27,502.61)
14	06/01/12	92,137.00	73,894.12	18,242.88	(18,514.24)	13,348.61
15	12/01/12	35,239.50	73,894.12	(38,654.62)	-	(27,660.13)
16	06/01/13	90,239.50	73,894.12	16,345.38	(22,309.24)	11,438.21
17	12/01/13	33,342.00	73,894.12	(40,552.12)	-	(27,751.52)
18	06/01/14	98,342.00	73,894.12	24,447.88	(16,104.24)	16,361.55
19	12/01/14	31,099.50	73,894.12	(42,794.62)	-	(28,008.04)
20	06/01/15	106,099.50	73,894.12	32,205.38	(10,589.24)	20,612.57
21	12/01/15	28,512.00	73,894.12	(45,382.12)	-	(28,405.26)
22	06/01/16	103,512.00	73,894.12	29,617.88	(15,764.24)	18,129.18
23	12/01/16	25,924.50	73,894.12	(47,969.62)	-	(28,714.46)
24	06/01/17	100,924.50	73,894.12	27,030.38	(20,939.24)	15,823.28
25	12/01/17	23,337.00	73,894.12	(50,557.12)	-	(28,942.56)
26	06/01/18	98,337.00	73,894.12	24,442.88	(26,114.24)	13,684.13
27	12/01/18	20,749.50	73,894.12	(53,144.62)	-	(29,096.07)
28	06/01/19	100,749.50	73,894.12	26,855.38	(26,289.24)	14,378.60
29	12/01/19	17,989.50	73,894.12	(55,904.62)	-	(29,271.38)
30	06/01/20	107,989.50	73,894.12	34,095.38	(21,809.24)	17,458.27
	12/01/20	14,884.50	0.00	14,884.50	-	7,453.32
	06/01/21	109,884.50	0.00	109,884.50	124,769.00	53,809.93
	12/01/21	11,607.00	0.00	11,607.00	-	5,558.48
	06/01/22	111,607.00	0.00	111,607.00	123,214.00	52,268.23
	12/01/22	8,157.00	0.00	8,157.00	-	3,735.83
	06/01/23	113,157.00	0.00	113,157.00	121,314.00	50,681.35
	12/01/23	4,534.50	0.00	4,534.50	-	1,986.12
	06/01/24	119,534.50	0.00	119,534.50	124,069.00	51,201.23
	12/01/24	567.00	0.00	567.00	-	237.51
	06/01/25	(136,708.00)	0.00	(136,708.00)	(136,141.00)	(56,001.73)
		\$ 2,667,000.00	\$ 2,216,823.64	\$ 450,176.36	\$ 450,176.36	\$ 307,995.17

**\$1,655,034.73**  
**CITY OF FORT BRAGG**  
**REFINANCING LEASE PURCHASE AGREEMENT**  
**(September 15, 2005)**  
**(Leased Assets: Town Center and Corporation Yard)**

**TRANSCRIPT OF DOCUMENTS**

1. Ground Lease dated as of September 1, 2005 between the City of Fort Bragg (the "City") and the City of Fort Bragg Joint Powers Financing Authority (the "Authority").
2. Refinancing Lease/Purchase Agreement dated as of September 1, 2005 between the Authority and the City.
3. Assignment dated September 1, 2005 by the Authority to WestAmerica Bank.
4. Title Insurance Policy.
5. City Resolution 2889-2005 adopted on September 17, 2005, certified as of September 15, 2005.
6. Authority Resolution No. 8-2005 adopted on September 12, 2005, certified as of September 15, 2005.
7. Closing Certificate of the City dated September 15, 2005.
8. Certificate as to Arbitrage dated September 15, 2005.
9. Internal Revenue Service Form 8038-G.
10. California Debt and Investment Advisory Commission Report of Proposed Debt Issuance and Report of Final Sale.
11. Evidence of Insurance.
12. Notice by the City of Intention to Prepay refunded certificates of participation.
13. Termination Agreement dated September 15, 2005 terminating agreements related to refunded certificates of participation.
14. Closing Memorandum.
15. Interested Parties List.
16. Approving Opinion of Lofton & Jennings dated September 15, 2005.

EXECUTION COPY

**COPY OF Document Recorded**

9/16/05 2005-20287

Recording Requested By: )  
City of Fort Bragg )  
 )  
When Recorded Mail to: )  
City of Fort Bragg )  
416 N. Franklin Street )  
Fort Bragg, California 95437 )  
Attn: Mark Johnson )  
 )

Has not been compared with  
original. Original will be returned  
when processing has been  
completed.

**MENDOCINO COUNTY RECORDER**

This document is recorded for the benefit of the City of Fort Bragg and recording is fee-exempt under §27383 of the Government Code.

GROUND LEASE

BETWEEN

CITY OF FORT BRAGG,  
as Lessor

AND

CITY OF FORT BRAGG JOINT POWERS FINANCING AUTHORITY,  
as Lessee

Dated as of September 1, 2005

## **GROUND LEASE**

THIS GROUND LEASE, made and entered into as of the 1<sup>st</sup> day of September, 2005 (the "Ground Lease"), by and between the City of Fort Bragg (the "City"), and the City of Fort Bragg Joint Powers Financing Authority (the "Authority").

### **WITNESSETH:**

WHEREAS, the City is authorized by law to establish, acquire, lease, erect, repair, maintain and operate buildings and other facilities for governmental purposes; and

WHEREAS, the City has previously issued its \$2,790,000 Certificates of Participation (1995 Refunding and Landfill Closure Program) dated June 1, 1995 (the "1995 COPs") and has now determined it is in its the best interests to refinance the 1995 COPs to realize present value savings; and

WHEREAS, the City intends that certain real property and all improvements thereon as further described in Attachment I to this Ground Lease (the "Real Estate") will provide security to the Authority and its assignees; and

WHEREAS, the Authority has agreed to lease from the City the Real Estate and has agreed to sublease back to the City the Real Estate pursuant to the Refinancing Lease/Purchase Agreement dated as of September 1, 2005 (the "Lease"), between the Authority and the City; and

NOW, THEREFORE, for and in consideration of the premises hereinafter contained, the parties hereto hereby formally covenant, agree and bind themselves as follows:

### **ARTICLE I REPRESENTATIONS AND DISCLAIMERS**

Section 1.01. Representations of the City. The City represents, covenants and warrants to the Authority:

- (a) That the City has good and marketable title to the Real Estate subject only to Permitted Encumbrances, has the full power and authority to enter into, to execute and to deliver this Ground Lease and the Lease and has duly authorized the execution and the delivery of this Ground Lease and the Lease;
- (b) Except for Permitted Encumbrances, that the Real Estate is not subject to any dedication, easement, right of way, reservation in patent, covenant, condition, restriction, lien or encumbrance that would prohibit or would interfere materially with the use of the Real Estate to support the financing as contemplated by this Ground Lease and the Lease;
- (c) That, if a problem with the title to the Real Estate or the use thereof should develop, the City shall undertake all actions necessary to defend title including exercising its condemnation powers to the extent permitted by law to obtain the necessary rights in the Real Estate that will enable the parties hereto to perform the transaction contemplated by the Lease and this Ground Lease;



- (d) That all taxes, assessments or impositions of any kind with respect to the Real Estate, except current taxes, have been paid in full;
- (e) That the Real Estate is necessary to the City in order for the City to perform its essential governmental functions; and
- (f) That the City's past and current uses of the Real Estate, and to the best of the City's knowledge all past and current uses of the Real Estate, have complied and currently comply with all federal, state and local environmental laws, rules, regulations and ordinances. Neither the City nor anyone on behalf of the City has received notice of any violations of any environmental law, rule, regulation or ordinance. No actions or lawsuits have been commenced or threatened by a governmental agency or any other person or entity claiming non-compliance with any environmental law, rule, regulation or ordinance. The City has never applied for environmental liability insurance or, if it has so applied, it has never been denied such coverage. The City has no knowledge or notice of any emission, discharge, seepage, release, or pollutant in or upon the Real Estate.

Section 1.02. Representations of the Authority. The Authority represents, covenants and warrants to the City that the Authority has the authority to enter into, to execute and to deliver this Ground Lease and the Lease and to perform all of its obligations thereunder, has duly authorized the execution and the delivery of this Ground Lease and the Lease and shall permit this Ground Lease or a memorandum thereof to be recorded in the County of Mendocino, State of California.

Section 1.03. Disclaimers of the Authority. (A) THE AUTHORITY DOES NOT MAKE ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE FITNESS OF THE REAL ESTATE FOR THE USE CONTEMPLATED BY THE CITY.

(B) THE AUTHORITY MAKES NO PATENT WARRANTIES OR REPRESENTATIONS WHATSOEVER, THE AUTHORITY SHALL NOT BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT OR SPECIAL DAMAGES WITH RESPECT TO THE REAL ESTATE AND THE PROVISIONS OF THIS SECTION ARE APPLICABLE TO ALL PORTIONS OF THE REAL ESTATE UNDER THIS GROUND LEASE AND THE LEASE.

## ARTICLE II LEASE OF THE REAL ESTATE

Section 2.01. Demise. The City hereby demises and leases to the Authority and the Authority hereby takes and leases from the City for the sum of one dollar (\$1.00) and other good and valuable consideration, the receipt and the sufficiency of which are hereby acknowledged, the Real Estate described in Attachment I attached hereto and by this reference made a part hereof, including without limitation, all Improvements and all rights, powers, licenses, easements, rights-of-way, privileges, hereditaments and franchises now or hereafter situate thereon or pertaining thereto.

Section 2.02. Term. The term of this Ground Lease shall commence on the Funding Date and shall end September 1, 2021, unless extended or sooner terminated in accordance with the terms hereof. The term of this Ground Lease shall be automatically extended for such time as may be permitted by law until all amounts due hereunder and under the Lease have been paid in full. Notwithstanding anything herein to the contrary, this Ground Lease shall not be extended beyond 25 years from the date hereof.

### **ARTICLE III TERMINATION**

Section 3.01. Termination. Subject to the other provisions of this Ground Lease, this Ground Lease shall terminate prior to September 1, 2021 or shall be extended beyond September 1, 2021 until the occurrence of any one of the following events:

(a) The payment of all Rent and other amounts owing by the City to the Authority under the Lease; or

(b) The termination of the Lease Term by the City for an Event of Nonappropriation applicable to any Fiscal Year pursuant to the Lease and the receipt by the Authority or its assigns of amounts from the sublease or the sale of the Authority's leasehold interest in the Real Estate sufficient to:

- (1) Pay to the Authority an amount equal to all Supplemental Rent due under the Lease, and reimburse the Authority for all administrative costs and expenses, including reasonable attorneys fees, incurred by the Authority as a result of the termination of the Lease Term and the sublease, or the sale of the leasehold interest in the Real Estate; and
- (2) Reimburse the Authority for all reasonable capital costs and expenses in any manner incurred by the Authority with respect to making the Real Estate suitable for the sublease or the sale of such sublease for commercial or other lawful purposes and all other costs and expenses incurred in connection with such sublease or sale; and
- (3) Pay to the Authority or its assignee an amount that will equal the Basic Rent Payments then due as of such date, the Principal Portion of all Basic Rent Payments stated to become due under the Lease through September 1, 2021 or such later date as may be set forth by amendment hereto and the interest accrued on such Principal Portion (at rates per annum that are equal to the interest rates on the Lease) to the date of the payment in full of the amounts set forth in (1), (2) and (3) of this subsection (b) and any additional amount which, when invested, will be necessary to provide for the payment of Basic Rent Payments due through the first Optional Prepayment Date plus any prepayment premium; or

(c) The termination of the Lease Term by the Authority, upon the occurrence of an Event of Default by the City under the Lease and the receipt by the Authority or its assigns of amounts from the sublease or sale of the Authority's leasehold interest in the Real Estate or the payment by the City from Available Revenues sufficient to:

- (1) Pay to the Authority an amount that will equal all Supplemental Rent due under the Lease, and reimburse the Authority, for all administrative costs and expenses, including reasonable attorneys fees, incurred by the Authority, as a result of the Event of Default and the termination of the Lease Term and the sublease or the sale of the leasehold interest in the Real Estate; and
- (2) Reimburse the Authority for all reasonable capital costs and expenses in any manner incurred by the Authority with respect to making the Real Estate suitable for sublease or the sale of such sublease for the commercial or other lawful purposes and all other costs and expenses incurred in connection with such sublease or sale; and

- (3) Pay to the Authority or its assigns an amount that will equal the Basic Rent Payments then due as of such date, the Principal Portion of all Basic Rent Payments stated to become due under the Lease through September 1, 2021 or such later date as may be set forth by amendment hereto; and the interest accrued on such Principal Portion (at rates per annum that are equal to the interest rates in the Lease) to the date of the payment in full of the amounts set forth in (1), (2) and (3) of this subsection (c) and any additional amount which, when invested, will be necessary to provide for the payment of Basic Rent Payments due through the first Optional Prepayment Date plus any prepayment premium.

Section 3.02. Use of Sublease Rentals. (a) The amounts referred to in Section 3.01, paragraphs (b) and (c), respectively, shall be known as the "Reimbursement Amount." Use of the Real Estate by the Authority or any subsidiary or affiliate of the Authority, other than for the purpose of assuming control, making necessary changes in the Real Estate, and the initial subleasing thereof, shall be treated as the sublease thereof on a monthly basis at market value and any amounts so treated that are in excess of the monthly administrative costs of the Authority in respect of the Real Estate shall be paid in cash to the Authority within thirty (30) days of the accrual thereof. In the event that Delta subleases the Real Estate, the Authority will not be penalized for any sublease amount that is below the established market value for similarly situated properties.

(b) In the event of an Event of Nonappropriation under the Lease, an amount equal to amounts due under the Lease, were there not an Event of Nonappropriation, shall be payable through the application of the Reimbursement Amount as provided herein in order to terminate this Ground Lease under Section 3.01 hereof.

Section 3.03. Return of Real Estate Subject to Subleases. In the event that (a) the Lease Term is terminated by the City for an Event of Nonappropriation in any Fiscal Year or terminated by the Authority as a result of the occurrence and the continuance of an Event of Default by the City under the Lease and (b) the Reimbursement Amount is received by the Authority, but the Authority's leasehold interest in the Real Estate has been subleased or sold to any sublessee or purchaser pursuant to any subleases or sale that are still in effect, this Ground Lease shall not terminate but the Authority and any assignee of the Authority shall assign and set over to the City all of the Authority's interest in the Real Estate granted under this Ground Lease, subject to all existing rights created in such sublessees or purchasers of the Real Estate by any such sublease.

Section 3.04. Reports. In the event that the Lease Term is terminated by the City for an Event of Nonappropriation in any Fiscal Year or terminated by the Authority as a result of the occurrence and the continuance of an Event of Default by the City under the Lease, the Authority shall keep complete and accurate records regarding any sublease or sale of the Real Estate and shall, within sixty (60) days of the end of the Fiscal Year of the City, deliver a written report to the City showing: (a) all amounts received by the Authority from any sublease of its leasehold interest in the Real Estate and all reasonable amounts expended in order to render the Real Estate suitable for sublease; (b) an analysis as to whether the Authority has received the Reimbursement Amount, with all supporting calculations; and (c) the date, if any, in the next Fiscal Year of the City in which the Authority expects to receive the Reimbursement Amount. Such written report shall be verified by a certified public accountant or firm of certified public accountants licensed to practice in the City and not within the regular employ of the Authority. In the event that on the last day of any Fiscal Year of the City, the Authority has received the Reimbursement Amount, then all rent payments with respect to any sublease of the Real Estate payable after the close of such Fiscal Year and net of any reasonable expenses incurred with respect hereto shall be the property of and be payable to the City.



The City shall have the right, at its own expense, to examine the Authority's records insofar as they relate to the Real Estate. Such examination shall be made upon five (5) business days prior notice at the Authority's offices during normal business hours.

#### **ARTICLE IV ACCESS, USE, CONDEMNATION**

Section 4.01. Granting Access. The City hereby grants such access to the Real Estate in such form and content as are determined by the Authority to be reasonably necessary to exercise the Authority's rights and obligations under the Lease and this Ground Lease including, but not limited to, its rights to exercise its remedies under the Lease and its rights in the event of termination of the Lease.

Section 4.02. Quiet Use and Enjoyment. Subject to the terms of the Lease, the City hereby covenants to provide the Authority during the term of this Ground Lease with quiet use and enjoyment of the Real Estate, and the Authority during such term shall have, shall hold and shall enjoy the Real Estate peaceably and quietly, without suit, trouble or hindrance from the City.

Section 4.03. Condemnation. In the event of condemnation of the Real Estate, the proceeds of such condemnation will belong to the City to be applied as provided in the Lease.

#### **ARTICLE V USE OF PROPERTY; SURRENDER, ASSIGNMENT**

Section 5.01. Use of Real Estate. In the event that the Lease Term is terminated by the City for an Event of Nonappropriation or is terminated by the Authority as a result of an Event of Default by the City, the Authority may use, or sublease its leasehold interest in the Real Estate for any purpose authorized by any applicable zoning laws. The City acknowledges that in the event of such termination, the Authority shall have the right to apply for and obtain such zoning changes on the Real Estate as shall be reasonably necessary for subleasing or selling its leasehold interest in the Real Estate.

Section 5.02. Surrender of Real Estate. The Authority agrees that upon the termination of this Ground Lease it will surrender the Real Estate to the City free and clear of all liens and encumbrances, except the Permitted Encumbrances. In the event that the Real Estate are subject to the rights of any sublessee of the Authority granted under any sublease entered into in accordance with the terms of this Ground Lease after the termination of the Lease Term for an Event of Nonappropriation by the City or as a result of an Event of Default by the City, the Authority agrees to assign and to set over to the City the Authority's entire interest in the Real Estate granted under this Ground Lease subject only to the Permitted Encumbrances and the rights of such sublessees under any such subleases.

#### **ARTICLE VI SUBLETTING OF REAL ESTATE**

Section 6.01. Assignment. The Authority shall have the right, during the term hereof, to assign its rights under this Ground Lease without the consent of the City in connection with any assignment of its rights under the Lease.

Section 6.02. Ground Lease and Lease Create Independent Estates. It is specifically agreed by the Authority and the City that:

- (a) the leasehold interest herein granted by the City to the Authority shall be independent of the Lease;
- (b) the Lease shall not be an assignment or surrender of the leasehold interest herein granted to the Authority;
- (c) the Lease shall not operate as a merger or extinguishment of the leasehold interest herein granted to the Authority;
- (d) this Ground Lease and the Lease shall not constitute "washout" or "mutual" leases; and
- (e) should the Lease be withdrawn for any reason whatsoever whether by breach of the Lease or otherwise, this Ground Lease and the interest herein granted by the City to the Authority shall remain in full force and effect until terminated by the express terms hereof.

Section 6.03. Subletting or Sale to Other Parties. It is agreed that, upon the occurrence and the continuance of an Event of Default or the occurrence of an Event of Nonappropriation under the Lease, the Authority, in its sole discretion, shall have the right to sell, or to sublease its interest hereunder in the Real Estate subject to the Lease to any other person or party for any purpose authorized by applicable law.

## **ARTICLE VII MISCELLANEOUS**

Section 7.01. Definitions. All capitalized terms not otherwise defined in this Ground Lease shall have the meanings ascribed thereto in the Lease, unless the context shall otherwise clearly require.

Section 7.02. Severability. If any term or provision of this Ground Lease or the application thereof to any person or circumstances shall be invalid or unenforceable to any extent, the remainder of this Ground Lease or the application of such term or provision to persons or to circumstances, other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Ground Lease shall be valid and enforceable to the fullest extent permitted by law.

Section 7.03. Notices and Demands. Any notice, demand or other communication under this Ground Lease by either party to the other shall be sufficiently given or delivered if dispatched by registered or certified mail, postage prepaid and return receipt requested or delivered personally and, in the case of the City, addressed to City of Fort Bragg, Attn: Finance Director, 416 N. Franklin Street, Fort Bragg, California 95437, and in the case of the Authority addressed to Fort Bragg Joint Powers Authority, c/o City of Fort Bragg Attn: Mark Johnson, 416 N. Franklin Street, Fort Bragg, California 95437, or at such other address with respect to which any party, from time to time, may designate in writing and may forward to the other parties as provided in this Section.

Section 7.04. Environmental Conditions. Delta shall not be obligated to monitor compliance of the Real Estate with applicable environmental or other laws. Delta shall not have any obligations or responsibility to foreclose or otherwise further involve themselves with the Real Estate under any circumstances, including any instance where Delta is notified of any non-compliance of the Real Estate with applicable environmental laws. The City represents that the Real Estate is currently in full

compliance with all applicable Federal, State and local environmental laws. It is expressly understood that Delta shall not have the right or the obligation to monitor the City's compliance with environmental laws.

Section 7.05. Binding Effect. This Ground Lease shall inure to the benefit of and shall be binding upon Delta and the City and their respective successors and assigns.

Section 7.06. Counterparts. This Ground Lease may be executed in counterparts, each of which shall constitute one and the same instrument.

Section 7.07. Applicable Law. This Ground Lease shall be interpreted and enforced in accordance with the laws of the State.

Section 7.08. Amendments. The parties hereto, from time to time, may enter into any amendment hereto under the same circumstances, in the same manner, and subject to the same conditions as are applicable to amendments of the Lease as set forth in the Lease.

**IN WITNESS WHEREOF**, the parties hereto have executed this Ground Lease on the date set forth below their respective signatures and as of the date first above written.

**CITY OF FORT BRAGG, as lessor**

By: Mark Johnson  
Mark Johnson, Finance Director

**CITY OF FORT BRAGG JOINT POWERS  
FINANCING AUTHORITY, as lessee**

By: Mark Johnson  
Mark Johnson, Treasurer

STATE OF CALIFORNIA                    )  
  ) SS.  
COUNTY OF MENDOCINO                )

On \_\_\_\_\_, 2005, before me, \_\_\_\_\_ a notary public in and for said County and State, personally appeared \_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument, and acknowledged to me that such he/she executed the same in his/her authorized capacity, and that by his/her signatures on the instrument the persons, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
NOTARY PUBLIC

STATE OF CALIFORNIA                    )  
  ) SS.  
COUNTY OF MENDOCINO                )

On \_\_\_\_\_, 2005, before me, \_\_\_\_\_ a notary public in and for said County and State, personally appeared \_\_\_\_\_ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument, and acknowledged to me that such he/she executed the same in his/her authorized capacity, and that by his/her signatures on the instrument the persons, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
NOTARY PUBLIC



**ATTACHMENT I TO THE GROUND LEASE  
REAL ESTATE DESCRIPTION**

Title Order Number:

File Number: 2306-2042784

### **Attachment I**

Real property in the City of Fort Bragg, County of Mendocino, State of California, described as follows:

**PARCEL ONE:**

That certain real property situated in the City of Fort Bragg, County of Mendocino, State of California and being in Section 7, Township 18 North, Range 17 West, Mount Diablo Meridian, more particularly defined and lying within the following described boundaries:

The bearings used in this description are in terms of the California State Grid, Zone 2.

Commencing at the Section corner common to Sections 6 and 7, Township 18 North, Range 17 West, Mount Diablo Meridian and Sections 1 and 12, Township 18 North, Range 18 West, Mount Diablo Meridian; thence South 88°40'20" East, 3,066.56 feet (Record = East 3,070 feet), to the Northwest corner of Union Lumber Company Suburban Lot 7 and also being the Southeast corner of the intersection of Morrow Street and Laurel Avenue; thence South 88°40'00" East along the Northerly line of said Union Lumber Company Suburban Lot 7 and also along the Northerly boundary line of Union Lumber Company Suburban Lot 6, a distance of 470.00 feet to the true point of beginning; thence from said true point of beginning and along the exterior boundary line of the parcel of land to be described as follows:

Continuing South 88°40'00" East along the Northerly boundary line of Union Lumber Company Suburban Lot 6 and also the Northerly boundary line of Union Lumber Company Suburban Lot 5, a distance of 470.00 feet to the Northeast corner of said Lot 5, being a 1 inch diameter iron bolt monument as shown and delineated upon that certain Record of Survey map filed for Record on March 18, 1941 in Map Case 1, Drawer 8, Page 15, Mendocino County Records; thence South 1°20'00" West, 500.00 feet; thence North 88°40'00" West, 50.00 feet; thence North 1°20'00" East, 10.00 feet; thence North 88°40'00" West, 100.00 feet; thence North 1°20'00" East, 20.00 feet; thence North 88°40'00" West, 76.00 feet; thence North 1°20'00" East, 20.00 feet; thence North 88°40'00" West, 250.00 feet; thence South 1°20'00" West, 20.00 feet; thence North 88°40'00" West, 64.00 feet; thence South 1°20'00" West, 170.00 feet to a point in the Northerly side line of Cedar Avenue; thence North 88°40'00" West along said street side line, 50.00 feet; thence leaving said street side line, North 1°20'00" East, 170.00 feet; thence South 88°40'00" East, 15.00 feet; thence North 1°20'00" East, 50.00 feet; thence North 88°40'00" West, 75.00 feet; thence North 1°20'00" East, 196.00 feet to a point in the Southerly boundary of lands being retained by the Grantors; thence South 88°40'00" East, 10.00 feet; thence North 25°48'06" East, 48.34 feet to the Southeast corner of Lands of Henry A. Dockham, et ux, as described in a deed dated March 5, 1953 and recorded in Book 341 of Official Records, Page 459, Mendocino County Records; thence North 60°22'10" East, along the Easterly boundary line of said Dockham land, 58.31 feet to the most Easterly Corner thereof; and being an angle point in the Southerly boundary line of lands of Donald E. Markham, as described in a deed dated August 26, 1953 and recorded in Book 352 of Official Records, Page 108, Mendocino County Records; thence along said lands of Markham, as follows:

North 57°54'30" East, 119.81 feet; thence North 1°20'00" East, 84.00 feet to the true point of beginning.

