



REPORT TO THE CITY COUNCIL

AGENDA ITEM NO.	
COUNCIL MEETING	03/06/2007
APPROVED BY	
DEPARTMENT DIRECTOR	
CITY MANAGER	

March 6, 2007

FROM: RUSSELL C. WIDMAR, AAE  
Director of Aviation

SUBJECT: (1) Amend ground leases covering the Piccadilly Airport Inn and the Piccadilly Express (formerly the Chateau) at FYI

- to extend their terms by 14 years 9 months and by 10 years, respectively,
- with the established annual rental rate review formula continuing, and
- deleting the current lease extension provisions, including the City's potential buy-out of the Piccadilly Express/Chateau, and

(2) Cooperate in Lessee's borrowing against their interests in the amended leases by signing "Ground Lessor's Consent, Estoppel Certificate and Agreements" in favor of the lending bank.

**KEY RESULT AREA**

One Fresno

**RECOMMENDATION**

That the Council approve amendments to the lease of the Piccadilly Inn at FYI with ART PICCADILLY AIRPORT LLC (the Piccadilly Lease) and to the lease of the adjacent Piccadilly Express with ART PICCADILLY CHATEAU LLC (the Chateau Lease):

- (i) to extend the term of the Piccadilly Lease by 14 years and 9 months from its current expiration date of September 30, 2029 and extend the Chateau Lease by ten years from its current expiration date of June 30, 2036 [both leases would then expire concurrently on June 30, 2046],
- (ii) with the established rent formula continuing, which calls for annual rental rate reviews with adjustments when certain US government indices have grown by ten percent or more, and
- (iii) Deleting the current five-year extension option in the Piccadilly Lease and the provision in the Chateau Lease that requires the City to purchase the Lessee's improvements at their fair cash value upon expiration of the original term unless the City and the Lessee have earlier agreed to either a twenty-five year lease extension or a sale of the real property.

It is further recommended that the Council authorize the Director of Aviation to sign a "Ground Lessor's Consent, Estoppel Certificate and Agreement" for each lease (copies attached) in connection with the Lessee's borrowing against their interest in these leases and the leases of two other "Piccadilly" properties in Fresno that are not owned by the City. Under these documents, essentially, the Far East National Bank or its experienced and financially competent designee could become the Lessee of the hotels if the current lessee/borrower ever defaulted in their loan payments to the bank or in their lease obligations to the City. Both leases already provide the Lessee some rights to refinance with corresponding duties of cooperation in the City.

### **EXECUTIVE SUMMARY**

Airports Department staff have been concerned about the provision in the Chateau Lease that requires the City to buy-out the Lessee's improvements (to wit, the hotel) at the expiration of the original forty-seven years, nine months term -- for the then prevailing fair cash value of the improvements. It's doubtful the Department would have the required cash (the current tax appraisal of the hotel is \$3.5 million), and the lease-provided alternatives to such buy-out -- agree on a twenty-five year extension of the lease or agree to sell the real property to the lessee -- are speculative at best. Would the Lessee then be interested in an extension or sale? And would the FAA allow a sale of Airport property? The proposed ten year extension of the Chateau Lease would resolve the uncertainties and provide the Airports Department a continuing income from the hotel with no potential buy-out.

The older Piccadilly Lease contains no buy-out requirement, but does provide a five-year extension option in favor of the Lessee. The proposed transaction would extend the Piccadilly Lease by fifteen years and nine months, making it co-terminus with the extended Chateau Lease, assuring a continuing income from this hotel too.

Both leases expressly allow the Lessee to use its interest in the lease as collateral for a loan. In fact, it was the Lessee's recent request that the City cooperate in the making of a loan that provided an opportunity to address the future uncertainties, assure continuing income, and eliminate the potential buy-out.

Because the Airports Department operates as a self-supporting enterprise, the recommended actions would have no impact on the General Fund.

### **KEY OBJECTIVE BALANCE**

Extending the terms of the two leases now while eliminating any potential future buy-out assures continuing rental income from the hotels with no potential major expense (Financial Responsibility). Moreover, the current Lessee is providing good Customer Satisfaction as evidenced by a notable lack of complaints. And the hotels are economic engines for the community, facilitating economic activity and providing jobs (Employee Satisfaction).

### **BACKGROUND**

The Piccadilly hotel site of 4.75 acres was originally leased to Ronald A. Smith and Associates, a partnership, on May 16, 1968 -- for a term of fifty (50) years for the purpose of constructing and operating a hotel. The term was extended to a total of sixty (60) years and 3.5 months by a lease amendment that simply changed the start date for the original fifty (50) years. The lease contained an option to add additional, contiguous acreage. The initial ground rent of \$8,474 per year represented seven percent (7%) of the agreed value of the property. The property was to have been re-appraised every five years.

