

Asset & Property Management Agreement  
between  
Hercules Redevelopment Agency  
and  
Main Street Property Services, Inc.

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Sycamore North Retail

December 1, 2009

**ASSET & PROPERTY MANAGEMENT AGREEMENT**  
**BETWEEN**  
**HERCULES REDEVELOPMENT AGENCY**  
**AND**  
**MAIN STREET PROPERTY SERVICES, INC.**

This **ASSET & PROPERTY MANAGEMENT AGREEMENT** (this “Agreement”) is made and entered into as of this first day of December 2009 (“Effective Date”) by and between the **REDEVELOPMENT AGENCY OF THE CITY OF HERCULES**, a public body corporate and politic (“Agency” or “Owner”) and **MAIN STREET PROPERTY SERVICES, INC.**, a California corporation (“Manager”). The parties hereto may be referred to by their individual designations or as a “Party” and collectively as the “Parties”.

**ARTICLE I. RECITALS**

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- A. Owner is authorized and empowered under Health and Safety Code Sections 33000, et seq., (the “CCRL”) to enter into agreements for the acquisition, disposition, and development of real property and otherwise to assist in the redevelopment of real property within a redevelopment project area in conformity with a redevelopment plan adopted for such area, to acquire real and personal property in redevelopment project areas, to receive consideration for the provision by Owner of redevelopment assistance, to make and execute contracts and other instruments necessary or convenient to the exercise of its powers, and to incur indebtedness to finance or refinance redevelopment projects.
- B. On November 30, 1983, the City Council of the City of Hercules (the “City Council”), by Ordinance No. 181 (“1983 Ordinance”), adopted the Redevelopment Plan (the “Dynamite Plan”) for the Dynamite Redevelopment Project (the “Dynamite Redevelopment Project”) pursuant to procedures codified within the CCRL. On April 26, 1994, the City Council, by Ordinance No. 325 (the “1994 Ordinance”) amended the Dynamite Plan. On February 27, 1996, the City Council, by Ordinance No. 333 (the “1996 Ordinance”) again amended the Dynamite Plan.
- C. On February 13, 2001, the City Council, by Ordinance No. 363 (“2001 Ordinance”) approved and adopted the merger of the Dynamite Redevelopment Project and the Project Area 2 Redevelopment Project and amendment to the Original Plans and created a merged project area (the “Merged Project Area”).
- D. On November 14, 2006 by Resolution 06-138 the City Council approved Tentative Parcel Map 497-06, a one-lot parcel of approximately 1.87 acres, for a mixed-use project commonly referred to as “Sycamore Downtown” and referred to herein as the “Sycamore North Project.” On the same day, the City Council by Resolution 06-139 certified an addendum to the Hercules General Plan and Redevelopment Plan Amendments EIR for the Sycamore North Project.
- E. On July 10, 2007 by Resolution 07-036 the Agency authorized the purchase of three parcels of real property, two of which (Contra Costa County Assessor’s Parcel Nos. 404-

020-057 and 404-020-058) comprise approximately 11.44 acres, on the south side of Sycamore Avenue, opposite and facing the Sycamore North project. Subsequently, the Agency engaged various professional services to design a project to be constructed on Contra County Assessor's Parcel Nos. 404-020-057 and 404-020-058 (the "Sycamore Crossing Project") across Sycamore Avenue from the Sycamore North Project. **Exhibit A** depicts Sycamore North and Sycamore Crossing, collectively denoted "Sycamore Downtown". A portion of the Sycamore Crossing area, denoted "Sycamore South" or "Crossing One", located directly across the street from Sycamore North, is planned for shopfront pedestrian retail, complementary to Sycamore North.