APN: 008-250-48, 27

PARCEL TWO:

Being that portion of Lot 16 in Block 15 bounded and described as follows, to wit:

Starting at the corner to Sections 1 and 12, Township 18 North, Range 18 West and Sections 6 and 7, Township 18 North, Range 17 West, Mount Diablo Base and Meridian and running thence East 280 feet to and for the point of beginning; and thence on the exterior boundary of such piece or parcel of land East 100 feet; thence South 35 feet; thence West 100 feet; and thence North 35 feet to said point of beginning, being the Northeast 35 by 100 feet of said Lot 16.

APN: 008-151-01

PARCEL THREE:

Starting at the corner to Sections 1 and 12 in Township 18 North, Range 18 West of Mount Diablo Base and Meridian and Sections 6 and 7 in Township 18 North, Range 17 West of Mount Diablo Base and Meridian and running East 380 feet and thence South 35 feet to and for the point of beginning and thence on the exterior boundary of such piece or parcel of land South 42 1/2 feet and thence West 56 feet; thence North 42 1/2 feet and thence East 56 feet to the said point of beginning, being a portion of Block 15 of the City of Fort Bragg.

APN: 008-151-02

APN: 008-151-01,02 and 008-250-27,48

EXECUTION COPY

Recording Requested By:  
City of Fort Bragg

When Recorded Mail to:  
City of Fort Bragg  
416 N. Franklin Street  
Fort Bragg, California 95437  
Attn: Mark Johnson

**COPY OF Document Recorded**

9/16/05 2005-20288

Has not been compared with original. Original will be returned when processing has been completed.

MENDOCINO COUNTY RECORDER

This document is recorded for the benefit of the City of Fort Bragg and recording is fee-exempt under §27383 of the Government Code.

## REFINANCING LEASE/PURCHASE AGREEMENT

BETWEEN

CITY OF FORT BRAGG JOINT POWERS FINANCING AUTHORITY,  
as Lessor

AND

CITY OF FORT BRAGG,  
as Lessee

Dated as of September 1, 2005

**REFINANCING LEASE/PURCHASE AGREEMENT  
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#### **ATTACHMENT I TO THE LEASE - DESCRIPTION OF THE REAL ESTATE**

#### **ATTACHMENT II TO THE LEASE – RENTAL PAYMENT SCHEDULE**



## **REFINANCING LEASE/PURCHASE AGREEMENT**

This **REFINANCING LEASE/PURCHASE AGREEMENT** (this "Lease") is entered into by and between City of Fort Bragg Joint Powers Financing Authority (the "Lessor"), and City of Fort Bragg (the "Lessee"), dated as of September 1, 2005.

### **WITNESSETH:**

WHEREAS, the Lessee is authorized by law to establish, acquire, lease, erect, repair, maintain and operate buildings and other facilities necessary for governmental purposes; and

WHEREAS, the Lessee has previously issued its \$2,790,000 Certificates of Participation (1995 Refunding and Landfill Closure Program) dated June 1, 1995 (the "1995 COPs") and has now determined it is in the best interests of the Lessee to refinance the 1995 COPs to realize present value savings; and

WHEREAS, the Lessor and the Lessee on this day will have entered into a Ground Lease (the "Ground Lease") whereby the Lessee is leasing to the Lessor certain real property (the "Real Estate") for the term of this Lease and under the conditions as specified therein, to be leased back to the Lessee pursuant to this Lease; and

WHEREAS, pursuant to a Resolution duly adopted by the Lessee, the Lessee has determined that it is in the best interest of the Lessee for the Lessee to enter into and to execute this Lease, the Ground Lease and certain related documents thereto for the purpose of refinancing the 1995 COPs; and

WHEREAS, in exchange for Lessor depositing or causing to be deposited an amount to be used to prepay in full the 1995 COPs and other related amounts, the Lessee will enter into this Lease and the Ground Lease and will pay the Lessor Rent during the Lease Term as provided herein; and

NOW, THEREFORE, the parties hereto mutually agree as follows:

### **ARTICLE I DEFINITIONS AND EXHIBITS**

#### **Section 101. Definitions.**

Unless the context otherwise specifically requires or indicates to the contrary, the following terms as used in this Lease shall have the respective meanings set forth below. Each of the defined terms set forth below is deemed to be a defined term unless otherwise expressly indicated.

"Authorized Representative" shall mean, (1) with respect to the Lessor: the President, the Treasurer, any vice-president, secretary or assistant secretary or any other person designated as an Authorized Representative of the Lessor by a statement of the Lessor signed by any two of such above-named officers; and (2) with respect to the Lessee; the City Manager, the Finance Director or any other person designated as an Authorized Representative of the Lessee.

"Available Revenues" shall mean, with respect to the Real Estate, all sums appropriated by the Lessee in its annual budget as it may be approved by lawful means and as may otherwise become legally available by resolution of the Lessee for the purpose of paying Rent.

“Base Rent” shall mean the payment due and owing under Section 301 of this Lease and described in Attachment II hereto as it may be restated in accordance with Sections 306 and 602 hereof consisting of a Principal Portion and an Interest Portion.

“Base Rent Payment” shall mean the periodic payment of Base Rent due and owing from time to time, including (i) the Interest Portion thereof as set forth pursuant to Section 307 of this Lease and (ii) the Principal Portion thereof as may be adjusted from time to time pursuant to Section 306 hereof provided that certain Base Rent Payments may include only an Interest Portion.

“Base Rent Payment Dates” shall mean with respect to any portion of Base Rent represented by this Lease, the first (1st) day of each June and December commencing December 1, 2005, or if any such date is not a Business Day, the First Business Day preceding any such date until maturity or the Lease is paid in full.

“Business Day” shall mean any day except Saturday, Sunday, any day on which banks located in the municipalities in which the principal offices of the Lessee are located, are required or are authorized by law to remain closed.

“City” shall mean City of Fort Bragg.

“Code” shall mean the United States Internal Revenue Code of 1986, as amended, and the regulations and the revenue rulings issued pursuant thereto from time to time.

“Costs” shall mean all costs that under generally accepted accounting principles constitute capital costs of constructing, furnishing, equipping and installing the Real Estate, including architectural, engineering and design costs, financing costs, including capitalized interest and Costs of Issuance, and all fees and costs incidental or related thereto.

“Costs of Issuance” shall mean all items of expense directly or indirectly payable by or reimbursable to the Lessee or to the Lessor and related to the authorization and the execution of the Ground Lease and the Lease, including but not limited to advertising and printing costs, costs of preparation and reproduction of documents, filing and recording fees, all initial fees and charges of the Lessor, the fees to be paid to any placement agent or underwriter, fees to be paid to any financial advisor to the Lessee, title insurance, legal fees of parties to the transaction and all initial charges and all other initial fees and disbursements contemplated by this Lease.

“Event of Default” shall mean an Event of Default as described in Section 801 hereof.

“Event of Extraordinary Prepayment” shall mean that Event of Extraordinary Prepayment as described in Section 603 hereof.

“Event of Nonappropriation” shall mean an Event of Nonappropriation as described in Section 802 hereof.

“Financial Newspaper” shall mean The Wall Street Journal or The Bond Buyer or any other newspaper or journal containing financial news, printed in the English language, customarily published on each Business Day with a national circulation, customarily relied upon by the financial community and selected by the Lessor, whose decision shall be final and conclusive.

“Fiscal Year” shall mean the fiscal year of the Lessee for financial and budgeting purpose. The Lessee’s Fiscal Year begins on July 1 of each calendar year.

“Funding Date” shall mean that date the Lessor and Lessee execute this Lease and Rent obligations begin to accrue against the Lessee.

“Ground Lease” shall mean the Ground Lease dated as of the date of this Lease by and between the Lessee as lessor and the Lessor as lessee, as it may be amended in accordance with its terms.

“Improvements” shall mean the construction of additions and renovations to the Real Estate.

“Interest Portion” shall mean, with respect to each Base Rent Payment, the portion thereof that is interest as calculated and set pursuant to Sections 307 and 308 hereof.

“Lease” shall mean this Refinancing Lease/Purchase Agreement between the Lessee and the Lessor dated as of September 1, 2005, as it may be amended in accordance with its terms.

“Lease Rights” shall have the meaning provided in Section 701 hereof.

“Lease Term” or “Term” shall mean the period specified in Section 402 hereof.

“Lessee” shall mean City of Fort Bragg.

“Lessor” shall mean the City of Fort Bragg Joint Powers Financing Authority, and its successors and assigns.

“Permitted Encumbrances” shall mean as of any particular time:

(a) determined liens and charges incident to construction or maintenance now or hereafter filed on record that are being contested in good faith and have not proceeded to judgment, provided that the Lessee shall have set aside adequate reserves with respect thereto;

(b) the lien of taxes and assessments that are not delinquent;

(c) the lien of taxes and assessments that are delinquent but the validity of which is being contested in good faith and with respect to which the Lessee shall have set aside adequate reserves unless, in the opinion of independent counsel that thereby any of the Real Estate or the interest of the Lessor may be in danger of being lost or forfeited;

(d) minor defects and irregularities in the title to the Real Estate, in the opinion of independent counsel that do not in the aggregate materially impair the use of the Real Estate for the purposes for which it is or may reasonably be expected to be held;

(e) easements, exceptions or reservations for the purpose of pipelines, telephone lines, telegraph lines, power lines and substations, roads, streets, alleys, highways, railroad purposes, drainage and sewerage purposes, dikes, canals, materials, ditches, the removal of oil, gas, coal or other minerals, and other like purposes, or for the joint or common use of real property, facilities and equipment that the Lessee certifies in writing do not materially impair the use of the Real Estate for the purposes for which it is or may reasonably be expected to be held;

(f) rights reserved to or vested in any municipality or governmental or other public authority to control, to regulate or to use in any manner any portion of the Real Estate that do not materially impair the use of the Real Estate for the purposes for which it is or may reasonably be expected to be held;

(g) any obligations or duties affecting any portion of the Real Estate or any municipality or governmental or other public authority with respect to any right, power, franchise, grant, license or permit;

(h) present or future zoning laws and ordinances;

(i) the rights created under the Ground Lease;

(j) the rights created under this Lease;

(k) any exceptions noted in the Title Insurance Policy delivered with respect to this transaction.

"Principal Portion" shall mean with respect to each Base Rent Payment, the portion thereof designated as principal as set forth in Section 306 to the Lease and in Attachment I thereto, as amended and restated from time to time in accordance with this Lease.

"Real Estate" shall mean the land together with existing facilities thereon described in Exhibit A to this Lease and in the Ground Lease.

"Rent" shall mean, collectively, Base Rent and Supplemental Rent and, within the context of Section 803 on Remedies, will also include the amount described in Sections 803(c) and 907.

"Reserved Rights" shall mean (i) the right to receive notices provided for in this Lease, (ii) the right to appoint, replace or remove such parties as shall be appointed, replaced or removed under this Lease at the direction of the Lessor; and (iii) the right to give or withhold consents permitted or required of Lessor under this Lease and to consent to or withhold consent to amendments to this Lease to the extent that any such consent or amendment would diminish Lessor's rights or enlarge its responsibilities or adversely affect its ability to realize or perform same, respectively, or which would increase Lessor's potential liability or exposure to any party to such documents or to any third party as a result thereof.

"Resolutions" shall mean the resolutions adopted by the Lessee authorizing this Lease and the Ground Lease.

"Special Counsel" shall mean Lofton & Jennings or any other attorney at law or any firm of attorneys of nationally recognized standing in matters pertaining to the federal tax exemption of interest on bonds or other obligations issued by states and political subdivisions and duly admitted to practice law before the highest court of the State.

"State" shall mean the State of California.

"State and Federal Law or Laws" shall mean the constitution and the laws of the State, any ordinance, rule or regulation of any agency or political subdivision of the State, any law of the United States and any rule or regulation of any federal agency.

"Supplemental Rent" shall mean all amounts due hereunder other than Base Rent, as further described in Section 301 hereof.

"Title Insurance Policy" shall mean the title insurance policy issued in connection with the Real Estate.

**Section 102. Exhibits.**

The following Attachments are attached to this Lease and by this reference are made a part of this Lease:

Attachment I: Description of the Real Estate and

Attachment II: Base Rent Payment Schedule.

**ARTICLE II  
REPRESENTATIONS, COVENANTS AND WARRANTIES; DISCLAIMERS**

**Section 201. Representations, Covenants and Warranties of Lessee.**

The Lessee represents, covenants and warrants as follows:

(a) The Lessee is a public body corporate and politic duly organized, validly existing and governed by the Constitution and the laws of the State.

(b) The constitution and the laws of the State authorize the Lessee to establish, to acquire, to lease, to construct, to operate, to equip and to maintain the Real Estate; to enter into this Lease and the Ground Lease and the transactions contemplated hereby and thereby and to carry out its obligations under this Lease and the Ground Lease.

(c) The officers of the Lessee executing this Lease and the Ground Lease have been duly authorized to execute and to deliver this Lease the Ground Lease under the terms and the provisions of one or more resolutions of the Lessee.

(d) The Lessee has complied or will comply with all open meeting laws, all public bidding laws and all other State and federal laws applicable to it with respect to this Lease and the Ground Lease, the acquisition and the conveyance of the Real Estate or any rights in the Real Estate and the construction of the Improvements, if any.

(e) Except as provided under the terms of this Lease and the Ground Lease, the Lessee will not transfer, lease, assign, mortgage or encumber the Real Estate or any portion thereof or take any other action contrary to the rights of the Lessor created under this Lease.

(f) Real Estate will be used by the Lessee only for the purpose of performing one or more essential governmental or proprietary functions of Lessee consistent with the permissible scope of Lessee's authority and will not be used in a trade or business of any person or entity other than the Lessee.

(g) Upon the execution of this Lease, the Lessee will provide to the Lessor opinions of its legal counsel and such other certificates and documents as are customary and as reasonably may be requested by the Lessor to evidence the validity of the transaction contemplated by the Lease and the Ground Lease, including but not limited to a Title Insurance Policy and subsequent recordation of the Lease and Ground Lease with the Mendocino County Recorder's Office.

(h) During the term of this Lease, the Lessee will comply with the requirements of the Code applicable to this Lease in order to maintain the exclusion from gross income for federal income tax



purposes of the Interest Portion and will not take any action or fail to take any action that would cause the loss of such exclusion or cause the Interest Portion to be treated as an item of tax preference under Section 57 of the Code, in so far as it has the power and the authority to do so.

(i) The Lessee intends, subject to the provisions of Section 802 hereof, to pay all Rent Payments required hereunder. The Lessee's Authorized Representative shall include in his or her budget request for each Fiscal Year the Rent to become due in such Fiscal Year. The Lessee shall use all reasonable and lawful means to secure the appropriation of money for such Fiscal Year sufficient to pay the Rent coming due therein. If 45 days before the end of the then current Fiscal Year, the Rent Payments have not been appropriated, then the Lessee, within 5 business days, shall notify in writing the Lessor of such event.

(j) In any Fiscal Year within the Term of the Lease for which sufficient funds are appropriated to pay Rent, the Lessee shall not transfer from the budget line item any amount designated for the payments of Rent and shall make all Rent payments in a timely manner.

(k) In the event that the Lessee's appropriation for Rent will cause the Lessee to exceed its annual permissible budget increase, the Lessee shall use its best efforts to amend its budget so that the appropriation of Rent shall fall within the annual permissible budget increase and the appropriation for Rent shall be the last discretionary item that the Lessee will cut from its budget.

(l) There are no lawsuits or administrative or other proceedings pending or to the best of the Lessee's knowledge threatened that contest the authority for, the authorization or the performance of or the expenditure of funds pursuant to this Lease other than as may be described in the opinion of counsel to the Lessee.

(m) Information supplied and statements made by the Lessee in any financial statement or current budget dated or prepared prior to or contemporaneously with this Lease present such information fairly and accurately.

(n) The execution and the delivery by the Lessee of the Ground Lease and this Lease, and the compliance by the Lessee with the provisions thereof, will not conflict with or constitute on the part of the Lessee a violation of, breach of or default under its by-laws or any statute, indenture, mortgage, deed of trust, note agreement or other agreement or instrument to which the Lessee is bound, or, to the knowledge of the Lessee, any order, rule, or regulation of any court or governmental agency or body having jurisdiction over the Lessee or any of its activities or properties, and all consents, approvals, authorizations and orders of governmental or regulatory authorities that are required for the consummation of the transactions contemplated hereby and thereby have been obtained.

(o) The Lessee agrees that it shall not authorize any action or act in any way that would cause any charge or claim to exist on the Real Estate or the Available Revenues other than Permitted Encumbrances or authorize any other action or act in any way that would adversely impact the rights of the Lessor hereunder.



## **Section 202. Representations, Covenants and Warranties of Lessor.**

The Lessor represents, covenants and warrants as follows:

(a) The Lessor is a public body corporate and politic, duly organized, existing and in good standing under the laws of the State of California; has full and complete power to enter into this Lease and the Ground Lease, to enter into and to carry out the transactions contemplated of it hereby and thereby and to carry out its obligations under this Lease and the Ground Lease; is possessed of full power to own and to hold real and personal property and to lease the same; and has duly authorized the execution and the delivery of this Lease and the Ground Lease, and all other agreements, certificates and documents contemplated hereby and thereby.

(b) Neither the execution and the delivery of this Lease or the Ground Lease, nor the fulfillment of or the compliance with the terms and the conditions thereof, nor the consummation of the transactions contemplated hereby and thereby conflicts with or results in a breach of the terms, the conditions or the provisions of any restriction, any agreement or any instrument to which the Lessor is now a party or by which the Lessor or its property is bound, constitutes a default under any of the foregoing or results in the creation or the imposition of any lien, charge or encumbrance whatsoever upon any of the property or the assets of the Lessor or upon the Real Estate, except Permitted Encumbrances.

(c) If the Lessee elects to prepay this Lease pursuant to Section 601 of the Lease, the Lessor will deliver, or will cause to be delivered to the Lessee all documents that are or may be necessary to vest all of the Lessor's rights and interest in and to the Real Estate in the Lessee and will release all liens and encumbrances created under this Lease or the Ground Lease with respect to the Real Estate.

## **Section 203. Disclaimer of Lessor.**

(a) THE LESSOR BY DELIVERY HEREOF, MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE FITNESS OF THE REAL ESTATE FOR THE USE CONTEMPLATED BY THE LESSEE.

(b) THE LESSOR LEASES THE REAL ESTATE AS IS AND, NOT BEING ANY CONTRACTOR'S AGENT, MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE MERCHANTABILITY, THE FITNESS FOR A PARTICULAR PURPOSE, THE DESIGN OR THE CONDITION OF THE REAL ESTATE, OR AS TO THE QUALITY, THE CAPACITY OF THE MATERIAL OR THE WORKMANSHIP OF THE REAL ESTATE OR THE ABILITY OF THE REAL ESTATE OR ANY PORTION THEREOF TO SATISFY THE REQUIREMENTS OF ANY LAW, RULE, SET OF SPECIFICATIONS OR CONTRACT THAT MAY BE APPLICABLE THERETO. It is agreed that all such risks, as between the Lessor, on the one hand, and the Lessee on the other hand, are to be borne by the Lessee at its sole risk and expense. The Lessee agrees to look solely to the Contractors of the Real Estate for such warranties, and all warranties made by the Contractors, to the degree possible, are hereby assigned to the Lessee for the term.

(c) THE LESSOR MAKES NO PATENT WARRANTIES OR REPRESENTATIONS WHATSOEVER. THE LESSOR SHALL NOT BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT OR SPECIAL DAMAGES WITH RESPECT TO THE REAL ESTATE.

(d) THE PROVISIONS OF THIS SECTION ARE APPLICABLE TO ALL PORTIONS OF THE REAL ESTATE CONSTRUCTED, ACQUIRED OR INSTALLED UNDER THIS LEASE.

### **ARTICLE III RENT**

#### **Section 301. Rent.**

The Lessee agrees to pay solely from Available Revenues as Rent for the Real Estate the total amount of all Base Rent Payments on the Base Rent Payment Dates, and from time to time as provided herein as Supplemental Rent all other amounts, liabilities and obligations that the Lessee assumes or agrees to pay to the Lessor. THE PAYMENTS OF RENT SHALL NOT CONSTITUTE A DEBT OR A GENERAL OBLIGATION OF THE LESSEE, OF THE COUNTY OF MENDOCINO, OF THE STATE OR OF ANY AGENCY, DEPARTMENT OR POLITICAL SUBDIVISION THEREOF AS CONTEMPLATED WITHIN ANY CONSTITUTIONAL OR STATUTORY DEBT LIMITATION PROVISION; PROVIDED, HOWEVER, THAT THE LESSEE'S OBLIGATION TO MAKE RENT PAYMENTS SHALL CONSTITUTE A LIABILITY OF THE LESSEE, PAYABLE SOLELY FROM AVAILABLE REVENUES. NEITHER THE LESSEE, THE COUNTY, THE STATE, NOR ANY AGENCY OR DEPARTMENT THEREOF SHALL BE OBLIGATED TO PAY THE RENT EXCEPT THAT THE LESSEE SHALL BE OBLIGATED TO PAY THE RENT SOLELY FROM AVAILABLE REVENUES. NEITHER THE FULL FAITH AND CREDIT NOR THE TAXING POWER OF THE LESSEE, THE COUNTY, THE STATE OR OF ANY AGENCY, DEPARTMENT OR POLITICAL SUBDIVISION THEREOF AS CONTEMPLATED WITHIN ANY CONSTITUTIONAL DEBT LIMITATION PROVISION IS PLEDGED TO THE PAYMENT OF THE RENT.

#### **Section 302. Rental Payments to be Unconditional; No Abatement or Setoff.**

Except as provided in Sections 309 and 802 hereof, the obligation of the Lessee to pay Rent when due shall be absolute and unconditional in all events. Notwithstanding any dispute between the Lessee and the Lessor, any Contractor, or any other person, the Lessee shall pay all Rent when due and shall not withhold any Rent pending final resolution of such dispute, nor shall the Lessee assert any right of set-off or counterclaim against its obligation to pay Rent when due. The Lessee's obligation to pay Rent during the Lease Term shall not be abated through accident or unforeseen circumstances. However, nothing herein shall be construed to release the Lessor from the performance of its obligations hereunder; and if the Lessor should fail to perform any such obligation, the Lessee may institute such legal action against the Lessor as the Lessee may deem necessary to compel the performance of such obligation or to recover damages therefor.

#### **Section 303. Rental Payment Obligation After Event of Nonappropriation.**

Notwithstanding an Event of Nonappropriation and the termination of the Lease Term as provided in Section 402, the obligation to pay Rent solely from Available Revenues shall continue until such obligation has been paid by the Reimbursement Amounts pursuant to Section 3.01(b) and (c) of the Ground Lease.

#### **Section 304. Return of Real Estate.**

Upon the termination of the Lease Term without the payment of Rent due and outstanding and all other amounts due hereunder and under the Ground Lease, whether at or prior to maturity, the Lessee immediately shall surrender possession of the Real Estate peacefully and properly to the Lessor or its assignee in the condition, the repair, the appearance and the working order required under this Lease.

The Lessor's rights or those of its assignees in and to the Real Estate thereafter shall be governed by the terms and the conditions of this Lease and the Ground Lease, and the Lessor or its assignee may lease, may sublease or may sell its rights in the same in such manner as it sees fit, not inconsistent with the terms of this Lease and the Ground Lease. In the event that the Real Estate shall be leased or subleased or the Lessor's rights or those of its assignees therein shall be sold and the amounts received from such lease, sublease or sale of Leasehold rights to meet the requirements of Section 3.03 of the Ground Lease, then all further proceeds of any such lease or sublease shall be the property of the Lessee and the Ground Lease shall terminate, all as provided in the Ground Lease.

**Section 305. Damages for Failure to Make Timely Return of Real Estate.**

If after an Event of Nonappropriation the Lessee has not delivered possession of the Real Estate to the Lessor or its assignee in accordance with Section 304 hereof, the Lessee shall be responsible for the payment of damages in an amount equal to the amount of the Base Rent Payments thereafter stated to come due under Exhibit A to this Lease as may previously have been restated that are attributable to the number of days during which the Lessee fails to take such actions, plus the amount of any Supplemental Rent accruing during such period.