Over the years, the interest in the lease was transferred until it was vested in ART PICCADILLY AIRPORT LLC, which company is now owned by American Realty Investors, Inc. of Dallas TX. Over the years the ground rent formula was changed too. The rent is now reviewed annually and gets adjusted by the cumulative, average growth (expressed as a percentage) of two indices published by the US Bureau of Labor Statistics whenever that average has grown by ten percent or more since the last adjustment. Over the years, another option -- to extend the ground lease for another five years -- was added to this lease. The current rental rate of \$0.304828 per square foot per year (X 348,384 square feet = \$106,197.20 per year) approximates the current market rate.

The contiguous property subject to the above-mentioned option to add property was NOT added to the Piccadilly Lease. Instead, it was covered by a new and separate ground lease with Donald J. Peracchi and his wife, Judith E. Peracchi, which was entered November 1, 1988. This lease allowed any use or development of the property consistent with the zoning ordinances, with limited exceptions. Eventually, the Chateau hotel (now re-named the Piccadilly Express) was constructed on the site. The term of this Chateau Lease is forty-seven years and nine months. However, at the expiration of the original term, the City must buy-out the lessee's investment in the hotel OR agree to a twenty-five (25) year extension OR agree to sell the real property to the Lessee.

The current Lessee is ART PICCADILLY CHATEAU LLC, which company is also now owned by American Realty Investors, Inc, of Dallas. The same ground rental rate-making formula as in the Piccadilly Lease applies, and the current rental rate works out to \$0.321883 per square foot per year (X 62,775 square feet = \$20,132.28 per year).

#### **FISCAL IMPACT**

There would be no impact to the General Fund from the recommended action.

#### **Attachments:**

Ground Lessor's Consent, Estoppel Certificate and Agreement for the Piccadilly  
Ground Lessor's Consent, Estoppel Certificate and Agreement for the Chateau

**RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:**

FAR EAST NATIONAL BANK  
350 South Grand Avenue, 41<sup>st</sup> Floor  
Los Angeles, California 90071  
Attention: Jennifer Fu, First Vice President

Assessor's Parcel No(s): \_\_\_\_\_

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**GROUND LESSOR'S CONSENT, ESTOPPEL CERTIFICATE  
AND AGREEMENT**

The undersigned, CITY OF FRESNO, CALIFORNIA ("Lessor"), as lessor under that certain Land Lease and Agreement (the "Ground Lease") dated May 16, 1968, between Lessor, on the one hand, and ART PICCADILLY AIRPORT LLC, a California limited liability company ("Lessee") as successor in interest, by mesnes assignments, to Ronald A. Smith and Associates, as lessee, on the other hand, covering that certain premises located in the County of Fresno, State of California (the "Leased Property"), and legally described in Exhibit "A" hereto, hereby certifies to and agrees with FAR EAST NATIONAL BANK, a national banking association ("Lender") as follows:

A. Lessor hereby certifies to Lender and represents, warrants, covenants and agrees as follows:

1. Lessee is obtaining an extension of credit from Lender in the principal sum of \$12,200,000 ("Loan"). Lessee desires to secure the Loan, in part, by Lessee's interest in the Leased Property pursuant to the Ground Lease. Additionally, Lessee will be guarantying (the "Guaranties") certain obligations ("Affiliate Loans") of various affiliates of Lessee, i.e., ART Piccadilly Shaw LLC, ART Piccadilly University LLC, and ART Piccadilly Chateau LLC (individually and collectively the "Piccadilly Entities") to Lender, which guaranties shall be secured by Lessee's interest in the Leased Property under the Ground Lease pursuant to additional deeds of trust to be executed by Lessee ("Other Deeds of Trust"). Lender is relying upon this Ground Lessor's Consent, Estoppel Certificate and Agreement ("Agreement"), in securing the Loan and Guaranties with Lessee's interests in the Leased Property.

2. Lessor is the current Lessor under the Ground Lease, and Lessee is the current Lessee under the Ground Lease. Lessor has not assigned or conveyed or agreed to assign or to convey Lessor's interest under the Ground Lease in whole or in part, except in connection with the Loan.