- F. On May 12, 2009, construction commenced on the Sycamore North Project. .
- G. On June 9, 2009 by Resolution 09-083 the City Council and by Resolution 09-062 Redevelopment Agency approved a budget of \$55,984,001 for construction of the Sycamore North Project.
- H. Agency's contractors are constructing the Sycamore North Project which when completed will include a subterranean parking structure, a ground-level story of shop front space suitable for retail uses above which will be 96 residential units of affordable and market rate housing. Aboveground elevation drawings are attached hereto as **Exhibit B**.
- I. Construction plans designate various areas of the Sycamore North Project for either exclusive or common use by the retail and housing users. Within the 47,915 square feet of gross building area (including exterior walls) on the ground-level story, 5,938 square feet are designated for the residential use and 3,605 square feet are designated for common area. The useable retail area is 36,046 square feet. The total rentable area is 39,651 square feet, which is the sum of the useable retail area and the common area. A plan diagram of the ground-level story is attached as **Exhibit C**.
- J. The subject of this Agreement is the "Retail Property" which is the volume of space and structure associated with the total rentable area on the ground-level story of Sycamore North, including appurtenant structures, parking, easements, common areas, rights of signage and other exterior fixtures, and all other rights and physical components necessary to conduct business as a commercial landlord. The Retail Property is intended to be demised, further improved by, and leased to retail tenants as a series of individual shops, under a common management. A plan diagram of the Retail Property, its possible demisement into shops, and its appurtenant parking area is attached as **Exhibit D**.
- K. Owner is creating separate condominiums within the Sycamore North complex for housing and retail components. A Vesting Tentative Condominium Map for the Retail Property, attached hereto as **Exhibit E**, shows that the Retail Property can be segregated as a separate unit of real estate consisting of Parcels 2, 3, 4 and 5, which is herein denoted as the "Retail Condominium".
- L. Through and upon the completion of construction, the entire Sycamore North Project , which includes five separate parcels (collectively the "Parcels" or individually a "Parcel") will be owned by the Agency. A Building Association composed of the owners of the Parcels will be created. Initially upon completion of construction, the Agency will be the only member of the Building Association.

- M. Upon completion of construction, additional condominiums will be created for the residential housing units within Parcel 1. A Residential Condominium Association will be created. A Residential Property Manager will be appointed by Owner, to manage the residential condominiums as real estate for rental or for sale.
- 90 N. Upon completion of construction, a Reciprocal Easement Agreement (“REA”) will be created by the Owner. Among other things, the REA will define the rights and obligations of use of Common Areas and Parking Area as between the Residential Condominium Association and the Retail Condominium. Areas common to the housing and retail portions will be managed by the Building Association.
- 95 O. Owner has caused the construction of the Retail Property, acquired Sycamore Crossing, and constructed street improvements on Sycamore Avenue to achieve some of the goals of the Current Hercules Redevelopment Plans. These investments were intended to ensure the provision of an adequate quantity of suitable shop front retail space at a desired and planned location, central to Hercules, which would otherwise not occur due to the blighted condition of the properties within the current conditions of the real estate market.
- 100 P. Owner desires that the Retail Property become a vibrant center of public activity around an interdependent, mutually supportive collection of successful independent profitable retail businesses that generate sales tax revenues. Owner desires that the collective character of the retail businesses, in their offerings and operations, set a desired high standard for future retail businesses in Hercules.
- 105 Q. Owner recognizes that as a public agency it does not possess and is not able to exercise the capacity, on its own, to manage retail property sufficiently well to achieve its desired goals. Owner therefore requires specialized, private-sector professional asset and property management to achieve the desired business and civic objectives for the Retail Property.
- 110 R. Owner intends, once these business and civic objectives have been achieved with stability, to terminate its ownership, dispose of the Retail Property, and recover a reasonable portion of, and return on, Owner funds invested in the Retail Property.
- 115 S. In furtherance of the goals of the Current Hercules Redevelopment Plans, Owner has also acquired facing property on the south side of Sycamore Avenue for future development of similar, supportive shop front and other retail uses (the “Sycamore Crossing”). Owner recognizes the benefit of common management of shopfront retail operations on both sides of Sycamore Avenue.
- 120 T. Manager is a California corporation engaged in the business of managing shop front, street-oriented retail centers, has extensive experience in the operation of commercial property, and is qualified and prepared to manage the Retail Property and possibly acquire the Retail Property from the Owner.
- 125 U. Owner and Manager desire to provide, by this Agreement, the management and financial controls enabling Owner to exercise its role as a public property owner, and enabling Manager to exercise its specialized property management capabilities, as the Owner’s agent, for the benefit of the Owner and in furtherance of the Owner’s objectives.