**Section 306. Base Rent; Principal Portion.**

The Principal Portions of the Base Rent Payments shall be due on the dates and in the amounts shown on Attachment II hereto. The Principal Portion of Base Rent may be recomputed upon extraordinary prepayment as provided in Article VI hereof.

**Section 307. Base Rent; Interest Portion.**

Interest Portions of Base Rent shall be computed at the rate or the rates per annum as specified in Attachment II.

**Section 308. Interest Calculation.**

The Interest Portion of the Base Rent shall be computed upon the basis of a 360-day year, consisting of twelve 30-day months.

**Section 309. Supplemental Rent.**

During the Lease Term, amounts due and paid under this Lease as Supplemental Rent shall be paid by the Lessee to the Lessor on the next succeeding Base Rent Payment Date.

**ARTICLE IV  
LEASE OF REAL ESTATE; LEASE RIGHTS AND OBLIGATIONS**

**Section 401. Lease of Real Estate.**

The Lessor hereby agrees to lease and to sell the Real Estate to the Lessee, and the Lessee hereby agrees to lease and to purchase from the Lessor the Real Estate on the terms and subject to the conditions set forth in this Lease.

#### **Section 402. Lease Term.**

The Term of this Lease shall commence on the Funding Date. The Term of this Lease will terminate upon the occurrence of the first of the following events:

(a) the termination by the Lessee of its obligation to make any further Base Rent Payments in accordance with Section 802 hereof;

(b) a default by the Lessee and the Lessor's election to terminate this Lease pursuant to Section 803 hereof; or

(c) the payment by the Lessee of an amount equal to all Base Rent Payments stated to be paid by the Lessee hereunder through September 1, 2021 or any later date upon which amounts are due hereunder and all Supplemental Rent.

Notwithstanding anything to the contrary herein, the obligations created under this Lease and existing on or prior to the termination date hereof except for the obligation to make payments hereunder, shall continue as long as the Lease is outstanding, as provided herein.

#### **Section 403. Net Lease.**

The Lessee intends the Rent payments to be net to the Lessor. The obligation of the Lessee to pay Rent shall be absolute and unconditional and shall in no way be reduced, released, discharged or otherwise affected for any reason (except as set forth in Section 303 and Section 802 hereof), including without limitation (i) any defect in the condition, the quality or the fitness for use of, or the title to, any portion of the Real Estate or (ii) any damage to, or abandonment, destruction, requisition or taking of any portion of the Real Estate. The Lessee shall comply with and shall pay all local, state and federal taxes, including without limitation, income, franchise, gross receipts, sales, use, documentary stamp, excise and real and personal property taxes, payments in lieu of taxes, assessments, licenses, registration fees, freight and transportation charges and any other charges imposed or liabilities incurred with respect to the ownership, the possession or the use of the Real Estate, any payment of Base Rent or Supplemental Rent or any other payments by the Lessee and any penalties, fines or interest imposed on any of the foregoing during the Lease Term, and the Lessee shall pay all reasonable expenses incurred by the Lessor in connection with all filings or recordings of any documents relating to this Lease and the Ground Lease or the Lessor's rights hereunder, provided, however that the Lessee shall have no obligation to pay as Base Rent or Supplemental Rent any amounts constituting or deemed to be federal or state income or corporate taxes attributable to or due and payable by the Lessor or its successors or assigns. This section does not relieve the Lessee from any obligations under this Lease. The Lessor shall have the right to make any of the payments required of the Lessee, but shall not be obligated to pay the same, and shall have the right to charge such payment with interest (at a rate equal to the Lessor's cost of money) from the due date thereof through the date of payment, as Supplemental Rent to be paid by the Lessee with the next Base Rent Payment due under this Lease.

#### **Section 404. Real Estate.**

Title to the Improvements shall vest immediately in the Lessee subject, however, in all respects to the leasehold interest of the Lessor granted to it in the Ground Lease and the Lease.

#### **Section 405. Leasehold Rights in the Real Estate.**

The leasehold rights granted to the Lessor pursuant to the Ground Lease shall convey all rights and interests in the Real Estate granted therein. Such leasehold interest shall be recordable, and the Lessee agrees to execute and to deliver all documents necessary to effectuate a valid and binding conveyance of leasehold rights to the Lessor pursuant to the Ground Lease.

#### **Section 406. Liens.**

(a) The Lessee shall not, directly or indirectly, create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or claim on or with respect to the Real Estate other than the Permitted Encumbrances. Except as expressly provided in this Article, the Lessee, at its own expense, promptly shall take such action as may be necessary duly to discharge or to remove any such mortgage, pledge, lien, charge, encumbrance or claim that may arise at any time. The Lessee shall reimburse the Lessor for any expense incurred by it in order to discharge or to remove (and the Lessor is not obligated to take any such action) any such mortgage, pledge, lien, charge, encumbrance or claim however nothing contained herein shall impact any obligation upon the Lessor to take any such action.

(b) At the Lessee's expense and in the Lessee's name, the Lessee, may contest any taxes, assessments, utility and other charges and, in the event of any such contest, may permit the taxes, the assessments or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom, unless the Lessor shall notify the Lessee in writing that in the opinion of an independent counsel who is an attorney licensed to practice law in California and is not an employee of the Lessee or the Lessor or any agent thereof, that by non-payment of any such items, the interest of the Lessor in the Real Estate will be endangered materially or the Real Estate or any part thereof will be subject to loss or to forfeiture by the assessment of any such items, in which case the Lessee promptly shall pay such taxes, assessments or charges or shall provide the Lessor with full security against any loss that may result from such nonpayment, in form satisfactory to the Lessor.

#### **Section 407. Care and Use of Real Estate.**

The Lessee, at its sole expense, shall maintain the Real Estate (or the portion thereof, as the case may be), in good operating condition and appearance and shall protect it from deterioration other than normal wear and tear; shall cause the Real Estate (or any portion thereof) to be used in a proper and safe manner within its normal capacity, without abuse and in the manner contemplated by the manufacturer's or contractor's specifications and in compliance with the requirements of applicable laws, ordinances and regulations, the requirements of any warranties applicable thereto and the requirements of any insurance program required under Article IX hereof; shall cause the Real Estate (or the portion thereof, as the case may be), to be operated by or under the direction of competent persons only; and shall obtain, at the Lessee's sole expense, all registrations, permits and licenses, if any, required by law for the operation of the Real Estate or the portion thereof, as the case may be. In case any equipment, appliance or alteration is required to be made or installed on the Real Estate in order to comply with any applicable governmental laws, regulations, requirements and rules, the Lessee agrees to make or to install such equipment, appliance or alteration at its own cost and expense, and any such equipment, appliance or alteration shall be considered part of the Real Estate for all purposes of the Lease without any further act of the Lessor or the Lessee. All modifications, repairs, alterations, replacements, substitutions, accessories and controls to any portion of the Real Estate shall be deemed part of the Real Estate for all purposes of this Lease. Any parts or accessories provided by the Lessee in the course of repairing or maintaining the Real Estate shall be considered accessions to the Real Estate and form a part thereof. The lien created herein in the Real Estate shall attach to such accession and shall be vested immediately in the Lessor without cost or expense to the Lessor.

**Section 408. Possession and Enjoyment of Real Estate.**

The Lessee shall have the quiet use and enjoyment of the Real Estate and shall peaceably and quietly have, hold and enjoy the Real Estate during the Lease Term, without suit, trouble or hindrance from the Lessor, except as expressly set forth in this Lease and the Ground Lease.

**Section 409. Lessee's and Lessor's Responsibilities for Real Estate.**

(a) The Lessee assumes all risks and liabilities for loss or damage to the Real Estate or to any portion thereof and for injury to or death of any person or damage to any property that is proximately caused by the negligent conduct of the Lessee, its officers, employees and agents whether such injury or death be with respect to agents or employees of the Lessee or of third parties, whether such property damage be to the Lessee's property or the property of others and whether or not such risks or liabilities are covered by insurance. The Lessee hereby assumes responsibility for and agrees to reimburse the Lessor for all liabilities, obligations, losses, damages, penalties, claims, actions, costs and expenses (including reasonable attorney's fees) of whatsoever kind and nature including, but not limited to, those relating to bidding procedures undertaken in connection with the Real Estate) imposed on, incurred by or asserted against the Lessor that in any way relate to or arise out of a claim, suit or proceeding based in whole or in part upon the negligent conduct of the Lessee, its officers, employees and agents, to the maximum extent permitted by law, but excluding gross negligence or willful misconduct of the Lessor.

(b) THE LESSOR SHALL NOT BE RESPONSIBLE FOR ANY DEFECTS, WEAR AND TEAR OR GRADUAL DETERIORATION OR LOSS OF SERVICE OR USE OF THE REAL ESTATE OR ANY PORTION THEREOF. The Lessor shall not be liable to the Lessee or to anyone else for any liability, injury, claim, loss, damage or expense of any kind or nature caused directly or indirectly by the inadequacy of the Real Estate or any portion thereof, any interruption of use or loss of service, use or performance of the Real Estate or any portion thereof or any loss of business or other consequence or damage, whether or not resulting directly or indirectly from any of the foregoing except to the extent that any of the foregoing is a direct and proximate result of the willful misconduct or gross negligence of the Lessor.

**Section 410. Duty to Dismiss.**

With respect to the Real Estate, the Lessee acknowledges that the Lessor under this Lease is without any title to the Real Estate and the Lessee hereby agrees to use its best efforts, at its own expense, to have the Lessor dismissed from any lawsuit brought by any party arising out of or in any way relating to this Lease, the Ground Lease or the ownership, the rental, the possession, the operation, the condition, the sale or the return of the Real Estate but only to the extent that such suit does not arise out of a willful or grossly negligent act of the Lessor. This covenant by the Lessee to cooperate and to use its best efforts to dismiss the Lessor from any such action shall include the Lessor's successors and assigns and its agents, employees, officers and directors. In the event that despite compliance with this covenant the Lessor is not dismissed from such action, the Lessor shall have the right to appear in its own name in the defense of such claim with its reasonable legal expenses to be paid by the Lessee and with the cooperation of the Lessee.

**ARTICLE V**

(RESERVED)



## **ARTICLE VI PREPAYMENTS**

### **Section 601. Availability of Option to Prepay.**

The Lessee shall have the option to prepay and to purchase the Lessor's interest in the Real Estate in whole at any time by paying the purchase option price set forth in Attachment II. If the prepayment date is between Rent Payment dates, the purchase option price shall be the total of the purchase option price on the Rent Payment date immediately preceding the date of prepayment, plus accrued interest from such Rent Payment Date through the date of prepayment.

### **Section 602. Extraordinary Prepayment.**

(a) In the event that the Lessee must prepay the unpaid balance or a portion thereof of the Principal Portion of Base Rent in accordance with Section 907(b)(ii)(B) hereof, then such occurrence shall constitute an "Event of Extraordinary Prepayment." Upon the occurrence of an Event of Extraordinary Prepayment, the Lessee will credit the amounts received under Section 907(b)(ii)(B) in order to prepay all or a portion of the Principal Portion and accrued Interest Portion of Base Rent due on the next Base Rent Payment Date and the Base Rent Payments shall be reduced to the aggregate amount of outstanding Rent after giving effect to such Event of Extraordinary Prepayment.

(b) The Principal Portion of Base Rent shall be subject to extraordinary prepayment solely from Available Revenues, in whole, plus interest accrued to such prepayment dates upon the declaration by the Lessor, following an Event of Default or an Event of Nonappropriation hereunder.

### **Section 603. Release of Lessor's Interest.**

Upon the prepayment of Rent for the entire Real Estate as hereinabove provided, the Lessee shall have no further obligations under this Lease, and the Lessor and its officers shall take all actions necessary to authorize, to execute and to deliver to the Lessee any and all documents and instruments necessary to vest in the Lessee all of the Lessor's right, title and interest in and to the Real Estate, free and clear of all liens, leasehold interests and encumbrances, including, if necessary, a release of any and all liens or interests created under the provisions of this Lease or the Ground Lease.

## **ARTICLE VII LEASE RIGHTS, ASSIGNMENT AND SUBLEASING, MORTGAGING AND SELLING**

### **Section 701. Lease Rights.**

This Lease and any or all of the Lessor's rights and interest hereunder including, without limitation, the right to receive the Base Rent Payments and any Supplemental Rent payments and the Lessor's rights as a Lessor with respect to the Real Estate created hereunder but specifically excepting the Reserved Rights (collectively referred to herein as the "Lease Rights") and the Lessor's rights in the Ground Lease shall be vested in the Lessor or the Investor throughout the Lease Term.

## **Section 702. Assignment and Subleasing.**

(a) This Lease may not be assigned and the Real Estate may not be subleased by the Lessee without the written consent of the Lessor, which shall not unreasonably be withheld.

(b) Lessor's right to receive Base Rent under this Lease and to enforce the obligation of the Lessee hereunder may be assigned and reassigned in whole or in part to one or more assignees or subassignees by Lessor and, to the extent of its interest, without the necessity of obtaining the consent of the Lessee; provided that any assignment shall not be effective until the Lessee has received written notice, signed by the assignor, of the name, address and tax identification number of the assignee. The Lessee shall retain all such notices as a register of all assignees and shall make all payments to the assignee or assignee designated in such register. The Lessee agrees to execute all documents, including notices of assignment or financing statements that may be reasonably requested by Lessor or any assignee to protect its interests in this Lease.

## **Section 703. Restriction on Mortgage or Sale of Real Estate by Lessee.**

The Lessee will not mortgage, sell, assign, transfer or convey the Real Estate or any portion thereof during the Term of this Lease without the written consent of the Lessor, which shall not unreasonably be withheld.

# **ARTICLE VIII EVENTS OF DEFAULT AND EVENT OF NON-APPROPRIATION, REMEDIES**

## **Section 801. Events of Default.**

An Event of Default hereunder means the occurrence of any one or more of the following events:

(a) The Lessee fails to make for a reason other than an Event of Nonappropriation, as set forth in Section 802 hereof, any Rent payment, as it becomes due (except that failure to pay Supplemental Rent shall not constitute an Event of Default unless such failure continues for more than thirty (30) days);

(b) The Lessee fails to perform or to observe any other covenant, condition or agreement to be performed or observed by it hereunder and such failure is not cured within thirty (30) days after written notice thereof by the Lessor, if applicable; provided, however, that if such observance or performance requires work to be done, actions to be taken or conditions to be remedied, which by their nature cannot reasonably be accomplished within such thirty (30) day period, if the Lessee shall commence such observance or performance within such period and shall be proceeding diligently with respect thereto, then the fact that the same shall not have been corrected during such period shall not constitute an Event of Default provided further that such default shall be cured within ninety (90) days of such notice;

(c) The Lessee becomes insolvent, admits in writing its inability to pay its debts as they mature or applies for, consents to or acquiesces in the appointment of a trustee, receiver or custodian for the Lessee or for a substantial part of its property; or in the absence of such application, consent or acquiescence, a trustee, a receiver or a custodian is appointed for the Lessee or a substantial part of its property and is not discharged within sixty (60) days; or any bankruptcy, reorganization, debt

arrangement, moratorium, any proceeding under bankruptcy or insolvency law or any dissolution or liquidation proceeding is instituted by or, if permitted by law, against the Lessee and, if instituted against the Lessee, is consented to or acquiesced in by the Lessee or is not dismissed within sixty (60) days; or

(d) The discovery by the Lessor that any material statement, representation or warranty made by the Lessee in this Agreement, or in any writing delivered by the Lessee pursuant thereto or in connection herewith is false, misleading or erroneous in any material respect.

An Event of Nonappropriation shall not be deemed an Event of Default under this Lease. Upon the occurrence of an Event of Default, the Lessee shall provide prompt written notice to the Lessor, and unless terminated by the Lessor or its assignee, all obligations of the Lessee under this Lease shall remain in full force and effect.

#### **Section 802. Event of Nonappropriation.**

(a) An "Event of Nonappropriation" shall be determined to have occurred if the Lessee shall determine not to appropriate or shall be unable to appropriate amounts sufficient to make Rent payments coming due in a Fiscal Year through a specific provision in its budget stating that it is nonappropriating by the date 30 days following the beginning of such Fiscal Year. Upon the occurrence of an Event of Nonappropriation, the Lessee shall notify the Lessor, in writing, immediately on such date and the Lease Term shall terminate effective as of the last day of the prior Fiscal Year (the "Termination Date") and the Lessee, in this sole event, shall not be obligated to make any further payments of Base Rent beyond such Termination Date other than from available revenues. Upon the Event of Nonappropriation, the Lessee shall adopt a resolution setting forth its reasons for the nonappropriation, and the Lessee shall give the Lessor notice promptly along with copies of such resolution but in no event later than five (5) Business Days after the occurrence of an Event of Nonappropriation, which notice shall specify the Termination Date. In the Event of Nonappropriation under this Section 802, all obligations of the Lessee to make payments of Rent that otherwise would be due hereunder after the Termination Date shall cease and the remedies set forth in Section 803(b) hereof shall apply.

(b) An Event of Nonappropriation shall not be deemed to have occurred so long as an Event of Default has occurred hereunder and has not been cured by the Lessee.

#### **Section 803. Remedies.**

(a) Remedies Available Upon an Event of Default.

(1) Real Estate. Whenever any Event of Default shall have happened and shall be continuing, the Lessor shall have the right, at its option and without any further demand or notice to take one or any combination of the following remedial steps:

(A) With or without terminating this Lease, re-enter and take possession of the Real Estate and exclude the Lessee from using it; provided, however, that if this Lease has not been terminated, the Lessor shall return possession of the Real Estate to the Lessee when the Event of Default is cured; and provided further that the Lessee shall continue to be responsible for the Rent due during the Fiscal Year then in effect; or

(B) With or without terminating this Lease, re-enter and take possession of the Real Estate and use, sublease, or sell the leasehold interest in the Real Estate or any part thereof in accordance with the provisions of the Ground Lease, holding the Lessee liable for the difference between (i) the rent and other amounts paid by a sublessee pursuant to such sublease, if any (net of expenses

incurred in subleasing the Real Estate), and (ii) the balance of the Rent owed by the Lessee during its then current Fiscal Year, which amount payable hereunder shall be limited to Available Revenues; provided, however, that nothing contained herein shall impose an obligation upon the Lessor so to sublease or sell the leasehold interest on the Real Estate, but that if subleased or sold it shall be done in a commercially reasonable manner, and provided that any excess proceeds from such disposition shall be applied in accordance with the provisions of the Ground Lease.

(2) Other. The Lessor shall have the right to take whatever action at law or in equity may appear necessary or desirable to collect the Base Rent Payments then due and thereafter to become due during the then current Fiscal Year of the Lessee with respect to the Real Estate or any part thereof or to enforce performance and observance of any obligation, agreement or covenant of the Lessee under this Lease.

(b) Remedies Available Upon an Event of Nonappropriation.

(1) Real Estate. The Lessor shall have the right, at its option and without any further demand or notice to take one or any combination of the following remedial steps:

(A) Re-enter and take possession of the Real Estate and exclude the Lessee from using it; provided that the Lessee shall continue to be responsible for the Rent due during the Fiscal Year then in effect; or

(B) Re-enter and take possession of the Real Estate and sublease or sell the leasehold interest in the Real Estate or any part thereof in accordance with the provisions of the Ground Lease; provided, however, that nothing contained herein shall impose an obligation upon the Lessor so to sublease or sell the leasehold interest in the Real Estate and provided that any excess proceeds (net of expenses incurred in subleasing the Real Estate) from such disposition shall be applied in accordance with the provisions of the Ground Lease.

(2) Other. The Lessor shall have the right to take whatever action at law or in equity may appear necessary or desirable to collect the Rent then due and thereafter to become due during the then current Fiscal Year of the Lessee with respect to the Real Estate or any part thereof or to enforce performance and observance of any obligation, agreement or covenant of the Lessee under this Lease.

(c) For purposes of exercising any of the foregoing remedies, Lessee hereby grants to Lessor and its assigns an easement for ingress and egress over the Real Estate upon which the Real Estate is situated, as more particularly described in Exhibit A hereto, which easement is limited to the Real Estate which is the subject of this Lease.

(d) For the purposes of this Section 803 with regard to remedies available under this Lease, the words "rent due under this Lease to the end of the original lease term" shall include also an amount that, when invested, together with the other amounts necessary hereunder, will enable the payment of an amount equal to any amount due under any applicable optional prepayment provisions provided herein.

**Section 804. Election of Remedies; No Waiver of Elected Remedies.**

No failure on the part of either party to exercise and no delay in exercising any right or remedy so provided for herein shall operate as a waiver thereof, nor shall any single or partial exercise by either party of any right or remedy so provided hereunder preclude any other right or further exercise of any other right or remedy provided hereunder.

**Section 805. No Additional Waiver Implied by One Waiver.**

In the event any agreement contained in this Lease should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder, and shall not be construed to be an implied term thereof or a course of dealing between the parties hereto.

**Section 806. Agreement to Pay Attorneys' Fees and Expenses.**

In the event either party to this Lease should default under any of the provisions hereof and the nondefaulting party should employ attorneys or incur other expenses for the collection of moneys or the enforcement, the performance or the observance of any obligation or agreement on the part of the defaulting party herein contained, the defaulting party agrees that on demand therefor it will pay to the nondefaulting party the reasonable fee of such attorneys and such other expenses so incurred by the nondefaulting party.

**Section 807. Responsibility for Hold over Rent.**

Upon termination of the Lessee's obligation to pay Rent as provided in Section 303 hereof, the Lessee shall not be responsible for the payment of any Rent coming due with respect to succeeding Fiscal Years, but if the Lessee has not delivered possession of and title to the Real Estate to the Lessor in accordance with Section 803 hereof, the termination shall nevertheless be effective, but the Lessee shall be responsible for the payment of damages in an amount equal to the amount of the Rent payments thereafter coming due under Attachment I to this Lease that are attributable to the number of days during which the Lessee fails to deliver possession to the Real Estate.

**Section 808. Redelivery of Possession of Real Estate upon Expiration of Term and Payment of Rent.**

Upon the payment of all amounts due and owing under this Lease and the Ground Lease, the Lessor shall deliver the Real Estate to the Lessee free and clear of any obligation under this Lease, subject only to the provisions of Section 3.03 of the Ground Lease.

**ARTICLE IX  
RISK OF LOSS; INSURANCE**

**Section 901. Risk of Loss.**

The Lessee hereby assumes the entire risk of loss of the Real Estate and every portion thereof from any and every cause whatsoever, including, but not limited to, damage to or destruction of the Real Estate or any portion thereof by fire or any other casualty, or the taking of title to or the temporary use of the Real Estate or any portion thereof or of the leasehold interest of the Lessor or the Lessee therein under the exercise of the power of eminent domain by any governmental body de jure or de facto or by any person, firm or corporation acting under governmental authority.

**Section 902. Public Liability and Property Damage Insurance.**

The Lessee shall maintain or shall cause to be maintained, throughout the Term of this Lease, a standard comprehensive general liability insurance policy or policies in protection of the Lessee and the Lessor and their members, officers, agents and employees. Such policy or policies shall provide

for indemnification of such parties against direct or contingent loss or liability for damages for bodily and personal injury, death or property damage occasioned by the operation or the ownership of the Real Estate. Such policy or policies shall provide coverage in the minimum liability limits of \$1,000,000 for personal injury or death of each person and \$2,000,000, for personal injury or deaths of two or more persons in a single accident or event, and in a minimum amount of \$500,000 for damage to property (subject to a deductible clause of not to exceed \$200,000) resulting from a single accident or event. Such public liability and property damage insurance may, however, be in the form of a single limit policy in the amount of \$2,000,000 covering all such risks. Such liability insurance may be maintained as part of or in conjunction with any other liability insurance coverage carried or required to be carried by the Lessee. The net proceeds of such liability insurance shall be applied toward extinguishment or satisfaction of the liability with respect to which the net proceeds of such insurance shall have been paid.

**Section 903. Fire and Extended Coverage Insurance.**

The Lessee shall procure and shall maintain, or shall cause to be procured and maintained, throughout the Term of this Lease, insurance against loss or damage to any part of the Real Estate by fire or lightning, with extended coverage and vandalism and malicious mischief insurance. Such extended coverage insurance shall, as nearly as practicable, also cover loss or damage by explosion, windstorm, riot, aircraft, vehicle damage, smoke and such other hazards as are normally covered by such insurance. Such insurance shall be in an amount equal to one hundred percent (100%) of the replacement cost of the Real Estate, or the aggregate coverage of all such policies on the Real Estate shall at least equal the principal component of the Lease Payments then remaining unpaid, whichever is greater (except that such insurance may be subject to deductible clauses of not to exceed \$50,000 for any one loss). Such insurance may be maintained as part of or in conjunction with any other fire and extended coverage insurance carried or required to be carried by the Lessee. The net proceeds of such insurance shall be applied as provided in Section 908(b) hereof.