3. Lessor knows of no assignment or conveyance of Lessee's interest under the Ground Lease in whole or in part.

4. The Ground Lease, as amended by that certain (i) Lease Amendment No. 1 dated July 17, 1969, and recorded in the Official Records of Fresno County, California, on July 23, 1969, in Book 5705 Page 997, (ii) Lease Amendment No. 2, dated December 20, 1969, and recorded in the Official Records of Fresno County, California, on January 21, 1970, in Book 5752 Page 931, (iii) Lease Amendment No. 3 Land Lease and Agreement, dated April 30, 1970, and recorded in the Official Records of Fresno County, California, on March 11, 1971, in Book 5873 Pages 503 thru 506, (iv) Lease Amendment No. 4 Land lease Agreement dated October 23, 1979, and recorded in the Official Records of Fresno County, California, on November 13, 1979, as Instrument No. 132365, (v) Lease Amendment No. 5 Land Lease and Agreement, dated December 22, 1983, and recorded in the Official Records of Fresno County, California, on January 19, 1984, as Instrument No. 84005948, (vi) Lease Amendment No. 6 to Land Lease and Agreement, dated May 9, 1989, and recorded in the Official Records of Fresno County, California, on May 17, 1989, as Instrument No. 89052044, and (vii) Lease Amendment No. 7 to Land Lease Agreement dated \_\_\_\_\_, 2007, and recorded in the Official Records of Fresno County, California, on \_\_\_\_\_, 2007, as Instrument No. \_\_\_\_\_, is in full force and effect. The Ground Lease constitutes the full and entire understanding and agreement between Lessor and Lessee pertaining to the Ground Lease and the Leased Property.

5. Lessee has accepted the Leased Property.

6. The next rent payment by Lessee is due on March 1, 2007, and Lessee has made all rent payments required to be made under the Ground Lease. The amount of the current rent payment is \$8,849.77 per month, subject to any increase of rent payment as set forth in the Ground Lease.

7. No rent has been paid by Lessee more than thirty (30) days before its due date (except for any security deposit).

8. Lessor is not in breach or default of any of the terms, conditions or provisions of the Ground Lease.

9. The Ground Lease is in full force and effect, and Lessee is not, in any respect, in default under the terms and provisions of the Ground Lease. Lessor knows of no event which would constitute a default under the terms of the Ground Lease by either Lessee or Lessor.

10. The term of the Ground Lease will expire June 30, 2046. There are no options to extend the term of the Ground Lease.

11. Lessor has not currently encumbered its fee interest in the Leased Premises to any lender or financial institution, whether by way of mortgage, deed of trust or other security instruments.

12. Lessor hereby consents to the extension of credit by Lender to Lessee and the encumbrance of Lessee's interest in the Ground Lease pursuant to a Deed

of Trust by Lessee in favor of Lender ("Deed of Trust") and the securing of the Guaranties by the Other Deeds of Trust.

13. Lessor has been further advised by Lessee that Lender has required, in order to induce Lender to make the Loan and Affiliate Loans, among other matters, the delivery of the following statements, agreements, and representations by Lessor to Lender:

(a) During the term of the Loan and Guaranties, Lessor will not change or amend the Ground Lease or any interest of Lessee thereunder without Lender's prior written consent.

(b) Lessor shall deliver to Lender a copy of any notice relating to a default by Lessee under the Ground Lease at the time it gives such notice to Lessee. All such notices shall be given to Lender in accordance with the Ground Lease, at Far East National Bank, 350 South Grand Avenue, 41st Floor, Los Angeles, California 90071 or to such other address as Lender may hereinafter designate in writing and delivered in the manner provided for notice to be given under the Ground Lease.

(c) Lessor shall not terminate the Ground Lease because of any default or breach of the Ground Lease by Lessee, if the same can be cured by the payment or expenditure of money ("monetary default"), unless within thirty (30) days after receipt of such written notice to Lender by Lessor of such default or breach of the Ground Lease by Lessee, Lender fails to cure such monetary default.

(d) In the event of a non-monetary default by Lessee under the Ground Lease, the Lessor agrees that Lender shall have the right (but not the obligation) to cure such non-monetary default within the same period of time that Lessee has to cure such non-monetary default under the terms of the Ground Lease, commencing on the date Lender receives written notice of such non-monetary default, or, in the event no time period is provided for in the Ground Lease, then sixty (60) days after receipt of written notice to Lender by Lessor of such default or breach. Further, Lessor agrees that Lessor shall not terminate the Ground Lease in connection with any such non-monetary default which Lender has elected to remedy or cause to be remedied even if said non-monetary default is not remedied within the time period provided for in the Ground Lease, or such sixty (60)-day period, as applicable; provided, that Lender has commenced remedying or causing to be remedied such default with reasonable diligence, and continues the process with reasonable diligence to completion, and taking into account that Lender may be required to take possession of the Leased Property or obtain the appointment of a receiver to take possession of the Leased Property; provided, further, that during the time that Lender is curing such non-monetary defaults, Lender also cures any monetary defaults as provided in paragraph A.13(c), above. Lessor shall provide Lender access to the Leased Property for purposes of curing any defaults under the Ground Lease. In the event Lessee has defaulted under the Ground Lease by virtue of the filing of a bankruptcy petition or other insolvency proceeding, such default shall be applicable only with respect to Lessee, the then owner of the leasehold estate, and the bankruptcy or other insolvency proceeding shall not operate, or permit the Lessor, to terminate the Ground Lease as long as all rent

and other payments required to be paid by Lessee continue to be paid in accordance with the terms of the Ground Lease.