130       **NOW, THEREFORE**, in consideration of the foregoing, the covenants and obligations hereinafter set forth, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereby agree as follows:

## **ARTICLE II.      GENERAL APPOINTMENT**

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135       **1. General Engagement.** Owner hereby engages Manager as the sole, exclusive independent contractor to provide the services set forth in this Agreement relating to the administration, management, and supervision of the Retail Property. Owner shall not retain any other  
140       property manager, asset management or leasing administrator for the Retail Property and shall refer all leasing and other inquiries regarding the Retail Property to Manager. Manager shall in good faith provide the services set forth in this Agreement in accordance with normal and prudent practices in the real estate industry and shall have the authority to take all actions necessary or appropriate to fulfill its obligations. Manager's scope of action shall always be subject to the terms and conditions of this Agreement, including prior consultation with and consent of Owner, adherence to a Business Plan, and prior approvals of budgeted expenditures.

## **ARTICLE III.     MANAGER'S ASSET MANAGEMENT SERVICES**

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145       **2. Initial Duties.** Prior to approval of the Initial Business Plan (as defined below), Manager shall provide all services ordinarily and customarily provided by asset managers to preserve, protect and maintain the Retail Property until the Initial Business Plan is prepared and approved. Such services include, without limitation, supervising the Retail Property at the investment level, maximizing net operating income and property value, and recommendation of building shell and improvements.

### **3. Business Plans.**

#### **3.1. Initial Business Plan.**

155       3.1.1. Within sixty (60) days after the Effective Date, Manager shall prepare and submit to Owner a strategic business plan for the Retail Property containing recommendations concerning the ownership, operation, and maintenance thereof and proposed annual operating and capital budgets therefore (the "Initial Business Plan"). The Initial Business Plan shall, at a minimum, include each of the following: (i) a narrative business plan for the Retail Property; (ii) a pro forma financial statement of income and expenses for the first five (5) years; (iii) a merchandising plan; (iv) a list of prospective tenants; (v) specific actions to be  
160       taken by Manager and Owner to execute the strategy articulated in the Initial Business Plan including quantitative indicators to measure results for each recommended action; (vi) an exhibit depicting the overall architectural design and theme of the Retail Property; (vii) a tenant criteria manual; (viii) a proposed standard form of retail lease including construction exhibit and the rules and regulations applicable to all of the tenants; and (ix) tenant design guidelines. Owner shall cooperate with Manager in completion of the Initial Business Plan by providing access to all resources which are reasonably needed by Manager

including, without limitation, architects, constructions managers, the City attorney, the City and Agency staff.

3.1.2. Within sixty (60) days after submission of the Initial Business Plan, Owner and Manager shall meet, make such adjustments and revisions thereto as may be mutually acceptable, and after formal approval by Owner, the same shall constitute a “Business Plan” for the purposes of this Agreement.

3.2. **Subsequent Revisions.** Manager shall submit proposed revisions to the Business Plan from time to time when necessary because of changes in circumstances relating to the Retail Property. Additionally, on or before March 31 of each year during the Term, Manager shall submit to Owner a revised Business Plan for the following Fiscal Year (“FY”, which shall run from July 1 to June 30), and Owner and Manager shall cooperate so as to approve the revised Business Plan by the first day of June before the start of the Fiscal Year to which it relates. Revisions to a Business Plan or a draft Business Plan for the following year shall be subject to approval in the manner provided in Section 3.1 and after approval the revised plan shall be a Business Plan hereunder.

#### **4. Annual Operating Budget.**

4.1. **Budgets.** Concurrent with its submission of the Initial Business Plan, Manager shall submit to Owner for Owner's approval, an Operating Budget for the Retail Property (the “Budget”) for the Fiscal Year beginning FY 2009-10 and for each Fiscal Year thereafter during the Term of this Agreement. The Budget shall, among other things, identify both capital and operating expenditures required for the Real Property to be managed in accordance with the Business Plan stated monthly for three (3) years and annually for the subsequent two (2) years. Manager shall submit the Budget to Owner at least 120 days prior to the beginning of the fiscal year covered by the Budget. Owner shall promptly inform Manager of changes to be incorporated in the Budget, and Manager shall keep Owner informed of any anticipated deviation from the receipts or disbursements set forth in the approved Budget. Except as expressly permitted in this Agreement, annual disbursements for each type of operating expense itemized in the Budget may not exceed the amount authorized by the approved Budget.