**Section 904. Worker's Compensation Insurance.**

If required by State law, the Lessee shall carry or shall require the Contractors to carry Worker's Compensation Insurance covering all employees on, in, near or about the Real Estate and upon request shall furnish to the Lessor certificates evidencing such coverage throughout the Term of the Lease.

**Section 905. Other Insurance and Requirements for All Insurance.**

(a) All insurance required by this Article IX may be carried under a separate policy or a rider or an endorsement; shall be taken out and shall be maintained with responsible insurance companies organized under the laws of one of the states of the United States and qualified to do business in the State; shall contain a provision that the insurer shall not cancel or revise coverage thereunder without giving written notice to the Lessee and the Lessor at least thirty (30) days before the cancellation or the revision becomes effective; and shall name the Lessee and the Lessor as additional insureds or loss payees, as their interests may appear in policies evidencing any such insurance procured by it. On or before the Funding Date, the Lessee shall provide the Lessor with a certificate or certificates of the respective insurers stating that such insurance is in full force and effect. Before the expiration of any such policy, the Lessee shall furnish the Lessor satisfactory evidence that the policy has been renewed or replaced by another policy conforming to the provisions of this Article unless such insurance is no longer obtainable at a reasonable rate, in which event, the Lessee shall notify the Lessor of this fact. The Lessee shall cause to be delivered to the Lessor on each anniversary of the Funding Date a certificate of the Authorized Lessee Representative satisfactory to the Lessor that the insurance policies required by this Lease are in full force and effect.



**Section 906. Flood Insurance.**

In the event that any portion of the Real Estate during the Lease Term shall be located in an area for which flood insurance is required by the United States of America or the State, the Lessee shall obtain and maintain flood insurance with respect to that portion of the Real Estate in an amount equal to the lesser of the full replacement value of that portion of the Real Estate or sufficient to pay the principal of and interest on the Lease. Such flood insurance shall be provided in accordance with the rules and regulations of the United States Government.

**Section 907. Proceeds of Insurance.**

(a) The net proceeds of the insurance carried pursuant to the provisions of Article IX hereof, to the extent it relates to public liability insurance or worker's compensation, shall be applied toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds may be paid.

(b) The net proceeds of the insurance carried with respect to damage to the Real Estate pursuant to the provisions of Article IX hereof, to the extent it does not relate to public liability insurance or worker's compensation, shall be paid to the Lessor and applied as follows:

(i) If the amount of the net proceeds does not exceed \$25,000 and there is no Event of Default or Event of Nonappropriation outstanding and uncured, the Net Proceeds shall be turned over to the Lessee and the Lessee shall either: (A) apply such proceeds to pay Rent; or (B) apply such proceeds together with other monies of the Lessee necessary therefor, to the repair, replacement, renewal or improvement of the Real Estate;

(ii) If the amount of the net proceeds equals or exceeds \$25,000 or if an Event of Default has occurred and has not been cured, or an Event of Nonappropriation has occurred, the net proceeds shall be turned over to the Lessor immediately upon receipt and held in escrow by the Lessor in a special account pending receipt of written instructions from the Lessee. At its option, to be exercised within a period of thirty (30) days from the receipt by the Lessor of such net proceeds, or portion thereof, the Lessee shall advise the Lessor in writing that (A) the Lessee (with the consent of the Lessor if there is an Event of Default or an Event of Nonappropriation) will use such net proceeds or portion thereof for the repair, replacement, renewal or improvement of the Real Estate and withdrawn by the Lessee in the manner prescribed in Article V of this Lease, or (B) such net proceeds or portion thereof will be deposited in a special account with such other funds of the Lessee as may be necessary and applied for the redemption of the outstanding Rent due under the Lease. This provision is not intended to be applicable if the Lessee itself should attempt to exercise eminent domain over the Real Estate, the Real Estate or any interest therein.

The Lessee shall be entitled to the net proceeds of any insurance, or from any eminent domain proceeding, settlement or compromise, relating to property of the Lessee not included in the Real Estate and after giving effect to the payment of all Rent under the Lease.

**Section 908. No Waiver of Lessee's Rights Against Vendors or Contractors.**

Notwithstanding the provisions of Section 901 hereof, the Lessee shall not be deemed to have waived any rights or remedies it may have against a Contractor with respect to the Real Estate.

**Section 909. Uninsured Loss.**

In the event of any uninsured loss, the Lessee at its expense and at the Lessee's option without reimbursement from the Lessor or any diminution in the Rent payments due with respect to the Real Estate shall either: (a) repair the Real Estate or such portion thereof, returning it to its previous condition; (b) replace the Real Estate or portion thereof with a like Real Estate or portion thereof in good operating condition and of equivalent value that shall become the Real Estate or a portion thereof, subject to this Lease; or (c) furnish to the Lessor: (1) a certificate stating that: (i) the value of the Real Estate or a portion thereof exceeds \$25,000; (ii) the Lessee has determined not to repair or replace the Real Estate or the portion thereof as the case may be; and (iii) that the Real Estate or portion thereof so damaged, lost or destroyed is no longer needed for educational purposes; and (2) an independent appraiser's verification that the value of the remaining portion of the Real Estate is greater than the aggregate Principal Portion of Rent due under the Lease. Nothing in this section shall alter the obligations of the Lessee under this Lease except as specifically provided herein.

**ARTICLE X  
ADMINISTRATIVE PROVISIONS**

**Section 1001. Notices.**

(a) Unless otherwise provided in writing, any notices to be given or to be served upon any party hereto in connection with this Agreement must be in writing and may be delivered personally or by certified or registered mail. If so mailed, a notice shall be deemed to have been given and received forty-eight (48) hours after a registered or certified letter containing such notice, postage prepaid, is deposited in the United States mail. If given other than by mail, a notice shall be deemed to have been given when delivered to and received by the party to whom it is addressed. Such notice shall be given to the parties at their following respective addresses or at such other address as either party hereafter may designate to the other party in writing:

**If to Lessor:** City of Fort Bragg Joint Powers Financing Authority  
Attn: Treasurer  
416 N. Franklin Street  
Fort Bragg, CA 95437

**If to the Lessee:** City of Fort Bragg  
Attn: Finance Director  
416 N. Franklin Street  
Fort Bragg, CA 95437

**Section 1002. Severability.**

In the event any provision of this Lease shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

**Section 1003. Further Assurances and Corrective Instruments.**

The Lessor and the Lessee agree that, if necessary, they will execute, acknowledge and deliver or will cause to be executed, acknowledged and delivered such supplements hereto and such further instruments as reasonably may be required for correcting any inadequate or incorrect description of the Real Estate hereby leased or intended so to be or for carrying out the expressed intention of this Lease.

**Section 1004. Applicable Law.**

This Lease shall be governed by and shall be construed in accordance with the laws of the State.

**Section 1005. Lessor and Lessee Representatives.**

Whenever under the provisions of this Lease the approval of the Lessor or the Lessee is required to take some action at the request of the other, such approval of such request shall be given by an Authorized Representative of the Lessor for the Lessor and by an Authorized Representative of the Lessee for the Lessee. Any party hereto shall be authorized to rely upon any such approval or request.

**Section 1006. Captions.**

The captions or the headings in this Lease are for convenience only and in no way define, limit or describe the scope or the intent of any provisions or sections of this Lease.

**Section 1007. Refinancing Lease/Purchase Agreement is Original.**

Each fully executed copy of this Lease shall be deemed an original for all purposes.

**Section 1008. Binding; Counterparts.**

This Lease shall be binding upon the parties hereto only when duly executed on behalf of both the Lessee and the Lessor together; provided, however, that each set of counterparts taken together shall constitute a single agreement.

**Section 1009. Tax Ownership in Lessee.**

The Lessor warrants and represents that it shall not at any time during the Term of the Lease claim depreciation, cost recovery deductions or tax credit for federal income tax purposes with respect to the Real Estate or a portion thereof and that it shall not take any position for federal income tax purposes that is inconsistent with the unequivocal title and ownership for any and all tax purposes of the Lessee.

**Section 1010. Inspections Permitted.**

The Lessor and the Lessee, as the case may be, shall permit inspections of the Real Estate and the books and the records of the Lessee with respect thereto at all reasonable times and upon reasonable notice.

**Section 1011. Time is of the Essence.**

Time is of the essence for this Lease and no covenant or obligation hereunder to be performed by the Lessee may be waived except by the written consent of the Lessor, and waiver of any such covenant or obligation or a forbearance to invoke any remedy on any occasion shall not constitute or be treated as a waiver of such covenant or obligation or any other covenant or obligation as to any other occasion and shall not preclude the Lessor from invoking such remedy at any later time prior to the Lessee's cure of the condition giving rise to such remedy. Each of the Lessor's rights hereunder is cumulative to its other rights hereunder and not alternative thereto.

**Section 1012. No Personal Liability or Accountability.**

No covenant or agreement contained in this Lease shall be deemed to be the covenant or the agreement of any present, past or future officer, agent or employee of the Lessee or the Lessor in his or her individual capacity, and neither the officers, the agents or the employees of the Lessee or the Lessor nor any official executing this Lease shall be liable personally on this Agreement or be subject to any personal liability or accountability by reason of any transaction or activity relating to this Lease.

**Section 1013. Environmental Conditions.**

The Lessor shall not be obligated to monitor compliance of the Real Estate with applicable environmental or other laws. The Lessor shall not have any obligations or responsibility to foreclose or otherwise further involve themselves with the Real Estate under any circumstance, including any instance where either the Lessor is notified of any non-compliance of the Real Estate with applicable environmental or other laws. Lessee represents that the Real Estate is currently in full compliance with all applicable Federal, state and local environmental laws. It is expressly understood that the Lessor shall not have the right or the obligation to monitor Lessee's compliance with environmental laws. Lessee hereby indemnifies and holds harmless the Lessor from all liability, damage and costs caused by Lessee's failure, for any reason, to comply with environmental laws, rules and regulations.

**Section 1014. No Washout.**

As an explicit and material part of the consideration of both the Lessor and the Lessee in entering into the Ground Lease and this Lease, the Ground Lease and this Lease shall not be deemed or construed to be "mutual" or "washout" leases.

**Section 1015. Gender.**

Use of the neuter gender herein is for purposes of convenience only and shall be deemed to mean and include the masculine or feminine gender whenever and wherever appropriate.

**Section 1016. Dated Date.**

The use of the "dated as of date" herein is for convenience of reference only and the actual date of execution hereof by each party hereto is set forth below their respective signatures. THE PARTIES HERETO EACH ACKNOWLEDGE RECEIPT OF A SIGNED, TRUE AND EXACT COPY OF THIS REFINANCING LEASE/PURCHASE AGREEMENT.

IN WITNESS WHEREOF, the Lessor has caused this Lease to be executed in its corporate name by its duly Authorized Representative, and the Lessee has caused this Lease to be executed in its name by its duly Authorized Representative, as of the date first above written but on the date set forth below.

**CITY OF FORT BRAGG JOINT POWERS FINANCING  
AUTHORITY, as Lessor**

By: Mark Johnson  
Mark Johnson, Treasurer

**CITY OF FORT BRAGG, as Lessee**

By: Mark Johnson  
Mark Johnson, Finance Director

### **Attachment I**

Real property in the City of Fort Bragg, County of Mendocino, State of California, described as follows:

**PARCEL ONE:**

That certain real property situated in the City of Fort Bragg, County of Mendocino, State of California and being in Section 7, Township 18 North, Range 17 West, Mount Diablo Meridian, more particularly defined and lying within the following described boundaries:

The bearings used in this description are in terms of the California State Grid, Zone 2.

Commencing at the Section corner common to Sections 6 and 7, Township 18 North, Range 17 West, Mount Diablo Meridian and Sections 1 and 12, Township 18 North, Range 18 West, Mount Diablo Meridian; thence South 88°40'20" East, 3,066.56 feet (Record = East 3,070 feet), to the Northwest corner of Union Lumber Company Suburban Lot 7 and also being the Southeast corner of the intersection of Morrow Street and Laurel Avenue; thence South 88°40'00" East along the Northerly line of said Union Lumber Company Suburban Lot 7 and also along the Northerly boundary line of Union Lumber Company Suburban Lot 6, a distance of 470.00 feet to the true point of beginning; thence from said true point of beginning and along the exterior boundary line of the parcel of land to be described as follows:

Continuing South 88°40'00" East along the Northerly boundary line of Union Lumber Company Suburban Lot 6 and also the Northerly boundary line of Union Lumber Company Suburban Lot 5, a distance of 470.00 feet to the Northeast corner of said Lot 5, being a 1 inch diameter iron bolt monument as shown and delineated upon that certain Record of Survey map filed for Record on March 18, 1941 in Map Case 1, Drawer 8, Page 15, Mendocino County Records; thence South 1°20'00" West, 500.00 feet; thence North 88°40'00" West, 50.00 feet; thence North 1°20'00" East, 10.00 feet; thence North 88°40'00" West, 100.00 feet; thence North 1°20'00" East, 20.00 feet; thence North 88°40'00" West, 76.00 feet; thence North 1°20'00" East, 20.00 feet; thence North 88°40'00" West, 250.00 feet; thence South 1°20'00" West, 20.00 feet; thence North 88°40'00" West, 64.00 feet; thence South 1°20'00" West, 170.00 feet to a point in the Northerly side line of Cedar Avenue; thence North 88°40'00" West along said street side line, 50.00 feet; thence leaving said street side line, North 1°20'00" East, 170.00 feet; thence South 88°40'00" East, 15.00 feet; thence North 1°20'00" East, 50.00 feet; thence North 88°40'00" West, 75.00 feet; thence North 1°20'00" East, 196.00 feet to a point in the Southerly boundary of lands being retained by the Grantors; thence South 88°40'00" East, 10.00 feet; thence North 25°48'06" East, 48.34 feet to the Southeast corner of Lands of Henry A. Dockham, et ux, as described in a deed dated March 5, 1953 and recorded in Book 341 of Official Records, Page 459, Mendocino County Records; thence North 60°22'10" East, along the Easterly boundary line of said Dockham land, 58.31 feet to the most Easterly Corner thereof; and being an angle point in the Southerly boundary line of lands of Donald E. Markham, as described in a deed dated August 26, 1953 and recorded in Book 352 of Official Records, Page 108, Mendocino County Records; thence along said lands of Markham, as follows:

North 57°54'30" East, 119.81 feet; thence North 1°20'00" East, 84.00 feet to the true point of beginning.

APN: 008-250-48, 27



PARCEL TWO:

Being that portion of Lot 16 in Block 15 bounded and described as follows, to wit:

Starting at the corner to Sections 1 and 12, Township 18 North, Range 18 West and Sections 6 and 7, Township 18 North, Range 17 West, Mount Diablo Base and Meridian and running thence East 280 feet to and for the point of beginning; and thence on the exterior boundary of such piece or parcel of land East 100 feet; thence South 35 feet; thence West 100 feet; and thence North 35 feet to said point of beginning, being the Northeast 35 by 100 feet of said Lot 16.

APN: 008-151-01

PARCEL THREE:

Starting at the corner to Sections 1 and 12 in Township 18 North, Range 18 West of Mount Diablo Base and Meridian and Sections 6 and 7 in Township 18 North, Range 17 West of Mount Diablo Base and Meridian and running East 380 feet and thence South 35 feet to and for the point of beginning and thence on the exterior boundary of such piece or parcel of land South 42 1/2 feet and thence West 56 feet; thence North 42 1/2 feet and thence East 56 feet to the said point of beginning, being a portion of Block 15 of the City of Fort Bragg.

APN: 008-151-02

APN: 008-151-01,02 and 008-250-27,48

**ATTACHMENT II TO THE LEASE  
RENTAL PAYMENT SCHEDULE**

Closing Date: September 15, 2005

Payment Number	Payment Date	Principal Component	Coupon	Interest Component	Total Payment	Prepayment Price (in \$)
1	12/01/05	\$59,284.56	4.15%	14,499.94	\$73,784.51	\$1,611,707.67
2	06/01/06	40,672.69	4.15%	33,111.82	73,784.51	1,570,628.25
3	12/01/06	41,516.65	4.15%	32,267.86	73,784.51	1,528,696.43
4	06/01/07	42,378.12	4.15%	31,406.39	73,784.51	1,485,894.53
5	12/01/07	43,257.47	4.15%	30,527.04	73,784.51	1,442,204.49
6	06/01/08	44,155.06	4.15%	29,629.45	73,784.51	1,397,607.88
7	12/01/08	45,071.28	4.15%	28,713.23	73,784.51	1,352,085.89
8	06/01/09	46,006.51	4.15%	27,778.00	73,784.51	1,305,619.32
9	12/01/09	46,961.14	4.15%	26,823.37	73,784.51	1,258,188.57
10	06/01/10	47,935.58	4.15%	25,848.92	73,784.51	1,209,773.63
11	12/01/10	48,930.25	4.15%	24,854.26	73,784.51	1,160,354.08
12	06/01/11	49,945.55	4.15%	23,838.96	73,784.51	1,109,909.07
13	12/01/11	50,981.92	4.15%	22,802.59	73,784.51	1,058,417.33
14	06/01/12	52,039.79	4.15%	21,744.71	73,784.51	1,005,857.14
15	12/01/12	53,119.62	4.15%	20,664.89	73,784.51	952,206.32
16	06/01/13	54,221.85	4.15%	19,562.65	73,784.51	897,442.25
17	12/01/13	55,346.96	4.15%	18,437.55	73,784.51	841,541.83
18	06/01/14	56,495.41	4.15%	17,289.10	73,784.51	784,481.47
19	12/01/14	57,667.69	4.15%	16,116.82	73,784.51	726,237.11
20	06/01/15	58,864.29	4.15%	14,920.22	73,784.51	666,784.17
21	12/01/15	60,085.72	4.15%	13,698.78	73,784.51	606,097.59
22	06/01/16	61,332.50	4.15%	12,452.00	73,784.51	544,151.76
23	12/01/16	62,605.15	4.15%	11,179.36	73,784.51	480,920.56
24	06/01/17	63,904.21	4.15%	9,880.30	73,784.51	416,377.31
25	12/01/17	65,230.22	4.15%	8,554.29	73,784.51	350,494.79
26	06/01/18	66,583.75	4.15%	7,200.76	73,784.51	283,245.20
27	12/01/18	67,965.36	4.15%	5,819.15	73,784.51	214,600.19
28	06/01/19	69,375.64	4.15%	4,408.87	73,784.51	144,530.79
29	12/01/19	70,815.19	4.15%	2,969.32	73,784.51	73,007.45
30	06/01/20	<u>72,284.60</u>	4.15%	<u>1,499.91</u>	<u>73,784.51</u>	-
		<b>\$1,655,034.73</b>		<b>\$558,500.50</b>	<b>\$2,213,535.23</b>	

**RECORDING REQUESTED BY**  
First American Title Company

**AND WHEN RECORDED MAIL TO:**  
WESTAMERICA BANCORPORATION, ATTN  
David L. Hicks  
P.O. Box 1200  
Suisun City, CA 94534-1200

**COPY OF Document Recorded**

9/16/05 2005-20289

Has not been compared with  
original. Original will be returned  
when processing has been  
completed.

**MENDOCINO COUNTY RECORDER**

Space Above This Line for Recorder's Use Only

A.P.N.: 008-151-01,02 and 008-250-27,48

File No.: 2306-2042784 (RB)

**Assignment**

Document Title

**ASSIGNMENT**

This Assignment, dated September 1, 2005 is hereby given by THE CITY OF FORT BRAGG JOINT POWERS FINANCING AUTHORITY (the "Assignor"), to WESTAMERICA BANK (the "Assignee").

**WITNESSETH:**

WHEREAS, Assignor has entered into that certain Refinancing Lease/Purchase Agreement dated September 1, 2005 (the "Lease"), with the City of Fort Bragg ("Lessee"), pursuant to which the Real Estate more particularly described therein (the "Real Estate") is being leased to Lessee under the terms stated in the Lease;

WHEREAS, Assignor desires to sell, assign and transfer to Assignee, Assignor's right, title and interest in, to and under the base rent and other amounts due under the Lease upon the terms and conditions herein;

NOW, THEREFORE, in consideration of the premises, the covenants contained herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto hereby agree as follows:

Section 1.     Recitals. The parties hereto confirm that the recitals are true and correct.

Section 2.     Assignment. Assignor, for good and valuable consideration in hand received, does hereby irrevocably sell, assign and transfer to Assignee, all of its rights, but not its obligations, in the Lease, including, but not limited to, its rights to receive Base Rent from Lessee under the Lease, and the rights to exercise such rights and remedies as are conferred upon Assignor thereunder as may be necessary to enforce payment of such base rent when due or otherwise protect its interests upon the occurrence of an Event of Default thereunder by Lessee.

Assignor has or will immediately after the execution of this Assignment authorize and direct Lessee in writing, to pay to Assignee, its successors and assigns, all payments due or to become due under the Lease from and after the date of this Assignment by forwarding such payments to the address set forth above, a copy of which authorization and direction, acknowledged by Lessee has been or will be furnished to Assignee.

Section 3.     Assignor Representations, Warranties and Covenants. Assignor hereby represents, warrants and covenants to and with Assignee as follows:

(a)     Assignor is a joint exercise of powers authority duly organized, validly existing and in good standing under the laws of the State of California, with powers and authority to own its property (if applicable) and carry on its business as now being conducted.

(b)     Assignor has full power, authority and legal right to enter into and perform its obligations under this Assignment and the Lease, and the execution, delivery and performance hereof and thereof has been duly authorized by all necessary corporate actions on the part of Assignor, and does not require any stockholder approval or the approval or consent of any trustee or holder of any indebtedness or obligations of Assignor unless such required approvals and consents have been duly obtained.

(c) The execution, delivery and performance of this Assignment and the Lease do not contravene any provision of the Bylaws of Assignor and do not and will not result in any breach of or constitute a default under any indenture, mortgage, contract, agreement or instrument to which Assignor is a party or by which it or its property is bound.

(d) This Assignment and the Lease are legal, valid and binding contracts of the Assignor, enforceable according to their terms, except as such enforcement is subject to applicable principles of equity and moratoriums and laws affecting creditor's rights generally.

(e) There is no pending or threatened action or proceeding before any court or administrative agency which will adversely affect the ability of Assignor to perform its obligations under this Assignment and the Lease.

(f) Assignor has no knowledge of any facts or information which:

- (i) impairs the validity of the Lease;
- (ii) makes the Lease less valuable; or
- (iii) if presented or disclosed to Assignee, would have materially influenced Assignee's decision to execute this Assignment.

(g) There are no oral or written agreements that would affect, modify or impair the Lease, which is the final and complete understanding between Assignor and the Lessee with respect to the Lease and the Real Estate.

(h) The Lease and the Real Estate are free and clear of all claims, liens, security interests and encumbrances of any kind or character, except as contemplated in the Lease. The Lease and the Real Estate are and shall remain free of all claims, liens, security interests and encumbrances arising through any act or omission of Assignor.

(i) Assignor has complied with and performed all obligations of the Lessor under the Lease and all related documents and instruments.

(j) The Lease delivered to Assignee herewith is an original and constitutes the entire writing, obligation and agreement between the Assignor and the Lessee respecting the Real Estate, the purchase thereof and the payment therefor by the Lessee.

(k) The Lease is in full force and effect and there is currently no default in the performance of any obligation thereunder and the Lessee has not asserted any set-off, counterclaim or defense with respect to its obligations under the Lease.

(l) The Real Estate has been accepted by Lessee in a condition satisfactory to Lessee.

(m) Assignor from time to time, at the request of the Assignee, shall execute and deliver such further acknowledgments, agreements and instruments of assignment, transfer and assurance, and do all such further acts and things as may be necessary or appropriate in the reasonable opinion of Assignee to give effect to the provisions hereof and to more perfectly confirm the rights, titles and interests hereby assigned and transferred to Assignee.

Section 4. Assignee Representation, Warranties and Covenants. Assignee hereby represents, warrants and covenants to and with Assignor as follows:

(a) Assignee is a "qualified institutional buyer" ("QIB") as that term is used by Rule 144A promulgated by the Securities and Exchange Commission in accordance with the Securities Act of 1933, as amended.

(b) Assignee has sufficient knowledge and experience and financial and business matters, including purchase and ownership of municipal and other tax-exempt obligations, to be able to evaluate the risks and merits of the investments represented and evidenced by the Lease and is able to bear the economic risk of such investment.

(c) Assignee is acquiring the right to receive Base Rent under the Lease for our own account with no present intent of distribution or resale thereof, in that, it does not now intend to resell or otherwise dispose of all or any part of such right. Assignee agrees that it may not transfer any interest in the Lease or the right to receive base rent thereunder except to other QIB's.