(e) If the Ground Lease is terminated for any reason or is, in connection with any bankruptcy proceeding, rejected or terminated by a trustee, a debtor in possession or by operation of law, Lessor shall, at Lender's written request within thirty (30) days after the date of any such rejection or termination, enter into a new lease of the Leased Property with Lender for the remainder of the term of the Ground Lease, effective as of the date of such rejection, at the rent and upon the same terms, provisions, covenants and agreements as are contained in the Ground Lease (except for any requirements which have been satisfied by or on behalf of Lessee prior to such rejection or termination); provided, that Lender shall, upon execution of the new lease, pay to Lessor any and all sums which would have been due under the Ground Lease as of the time of execution and delivery of the new lease, but for the rejection or termination thereof.

(f) If Lessee's interest in the Ground Lease is acquired by Lender, a wholly owned subsidiary corporation or other entity of Lender ("Affiliated Lender"), or a third party purchaser, by reason of foreclosure or other proceedings brought to enforce Lender's rights under the Deed of Trust, one of the Other Deeds of Trust or any other security document, or by deed in lieu of foreclosure, or by any other method, the Ground Lease and the rights of the Lessee thereunder shall continue in full force and effect and shall not be terminated or disturbed by Lessor, except in accordance with the terms of the Ground Lease and this Agreement. Upon such acquisition by Lender, an Affiliated Lender, or such third party purchaser, Lender, the Affiliated Lender, or such third party purchaser, as the case may be, shall attorn to Lessor as landlord under the Ground Lease, which attornment shall be effective and self-operative without the execution of any other instrument on the part of any party hereto, immediately upon Lender's, or the Affiliated Lender's, or such third party purchaser's succeeding to the interest of Lessee under the Ground Lease.

(g) Unless and until Lender has acquired Lessee's interest in the leasehold estate under the Ground Lease, Lender shall have no obligation of performance under the Ground Lease nor shall Lender be required to enforce any obligations or duties of Lessor under the Ground Lease, and in the event Lender so acquires such leasehold interest Lender shall be liable only for any acts or omissions of Lender during the time Lender was the lessee under the Ground Lease.

(h) If Lender acquires title to Lessee's interest in the Ground Lease by foreclosure of the Deed of Trust or any of the Other Deeds of Trust or by assignment or deed in lieu of foreclosure, or otherwise, or under a new lease pursuant to this Agreement, Lender may assign the Ground Lease, or the new lease, to an experienced and financially competent third party, as determined by Lender, in its sole discretion, without obtaining Lessor's consent, and shall thereupon be released from all liability for the performance or observance of the covenants and conditions contained in the Ground Lease or such new lease required on said Lessee's part to be performed and observed from and after the date of such assignment and any holder of a purchase money

deed of trust and given in connection with such assignment shall be entitled to all rights and benefits of a leasehold mortgagee hereunder.

B. Lessor and Lessee hereby agree with and for the benefit of Lender that:

1. Notwithstanding any Ground Lease provisions to the contrary, policies of fire, casualty, and extended coverage insurance shall be carried by Lessee covering the building or buildings constructed on the Leased Property with loss payable clause to Lender and the City.

2. Following a casualty, the proceeds of any and all insurances policies maintained by Borrower covering the building or buildings on the Leased Property, shall be deposited with Lender, or with an institutional investor or bank or trust company satisfactory to Lender, for application to the restoration of the Leased Property in accordance with the provisions of Section 6 of the Deed of Trust and this Agreement. Any and all eminent domain or condemnation awards or damages recoverable by the Lessee shall first be applied in payment of the then outstanding balance, if any, of the Loan and obligations secured by the Guaranties, and the balance of such awards and damages, if any, shall be paid to Lessor and Lessee, as their interest may appear.

3. Lessor hereby waives the right to obtain, for any liability of Lessee that arises, accrues, or is the subject of legal action while the Deed of Trust or any of the Other Deeds of Trust is in existence a lien on any equipment or furnishings of Lessee that may constitute a part of the improvements on the Leased Property.