4.2. **Approval and Funding of Budgets.** No later than sixty (60) days after receipt of a Budget and provided that the applicable Business Plan has been approved, the executive director of Owner (the “Executive Director”) shall obtain an appropriation and encumbrance of funds sufficient to supply the capital required by the applicable Budget.

#### **5. Implementation and Oversight.**

5.1. Following Owner’s approval of the Business Plan (or revision thereto) and the Budget, Manager shall be authorized and empowered, to (a) implement them in accordance with their terms, (b) incur the obligations therein contemplated, and (c) enter into and execute as Owner’s agent such agreements and documents as Manager deems necessary or advisable in connection therewith.

210 5.2. Each month, by the 20<sup>th</sup> calendar date, Manager shall provide Owner with brief  
written report of actions taken and expenses incurred, with a request for funding for  
the subsequent month. Owner shall then either (a) disburse, by the 10<sup>th</sup> day of the  
subsequent month, requested funds to Manager's account or (b) notify Manager, by  
215 the 28<sup>th</sup> day of the current month, of exceptions taken. If exceptions are taken, Owner  
and Manager shall immediately meet and confer to resolve the amount and date of  
funding for the subsequent month.

**6. Asset Review Duties.** The Manager's asset management duties with regard to the Retail  
Property shall include the following duties with respect to review of matters and  
recommendations for action:

220 6.1. **Casualty Insurance Review.** Assisting Owner in surveying the insurable risks the  
Retail Property, determining levels of insurance coverage, and procuring insurance  
coverage in accordance with Owner's instructions.

225 6.2. **Tax Review.** Reviewing existing assessed valuations the Retail Property for ad  
valorem tax purposes and implementing appropriate plans to reduce assessed  
valuations, where appropriate and if applicable.

6.3. **Repair, Maintenance, and Alteration Review.** Inspecting the Retail Property and  
implementing any alterations, construction, remediation, renovation, or repairs that  
are necessary or desirable to preserve, maintain, or enhance the value of the Retail  
Property.

230 6.4. **Regulatory Compliance Review.** Assisting Owner (if requested) in (a) reviewing  
the Retail Property to assure compliance with applicable governmental regulations  
(including environmental regulations and the Americans With Disabilities Act); (b)  
subject to Owner's budgetary constraints, implementing a program to bring the Retail  
Property into compliance with applicable regulations; and (c) implementing a  
235 program to monitor continuing compliance with governmental regulations.

**7. Leasing Service.** Manager shall provide tenant leasing services to the Owner in accordance  
with the Article below entitled "Leasing and Financial Services"

240 **8. Legal Services.** Manager is authorized to engage attorneys and other advisors as necessary  
to provide legal services in connection with the day-to-day operation of the Retail Property,  
including enforcement of leases and contracts; review of contracts, leases, and other  
documents; and defending legal actions, provided that Owner's prior approval shall be  
required for engagement of any legal counsel in connection with any disputed matter where  
the matter in controversy exceeds \$10,000, unless the matter is specifically budgeted for in a  
Business Plan.

245 **9. Construction Management Services.** Manager shall supervise the performance of all  
renovation, improvement, repair, and other construction work with regard to the Retail  
Property and shall, as Owner's agent, engage such architects, engineers, contractors,  
managers, and other parties as may be necessary to accomplish the same.

250 **10. Financing Services.** From time to time, in accordance with the Business Plan, Manager  
shall act as Owner's agent in financing or refinancing indebtedness with respect to the Retail  
Property, if any. Manager shall make recommendations to Owner concerning terms and  
conditions of any financing or refinancing and the lender(s) to provide the same, shall

negotiate the terms thereof and shall assist in consummating the transactions, but Owner shall have the sole authority to execute the requisite agreements therefore.