Section 5. Binding Obligation. This Assignment (including without limitation all representations, warranties and covenants) shall be binding on Assignor and Assignee and their respective successors and assigns, and will inure to the benefit of Assignor and Assignee and their successors and assigns (including without limitation any subsequent assignees of any right, title or interest assigned hereby). Assignor hereby subordinates to the rights of Assignee against the Lessee any rights Assignor may now or hereafter have or acquire against Lessee.

Section 6. Breach. In the event of a breach of any of the foregoing representation, warranties, agreements, or covenants by Assignor, Assignor shall, in addition to the indemnification provisions contained herein, upon demand of Assignee following such breach, repurchase the Lease for an amount equal to the aggregate unpaid principal balance due thereunder plus accrued interest to the date of repurchase.

Section 7. Governing Law. This Assignment will be governed by the laws of the State of California.

Section 8. Counterparts. This Assignment may be executed in counterparts, each of which shall be deemed original. All of such counterparts taken together shall be deemed to be one and the same instrument.




IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment as of the date first above written.

CITY OF FORT BRAGG JOINT POWERS  
FINANCING AUTHORITY

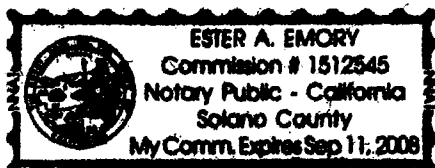
By: \_\_\_\_\_  
Mark Johnson, Treasurer

WESTAMERICA BANK

By:   
Name: DAVID L. LILES  
Title: VICE PRESIDENT

State of California  
 County of Solano  
 On 9-13-05 before me, Ester A. Emory, Notary Public  
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")  
 personally appeared DAVID L. HICKS  
Name(s) of Signer(s)

☒ personally known to me – OR – ☐ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/~~she~~/they executed the same in his/~~her~~/their authorized capacity(ies), and that by his/~~her~~/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Ester A. Emory  
Signature of Notary Public

**OPTIONAL**

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

**Description of Attached Document**

Title or Type of Document: Assignment  
 Document Date: 9/13/05 Number of Pages: 4  
 Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_

- ☐ Individual  
☐ Corporate Officer  
 Title(s): \_\_\_\_\_  
☐ Partner — ☐ Limited ☐ General  
☐ Attorney-in-Fact  
☐ Trustee  
☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

**RIGHT THUMBPRINT  
OF SIGNER**  
 Top of thumb here

Signer's Name: \_\_\_\_\_

- ☐ Individual  
☐ Corporate Officer  
 Title(s): \_\_\_\_\_  
☐ Partner — ☐ Limited ☐ General  
☐ Attorney-in-Fact  
☐ Trustee  
☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

**RIGHT THUMBPRINT  
OF SIGNER**  
 Top of thumb here

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment as of the date first above written.

CITY OF FORT BRAGG JOINT POWERS  
FINANCING AUTHORITY

By: Mark W. Johnson  
Mark Johnson, Treasurer

WESTAMERICA BANK

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of

Mendocino

ss.

On

9-15-05

Date

before me,

Nancy Philips, Notary

Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared

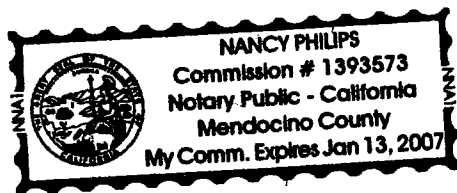
Mark Johnson

Name(s) of Signer(s)

☒ personally known to me

☐ proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(ies), and that by his/~~her/their~~ signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Nancy Philips  
Signature of Notary Public

## OPTIONAL

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

### Description of Attached Document

Title or Type of Document: \_\_\_\_\_

Document Date: \_\_\_\_\_

Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

### Capacity(ies) Claimed by Signer

Signer's Name: \_\_\_\_\_

☐ Individual

☐ Corporate Officer — Title(s): \_\_\_\_\_

☐ Partner — ☐ Limited ☐ General

☐ Attorney-in-Fact

☐ Trustee

☐ Guardian or Conservator

☐ Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

RIGHT THUMBPRINT  
OF SIGNER

Top of thumb here

# Policy of Title Insurance



ISSUED BY

*First American Title Insurance Company*

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B AND THE CONDITIONS AND STIPULATIONS, FIRST AMERICAN TITLE INSURANCE COMPANY, a California corporation, herein called the Company, insures, as of Date of Policy shown in Schedule A, against loss or damage, not exceeding the Amount of Insurance stated in Schedule A, sustained or incurred by the insured by reason of:

1. Title to the estate or interest described in Schedule A being vested other than as stated therein;
2. Any defect in or lien or encumbrance on the title;
3. Unmarketability of the title;
4. Lack of a right of access to and from the land; and in addition, as to an insured lender only:
5. The invalidity or unenforceability of the lien of the insured mortgage upon the title;
6. The priority of any lien or encumbrance over the lien of the insured mortgage; said mortgage being shown in Schedule B in the order of its priority;
7. The invalidity or unenforceability of any assignment of the insured mortgage, provided the assignment is shown in Schedule B, or the failure of the assignment shown in Schedule B to vest title to the insured mortgage in the named insured assignee free and clear of all liens.

The Company will also pay the costs, attorneys' fees and expenses incurred in defense of the title or the lien of the insured mortgage, as insured, but only to the extent provided in the Conditions and Stipulations.

IN WITNESS WHEREOF, First American Title Insurance Company has caused this policy to be signed and sealed by its duly authorized officers as of Date of Policy shown in Schedule A.

*First American Title Insurance Company*

BY

PRESIDENT

ATTEST

SECRETARY

*First American Title*

**SCHEDULE A**

Total Fee for Title Search, Examination  
and Title Insurance: \$3794.00

Amount of Insurance: \$1,655,034.73

Policy Number: 2306-2042784

Date of Policy: September 16, 2005 at 10:37 a.m.

1. Name of Insured:

Westamerica Bank

2. The estate or interest in the land which is covered by this policy is:

A leasehold estate as created by that certain lease dated September 1, 2005, executed by City of Fort Bragg Joint Powers Financing Authority as lessor and City of Fort Bragg as lessee, recorded September 16, 2005 as 2005-20288 of Official Records.

The Lessor's interest in said lease was assigned to West America Bank

3. Title to the estate or interest in the land is vested in:

City of Fort Bragg, a Municipal Corporation



## **SCHEDULE B**

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

### **PART ONE**

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records. Proceedings by a public agency which may result in taxes or assessments, or notice of such proceedings, whether or not shown by the records of such agency or by the public records.
2. Any facts, rights, interests or claims which are not shown by the public records but which could be ascertained by an inspection of the land or which may be asserted by persons in possession thereof.
3. Easements, liens or encumbrances, or claims thereof, which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by public records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the public records.

**SCHEDULE B**  
(Continued)**PART TWO**

1. General plan limitations, covenants, conditions, restrictions, reservations, exceptions, terms, liens or charges, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, national origin, sexual orientation, marital status, ancestry, source of income or disability, to the extent such covenants, conditions or restrictions violate Title 42, Section 3604(c), of the United States Codes or Section 12955 of the California Government Code, contained in deeds of other lots in said tract, an example of which can be found recorded May 31, 1912 in Book 131 of Deeds, Page 33. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.
2. General plan limitations, covenants, conditions, restrictions, reservations, exceptions, terms, liens or charges, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, national origin, sexual orientation, marital status, ancestry, source of income or disability, to the extent such covenants, conditions or restrictions violate Title 42, Section 3604(c), of the United States Codes or Section 12955 of the California Government Code, contained in deeds of other lots in said tract, an example of which can be found recorded January 24, 1913 in Book 133 of Deeds, Page 421. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.
3. The terms and provisions contained in the document entitled "Agreement" recorded December 18, 1958 as Book 499, Page 180 of Official Records.
4. The effect of a map purporting to show the land and other property, filed February 13, 1969, Map Case 2, Drawer 12, Page 54 and February 8, 1985, Map Case 2, Drawer 42, Page 75 of Record of Surveys.
5. The terms and provisions contained in the document entitled "Ground Lease" recorded September 16, 2005 as 2005-20287 of Official Records.
6. The terms and provisions contained in the document entitled ""Refinancing Lease/Purchase Agreement" recorded September 16, 2005 as 2005-2002-20288 of Official Records.

An assignment to Westamerica Bank was recorded on September 16, 2005, Series number 2005-20289

The map attached, if any, may or may not be a survey of the land depicted hereon. First American expressly disclaims any liability for loss or damage which may result from reliance on this map except to the extent coverage for such loss or damage is expressly provided by the terms and provisions of the title insurance policy, if any, to which this map is attached.

**SCHEDULE C**

The land referred to in this policy is described as follows:

Real property in the City of Fort Bragg, County of Mendocino, State of California , described as follows:

**PARCEL ONE:**

That certain real property situated in the City of Fort Bragg, County of Mendocino, State of California and being in Section 7, Township 18 North, Range 17 West, Mount Diablo Meridian, more particularly defined and lying within the following described boundaries:

The bearings used in this description are in terms of the California State Grid, Zone 2.

Commencing at the Section corner common to Sections 6 and 7, Township 18 North, Range 17 West, Mount Diablo Meridian and Sections 1 and 12, Township 18 North, Range 18 West, Mount Diablo Meridian; thence South 88°40'20" East, 3,066.56 feet (Record = East 3,070 feet), to the Northwest corner of Union Lumber Company Suburban Lot 7 and also being the Southeast corner of the intersection of Morrow Street and Laurel Avenue; thence South 88°40'00" East along the Northerly line of said Union Lumber Company Suburban Lot 7 and also along the Northerly boundary line of Union Lumber Company Suburban Lot 6, a distance of 470.00 feet to the true point of beginning; thence from said true point of beginning and along the exterior boundary line of the parcel of land to be described as follows:

Continuing South 88°40'00" East along the Northerly boundary line of Union Lumber Company Suburban Lot 6 and also the Northerly boundary line of Union Lumber Company Suburban Lot 5, a distance of 470.00 feet to the Northeast corner of said Lot 5, being a 1 inch diameter iron bolt monument as shown and delineated upon that certain Record of Survey map filed for Record on March 18, 1941 in Map Case 1, Drawer 8, Page 15, Mendocino County Records; thence South 1°20'00" West, 500.00 feet; thence North 88°40'00" West, 50.00 feet; thence North 1°20'00" East, 10.00 feet; thence North 88°40'00" West, 100.00 feet; thence North 1°20'00" East, 20.00 feet; thence North 88°40'00" West, 76.00 feet; thence North 1°20'00" East, 20.00 feet; thence North 88°40'00" West, 250.00 feet; thence South 1°20'00" West, 20.00 feet; thence North 88°40'00" West, 64.00 feet; thence South 1°20'00" West, 170.00 feet to a point in the Northerly side line of Cedar Avenue; thence North 88°40'00" West along said street side line, 50.00 feet; thence leaving said street side line, North 1°20'00" East, 170.00 feet; thence South 88°40'00" East, 15.00 feet; thence North 1°20'00" East, 50.00 feet; thence North 88°40'00" West, 75.00 feet; thence North 1°20'00" East, 196.00 feet to a point in the Southerly boundary of lands being retained by the Grantors; thence South 88°40'00" East, 10.00 feet; thence North 25°48'06" East, 48.34 feet to the Southeast corner of Lands of Henry A. Dockham, et ux, as described in a deed dated March 5, 1953 and recorded in Book 341 of Official Records, Page 459, Mendocino County Records; thence North 60°22'10" East, along the Easterly boundary line of said Dockham land, 58.31 feet to the most Easterly Corner thereof; and being an angle point in the Southerly boundary line of lands of Donald E. Markham, as described in a deed dated August 26, 1953 and recorded in Book 352 of Official Records, Page 108, Mendocino County Records; thence along said lands of Markham, as follows:

North 57°54'30" East, 119.81 feet; thence North 1°20'00" East, 84.00 feet to the true point of beginning.

*First American Title*

APN: 008-250-48, 27

PARCEL TWO:

Being that portion of Lot 16 in Block 15 bounded and described as follows, to wit:

Starting at the corner to Sections 1 and 12, Township 18 North, Range 18 West and Sections 6 and 7, Township 18 North, Range 17 West, Mount Diablo Base and Meridian and running thence East 280 feet to and for the point of beginning; and thence on the exterior boundary of such piece or parcel of land East 100 feet; thence South 35 feet; thence West 100 feet; and thence North 35 feet to said point of beginning, being the Northeast 35 by 100 feet of said Lot 16.

APN: 008-151-01

PARCEL THREE:

Starting at the corner to Sections 1 and 12 in Township 18 North, Range 18 West of Mount Diablo Base and Meridian and Sections 6 and 7 in Township 18 North, Range 17 West of Mount Diablo Base and Meridian and running East 380 feet and thence South 35 feet to and for the point of beginning and thence on the exterior boundary of such piece or parcel of land South 42 1/2 feet and thence West 56 feet; thence North 42 1/2 feet and thence East 56 feet to the said point of beginning, being a portion of Block 15 of the City of Fort Bragg.

APN: 008-151-02

**EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to
  - (i) the occupancy, use, or enjoyment of the land;
  - (ii) the character, dimensions or location of any improvement now or hereafter erected on the land;
  - (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or
  - (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
- (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims, or other matters:
  - (a) whether or not recorded in the public records at Date of Policy, but created, suffered, assumed or agreed to by the insured claimant;
  - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
  - (c) resulting in no loss or damage to the insured claimant;
  - (d) attaching or created subsequent to Date of Policy; or
  - (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the insured mortgage or for the estate or interest insured by this policy.
4. Unenforceability of the lien of the insured mortgage because of the inability or failure of the insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with the applicable doing business laws of the state in which the land is situated.
5. Invalidity or unenforceability of the lien of the insured mortgage, or claim thereof, which arises out of the transaction evidenced by the insured mortgage and is based upon usury or any consumer credit protection or truth in lending law.
6. Any claim, which arises out of the transaction vesting in the insured the estate or interest insured by their policy or the transaction creating the interest of the insured lender, by reason of the operation of federal bankruptcy, state insolvency or similar creditors' rights laws.

**CONDITIONS AND STIPULATIONS****1. DEFINITION OF TERMS.**

The following terms when used in this policy mean:

- (a) "insured": the insured named in Schedule A, and, subject to any rights or defenses the Company would have had against the named insured, those who succeed to the interest of the named insured by operation of law as distinguished from purchase including, but not limited to, heirs, distributees, devisees, survivors, personal representatives, next of kin, or corporate or fiduciary successors. The term "insured" also includes
  - (i) the owner of the indebtedness secured by the insured mortgage and each successor in ownership of the indebtedness except a successor who is an obligor under the provisions of Section 12 (c) of these Conditions and Stipulations (reserving, however, all rights and defenses as to any such successor that the Company would have had against any predecessor insured, unless the successor acquired the indebtedness as a purchaser for value without knowledge of the asserted defect, lien, encumbrance, adverse claim or other matter insured against by this policy as affecting title to the estate or interest in the land;
  - (ii) any governmental agency or governmental instrumentality which is an insurer or guarantor under an insurance contract or guaranty insuring or guaranteeing the indebtedness secured by the insured mortgage, or any part thereof, whether named as an insured herein or not;
  - (iii) the parties designated in Section 2 (a) of these Conditions and Stipulations.
- (b) "insured claimant": an insured claiming loss or damage.
- (c) "insured lender": the owner of an insured mortgage.
- (d) "insured mortgage": a mortgage shown in Schedule B, the owner of which is named as an insured in Schedule A.
- (e) "knowledge" or "known": actual knowledge, not constructive knowledge or notice which may be imputed to an insured by reason of any public records as defined in this policy or any other records which impart constructive notice of matters affecting the land.
- (f) "land": the land described or referred to in Schedule C, and improvements affixed thereto which by law constitute real property. The term "land" does not include any property beyond the lines of the area specifically described or referred to in Schedule C, nor any right, title, interest, estate or easement in abutting streets, roads, avenues, alleys, lanes, ways or waterways, but nothing herein shall modify or limit the extent to which a right of access to and from the land is insured by this policy.
- (g) "mortgage": mortgage, deed of trust, trust deed, or other security instrument.
- (h) "public records": records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge.
- (i) "unmarketability of the title": an alleged or apparent matter affecting the title to the land, not excluded or excepted from coverage, which would entitle a purchaser of the estate or interest described in Schedule A or the insured mortgage to be released from the obligation to purchase by virtue of a contractual condition requiring the delivery of marketable title.

**2. CONTINUATION OF INSURANCE.**

(a) **After Acquisition of Title:** If this policy insures the owner of the indebtedness secured by the insured mortgage, the coverage of this policy shall continue in force as of Date of Policy in favor of

(i) such insured lender who acquires all or any part of the estate or interest in the land by foreclosure, trustee's sale, conveyance in lieu of foreclosure, or other legal manner which discharges the lien of the insured mortgage;

(ii) a transferee of the estate or interest so acquired from an insured corporation, provided the transferee is the parent or wholly owned subsidiary of the insured corporation and their corporate successors by operation of law and not by purchase, subject to any rights or defenses the Company may have against any predecessor insureds; and

(iii) any governmental agency or governmental instrumentality which acquires all or any part of the estate or interest pursuant to a contract of insurance or guaranty insuring or guaranteeing the indebtedness secured by the insured mortgage.

(b) **After Conveyance of Title:** The coverage of this policy shall continue in force as of Date of Policy in favor of an insured only so long as the insured retains an estate or interest in the land, or holds an indebtedness secured by a purchase money mortgage given by a purchaser from the insured, or only so long as the insured shall have liability by reason of covenants of warranty made by the insured in any transfer or conveyance of the estate or interest. This policy shall not continue in force in favor of any purchaser from the insured of either

(i) an estate or interest in the land, or

(ii) an indebtedness secured by a purchase money mortgage given to an insured.

(c) **Amount of Insurance:** The amount of insurance after the acquisition or after the conveyance by an insured lender shall in neither event exceed the least of:

(i) The amount of insurance stated in Schedule A;

(ii) The amount of the principal of the indebtedness secured by the insured mortgage as of Date of Policy, interest thereon, expenses of foreclosure, amounts advanced pursuant to the insured mortgage to assure compliance with laws or to protect the lien of the insured mortgage prior to the time of acquisition of the estate or interest in the land and secured thereby and reasonable amounts expended to prevent deterioration of improvements, but reduced by the amount of all payments made; or

(iii) The amount paid by any governmental agency or governmental instrumentality, if the agency or instrumentality is the insured claimant, in the acquisition of the estate or interest in satisfaction of its insurance contract or guaranty.

### **3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT.**

The insured shall notify the Company promptly in writing

(i) in case of any litigation as set forth in Section 4 (a) below,

(ii) in case knowledge shall come to an insured hereunder of any claim of title or interest which is adverse to the title to the estate or interest or the lien of the insured mortgage, as insured, and which might cause loss or damage for which the Company may be liable by virtue of this policy, or

(iii) if title to the estate or interest or the lien of the insured mortgage, as insured, is rejected as unmarketable. If prompt notice shall not be given to the Company, then as to that insured all liability of the Company shall terminate with regard to the matter or matters for which prompt notice is required; provided, however, that failure to notify the Company shall in no case prejudice the rights of any insured under this policy unless the Company shall be prejudiced by the failure and then only to the extent of the prejudice.

### **4. DEFENSE AND PROSECUTION OF ACTIONS; DUTY OF INSURED CLAIMANT TO COOPERATE.**

(a) Upon written request by the insured and subject to the options contained in Section 6 of these Conditions and Stipulations, the Company, at its own cost and without unreasonable delay, shall provide for the defense of such insured in litigation in which any third party asserts a claim adverse to the title or interest as insured but only as to those stated causes of action alleging a defect, lien or encumbrance or other matter insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of such insured to object for reasonable cause) to represent the insured as to those stated causes of action and shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs or expenses incurred by an insured in the defense of those causes of action which allege matters not insured against by this policy.

(b) The Company shall have the right, at its own cost, to institute and prosecute any action or proceeding or to do any other act which in its opinion may be necessary or desirable to establish the title to the estate or interest or the lien of the insured mortgage, as insured, or to prevent or reduce loss or damage to an insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable hereunder, and shall not thereby concede liability or waive any provision of this policy. If the Company shall exercise its rights under this paragraph, it shall do so diligently.

(c) Whenever the Company shall have brought an action or interposed a defense as required or permitted by the provisions of this policy, the Company may pursue any litigation to final determination by a court of competent jurisdiction and expressly reserves the right, in its sole discretion, to appeal from any adverse judgment or order.

(d) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding, the insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, and all appeals therein, and permit the Company to use, at its option, the name of such insured for this purpose. Whenever requested by the Company, an insured, at the Company's expense, shall give the Company all reasonable aid

(i) in any action or proceeding, securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and

(ii) in any other lawful act which in the opinion of the Company may be necessary or desirable to establish the title to the estate or interest or the lien of the insured mortgage, as insured. If the Company is prejudiced by the failure of an insured to furnish the required cooperation, the Company's obligations to such insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.

### **5. PROOF OF LOSS OR DAMAGE.**

In addition to and after the notices required under Section 3 of these Conditions and Stipulations have been provided the Company, a proof of loss or damage signed and sworn to by each insured claimant shall be furnished to the Company within 90 days after the insured claimant shall ascertain the facts giving rise to the loss or damage. The proof of loss or damage shall describe the defect in, or lien or encumbrance on the title, or other matter insured against by this policy which constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage. If the Company is prejudiced by the failure of an insured claimant to provide the required proof of loss or damage, the Company's obligations to such insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such proof of loss or damage.

In addition, an insured claimant may reasonably be required to submit to examination under oath by any authorized representative of the Company and shall produce for examination, inspection and copying, at such reasonable times and places as may be designated by any authorized representative of



the Company, all records, books, ledgers, checks, correspondence and memoranda, whether bearing a date before or after Date of Policy, which reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the insured claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect and copy all records, books, ledgers, checks, correspondence and memoranda in the custody or control of a third party, which reasonably pertain to the loss or damage. All information designated as confidential by an insured claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of an insured claimant to submit for examination under oath, produce other reasonably requested information or grant permission to secure reasonably necessary information from third parties as required in this paragraph, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this policy as to that insured for that claim.

#### **6. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY.**

In case of a claim under this policy, the Company shall have the following additional options:

(a) to Pay or Tender Payment of the Amount of Insurance or to Purchase the Indebtedness.

(i) to pay or tender payment of the amount of insurance under this policy together with any costs, attorneys' fees and expenses incurred by the insured claimant, which were authorized by the Company, up to the time of payment or tender of payment and which the Company is obligated to pay; or  
(ii) in case loss or damage is claimed under this policy by the owner of the indebtedness secured by the insured mortgage, to purchase the indebtedness secured by the insured mortgage for the amount owing thereon together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of purchase and which the Company is obligated to pay.

If the Company offers to purchase the indebtedness as herein provided, the owner of the indebtedness shall transfer, assign, and convey the indebtedness and the insured mortgage, together with any collateral security, to the Company upon payment therefor.

Upon the exercise by the Company of the option provided for in paragraph a(i), all liability and obligations to the insured under this policy, other than to make the payment required in that paragraph, shall terminate, including any liability or obligation to defend, prosecute or continue any litigation, and the policy shall be surrendered to the Company for cancellation.

Upon the exercise by the Company of the option provided for in paragraph a(ii) the Company's obligation to an insured Lender under this policy for the claimed loss or damage, other than the payment required to be made, shall terminate, including any liability or obligation to defend, prosecute or continue any litigation.

(b) To Pay or Otherwise Settle With Parties Other than the Insured or With the Insured Claimant.

(i) to pay or otherwise settle with other parties for or in the name of an insured claimant any claim insured against under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay; or

(ii) to pay or otherwise settle with the insured claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in paragraphs b(i) or (ii), the Company's obligations to the insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute or continue any litigation.

#### **7. DETERMINATION AND EXTENT OF LIABILITY.**

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the insured claimant who has suffered loss or damage by reason of matters insured against by this policy and only to the extent herein described.

(a) The liability of the Company under this policy to an insured lender shall in no case exceed the least of:

(i) the Amount of Insurance stated in Schedule A, or, if applicable, the amount of insurance as defined in Section 2(c) of these Conditions and Stipulations;

(ii) the amount of the unpaid principal indebtedness secured by the insured mortgage as limited or provided under Section 8 of these Conditions and Stipulations or as reduced under Section 9 of these Conditions and Stipulations, at the time the loss or damage insured against by this policy occurs, together with interest thereon; or

(iii) the difference between the value of the insured estate or interest as insured and the value of the insured estate or interest subject to the defect, lien or encumbrance insured against by this policy.

(b) In the event the insured lender has acquired the estate or interest in the manner described in Section 2(a) of these Conditions and Stipulations or has conveyed the title, then the liability of the Company shall continue as set forth in Section 7(a) of these Conditions and Stipulations.

(c) The liability of the Company under this policy to an insured owner of the estate or interest in the land described in Schedule A shall not exceed the least of:

(i) the Amount of Insurance stated in Schedule A; or

(ii) the difference between the value of the insured estate or interest as insured and the value of the insured estate or interest subject to the defect, lien or encumbrance insured against by this policy.