4. As long as Lessee's obligations to Lender remain outstanding and notwithstanding anything to the Ground Lease to the contrary, at no time shall the Ground Lease and the leasehold estate created thereby, merge with the fee estate of the Leased Property. The Ground Lease, and the leasehold estate created thereby, or any interest in either thereof, may be held directly or indirectly by or for the account of any person who shall own the fee estate in the Leased Property or any portion therein, and no such merger shall occur unless and until all persons at the time having any interest in the fee estate and all persons having any interest in the Ground Lease or the leasehold estate, including Lender, shall join in a written instrument effecting such merger.

5. Unless this Agreement contradicts a term or provision of the Ground Lease, it is the parties' intent that this Agreement and the Ground Lease be construed as though no conflict exists between their terms. Notwithstanding anything in the Ground Lease to the contrary, in the event of a conflict between the terms of the Ground Lease and this Agreement as it relates to Lender, the terms of this Agreement shall control.

6. This document may be recorded among the land records of Fresno County, California. The agreements contained herein may be relied upon by Lender, Lessor, Lessee and their respective successors and assigns.

7. This Agreement may be executed in two or more counterparts, which, when taken together, shall constitute one and the same original.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the \_\_\_\_ day of February 2007.

**LESSOR:**

CITY OF FRESNO, CALIFORNIA

By: \_\_\_\_\_  
Name: Russell C. Widmar, AAE  
Its: Director of Aviation

**LESSEE:**

ART PICCADILLY AIRPORT LLC,  
a California limited liability company

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

[ALL SIGNATURES MUST BE ACKNOWLEDGED]

STATE OF CALIFORNIA )  
 ) ss  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, 200\_\_, 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(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.

\_\_\_\_\_

Notary Public

STATE OF CALIFORNIA )  
 ) ss  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, 200\_\_, 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(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.

\_\_\_\_\_

Notary Public

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

**(City of Fresno)**

A portion of the Southeast quarter of Section 30, Township 13 South, Range 21 East, Mount Diablo Base and Meridian, according to the Official Plat thereof, and more particularly described as follows:

Beginning at the Southeast corner of said Section 30; thence North  $0^{\circ} 11' 38''$  East, along the East line of said Section 30, a distance of 135.0 feet; thence North  $89^{\circ} 57' 50''$  West, along a line which is parallel with the South line of said Section 30, a distance of 50.00 feet; thence North  $0^{\circ} 11' 38''$  East, along a line which is parallel with and 50.00 feet West of the East line of said Section 30, a distance of 65.00 feet; thence Northerly, along a tangent curve, concave to the West, and having a radius 450.00 feet, through an interior angle of  $12^{\circ} 50' 06''$ , an arc distance of 100.80 feet to the true point of beginning of this description; thence continuing Northerly and Westerly, along said curve, concave to the Southwest, and having a radius of 450.00 feet, through an interior angle of  $75^{\circ} 39' 54''$ , an arc distance of 594.27 feet; thence Westerly along a reverse curve, concave to the North, and having a radius of 750.00 feet, through an interior angle of  $21^{\circ} 03' 32''$ , an arc distance of 275.68 feet; thence South  $35^{\circ} 10' 00''$  West, a distance of 117.87 feet; thence Southwesterly and Southerly along a tangent curve, concave to the East, and having a radius of 200.00 feet through an interior angle of  $34^{\circ} 58' 22''$ , an arc distance of 122.08 feet to its tangency with a line which is parallel with and 860.00 feet West of the East line of said Section 30; thence South  $0^{\circ} 11' 38''$  West, along a line which is parallel with the East line of said Section 30, a distance of 155.49 feet; thence South  $89^{\circ} 48' 22''$  East, a distance of 12.00 feet to a point which is 848.00 West of the East line of said Section 30; thence South  $00^{\circ} 11' 38''$  West along a line which is parallel with and 848.00 West of the East line of said Section 30, a distance of 207.45 feet, to a point which is 135.00 feet North of the South line of said Section 30; thence South  $89^{\circ} 57' 50''$  East, along a line which is parallel with and 135.00 feet North of the South line of said Section 30, a distance of 633.00 feet to a point which is 215.00 feet West of the East line of said Section 30; thence North  $0^{\circ} 11' 38''$  East, along a line which is parallel with the East line of said Section 30, a distance of 165.00 feet; thence South  $89^{\circ} 57' 50''$  East, along a line which is parallel with the South line of said Section 30, a distance of 153.75 feet, to the true point of beginning.

**RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:**

FAR EAST NATIONAL BANK  
350 S. Grand Avenue, 41<sup>st</sup> Floor  
Los Angeles, California 90071  
Attention: Jennifer Fu, First Vice President

Assessor's Parcel No.: \_\_\_\_\_

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**GROUND LESSOR'S CONSENT, ESTOPPEL CERTIFICATE  
AND AGREEMENT**

The undersigned, CITY OF FRESNO, CALIFORNIA ("Lessor"), as lessor under that certain Land Lease and Agreement (the "Ground Lease") dated November 1, 1988, between Lessor, on the one hand, and ART PICCADILLY CHATEAU LLC, a California limited liability company ("Lessee"), as successor in interest, by mesnes assignments, to Donald J. Peracchi and Judith E. Peracchi, as lessee, on the other hand, covering that certain premises located in the County of Fresno, State of California (the "Leased Property"), and legally described in Exhibit "A" hereto, hereby certifies to and agrees with FAR EAST NATIONAL BANK, a national banking association ("Lender") as follows:

A. Lessor hereby certifies to Lender and represents, warrants, covenants and agrees as follows:

1. Lessee is obtaining an extension of credit from Lender in the principal sum of \$3,700,000.00 ("Loan"). Lessee desires to secure the Loan, in part, by Lessee's interest in the Leased Property pursuant to the Ground Lease. Additionally, Lessee will be guarantying (the "Guaranties") certain obligations ("Affiliate Loans") of various affiliates of Lessee, i.e., ART Piccadilly Shaw LLC, ART Piccadilly University LLC, and ART Piccadilly Airport LLC (individually and collectively the "Piccadilly Entities") to Lender, which guaranties shall be secured by Lessee's interest in the Leased Property under the Ground Lease pursuant to additional deeds of trust to be executed by Lessee ("Other Deeds of Trust"). Lender is relying upon this Ground Lessor's Consent, Estoppel Certificate and Agreement ("Agreement") in securing the Loan and Guaranties with Lessee's interests in the Leased Property.

2. Lessor is the current Lessor under the Ground Lease, and Lessee is the current Lessee under the Ground Lease. Lessor has not assigned or conveyed or agreed to assign or to convey Lessor's interest under the Ground Lease in whole or in part, except in connection with the Loan.

3. Lessor knows of no assignment or conveyance of Lessee's interest under the Ground Lease in whole or in part.

4. The Ground Lease, as amended by that certain (i) Lease Amendment No. 1 to Land Lease Agreement dated May 8, 1989, and recorded in the Official Records of Fresno County, California, on June 14, 1989, as Instrument No. 89062564, and (ii) Lease Amendment No. 2 to Land Lease Agreement dated \_\_\_\_\_, 2007, and recorded in the Official Records of Fresno County, California, on \_\_\_\_\_, 2007, as Instrument No. \_\_\_\_\_, is in full force and effect. The Ground Lease constitutes the full and entire understanding and agreement between Lessor and Lessee pertaining to the Ground Lease and the Leased Property.

5. Lessee has accepted the Leased Property.

6. The next rent payment by Lessee is due on March 1, 2007, and Lessee has made all rent payments required to be made under the Ground Lease. The amount of the current rent payment is \$1,677.69 per month, subject to any increase of rent payment as set forth in the Ground Lease.

7. No rent has been paid by Lessee more than thirty (30) days before its due date (except for any security deposit).

8. Lessor is not in breach or default of any of the terms, conditions or provisions of the Ground Lease.

9. The Ground Lease is in full force and effect, and Lessee is not, in any respect, in default under the terms and provisions of the Ground Lease. Lessor knows of no event which would constitute a default under the terms of the Ground Lease by either Lessee or Lessor.

10. The term of the Ground Lease will expire June 30, 2046. There are no options to extend the term of the Ground Lease.

11. Lessor has not currently encumbered its fee interest in the Leased Premises to any lender or financial institution, whether by way of mortgage, deed of trust or other security instruments.

12. Lessor hereby consents to the extension of credit by Lender to Lessee and the encumbrance of Lessee's interest in the Ground Lease pursuant to a Deed of Trust by Lessee in favor of Lender ("Deed of Trust") and the securing of the Guaranties by the Other Deeds of Trust.

13. Lessor has been further advised by Lessee that Lender has required, in order to induce Lender to make the Loan and Affiliate Loans, among other matters, the delivery of the following statements, agreements, and representations by Lessor to Lender:

(a) During the term of the Loan and Guaranties, Lessor will not change or amend the Ground Lease or any interest of Lessee thereunder without Lender's prior written consent.