(d) The Company will pay only those costs, attorneys' fees and expenses incurred in accordance with Section 4 of these Conditions and Stipulations.

#### **8. LIMITATION OF LIABILITY.**

(a) If the Company establishes the title, or removes the alleged defect, lien or encumbrance, or cures the lack of a right of access to or from the land, or cures the claim of unmarketability of title, or otherwise establishes the lien of the insured mortgage, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals therefrom, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused thereby.

(b) In the event of litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals therefrom, adverse to the title, or, it applicable, to the lien of the insured mortgage, as insured.

(c) The Company shall not be liable for loss or damage to any insured for liability voluntarily assumed by the insured in settling any claim or suit without the prior written consent of the Company.

(d) The Company shall not be liable for:

(i) any indebtedness created subsequent to Date of Policy except for advances made to protect the lien of the insured mortgage and secured thereby and reasonable amounts expended to prevent deterioration of improvements; or

(ii) construction loan advances made subsequent to Date of Policy, except construction loan advances made subsequent to Date of Policy for the purpose of financing in whole or in part the construction of an improvement to the land which at Date of Policy were secured by the insured mortgage and which the insured was and continued to be obligated to advance at and after Date of Policy.

**9. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY.**

(a) All payments under this policy, except payments made for costs, attorneys' fees and expenses, shall reduce the amount of the insurance pro tanto. However, as to an insured lender, any payments made prior to the acquisition of title to the estate or interest as provided in Section 2(a) of these Conditions and Stipulations shall not reduce pro tanto the amount of insurance afforded under this policy as to any such insured, except to the extent that the payments reduce the amount of the indebtedness secured by the insured mortgage.

(b) Payment in part by any person of the principal of the indebtedness, or any other obligation secured by the insured mortgage, or any voluntary partial satisfaction or release of the insured mortgage, to the extent of the payment, satisfaction or release, shall reduce the amount of insurance pro tanto. The amount of insurance may thereafter be increased by accruing interest and advances made to protect the lien of the insured mortgage and secured thereby, with interest thereon, provided in no event shall the amount of insurance be greater than the Amount of Insurance stated in Schedule A.

(c) Payment in full by any person or the voluntary satisfaction or release of the insured mortgage shall terminate all liability of the Company to an insured lender except as provided in Section 2(a) of these Conditions and Stipulations.

**10. LIABILITY NONCUMULATIVE.**

It is expressly understood that the amount of insurance under this policy shall be reduced by any amount the Company may pay under any policy insuring a mortgage to which exception is taken in Schedule B or to which the insured has agreed, assumed or taken subject, or which is hereafter executed by an insured and which is a charge or lien on the estate or interest described or referred to in Schedule A, and the amount so paid shall be deemed a payment under this policy to the insured owner.

The provisions of this Section shall not apply to an insured lender, unless such insured acquires title to said estate or interest in satisfaction of the indebtedness secured by an insured mortgage.

**11. PAYMENT OF LOSS.**

(a) No payment shall be made without producing this policy for endorsement of the payment unless the policy has been lost or destroyed, in which case proof of loss or destruction shall be furnished to the satisfaction of the Company.

(b) When liability and the extent of loss or damage has been definitely fixed in accordance with these Conditions and Stipulations, the loss or damage shall be payable within 30 days thereafter.

**12. SUBROGATION UPON PAYMENT OR SETTLEMENT.**

**(a) The Company's Right of Subrogation.**

Whenever the Company shall have settled and paid a claim under this policy, all right of subrogation shall vest in the Company unaffected by any act of the insured claimant.

The Company shall be subrogated to and be entitled to all rights and remedies which the insured claimant would have had against any person or property in respect to the claim had this policy not been issued. If requested by the Company, the insured claimant shall transfer to the Company all rights and remedies against any person or property necessary in order to perfect this right of subrogation. The insured claimant shall permit the Company to sue, compromise or settle in the name of the insured claimant and to use the name of the insured claimant in any transaction or litigation involving these rights or remedies.

If a payment on account of a claim does not fully cover the loss of the insured claimant the Company shall be subrogated

(i) as to an insured owner, to all rights and remedies in the proportion which the Company's payment bears to the whole amount of the loss; and

(ii) as to an insured lender, to all rights and remedies of the insured claimant after the insured claimant shall have recovered its principal, interest and costs of collection.

If loss should result from any act of the insured claimant, as stated above, that act shall not void this policy, but the Company, in that event shall be required to pay only that part of any losses insured against by this policy which shall exceed the amount, if any, lost to the Company by reason of the impairment by the insured claimant of the Company's right of subrogation.

**(b) The Insured's Rights and Limitations.**

Notwithstanding the foregoing, the owner of the indebtedness secured by an insured mortgage, provided the priority of the lien of the insured mortgage or its enforceability is not affected, may release or substitute the personal liability of any debtor or guarantor, or extend or otherwise modify the terms of payment, or release a portion of the estate or interest from the lien of the insured mortgage, or release any collateral security for the indebtedness.

When the permitted acts of the insured claimant occur and the insured has knowledge of any claim of title or interest adverse to the title to the estate or interest or the priority or enforceability of the lien of the insured mortgage, as insured, the Company shall be required to pay only that part of any losses insured against by this policy which shall exceed the amount, if any, lost to the Company by reason of the impairment by the insured claimant of the Company's right of subrogation.

**(c) The Company's Rights Against Non-Insured Obligors.**

The Company's right of subrogation against non-insured obligors shall exist and shall include, without limitation, the rights of the insured to indemnities, guaranties, other policies of insurance or bonds, notwithstanding any terms or conditions contained in those instruments which provide for subrogation rights by reason of this policy.

The Company's right of subrogation shall not be avoided by acquisition of the insured mortgage by an obligor (except an obligor described in Section 1(a)(ii) of these Conditions and Stipulations) who acquires the insured mortgage as a result of an indemnity, guarantee, other policy of insurance, or bond and the obligor will not be an insured under this policy, notwithstanding Section 1(a)(i) of these Conditions and Stipulations.

**13. ARBITRATION.**

Unless prohibited by applicable law, either the Company or the insured may demand arbitration pursuant to the Title Insurance Arbitration Rules of the American Arbitration Association. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the insured arising out of or relating to this policy, any service of the Company in connection with its issuance or the breach of a policy provision or other obligation. All arbitrable matters when the Amount of Insurance is \$1,000,000 or less shall be arbitrated at the option of either the Company or the insured. All arbitrable matters when the Amount of Insurance is in excess of \$1,000,000 shall be arbitrated only when agreed to by both the Company and the insured. Arbitration pursuant to this policy and under the Rules in effect on the date the demand for arbitration is made or, at the option of the insured, the Rules in effect at Date of Policy shall be binding upon the parties. The award may include attorneys' fees only if the laws of the state in

which the land is located permit a court to award attorneys' fees to a prevailing party. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof.

The law of the situs of the land shall apply to an arbitration under the Title Insurance Arbitration Rules.

A copy of the Rules may be obtained from the Company upon request.

**14. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT.**

(a) This policy together with all endorsements, if any, attached hereto by the Company is the entire policy and contract between the insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.

(b) Any claim of loss or damage, whether or not based on negligence, and which arises out of the status of the lien of the insured mortgage or of the title to the estate or interest covered hereby or by any action asserting such claim, shall be restricted to this policy.

(c) No amendment of or endorsement to this policy can be made except by a writing endorsed hereon or attached hereto signed by either the President, a Vice President, the Secretary, an Assistant Secretary, or validating officer or authorized signatory of the Company.

**15. SEVERABILITY.**

In the event any provision of this policy is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision and all other provisions shall remain in full force and effect.

**16. NOTICES, WHERE SENT.**

All notices required to be given the Company and any statement in writing required to be furnished the Company shall include the number of this policy and shall be addressed to the Company at its main office at 1 First American Way, Santa Ana, California, 92707 or to the office which issued this policy.

**ENDORSEMENT**

**Attached to Policy No. 2306-2042784**

**Issued By**

**First American Title Insurance Company**

Said policy is amended in the following particulars:

- A. Paragraph 1 of the conditions and stipulations is hereby amended by adding subparagraph (J) as follows:

(J) "Leasehold Estate"; The right of possession for the term or terms described in Schedule A hereof subject to any provisions contained in the lease which limit such right of possession.

- B. Paragraphs 13, 14, 15 and 16 of the conditions and stipulations are hereby renumbered as paragraphs 15, 16, 17 and 18.

- C. The conditions and stipulations are amended by adding paragraph 13 and 14 as follows:

13. Valuation of estate or interest insured

If, in computing loss or damage incurred by the Insured, it becomes necessary to determine the value of the estate or interest insured by this policy, such value shall consist of the then present worth of the excess, if any, of the fair market rental value of such estate or interest, undiminished by any matters for which claim is made, for that part of the term stated in Schedule A herein then remaining plus any renewal or extended term for which a valid option to renew or extend is contained in the lease, over the value of the rent and other consideration required to be paid under the lease for the same period.

14. Miscellaneous items of loss

In the event the insured lender acquires all or any part of the estate or interest in the land described in Schedule A in accordance with the provisions of paragraph 2 of these conditions and stipulations and thereafter is evicted from possession or if an insured owner is evicted from possession of all or part of the land by reason of any matters insured against by this policy, the following, if applicable, shall be included in computing loss or damage incurred by the Insured, but not to the extent that the same are included in the valuation of the estate or interest insured by this policy.

- (A) The reasonable cost of removing and relocating any personal property which the Insured has the right to remove and relocate, situated on the land at the time of eviction, the cost of transportation of such personal property for the initial twenty-five miles incurred in connection with such relocation, and the reasonable cost of repairing such personal property damaged by reason of said removal and relocation. The costs referred to above shall not exceed in the aggregate the value of the personal property prior to its removal and relocation.

"Personal property", above referred to, shall mean chattels and property which because of its character and manner of affixation to the land, can be severed therefrom without causing appreciable damage to the property severed or to the land to which such property is affixed.

- (B) Rent or damages for use and occupancy of the land prior to such eviction which the insured as owner of the leasehold estate may be obligated to pay to any person having paramount title to that of the lessor in the lease.
- (C) The amount of rent which, by the terms of the lease, the Insured must continue to pay to the lessor after eviction for the land, or part thereof, from which the Insured has been evicted.
- (D) The fair market value, at the time of such eviction, of the estate or interest of the Insured in any sublease of all or part of the land caused by such eviction.

The total liability of the Company under said policy and any endorsements therein shall not exceed in the aggregate, the face amount of said policy and costs which the Company is obligated under the conditions and stipulations thereof to pay.

This endorsement is made a part of said policy and is subject to the schedules, conditions and stipulations therein except as modified by the provisions hereof.

F.A. Form 14  
CLTA Policy



First American Title Company  
551 South Orchard Avenue  
Ukiah, CA 95482

October 20, 2005

**Westamerica Bank**  
**P. O. Box 1200**  
**Suisun City, CA 94534-1200**  
**Attention: David L. Hicks**

Borrower: City of Fort Bragg  
File No.: 2306-2042784  
Property: Town Hall, Fort Bragg, CA 95437

In connection with the above referenced transaction, the following is enclosed:

- Policy of Title Insurance

## REFINANCING LEASE/PURCHASE AGREEMENT

### CITY CLERK'S CERTIFICATE

I, Cindy VanWormer, City Clerk of the City of Fort Bragg (the "City"), do hereby certify and follows:

1. Resolution No. 2889-2005 of the City (the "Resolution") was duly adopted at a regular meeting of the City Council of the City on September 12, 2005, has not been amended, revoked, modified, or rescinded, and remains in full force and effect on the date hereof.
2. In accordance with California Government Code Section 54954.2, an agenda for the regular meeting on September 12, 2005, of the City Council of the City containing a brief description of each item to be discussed at said meeting was posted at least 72 hours before such meeting in a location freely accessible to members of the public.
3. Attached hereto is a true and correct copy of the Resolution.

Dated: September 15, 2005

CITY OF FORT BRAGG

By: Cindy VanWormer  
Cindy VanWormer  
City Clerk



## **RESOLUTION NO. 2889-2005**

### **RESOLUTION OF THE FORT BRAGG CITY COUNCIL APPROVING, AUTHORIZING AND DIRECTING THE REFINANCING OF THE CITY'S 1995 CERTIFICATES OF PARTICIPATION AND AUTHORIZING RELATED ACTIONS**

**WHEREAS**, the City of Fort Bragg (the "City") has determined that substantial net dollar savings can be realized through the refinancing of the outstanding amount of the City's Certificates of Participation (1995 Refunding and Landfill Closure Program) dated June 1, 1995 (the "1995 COPs"); and

**WHEREAS**, the Council has determined that it is in the best interests and for the common benefit of the residents and landowners of the City for the City to refinance the 1995 COPs through the execution and delivery of: (i) a Ground Lease dated, for reference purposes, as of September 1, 2005 (the "Ground Lease") pursuant to which the City will lease the sites of the City's Town Hall (363 N. Main Street) and the City's Corporation Yard (831 Cedar Street) (collectively, the "Sites") to the City of Fort Bragg Joint Powers Financing Authority (the "Authority"); and (ii) a Refinancing Lease/Purchase Agreement dated, for reference purposes, as of September 1, 2005 (the "Lease"), between the City and Authority, which provides for the payment by the City of Rental Payments for the improvements on the Sites, said Rental Payments to be made by the City from any lawfully available revenues of the City; and

**WHEREAS**, Delta Managed Solutions, LLC, on behalf of the City, solicited bids from financial institutions to accept an assignment of the lease, which bids set forth an interest rate to be used to determine the lease payments to be made by the City under the Lease; and

**WHEREAS**, WestAmerica Bank ("WestAmerica") submitted the lowest bid of 4.15%, effective through September 15, 2005, which produces savings in General Fund lease/rent payments of approximately \$450,000 in nominal terms or \$300,000 in discounted presented value terms and also eliminates City lease/rent payments for five fiscal years 2021 through 2025.

**NOW THEREFORE, the City Council of Fort Bragg does hereby RESOLVE, DETERMINE AND ORDER, as follows:**

Section 1. The above recitals are all true and correct.

Section 2. The Council hereby authorizes and directs the execution and delivery of the Ground Lease and the Lease, which Lease shall have principal components aggregating not more than an amount of \$2,000,000, as shall be approved by the City Manager, Finance Director or other authorized executing official of the City, such approval to be conclusively evidenced by the execution thereof as herein authorized. The right to receive lease payments under the lease will be assigned to WestAmerica pursuant to an Assignment to be approved and executed by the Authority. Substantially final forms of the Ground Lease and the Lease are on file with the City Clerk.

Section 3. The Council hereby authorizes and directs the City Manger or the Finance Director to execute and deliver a termination agreement or any other



appropriate documents deemed necessary by Special Counsel (defined below) to terminate the leases entered by the City in connection with the 1995 COPs.

Section 4. In connection with the refinancing of the 1995 COPs contemplated by this resolution, the City hereby retains the following firms and authorizes and directs the Finance Director to pay costs incidental to the refinancing authorized hereby, including the fees of the following firms: Delta Managed Solutions, LLC (Financial Advisor); A. M. Peche and Associates, LLC (Finance Advisor) and Lofton & Jennings (Special Counsel).

Section 5. The Council hereby authorizes and directs:

(a) The City Manager, Finance Director or other authorized executing official to execute and deliver said Ground Lease and said Lease, and all closing documents in connection therewith, as appropriate, for and in the name of and on behalf of the City;

(b) The appropriate officers of the City, jointly and severally, for and in the name of and on behalf of this City, to execute and deliver any and all things and to take any and all actions which may be necessary or advisable in their discretion to fulfill the actions and consummate the transactions heretofore approved by this Council; and

(c) The appropriate officers of the City to make such additional filings, amendments, consents, undertakings or agreements as may be required to affect and maintain the qualifications and exemptions existing or to be obtained under the laws of the State of California and the laws of the United States of America.

Section 6. The Council hereby ratifies and confirms all actions heretofore taken in connection with the authorization, execution and delivery of the Ground Lease and the Lease and other documents related thereto.

Section 7. The City hereby designates the Lease for purposes of Section 265(b) of the Code as a "Qualified Tax-Exempt Obligation" and covenants that the Lease does not constitute a private activity bond as defined in Section 141 of the Code and that the aggregate face amount of all tax-exempt obligations issued by the City (including all subordinate entities of the City and all entities which may issue obligations on behalf of the City) during the calendar year 2005 is not reasonably expected to exceed \$10,000,000, excluding, however, private activity bonds, as defined in Section 141 of the Code (other than qualified 501(c)(3) bonds as defined in Section 145 of the Code) and current refinancing obligations having a principal amount not in excess of the refunded obligation.

Section 8. This resolution shall take effect immediately upon adoption.

**The above and foregoing Resolution was introduced by Councilmember Baltierra, seconded by Councilmember Gjerde, and passed and adopted at a regular meeting of the City Council of the City of Fort Bragg held on the 12<sup>th</sup> day**

of September, 2005, by the following vote:

**AYES:** Councilmembers Gjerde, Baltierra, Hammerstrom, Melo, and Mayor Turner.

**NOES:** None.

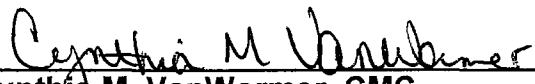
**ABSENT:** None.

**ABSTAIN:** None.

A handwritten signature in black ink, appearing to read 'Dave Turner', is written over a horizontal line.

**DAVE TURNER,**  
**Mayor**


**ATTEST:**

A handwritten signature in black ink, appearing to read 'Cynthia M. VanWormer', is written over a horizontal line.

**Cynthia M. VanWormer, CMC**  
**City Clerk**

STATE OF CALIFORNIA     )  
  )ss  
COUNTY OF MENDOCINO    )

I, Cynthia M. VanWormer, CMC, City Clerk of the City of Fort Bragg, California, do hereby certify that the foregoing is a full, true, and correct copy of a resolution duly adopted by the City Council of the City of Fort Bragg at a regular meeting thereof on the date and by the vote above stated, which resolution is on file and of record in the office of said City.

  
\_\_\_\_\_  
Cynthia M. VanWormer, CMC, City Clerk

## REFINANCING LEASE/PURCHASE AGREEMENT

### SECRETARY'S CERTIFICATE

I, Cindy VanWormer, Secretary of the City of Fort Bragg Joint Powers Financing Authority (the "Authority"), do hereby certify and follows:

1. Resolution No. 8-2005 (the "Resolution") of the governing board of the Authority was duly adopted at a regular meeting of the governing board on September 12, 2005, and has not been amended, revoked, modified or rescinded, and remains in full force and effect as of the date hereof.
2. In accordance with California Government Code Section 54954.2, an agenda for the meeting on September 12, 2005, of the governing board of the Authority containing a brief description of each item to be discussed at such meeting was posted at least 72 hours before such meeting in a location freely accessible to members of the public.
3. Attached hereto is a true and correct copy of the Resolution.

Dated: September 15, 2005

CITY OF FORT BRAGG JOINT POWERS  
FINANCING AUTHORITY

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



Cindy VanWormer  
Secretary

## **RESOLUTION NO. 8-2005**

### **RESOLUTION OF THE CITY OF FORT BRAGG JOINT POWERS FINANCING AUTHORITY GOVERNING BOARD AUTHORIZING THE EXECUTION AND DELIVERY OF A GROUND LEASE AND A REFINANCING LEASE/PURCHASE LEASE AGREEMENT, BY AND BETWEEN THE AUTHORITY AND THE CITY OF FORT BRAGG, AND AN ASSIGNMENT AGREEMENT ASSIGNING THE AUTHORITY'S RIGHTS TO RENTAL PAYMENTS UNDER SUCH REFINANCING LEASE/PURCHASE AGREEMENT**

**WHEREAS**, the City of Fort Bragg Joint Powers Financing Authority (the "Authority") is empowered to assist the City of Fort Bragg (the "City") in financing and refinancing certain public capital improvement obligations and certain public capital improvement projects pursuant to Article 4 of Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California and pursuant to that certain Joint Exercise of Powers Agreement by and between the City and the Redevelopment Agency of the City of Fort Bragg dated as of April 12, 1993; and

**WHEREAS**, the Authority has determined to enter into a Ground Lease and a Refinancing Lease/Purchase Agreement, each dated, for reference purposes, as of September 1, 2005 by and between the Authority and the City in order to assist the City in refinancing the City's Certificates of Participation (1995 Refunding and Landfill Closure Program) (the "1995 COPs"); and

**WHEREAS**, the Authority has determined to enter into an Assignment Agreement, dated as of September 1, 2005, pursuant to which the Authority will assign to a financial institution the Authority's entitlement to receive the Rental Payments and other moneys from the City;

**NOW, THEREFORE, BE IT RESOLVED, BY THE GOVERNING BOARD OF THE CITY OF FORT BRAGG JOINT POWERS FINANCING AUTHORITY, AS FOLLOWS:**

Section 1. The foregoing recitals are true and correct and this Board hereby so finds and determines.

Section 2. The forms of Ground Lease, Refinancing Lease/Purchase Agreement, and Assignment Agreement are hereby approved. The President or Treasurer of the Authority is hereby authorized and directed to execute and deliver the forms of Ground Lease, Refinancing Lease/Purchase Agreement and Assignment Agreement in substantially the forms on file with the Secretary of the Authority, with such changes, additions, amendments or modification which are approved by the President or Treasurer in the interest of the Authority, such approval to be conclusively evidenced by said execution and delivery.

Section 3. The President, the Treasurer and the Secretary and any and all other officers, agents and employees of the Authority are hereby authorized and directed to take any and all actions and execute and deliver any and all documents necessary or convenient to accomplish the purposes of this Resolution, including but not limited to the execution, sale and delivery of the Certificates and the execution and delivery of a

termination agreement or any other appropriate documents to terminate the lease entered into by the Authority in connection with the 1995 COPs.

Section 4. This resolution shall take effect immediately upon its adoption.

**The above and foregoing Resolution was introduced by Governing Board Member Gjerde, seconded by Governing Board Member Baltierra, and passed and adopted at a regular meeting of the City Council of the City of Fort Bragg held on the 12<sup>th</sup> day of September, 2005, by the following vote:**

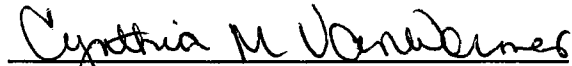
**AYES:** Board Members Gjerde, Baltierra, Hammerstrom, Melo, and Chair Turner.  
**NOES:** None.  
**ABSENT:** None.  
**ABSTAIN:** None.



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**DAVE TURNER,**  
Chair

**ATTEST:**



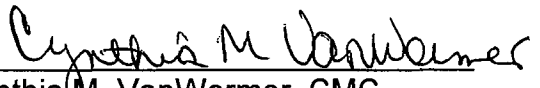
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**Cynthia M. VanWormer, CMC**  
Authority Secretary



STATE OF CALIFORNIA )  
 )ss  
COUNTY OF MENDOCINO )

I, Cynthia M. VanWormer, Secretary to the Governing Board of the Fort Bragg Joint Powers Authority, do hereby certify that the foregoing is a full, true, and correct copy of a resolution duly adopted by said Governing Board at a regular meeting thereof on the date and by the vote above stated.

  
\_\_\_\_\_  
Cynthia M. VanWormer, CMC,  
Authority Secretary

## REFINANCING LEASE/PURCHASE AGREEMENT

### CLOSING CERTIFICATE OF THE CITY OF FORT BRAGG

In connection with the execution by the City of the Refinancing Lease/Purchase Agreement, dated as of September 1, 2005 (the "Agreement") between the City of Fort Bragg (the "City") and the City of Fort Bragg Joint Powers Financing Authority the undersigned Finance Director of the City hereby certifies as follows:

1. there is no litigation or proceeding pending with respect to which the City has been served or, to the best of the knowledge of the undersigned, threatened against the City (i) to restrain or enjoin the execution and delivery of the Agreement or the payment of base rental, (ii) in any way contesting the validity of the Agreement or the authority of the City to enter into the Agreement, (iii) in any way contesting the powers of the City in connection with any action contemplated by the Agreement of Purchase, or (iv) in which a final adverse decision could materially affect the operation of the City or its ability to perform its obligations under the Agreement;


2. the representations, warranties and covenants of the City contained in the Agreement are true and correct in all material respects on and as of the date hereof with the same effect as if made on the date hereof by the City;

3. the City is not in breach of or default under any applicable law or administrative regulation of the State or the United States or any applicable judgment or decree or any loan agreement, indenture, bond, note, resolution, agreement or other instrument to which the City is a party or is otherwise subject which would have an adverse impact of the City's ability to perform its obligations under the Agreement, and no event has occurred and is continuing which, with the passage of time or the giving of notice, or both, would constitute a default or event of default under the Agreement;

4. there are no encumbrances on the real property which is the subject of the Agreement (the "Property") that materially conflict with the Agreement or interfere with the use and occupancy of the Property by the City as contemplated by the Agreement and all base rental payable by the City for the use of the Property in the aggregate does not in any annual period exceed fair rental value for the Property;

Date: September 15, 2005

CITY OF FORT BRAGG

By:   
Finance Director

**CERTIFICATE AS TO ARBITRAGE**

I, the undersigned officer of the City of Fort Bragg (the "Lessee"), being the person duly charged, with others, with the responsibility for the delivery on behalf of the Lessee of the Refinancing Lease/Purchase Agreement, (the "Lease") dated as of September 1, 2005, by and between the City of Fort Bragg Joint Powers Financing Authority (the "Lessor"), and the Lessee, which is being delivered this day, HEREBY CERTIFY that:

1. The Lease is executed and delivered under and pursuant to the laws of the State of California to enable the Lessee to acquire certain property as described in Exhibit A to the Agreement (the "Real Estate") in furtherance of the public purposes of the Lessee. Pursuant to the Lease, the Lessee agrees to lease the Real Estate from the Lessor for a total principal cost not to exceed \$1,655,034.73, and the Lessor agrees to lease the Real Estate to the Lessee. In consideration for such lease, the Lessee agrees to make rental payments on each June 1 and December 1, commencing December 1, 2005 ("Basic Rent Payments"), to the Lessor or its assignee, which Basic Rent Payments include an interest component.

2. On the basis of the facts, estimates and circumstances in existence on the date hereof, I reasonably expect the following with respect to the Lease and the proceeds thereof:

(a) The net proceeds from the Lease are \$1,655,034.73 representing the principal amount thereof. The entire net proceeds will be used for the prepayment of the Prior Agreements in full and the costs associated with the execution and delivery of the Lease. Said net proceeds, together with interest earnings thereon, will not exceed the amount necessary for the Lessee's governmental purpose of the Lease.

(b) There is no reserve fund for the payment of Basic Rent Payments.

(c) The Basic Rent Payments as set forth in the Lease will be made by the Lessee from amounts in its general funds directly to the Lessor or its assignee and will represent payments of principal and interest due with respect to the Lease. The general funds of the Lessee does not constitute sinking funds and, if invested, will be invested without yield limitations.

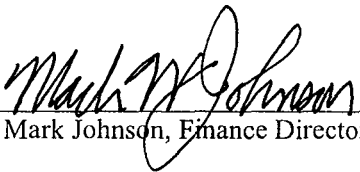
(d) No portion of the proceeds of the Lease will be used as a substitute for other funds (replacement funds) which are otherwise expected to be available to be used as a source of financing for any part of the cost of the Real Estate or for the Basic Rent Payments and which have been invested in securities or obligations having a yield in excess of the yield of the Lease.

(e) Except as specified herein, no funds which have been or will be used to acquire directly or indirectly securities or obligations producing a yield in excess of the yield of the Lease have been or will be pledged to Basic Rent Payments.

3. The Lessee has not received notice that its Certificate as to Arbitrage may not be relied upon with respect to its obligations nor has it been advised that any adverse action by the Commissioner of Internal Revenue is contemplated.

To the best of the undersigned's knowledge, information and belief, the expectations herein expressed are reasonable and that there are not facts, estimates or circumstances other than those expressed herein that would materially affect the expectations herein expressed.

CITY OF FORT BRAGG

By:   
Mark Johnson, Finance Director

Dated: September 15, 2005



## CITY OF FORT BRAGG

*Incorporated August 5, 1889*

416 N. Franklin St.  
Fort Bragg, CA 95437  
Phone: (707) 961-2823  
Fax: (707) 961-2802  
[ci.fort-bragg.ca.us](http://ci.fort-bragg.ca.us)

November 15, 2005

Internal Revenue Service  
Ogden, Utah 84201

Re: City of Fort Bragg Refinancing Lease/Purchase Agreement

Dear Sir or Madam:

Enclosed for filing is an executed original of the Information Return for Tax-Exempt Government Obligations (8038-G) for the above-referenced issue.

Also enclosed is a copy of the Information Return. Please date-stamp this copy to evidence your receipt and return it to me in the envelope provided.

Thank you for your cooperation.

Sincerely,

Mark W. Johnson  
Finance Director/Treasurer

MJ

Enclosures (2)

Form **8038-G**  
(Rev. November 2000)  
Department of the Treasury  
Internal Revenue Service

# Information Return for Tax-Exempt Governmental Obligations

► Under Internal Revenue Code section 149(e)

► See separate instructions.

Caution: If the issue price is under \$100,000, use Form 8038-GC.

OMB No. 1545-0720

<b>Part I Reporting Authority</b>		If Amended Return, check here <input type="checkbox"/>	
1 Issuer's name <b>City of Fort Bragg</b>	2 Issuer's employer identification number <b>94 6000335</b>		
3 Number and street (or P.O. box if mail is not delivered to street address) <b>416 North Franklin</b>	Room/suite	4 Report number <b>3 2005-1</b>	
5 City, town, or post office, state, and ZIP code <b>Fort Bragg, California 95437</b>		6 Date of issue <b>September 15, 2005</b>	
7 Name of issue <b>Refinancing Lease/Purchase Agreement</b>		8 CUSIP number <b>N/A</b>	
9 Name and title of officer or legal representative whom the IRS may call for more information <b>Mark Johnson, Finance Director</b>		10 Telephone number of officer or legal representative <b>( 707 ) 961-1586</b>	

<b>Part II Type of Issue (check applicable box(es) and enter the issue price)</b> See instructions and attach schedule	
11 <input type="checkbox"/> Education	11
12 <input type="checkbox"/> Health and hospital	12
13 <input type="checkbox"/> Transportation	13
14 <input checked="" type="checkbox"/> Public safety	14 <b>1,655,035</b>
15 <input type="checkbox"/> Environment (including sewage bonds)	15
16 <input type="checkbox"/> Housing	16
17 <input type="checkbox"/> Utilities	17
18 <input type="checkbox"/> Other. Describe ►	18
19 If obligations are TANs or RANs, check box <input type="checkbox"/> If obligations are BANS, check box <input type="checkbox"/>	
20 If obligations are in the form of a lease or installment sale, check box <input checked="" type="checkbox"/>	

<b>Part III Description of Obligations. Complete for the entire issue for which this form is being filed.</b>				
(a) Final maturity date	(b) Issue price	(c) Stated redemption price at maturity	(d) Weighted average maturity	(e) Yield
21 <b>June 1, 2020</b>	<b>\$ 1,655,035</b>	<b>\$ 1,655,035</b>	<b>8 years</b>	<b>4.15 %</b>

<b>Part IV Uses of Proceeds of Bond Issue (including underwriters' discount)</b>	
22 Proceeds used for accrued interest	22
23 Issue price of entire issue (enter amount from line 21, column (b))	23 <b>1,655,035</b>
24 Proceeds used for bond issuance costs (including underwriters' discount)	24 <b>38,794</b>
25 Proceeds used for credit enhancement	25
26 Proceeds allocated to reasonably required reserve or replacement fund	26
27 Proceeds used to currently refund prior issues	27 <b>1,616,241</b>
28 Proceeds used to advance refund prior issues	28
29 Total (add lines 24 through 28)	29 <b>1,655,035</b>
30 Nonrefunding proceeds of the issue (subtract line 29 from line 23 and enter amount here)	30

<b>Part V Description of Refunded Bonds (Complete this part only for refunding bonds.)</b>	
31 Enter the remaining weighted average maturity of the bonds to be currently refunded	<b>5 years</b>
32 Enter the remaining weighted average maturity of the bonds to be advance refunded	<b>years</b>
33 Enter the last date on which the refunded bonds will be called	<b>December 1, 2005</b>
34 Enter the date(s) the refunded bonds were issued	<b>June 22, 1995</b>

<b>Part VI Miscellaneous</b>	
35 Enter the amount of the state volume cap allocated to the issue under section 141(b)(5)	35
36a Enter the amount of gross proceeds invested or to be invested in a guaranteed investment contract (see instructions)	36a
b Enter the final maturity date of the guaranteed investment contract	37a
37 Pooled financings: a Proceeds of this issue that are to be used to make loans to other governmental units	
b If this issue is a loan made from the proceeds of another tax-exempt issue, check box <input type="checkbox"/> and enter the name of the issuer	
38 If the issuer has designated the issue under section 265(b)(3)(B)(i)(iii) (small issuer exception), check box <input checked="" type="checkbox"/>	
39 If the issuer has elected to pay a penalty in lieu of arbitrage rebate, check box <input type="checkbox"/>	
40 If the issuer has identified a hedge, check box <input type="checkbox"/>	

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete.

Sign Here

*Mark W. Johnson*  
Signature of issuer's authorized representative

**11-15-05**  
Date

**Mark Johnson, Finance Director**  
Type or print name and title



# REPORT OF PROPOSED DEBT ISSUANCE

California Debt and Investment Advisory Commission  
915 Capitol Mall, Room 400, Sacramento, CA 95814  
P.O. Box 942809, Sacramento, CA 94209-0001  
Tel.: (916) 653-3269 FAX: (916) 654-7440

For Office Use Only

CDIAC #: \_\_\_\_\_

RCVD AUG 19 '05

Completion and timely submittal of this form to the California Debt and Investment Advisory Commission (CDIAC) at the above address will assure your compliance with existing California State law and will assist in the maintenance of a complete database of public debt in California. Thank you for your cooperation.<sup>1</sup>

ISSUER NAME: City of Fort Bragg

(If pool bond, list participants)

ISSUE NAME: Refinancing Lease Purchase Agreement

Please specify type/name of project: \_\_\_\_\_

PROPOSED SALE DATE: September 15, 2005 PRINCIPAL TO BE SOLD: \$ 2,000,000

IS ANY PORTION OF THE DEBT FOR REFUNDING?<sup>2</sup>

☐ No ☒ Yes, proposed amount for refunding \$ 1,900,000

## Issuer Contact:

Name: Mark Johnson

Title: Finance Director/Treasurer

Address: 416 North Franklin, Fort Bragg, CA 95437

Phone: 707-961-1586

Issuer Located In Mendicino

County

Filing Contact: Name of Individual (representing: ☒ Bond Counsel, ☐ Issuer, ☐ Financial Advisor, or ☐ Lead Underwriter) who completed this form and may be contacted for information:

ame: William M. Lofton, Esq.

Firm/Agency: Lofton & Jennings

Address: 225 Bush Street, 16th Floor, San Francisco, CA 94104

Phone: 415-394-8296

E-mail: blofton@loftonjennings.com

Send acknowledgement/copies to: William M. Lofton, Esq.

## FINANCING PARTICIPANTS:

BOND COUNSEL: Lofton & Jennings

FINANCIAL ADVISOR: A. M. Peché & Associates, LLC

UNDERWRITER/PURCHASER: Westamerica Bank

## IS THE INTEREST ON THE DEBT TAXABLE?

Under State law: ☒ NO (tax-exempt) ☐ YES (taxable)

Under Federal law: ☒ NO (tax-exempt) ☐ YES (taxable)

If the issue is federally tax-exempt, is interest a specific preference item for the purpose of alternative minimum tax?

☐ Yes, preference item ☒ No, not a preference item

TYPE OF SALE: ☐ Competitive ☒ Negotiated

<sup>1</sup> Section 8855(k) of the California Government Code requires the issuer of any proposed new public debt issue to give written notice of the proposed sale to the CDIAC no later than 30 days prior to the sale. Under California Government Code Section 8855(l), "The issuer of any new public debt issue shall, not later than 45 days after the signing of the bond purchase contract in a negotiated or private financing, or after the acceptance of a bid in a competitive offering, submit a report of final sale and official statement to the Commission. The Commission may require information to be submitted in the report of final sale that is considered appropriate."

Section 53583(c)(2)(B) of the California Government Code requires that any local agency selling refunding bonds at private sale or on a negotiated basis shall send a written statement, within two weeks after the bonds are sold, to the CDIAC explaining the reasons why the local agency determined to sell the bonds at private sale or on a negotiated basis instead of at public sale.



## REPORT OF FINAL SALE

California Debt and Investment Advisory Commission  
915 Capitol Mall, Room 400, Sacramento, CA 95814  
P.O. Box 942809, Sacramento, CA 94209-0001  
Tel.: (916) 653-3269 FAX: (916) 654-7440

For Office Use Only

Under California Government Code Section 8855(i), "The issuer of any new public debt issue shall, not later than 45 days after the signing of the bond purchase contract in a negotiated or private financing, or after the acceptance of a bid in a competitive offering, submit a report of final sale and official statement to the Commission. The Commission may require information to be submitted in the report of final sale that is considered appropriate."

CDIAC #: 2005-1502

ISSUER NAME: City of Fort Bragg

(If pool bond, list participants)

ISSUE NAME: Refinancing Lease/Purchase Agreement

IF THIS IS A POOLED FINANCING, WHICH ISSUANCE STATUTE IS IT AUTHORIZED UNDER?

☐ 1) Marks-Roos Local Bond Pooling Act ☐ 2) JPA Law ☐ 3) Installment Sales Agreement, Lease... ☐ 4) Housing Revenue Bond Law & Industrial Development Bond Law ☐ 5) Other \_\_\_\_\_

WILL A VALIDATION ACTION BE PURSUED: ☒ No ☐ Yes ☐ Unknown

ACTUAL SALE DATE: September 15, 2005 PRINCIPAL SOLD: \$1,655,034.73

IS ANY PORTION OF THE DEBT FOR REFUNDING?<sup>1</sup>

☐ No ☒ Yes, refunding amount (including costs) \$ 1,655,034.73

### Issuer Contact:

Name: Mark Johnson

Title: Finance Director

Address: 416 North Franklin, Fort Bragg, California 95437

Phone: 707-961-1586 ISSUER LOCATED IN Mendocino COUNTY

Filing Contact: Name of Individual (representing: ☒ Bond Counsel, ☐ Issuer, ☐ Financial Advisor, or ☐ Lead Underwriter) who completed this form and may be contacted for information:

Name: William M. Lofton, Esq.

Firm/Agency: Lofton & Jennings

Address: 225 Bush Street, 16th Floor, San Francisco, California 94104

Phone: 415-772-1900 E-Mail: blofton@loftonjennings.com

Send acknowledgement/copies to: William M. Lofton, Esq.

Name of individual to whom an invoice for the CDIAC issue fee should be sent:<sup>2</sup>

Name: David L. Hicks, Vice President/Credit Administrator

Firm: WestAmerica Bank, Credit Administration Dept. (A-2D)

Address: 4550 Mangels Boulevard, Fairfield, California 94534-4082

Phone: 707-863-6002

<sup>1</sup> Section 53583(c)(2)(B) of the California Government Code requires that any local agency selling refunding bonds at private sale or on a negotiated basis shall send a written statement, within two weeks after the bonds are sold, to the CDIAC explaining the reasons why the local agency determined to sell the bonds at a private sale or on a negotiated basis instead of at public sale.

<sup>2</sup> This fee is authorized by Section 8856 of the California Government Code and is charged to the lead underwriter or purchaser of the issue. The fee is administratively set by the Commission. The current fee schedule may be obtained from CDIAC.

**ATTACHMENT II TO THE LEASE  
RENTAL PAYMENT SCHEDULE**

**Closing Date: September 15, 2005**

<b>Payment Number</b>	<b>Payment Date</b>	<b>Principal Component</b>	<b>Coupon</b>	<b>Interest Component</b>	<b>Total Payment</b>	<b>Prepayment Price (in \$)</b>
1	12/01/05	\$59,284.56	4.15%	14,499.94	\$73,784.51	\$1,611,707.67
2	06/01/06	40,672.69	4.15%	33,111.82	73,784.51	1,570,628.25
3	12/01/06	41,516.65	4.15%	32,267.86	73,784.51	1,528,696.43
4	06/01/07	42,378.12	4.15%	31,406.39	73,784.51	1,485,894.53
5	12/01/07	43,257.47	4.15%	30,527.04	73,784.51	1,442,204.49
6	06/01/08	44,155.06	4.15%	29,629.45	73,784.51	1,397,607.88
7	12/01/08	45,071.28	4.15%	28,713.23	73,784.51	1,352,085.89
8	06/01/09	46,006.51	4.15%	27,778.00	73,784.51	1,305,619.32
9	12/01/09	46,961.14	4.15%	26,823.37	73,784.51	1,258,188.57
10	06/01/10	47,935.58	4.15%	25,848.92	73,784.51	1,209,773.63
11	12/01/10	48,930.25	4.15%	24,854.26	73,784.51	1,160,354.08
12	06/01/11	49,945.55	4.15%	23,838.96	73,784.51	1,109,909.07
13	12/01/11	50,981.92	4.15%	22,802.59	73,784.51	1,058,417.33
14	06/01/12	52,039.79	4.15%	21,744.71	73,784.51	1,005,857.14
15	12/01/12	53,119.62	4.15%	20,664.89	73,784.51	952,206.32
16	06/01/13	54,221.85	4.15%	19,562.65	73,784.51	897,442.25
17	12/01/13	55,346.96	4.15%	18,437.55	73,784.51	841,541.83
18	06/01/14	56,495.41	4.15%	17,289.10	73,784.51	784,481.47
19	12/01/14	57,667.69	4.15%	16,116.82	73,784.51	726,237.11
20	06/01/15	58,864.29	4.15%	14,920.22	73,784.51	666,784.17
21	12/01/15	60,085.72	4.15%	13,698.78	73,784.51	606,097.59
22	06/01/16	61,332.50	4.15%	12,452.00	73,784.51	544,151.76
23	12/01/16	62,605.15	4.15%	11,179.36	73,784.51	480,920.56
24	06/01/17	63,904.21	4.15%	9,880.30	73,784.51	416,377.31
25	12/01/17	65,230.22	4.15%	8,554.29	73,784.51	350,494.79
26	06/01/18	66,583.75	4.15%	7,200.76	73,784.51	283,245.20
27	12/01/18	67,965.36	4.15%	5,819.15	73,784.51	214,600.19
28	06/01/19	69,375.64	4.15%	4,408.87	73,784.51	144,530.79
29	12/01/19	70,815.19	4.15%	2,969.32	73,784.51	73,007.45
30	06/01/20	<u>72,284.60</u>	4.15%	<u>1,499.91</u>	<u>73,784.51</u>	-
		<b>\$1,655,034.73</b>		<b>\$558,500.50</b>	<b>\$2,213,535.23</b>	

772  
1909

Bill- I could not get Certificates of Coverage today since our "risk manager" (City Clerk) is out. But I did get REMIF to send general coverage info, plus listing of fire/extended coverage on facilities (\$1,402,065 on Corp Yard and \$746,080 on Town Hall) plus Certificate provided last year for 1995 COP issue (liability). Hope this is sufficient for West America to close - the lease requires insurance but does not specify certificates with additional insureds.

**Fax**

To: ~~Mark Johnson~~ From: Leigh Townsend  
 Fax: 961-2913 Pages: 3 (Includes cover)  
 Phone: Date: 9/14/05  
 Re: Ins. Coverage CC:

march

☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

Hi Mark,  
 Please let me know if  
 you need something  
 else.

Thanks,  
 Leigh

R.E.V.I.F.

SUMMARY OF POLICIES  
2004-2005

COMPANY	LIMITS/COVERAGE	COST
<b><u>LIABILITY</u></b>		
Californin Joint Powers Risk Management Authority*	\$4,500,000 xs \$500,000. Bodily injury, property damage, errors and omissions, personal injury. (7/1/04 - 7/1/05)	\$771,397
American Reinsurance #9391646	\$10,000,000 x \$5,000,000	
American Reinsurance #9391720	\$10,000,000 xs \$15,000,000. Bodily injury, property damage, personal injury, errors & omissions, employment practices, liability reinsurance. (7/1/04 - 7/1/05)	
<b><u>WORKERS' COMPENSATION</u></b>		
Continental #W128587841A	Statutory xs \$1,000,000 S.I.R. (7/1/04 - 7/1/05)	\$484,163
	\$2,000,000 xs \$1,000,000 S.I.R. for employers liability (7/1/04 - 7/1/05)	
<b><u>PROPERTY</u></b>		
Discover Property & Casualty #D0003Z00030	\$4,975,000 xs \$25,000 S.I.R. (excludes earthquake and flood) (7/1/04 - 7/1/06)	
Federal Insurance Company (CHUBB) #660-74-94	\$195,000,000 xs \$5,000,000 all risk (excludes terrorism, mold, and computer virus) (7/1/04 - 7/1/05)	\$232,187
Hartford Steam Boiler Ins. Company #FBP4909988	\$19,995,000 xs \$5,000 S.I.R., <u>Boiler/Machinery</u> - Mechanical breakdown to boilers and other pressure vessels. Fixed rate per city** \$21,250,000 limit for equipment breakdown. (7/1/04 - 7/1/05)	\$28,344
Fireman's Fund #S 95 MXX 80828850	\$1,490,000 xs \$10,000 S.I.R., <u>Automobile Physical Damage</u> Vehicles valued in excess of \$25,000. Damage to vehicles off premises. (7/1/04 - 7/1/05)	\$85,268
<b><u>BONDS</u></b>		
Fidelity & Deposit Company of Maryland #CCP 004417	\$1,975,000 xs \$25,000 S.I.R., <u>Public Employee Blanket Bond</u> , loss of money, securities, and other property through employee dishonesty. (10/1/04 - 10/1/05)	
	\$1,975,000 xs \$25,000 S.I.R., <u>Honesty Blanket Bond</u> , coverage for a forgery or alteration loss by a third party. (10/1/04 - 10/1/05)	
	\$975,000 xs \$25,000 S.I.R., <u>Faithful Performance</u> loss of money, securities, and other property through failure to properly supervise. (10/1/04 - 10/1/05)	\$29,282
	\$990,000 xs \$10,000 <u>REMIF Treasurer/CEO Bond</u> , <u>Honesty</u> <u>Blanket Bond</u> , forgery or alteration, public employee dishonesty, and faithful performance coverage.	\$1,572

\* Risk Sharing Self-Funded Pool

\*\* SIR and limits different for Healdsburg and Ukiah

Note: Earthquake/Blind Coverage is not included in this summary.