(b) Lessor shall deliver to Lender a copy of any notice relating to a default by Lessee under the Ground Lease at the time it gives such notice to Lessee. All such notices shall be given to Lender in accordance with the Ground Lease, at Far East National Bank, 350 South Grand Avenue, 41st Floor, Los Angeles, California 90071 or to such other address as Lender may hereinafter designate in writing and delivered in the manner provided for notice to be given under the Ground Lease.

(c) Lessor shall not terminate the Ground Lease because of any default or breach of the Ground Lease by Lessee, if the same can be cured by the payment or expenditure of money ("monetary default"), unless within thirty (30) days after receipt of such written notice to Lender by Lessor of such default or breach of the Ground Lease by Lessee, Lender fails to cure such monetary default.

(d) In the event of a non-monetary default by Lessee under the Ground Lease, the Lessor agrees that Lender shall have the right (but not the obligation) to cure such non-monetary default within the same period of time that Lessee has to cure such non-monetary default under the terms of the Ground Lease, commencing on the date Lender receives written notice of such non-monetary default, or, in the event no time period is provided for in the Ground Lease, then sixty (60) days after receipt of written notice to Lender by Lessor of such default or breach. Further, Lessor agrees that Lessor shall not terminate the Ground Lease in connection with any such non-monetary default which Lender has elected to remedy or cause to be remedied even if said non-monetary default is not remedied within the time period provided for in the Ground Lease, or such sixty (60)-day period, as applicable; provided, that Lender has commenced remedying or causing to be remedied such default with reasonable diligence, and continues the process with reasonable diligence to completion, and taking into account that Lender may be required to take possession of the Leased Property or obtain the appointment of a receiver to take possession of the Leased Property; provided, further, that during the time that Lender is curing such non-monetary defaults, Lender also cures any monetary defaults as provided in paragraph A.13(c), above. Lessor shall provide Lender access to the Leased Property for purposes of curing any defaults under the Ground Lease. In the event Lessee has defaulted under the Ground Lease by virtue of the filing of a bankruptcy petition or other insolvency proceeding, such default shall be applicable only with respect to Lessee, the then owner of the leasehold estate, and the bankruptcy or other insolvency proceeding shall not operate, or permit the Lessor, to terminate the Ground Lease as long as all rent and other payments required to be paid by Lessee continue to be paid in accordance with the terms of the Ground Lease.

(e) If the Ground Lease is terminated for any reason or is, in connection with any bankruptcy proceeding, rejected or terminated by a trustee, a debtor in possession or by operation of law, Lessor shall, at Lender's written request within thirty (30) days after the date of any such rejection or termination, enter into a new lease of the Leased Property with Lender for the remainder of the term of the Ground Lease,

effective as of the date of such rejection, at the rent and upon the same terms, provisions, covenants and agreements as are contained in the Ground Lease (except for any requirements which have been satisfied by or on behalf of Lessee prior to such rejection or termination); provided, that Lender shall, upon execution of the new lease, pay to Lessor any and all sums which would have been due under the Ground Lease as of the time of execution and delivery of the new lease, but for the rejection or termination thereof.

(f) If Lessee's interest in the Ground Lease is acquired by Lender, a wholly owned subsidiary corporation or other entity of Lender ("Affiliated Lender"), or a third party purchaser, by reason of foreclosure or other proceedings brought to enforce Lender's rights under the Deed of Trust, one of the Other Deeds of Trust or any other security document, or by deed in lieu of foreclosure, or by any other method, the Ground Lease and the rights of the Lessee thereunder shall continue in full force and effect and shall not be terminated or disturbed by Lessor, except in accordance with the terms of the Ground Lease and this Agreement. Upon such acquisition by Lender, an Affiliated Lender, or such third party purchaser, Lender, the Affiliated Lender, or such third party purchaser, as the case may be, shall attorn to Lessor as landlord under the Ground Lease, which attornment shall be effective and self-operative without the execution of any other instrument on the part of any party hereto, immediately upon Lender's, or the Affiliated Lender's, or such third party purchaser's succeeding to the interest of Lessee under the Ground Lease.

(g) Unless and until Lender has acquired Lessee's interest in the leasehold estate under the Ground Lease, Lender shall have no obligation of performance under the Ground Lease nor shall Lender be required to enforce any obligations or duties of Lessor under the Ground Lease, and in the event Lender so acquires such leasehold interest Lender shall be liable only for any acts or omissions of Lender during the time Lender was the lessee under the Ground Lease.