### Difference in Conditions 2004 - 2005

Insurers	Participation	Premium
Great American Assurance Company CIP 56644111	11/17/04-11/17/05 Renewal - DIC CIGNA - DIC \$2,500,000 part of \$5,000,000 Primary	\$110,000.00 <u>\$5,000.00</u> \$115,000.00
Greenwich Insurance Company ACG 33644111	11/17/04-11/17/05 Renewal -- DIC \$2,500,000 part of \$5,000,000 Primary	\$110,000.00
Landmark American Insurance Co LMD 410460	11/17/04-11/17/05 Renewal - DIC Taxes - DIC Stamping Fee - DIC \$5,000,000 xs \$5,000,000	\$85,000.00 \$2,550.00 <u>\$191.25</u> \$87,741.25
Mt. Hawley Insurance Company MCH 0300166	11/17/04-11/17/05 Renewal -- DIC Taxes -- DIC Policy Fee - DIC Stamping Fee - DIC \$10,000,000 xs \$10,000,000	\$80,000.00 \$2,404.50 \$150.00 <u>\$180.34</u> \$82,734.84
Clarendon America Insurance Company 303583EQ1	11/17/04-11/17/05 Renewal - DIC Policy Fee - DIC Taxes - DIC Stamping Fee - DIC \$5,000,000 xs \$20,000,000	\$43,000.00 \$300.00 \$1,299.00 <u>\$97.43</u> \$44,696.43
	<b>Premiums</b>	<b><u>\$440,172.52</u></b>

FORT BRAGG PROPERTY AND DIC COVERAGE FY05  
38,108

#	SITE	DESCRIPTION	VALUE BUILDINGS	SQ.FT	COST/ SQ.FT	CONTRACT EQUIP	IN THE OPEN	TOTALS	DIC NOT COVERED	DIC COVERAGE	ADD/ DELETE DATES
1	1-001	CITY HALL	3,781,530	17,189	220	468,691	1,557	4,251,818	-	4,251,818	
2	2-001	FIRE STATION	2,796,640	12,712	220	-		2,796,640	-	2,796,640	
3	3-001	GUEST HOUSE	2,369,250	17,550	135	142,198		2,511,448	2,511,448	0	
4	3-002	GH STORAGE	36,100	361	100	4,900		41,000	41,000		
5	4-001	FORT MUSEUM	92,800	928	100	20,000		112,800	112,800		
6	5-001	CORP YARD	1,015,000	8,120	125	237,065	150,000	1,402,065	-	1,402,065	
7	5-002	CV HAZ MAT	19,200	192	100	10,000		29,200	29,200		
8	6-001	TOWN HALL	696,080	3,164	220	50,000		746,080	-	746,080	
9	7-001	RIVER INTAK BS	12,100	121	100	103,598		115,698	115,698		
10	7-002	RIBS EFB PRES	33,600	336	100	78,000		111,600	-	111,600	
11	8-001	WATER TP BLDG	300,000	2,400	125	1,125,000		1,425,000	-	1,425,000	
12	8-002	WTP PUMP H	137,500	1,100	125	220,000		357,500	-	357,500	
13	8-003	WTP CHLORINE	12,600	126	100	8,438		21,038	21,038		
14	8-005	WTP TANK		reservoir	-	-	1,500,000	1,500,000	1,500,000		
15	8-006	WTP TANK		reservoir	-	-	1,500,000	1,500,000	1,500,000		
16	8-007	WTP RESERVOIR		reservoir	-	-	491,862	491,862	491,862		
17	8-008	WTP RESERVOIR		reservoir	-	-	491,862	491,862	491,862		
18	9-001	ELM LIFT STAT	64,600	646	100	99,000		163,600	163,600		
19	10-001	PUDDING CR LIFT	32,300	323	100	49,392		81,692	81,692		
20	11-001	S HARBOR NOYO	24,000	240	100	21,609		45,609	45,609		
21	12-001	N HARBOR NOYO	24,000	240	100	21,609		45,609	45,609		
22	13-001	WWTP CONTROL	223,000	1,784	125	70,000		293,000	-	293,000	
23	13-002	WWTP CHLORINE	74,600	746	100	35,000		109,600	109,600		
24	13-003	WWTP WELL	55,000	550	100	15,000		70,000	70,000		
25	13-004	WWTP SLUDGE	33,900	339	100	25,000		58,900	58,900		
26	13-005	WWTP FILTER	80,000	800	100	80,000		160,000	160,000		
27	13-006	WW TREAT PLANT				785,000	3,190,000	3,975,000	-	3,975,000	
28	13-007	WWTP GENERATOR	90,000	900	100	60,000		150,000	-	150,000	
29	14-001	POLICE DEPT	1,826,000	8,300	220	684,000		2,510,000	-	2,510,000	
30	15-001	WATER TANK				-	300,000	300,000	-	300,000	
31	17-001	CBD				-	35,000	35,000	35,000		
32	18-001	PELICAN STORAGE				250,000		250,000	250,000		
33	90-001	HWY#20	753,125	6,025	125	40,000		793,125	793,125		
TOTALS			14,592,975	85,192	171.18	4,703,400	150,000	7,510,281	26,946,656	8,627,953	18,318,703

**CALIFORNIA JOINT POWERS RISK MANAGEMENT AUTHORITY****CERTIFICATE OF COVERAGE****Certificate Holder and**

**Additional Covered Party:** City of Fort Bragg Joint Powers Financing Authority, c/o City of Fort Bragg  
416 N. Franklin Street  
Fort Bragg, CA 95437  
Attention: Ms. Connie Jackson, City Manager

**This certifies that the coverage**

**Described herein has been issued to:** REMIF - City of Fort Bragg

**Description of Activity:** Certificates of Participation for Landfill Closure Financing Program

**Date(s) of Activity:** Ongoing

**Location of Activity:** City of Fort Bragg

Entity Providing Coverage	Excess Coverage	Certificate Expiration Date
California Joint Powers Risk Management Authority	\$ 2,500,000 excess of \$ 500,000	6/30/2005

The following coverage is in effect and is provided through participation in a risk sharing joint powers authority: comprehensive general liability, automobile liability, and public officials errors and omissions, as defined in the Memorandum of Coverage on file with the entity and which will be made available upon request.

The coverage being provided is limited to the activity and the time period indicated herein and is subject to all the terms, conditions and exclusions of the Memorandum of Coverage of the California Joint Powers Risk Management Authority.

Pursuant to Section II, subsection 8, relating to the definition of a covered party, the certificate holder named herein is only an additional covered party for covered claims arising out of the activity described herein and is subject to the limits stated herein.

Coverage is in effect at this time and will not be cancelled, limited or allowed to expire at a date other than that indicated herein except upon 30 days written notice to the certificate holder.

7/1/2004

Date

Authorized Signature

**Robert J. German, General Manager**

Name and Title (Print or type)





## CITY OF FORT BRAGG

*Incorporated August 5, 1889*  
416 N. Franklin St.  
Fort Bragg, CA 95437  
Phone: (707) 961-2823  
Fax: (707) 961-2802  
[ci.fort-bragg.ca.us](http://ci.fort-bragg.ca.us)

Ms. Francine Rockett  
Vice President & Account Manager  
U.S. Bank National Association  
Corporate Trust Services  
One California Street, Suite 2100  
San Francisco, CA 94111

September 15, 2005

RE: CITY OF FORT BRAGG – FORT BRAGG JOINT POWERS FINANCING  
AUTHORITY – CERTIFICATES OF PARTICIPATION  
1995 REFUNDING AND LANDFILL CLOSURE PROGRAM

Dear Ms. Rockett:

Please be advised that the City of Fort Bragg is refinancing the outstanding principal balance of above referenced COPs and that sufficient funds have been wired to you which when added to Reserve Account and other available moneys will be sufficient to redeem in whole, with premium, all outstanding COPs on December 1, 2005. Please consider this letter as official notice to you of prepayment of the underlying lease obligations and instructions for optional redemption of the COPs.

Very truly yours,

Mark W. Johnson

City Finance Director/Treasurer  
Authority Finance Director/Treasurer

Cc: Bill Lofton, Lofton & Jennings

COPY OF Document Recorded

9/16/05 2005-20286

EXECUTION COPY

AFTER RECORDATION RETURN TO:

Mark Johnson  
City of Fort Bragg  
416 North Franklin  
Fort Bragg, CA 95437

Has not been compared with  
original. Original will be returned  
when processing has been  
completed.

MENDOCINO COUNTY RECORDER

THIS TRANSACTION IS EXEMPT FROM CALIFORNIA DOCUMENTARY TRANSFER TAX  
PURSUANT TO SECTION 11929 OF THE CALIFORNIA REVENUE AND TAXATION CODE. THIS  
DOCUMENT IS EXEMPT FROM RECORDING FEES PURSUANT TO SECTION 27383 OF THE  
CALIFORNIA GOVERNMENT CODE.

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### TERMINATION AGREEMENT

**Dated September 15, 2005**

**by and among the**

**CITY OF FORT BRAGG**

**the**

**CITY OF FORT BRAGG JOINT POWERS FINANCING AUTHORITY**

**and**

**U.S. BANK TRUST NATIONAL ASSOCIATION  
as Trustee**

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**CITY OF FORT BRAGG  
CERTIFICATES OF PARTICIPATION  
(1995 Refunding Landfill Closure Program)**

## TERMINATION AGREEMENT

This Termination Agreement is dated September 15, 2005, and is by and among the City of Fort Bragg (the "City"), the CITY OF FORT BRAGG JOINT POWERS FINANCING AUTHORITY (the "Authority"), and U.S. BANK TRUST NATIONAL ASSOCIATION, as successor trustee to Bank of America National Trust and Savings Association, as trustee (the "Trustee").

### WITNESSETH:

WHEREAS, the City and the Authority have heretofore entered into a Site Lease, dated as of June 1, 1995 (the "Site Lease"), and the Lease Agreement, dated as of June 1, 1995 (the "Lease Agreement"), pursuant to which the Authority and the City entered into transactions for the lease financing of certain real property described on Exhibit A hereto and the improvements thereon (the "Facilities"), and the City agreed to make certain lease payments (the "Lease Payments") to the Authority;

WHEREAS, pursuant to an Assignment Agreement, dated as of June 1, 1995 (the "Assignment Agreement"), by and between the Authority and the Trustee, as successor trustee, the Authority assigned to the Trustee, among other things, its rights to receive Lease Payments from the City under the Lease Agreement and the right to exercise such rights and remedies conferred on the Authority under the Lease Agreement to enforce payment of the Lease Payments;

WHEREAS, pursuant to a Trust Agreement, dated as of June 1, 1995, by and among the City, the Authority and the Trustee, the Trustee agreed among other matters, to execute and deliver certificates of participation (the "Certificates") representing undivided fractional interests of the owners thereof to receive Lease Payments made by the City;

WHEREAS, the Lease Agreement provides that in the event that the City deposits or causes the deposit on its behalf of moneys for the prepayment of the Lease Payments, then all of the obligations of the City under the Lease Agreement of the City to make the Lease Payments from said deposit, shall cease and terminate, and unencumbered title to the Facilities shall be vested in the City without further action by the City or the Authority;

WHEREAS, the City has determined that, as a result of favorable financial market conditions and for other reasons, it is in the best interests of the City at this time to refinance the City's obligation to make the Lease Payments under the Lease Agreement and, as a result thereof, to refund all outstanding Certificates in full, plus accrued interest; and

WHEREAS, the City has made the deposit of moneys referenced in the Lease Agreement and the Lease Payments, the Lease Agreement and the agreements related thereto need not be maintained, and the parties hereto now desire to provide for the termination of such documents as provided herein.

NOW, THEREFORE, in consideration of the foregoing and for other consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereto do hereby agree:

Section 1. Termination.

(a) By virtue of the deposit of moneys for prepayment of the Lease Payments, all obligations of the City under the Lease Agreement shall cease and terminate, excepting only the obligation of the City to make, or cause to be made, all payments from such deposit and title to the Facilities shall vest in the City on the date of said deposit automatically and without further action by the City or the Authority. Said deposit and interest earnings thereon shall be deemed to be and shall constitute a special fund for the prepayment of the Lease Payments.

(b) In accordance with the foregoing, the following agreements (including any option to purchase contained therein), are hereby terminated and are of no further force or effect;

1. Lease Agreement was recorded June 22, 1995 as Book 2259, Page 647, Official Records of Mendocino County;

2. Assignment Agreement, recorded June 22, 1995 as Book 2259, Page 686, Official Records of Mendocino County; and

3. Site Lease, recorded June 22, 1995 as Book 2259, Page 636, Official Records of Mendocino County.

(c) That from and after the date hereof, none of the parties shall have any further rights or obligations thereunder.

Section 2. Execution in Counterparts. This Termination Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and same instrument.

IN WITNESS WHEREOF the parties hereto have duly executed this Termination Agreement.

U.S. BANK TRUST NATIONAL ASSOCIATION,  
as Trustee

By:   
Authorized Officer

CITY OF FORT BRAGG JOINT POWERS  
FINANCING AUTHORITY

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

ATTEST:

\_\_\_\_\_  
Secretary

CITY OF FORT BRAGG

By: \_\_\_\_\_  
Mark Johnson, Finance Director

ATTEST:

\_\_\_\_\_  
Clerk of the Board of Supervisors

IN WITNESS WHEREOF the parties hereto have duly executed this Termination Agreement.

U.S. BANK TRUST NATIONAL ASSOCIATION,  
as Trustee

By: \_\_\_\_\_  
Authorized Officer

CITY OF FORT BRAGG JOINT POWERS  
FINANCING AUTHORITY

By: Mark W Johnson  
Treasurer

ATTEST:

\_\_\_\_\_  
Secretary

CITY OF FORT BRAGG

By: Mark W Johnson  
Mark Johnson, Finance Director

ATTEST:

*City* Clerk of the Board of Supervisors

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA )

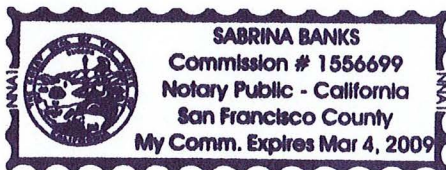
COUNTY OF SAN FRANCISCO )

ss.

On 9/13/2005, before me, SABRINA BANKS, NOTARY PUBLIC  
Date Name and Title of Officer (e.g. "Jane Doe, Notary Public")

Personally appeared FRANCINE ROCKETT  
Name of Signer(s)

☒ personally known to me – **OR** – ☐ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Sabrina Banks  
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY(IES) CLAIMED BY SIGNER(S)

DESCRIPTION OF ATTACHED DOCUMENT

- ☐ Individual  
☐ Corporate Officer

\_\_\_\_\_  
Title(s)

\_\_\_\_\_  
Title or Type of Document

- ☐ Partner(s) ☐ Limited  
☐ General

- ☐ Attorney-In-Fact  
☐ Trustee(s)  
☐ Guardian/Conservator  
☐ Other: \_\_\_\_\_

\_\_\_\_\_  
Number of Pages

Signer is Representing:  
Name of Person(s) or Entity(ies)  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Date of Document

\_\_\_\_\_  
Signer(s) Other Than Named Above

EXHIBIT A

LEGAL DESCRIPTION



## EXHIBIT A

### Description of Premises

All that certain real property situated in the City of Fort Bragg, County of Mendocino, State of California, and more particularly described as follows:

#### TRACT ONE:

Starting from the corner to Sections One (1) and Twelve (12), Township Eighteen (18) North, Range Eighteen (18) West, and Sections Six (6) and Seven (7), Township Eighteen (18) North, Range Seventeen (17) West, Mount Diablo Base and Meridian, and running thence East 840 feet; thence North 60 feet to the point of beginning; thence on the exterior boundaries of the land to be described as follows: East 140 feet; North 150 feet; West 140 feet; and South 150 feet to the point of beginning, being Lots Six (6), Seven (7), Eight (8), in Block Twelve (12) in said City of Fort Bragg as said Lots and Block are laid down and delineated upon a certain map entitled "Map of the City of Fort Bragg, showing the Town Lots" filed for record February 15, 1910 in Map Case 1, Drawer 3, Page 44, Mendocino County Records.

8-092-05, 06, 07

#### TRACT TWO:

Being that portion of Lot 16 in Block 15 bounded and particularly described as follows, to wit:

Starting at the corner to Sections 1 and 12, Township 18 North, Range 18 West, and Sections 6 and 7, Township 18 North, Range 17 West, Mount Diablo Base and Meridian, and running thence East 280 feet to and for the point of beginning; and thence on the exterior boundary of such piece or parcel of land East 100 feet; thence South 35 feet; thence West 100 feet; and thence North 35 feet to said point of beginning, being the Northeast 35 by 100 feet of said Lot 16.

8-151-01

**TRACT THREE:**

Starting at the corner to Sections One (1) and Twelve (12) in Township Eighteen (18) North, Range Eighteen (18) West of Mount Diablo Base and Meridian and Sections Six (6) and Seven (7) in Township Eighteen (18) North, Range Seventeen (17) West of Mount Diablo Base and Meridian, and running East three hundred eighty (380) feet and thence South thirty-five (35) feet to and for the point of beginning, and thence on the exterior boundary of such piece or parcel of land South forty-two and one-half ( $42 \frac{1}{2}$ ) feet, and thence West fifty-six (56) feet thence North forty-two and one-half ( $42 \frac{1}{2}$ ) feet, and thence East fifty-six (56) feet to the said point of beginning, being a portion of Block fifteen (15) of the City of Fort Bragg.

8-151-02

**TRACT FOUR:**

Lots Eleven (11), Twelve (12) and Thirteen (13) of Block Twenty-three (23) as numbered and designated upon the map entitled "Map of the City of Fort Bragg showing the Town Lots" filed for record February 15, 1910 in Map Case 1, Drawer 3, Page 44, Mendocino County Records.

8-161-04

\$1,655,034.73  
CITY OF FORT BRAGG  
Refinancing Lease Purchase Agreement  
CLOSING MEMORANDUM

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<b>SECTION I: DEPOSIT FROM DISTRICT</b>
---

DATE OF DEPOSIT: Thursday, September 15, 2005  
TIME: 9:00 a.m. PST

WIRE OF NET PROCEEDS:

On September 15, 2005, WestAmerica Bank, as Lessor under the Agreement, will wire the net proceeds of the Agreement as follows:

I. **\$1,616,240.73** to the Trustee for the 1995 COPs, which when combined with funds on hand, will be sufficient to prepay all outstanding 1995 COPs in full.

TRUSTEE FOR THE 1995 COPS:

U.S. BANK, NATIONAL ASSOCIATION  
ABA#: 091000022  
FBO: U.S. BANK NATIONAL ASSOCIATION  
Acct: I80I2II67365  
Ref: Fort Bragg 1995 Trust Account # 948II390  
Attn: Francine Rockett 415-273-4517

ADDITIONAL PAYMENTS:

Also on September 15, 2005, WestAmerica Bank is requested to wire costs of issuance as follows:

I. **\$12,096.39** to A.M. Peche & Associates, LLC representing the financial advisory fee and related out-of-pocket expenses, according to the following wire instructions:

A.M. PECHE & ASSOCIATES:

Mellon Bank  
ABA# 043000261  
For credit to: Merrill Lynch Account I0II730  
Further credit to: A. M. Peche & Associates LLC  
Account # 6CA-07356

2. The Placement Agent fee (including out-of-pocket expenses) of \$11,451.80 and title insurance costs of \$3,794.00, totaling **\$15,245.80** to Delta Managed Solutions, LLC, per the following wire instructions:

WELLS FARGO BANK  
ABA: I2I-000-248  
Account: 7056-28I962  
Account Name: Delta Managed Solutions, LLC

\$1,655,034.73  
CITY OF FORT BRAGG  
Refinancing Lease Purchase Agreement  
CLOSING MEMORANDUM

---

4. The Special Counsel fee (including out-of-pocket expenses) of \$11,451.81 to Lofton & Jennings, Attorneys at Law, per the following wire instructions:

BANK OF AMERICA NT&SA  
ABA No. 121000358  
San Francisco Main Branch #0033  
Account No. 00334-14510  
Reference: 218-04026

SUMMARY OF LEASE PROCEEDS:

Sources

Principal Amount of Agreement	\$1,655,034.73
-------------------------------	----------------

Uses

Net Proceeds to prepay 1995 COPs:	\$1,616,240.73
-----------------------------------	----------------

Costs of Issuance:

Wire to A.M. Peche & Associates:	12,096.39	
Wire to Delta Managed Solutions:	15,245.80	
Wire to Lofton & Jennings:	<u>11,451.81</u>	

38,794.00

Total Uses of Proceeds:	\$1,655,034.73
-------------------------	----------------

---

# A. M. PECHÉ & ASSOCIATES LLC

1025 Morton Street  
Alameda, California 94502-3904

Phone: (510) 521-2077  
Fax: (510) 521-2078  
APeche@PeccheAssociates.com  
www.PeccheAssociates.com

## CITY OF FORT BRAGG

Lease & Option to Purchase #2005-01  
Final Distribution List

---

### CITY OF FORT BRAGG

Mr. Andy Whiteman  
City Manager

(707) 961-2825  
awhiteman@ci.fort-bragg.ca.us

Mr. Mark Johnson  
Finance Director/Treasurer

(707) 961-1586  
mjohnson@ci.fort-bragg.ca.us

Ms. Cindy VanWormer  
City Clerk

(559) 659-1476 ext. 1311  
cvanwormer@ci.fort-bragg.ca.us

**City of Fort Bragg**

416 North Franklin  
Fort Bragg, CA 95437

(707) 961-2913 Fax

Mr. Michael Gogna, Esq., (City Attorney)

**Meyers Nave Riback Silver & Wilson**

401 Mendocino Avenue, Suite 100  
Santa Rosa CA 95401

(707) 545-8009  
mgogna@meyersnave.com

(707) 545-6617 Fax

### FINANCIAL ADVISOR

Mr. Albert M. Peché, Manager  
**A. M. Peché & Associates LLC**  
1025 Morton Street  
Alameda, CA 94501-3904

(510) 521-2077  
APeche@PeccheAssociates.com

(510) 521-2078 Fax

### PLACEMENT AGENT

Karl E. Yoder  
**Delta Managed Solutions, LLC**  
2005 N Street  
Sacramento, CA 95814

(916) 452-1440  
Karl.Yoder@DeltaManaged.com

(916) 244-0307 Fax

### SPECIAL COUNSEL

Mr. William M. Lofton, Esq.

(415) 394-8296  
BLofton@LoftonJennings.com

Jacquelynne M. Jennings, Esq.

(415) 394-8294  
JJennings@LoftonJennings.com

Deana Altman, Legal Assistant

**Lofton & Jennings**

225 Bush Street, 16<sup>th</sup> Floor  
San Francisco, CA 94104

(415) 394-8510  
DAltman@LoftonJennings.com

(415) 772-1909 Fax

**LENDER**

David L. Hicks  
Vice President/Credit Administrator  
Credit Administration Department (A-2D)

**WestAmerica Bank**

4550 Mangels Blvd., Fairfield CA 94534-4082  
P.O. Box 1200 Suisun City, CA 94585-1200

(707) 863-6002  
WABCAD@westamerica.com

(707) 862-6868 Fax

**TRUSTEE FOR 1995 CERTIFICATES**

Ms. Francine Rockett  
Vice President & Account Manager

**U.S. Bank National Association**

Corporate Trust Services  
One California Street, Suite 2100  
San Francisco, CA 94111

(415) 273-4517  
francine.rockett@usbank.com

(415) 273-4590 Fax

**TITLE COMPANY**

Gary Bates  
**First American Title Company**  
551 South Orchard Avenue  
Ukiah, CA 95482

(707) 462-1446 Ext 108  
gabates@firstam.com  
(707) 462-0947 Fax  
Policy #2306-2042784

# Lofton & Jennings

Attorneys at Law  
225 Bush Street, 16th Floor  
San Francisco, California 94104  
Telephone: (415) 772-1900  
Facsimile: (415) 772-1909

September 15, 2005

City of Fort Bragg  
Fort Bragg, California

WestAmerica Bank  
San Rafael, California

Re: City of Fort Bragg Refinancing Lease/Purchase Agreement

Ladies and Gentlemen:

We have acted as Special Counsel in connection with the execution and delivery of the Refinancing Lease/Purchase Agreement dated as of September 1, 2005 (the "Agreement") between the City of Fort Bragg (the "City"), as lessee and the City of Fort Bragg Joint Powers Financing Authority (the "Authority"), as lessor. All capitalized terms used herein and not otherwise defined shall have the same meanings assigned to them in the Agreement.

As Special Counsel we have examined copies certified to us as being true and complete copies of such documents, opinions and instruments as we have deemed necessary in order to render the opinions expressed herein. In such examination, we have assumed the genuineness of all signatures on original documents and the conformity to the original documents of all copies submitted to us. We have also assumed the due execution and delivery of all documents which we have examined where due execution and delivery are a prerequisite to the effectiveness thereof.

We call attention to the fact that the rights and obligations under the Agreement and their enforceability may be subject to bankruptcy, insolvency, reorganization, arrangement, fraudulent conveyance, moratorium and other laws relating to or affecting creditors' rights, to the application of equitable principles, to the exercise of judicial discretion in appropriate cases and to the limitations on legal remedies against public bodies in the State of California (the "State"). We also express no opinion with respect to any indemnification, contribution, penalty, choice of law, choice of forum or waiver provisions contained in the foregoing documents.

Based on and subject to the foregoing, and in reliance thereon, as of the date hereof, we are of the following opinions:

On the basis of the foregoing examination and assumptions and in reliance thereon and on all such other matters of fact as we deemed relevant under the circumstances, and upon consideration of the applicable laws, we are of the opinion that:

1. The City is a public body, corporate and politic, and political subdivision of the State, duly organized and validly existing under the laws of the State.

2. The City is authorized and has the power under applicable law to enter into the Agreement and to carry out its obligations thereunder.
3. The Agreement has been duly executed and delivered by, and constitutes a valid and binding agreement of, the City, enforceable against the City in accordance its terms.
4. The Assignment Agreement dated as of September 1, 2005 executed by Authority and WestAmerica Bank (the Bank") constitutes a valid and binding assignment by the Authority to the Bank of the Base Rent payable under the Agreement.
5. Under existing statutes, regulations, rulings and judicial decisions, the portion of each Base Rent Payment accruing under the Agreement designated as and comprising interest (the "Interest Component") and received by the Bank, or its assignees, is excluded from gross income for federal income tax purposes and is not an item of tax preference for purposes of calculating the federal alternative minimum tax imposed on individuals and corporations; however, it should be noted that, with respect to corporations, such interest may be included as an adjustment in the calculation of alternative minimum taxable income, which may affect the alternative minimum tax liability of corporations.
6. The Interest Component of each Base Rent Payment is exempt from present State of California personal income tax.
7. The Agreement is a "qualified tax-exempt obligation" within the meaning of Section 265(b)(3)(B) of the Internal Revenue Code of 1986, as amended (the "Code").

We express no opinion regarding other tax consequences related to the ownership or disposition of, or the accrual or receipt of interest under, the Agreement.

The opinions expressed herein as to the exclusion from gross income of the Interest Component of each Base Rent Payment are based upon certain representations of fact and certifications made by the City and others and are subject to the condition that the City complies with all requirements of the Code, that must be satisfied subsequent to the execution of the Agreement to assure that such Interest Component will not become includable in gross income for federal income tax purposes. Failure to comply with such requirements of the Code might cause the Interest Component of the Rental Payments to be included in gross income for federal income tax purposes retroactive to the date of issuance of the Agreement. The City has covenanted to comply with all such requirements.

Our engagement as Special Counsel concludes on the date hereof. This opinion speaks only as of the date hereof and we undertake no obligation to update this letter in any respect.

Respectfully submitted,