(h) If Lender acquires title to Lessee's interest in the Ground Lease by foreclosure of the Deed of Trust or any of the Other Deeds of Trust or by assignment or deed in lieu of foreclosure, or otherwise, or under a new lease pursuant to this Agreement, Lender may assign the Ground Lease, or the new lease, to an experienced and financially competent third party, as determined by Lender, in its sole discretion, without obtaining Lessor's consent, and shall thereupon be released from all liability for the performance or observance of the covenants and conditions contained in the Ground Lease or such new lease required on said Lessee's part to be performed and observed from and after the date of such assignment and any holder of a purchase money deed of trust and given in connection with such assignment shall be entitled to all rights and benefits of a leasehold mortgagee hereunder.

B. Lessor and Lessee hereby agree with and for the benefit of Lender that:

1. Notwithstanding any Ground Lease provisions to the contrary, policies of fire, casualty, and extended coverage insurance shall be carried by Lessee

covering the building or buildings constructed on the Leased Property with loss payable clause to Lender and the City.

2. Following a casualty, the proceeds of any and all insurances policies maintained by Borrower covering the building or buildings on the Leased Property, shall be deposited with Lender, or with an institutional investor or bank or trust company satisfactory to Lender, for application to the restoration of the Leased Property in accordance with the provisions of Section 6 of the Deed of Trust and this Agreement. Any and all eminent domain or condemnation awards or damages recoverable by the Lessee shall first be applied in payment of the then outstanding balance, if any, of the Loan and obligations secured by the Guaranties, and the balance of such awards and damages, if any, shall be paid to Lessor and Lessee, as their interest may appear.

3. Lessor hereby waives the right to obtain, for any liability of Lessee that arises, accrues, or is the subject of legal action while the Deed of Trust or any of the Other Deeds of Trust is in existence a lien on any equipment or furnishings of Lessee that may constitute a part of the improvements on the Leased Property.

4. As long as Lessee's obligations to Lender remain outstanding and notwithstanding anything to the Ground Lease to the contrary, at no time shall the Ground Lease and the leasehold estate created thereby, merge with the fee estate of the Leased Property. The Ground Lease, and the leasehold estate created thereby, or any interest in either thereof, may be held directly or indirectly by or for the account of any person who shall own the fee estate in the Leased Property or any portion therein, and no such merger shall occur unless and until all persons at the time having any interest in the fee estate and all persons having any interest in the Ground Lease or the leasehold estate, including Lender, shall join in a written instrument effecting such merger.

5. Unless this Agreement contradicts a term or provision of the Ground Lease, it is the parties' intent that this Agreement and the Ground Lease be construed as though no conflict exists between their terms. Notwithstanding anything in the Ground Lease to the contrary, in the event of a conflict between the terms of the Ground Lease and this Agreement as it relates to Lender, the terms of this Agreement shall control.

6. This document may be recorded among the land records of Fresno County, California. The agreements contained herein may be relied upon by Lender, Lessor, Lessee and their respective successors and assigns.

7. This Agreement may be executed in two or more counterparts, which, when taken together, shall constitute one and the same original.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the \_\_\_\_ day of February 2007.

**LESSOR:**

CITY OF FRESNO, CALIFORNIA

By: \_\_\_\_\_  
Name: Russell C. Widmar, AAE  
Its: Director of Aviation

**LESSEE:**

ART PICCADILLY CHATEAU LLC,  
a California limited liability company

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

[ALL SIGNATURES MUST BE ACKNOWLEDGED]

STATE OF CALIFORNIA )  
 ) ss  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, 200\_\_, 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(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.

\_\_\_\_\_  
Notary Public

STATE OF CALIFORNIA )  
 ) ss  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, 200\_\_, 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(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.

\_\_\_\_\_  
Notary Public

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

**(City of Fresno)**

A portion of the Southeast Quarter of Section 30, Township 13 South, Range 21 East, Mount Diablo Base and Meridian, as said Section is shown on the United States Township Plats, and more particularly described as follows:

Beginning at the southeast corner of said Section 30; thence North 00° 11' 30" East, along the east line of said Section 30, a distance of 135.00 feet; thence North 89° 57' 50" West, parallel with and 135.00 feet North of the south line of said Section 30, a distance of 848.00 feet to the true point of beginning; thence North 89° 57' 50" West, parallel with and 135.00 feet North of the south line of said Section 30, a distance of 302.00 feet; thence North 00° 11' 38" East, parallel with and 1150.00 feet West of the east line of said Section 30, a distance of 208.28 feet; thence South 89° 48' 22" East, a distance of 302.00 feet to a point being 848.00 feet West of the east line of said Section 30; thence South 00° 11' 30" West, parallel with and 848.00 feet West of the east line of said Section 30, a distance of 207.45 feet to the true point of beginning.

Assessor's Parcel Number: 494-071-25P and 494-071-72T  
Joint Plant Number: 424-027-02 and 440-043-08