255 **11. Retention of Third Parties.** Manager is authorized and empowered, as Owner's agent, to  
engage and enter into contracts with third parties to provide the services referred to in this  
Article, and may delegate performance of its duties to third parties, subject to the Owner's  
prior approval, which approval will not be unreasonably withheld. Such contracts shall be on  
260 such terms as Manager approves, provided the same are in compliance with the Business  
Plan. Without limiting the generality of the foregoing, the services of third parties which  
may be engaged include ad valorem tax services, surveyors, title services, data processing  
services, construction management services, marketing and market study services,  
engineering services, environmental consulting services, and architectural services. Manager  
shall not engage or enter into a contract with an Affiliate unless (a) the same is approved by  
265 Owner; or (b) such engagement was specifically set out in the Business Plan. For purposes of  
this Agreement, an "Affiliate" shall mean any person or entity that directly, or indirectly  
through one or more intermediaries, controls, is controlled by or is under common control  
with a Manager or Owner, as the case may be. For the purposes of this definition, "control"  
means the possession, direct or indirect, of the power to direct or cause the direction of the  
270 management and policies of a person, whether through the ownership of voting securities, by  
contract, or otherwise, and the terms "controlling" and "controlled" have the meanings  
correlative to the foregoing.

**12. Limitations on Manager's Authority.** Manager shall not have authority to: (a) enter into  
any contract or agreement on Owner's behalf which is not contemplated by the terms and  
275 provisions of this Agreement or the Business Plan; (b) sell or otherwise dispose of all or any  
part of the Retail Property unless the same has been approved in writing by Owner; or (c)  
consummate any financing transaction with respect to the Retail Property, unless the same  
has been approved in writing by Owner or (d) exceed any amounts allowed in the approved  
Budget without Owner's prior written consent.

#### 280 **ARTICLE IV. LEASING & FINANCIAL SERVICES**

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**13. General Leasing Functions.** Manager shall coordinate the leasing of the Retail Property  
and shall negotiate and use commercially reasonable efforts to secure executed leases from  
qualified tenants for available space in the Retail Property, such Leases to be in form and on  
terms approved by Owner in accordance herewith, and to bring about complete leasing of the  
285 Retail Property. Manager shall be responsible for the hiring of all leasing agents, as necessary  
for the leasing of the Retail Property, and to otherwise oversee and manage the leasing  
process on behalf of the Owner. In leasing the Retail Property, Manager expressly agrees  
that Manager shall not refuse to lease any space in the Retail Property to a prospective tenant  
on the basis of the tenant's race, color, creed, national origin, sex or any other classification  
290 then protected by law. Without limiting the foregoing, Manager shall:

13.1. Advertise the availability of premises and display "for lease" signs.

13.2. Negotiate leases with existing and prospective tenants all the terms and condition of  
this Section 13.



- 295 13.2.1. For leases with prospective tenants, Manager shall present a letter of intent to the  
Executive Director together with a written report describing how the proposed  
lease conforms to the Business Plan. The Executive Director shall either approve  
or disapprove of the letter of intent within seven (7) business days of the  
submission thereof; provided, however, that the Executive Director shall not  
unreasonably withhold its consent if the letter of intent is in substantial  
300 conformance with the Business Plan. If Executive Director fails to approve or  
disapprove of the letter of intent within such seven (7) business day period, then  
Executive Director shall be deemed to have disapproved the letter of intent.
- 305 13.2.2. For leases with existing tenants, or when a draft lease is signed by a new tenant,  
Manager shall submit the signed lease to the Executive Director. The Executive  
Director shall approve or disapprove of the Lease within seven (7) business days  
of its receipt of the same. If Executive Director disapproves of the proffered  
lease, then Executive Director shall notify Manager in writing of its basis for  
refusing to execute such lease. Executive Director's failure to approve or  
disapprove of the lease within such seven (7) day period shall be deemed to  
310 constitute Executive Director's approval of the lease whereupon Manager shall  
thereafter have the full authority to enter into the lease on behalf of the Owner
- 315 13.2.3. In connection with the foregoing, Manager is authorized to accept security  
deposits from any prospective tenants in an amount equal to the maximum  
amount then authorized by applicable law; provided, however, that if no  
maximum amount is established by law, then the deposit shall equal at least one  
month's rent unless otherwise approved by Owner. All security deposits shall be  
collected and disbursed in accordance with the requirements of the applicable  
lease and then-applicable law.
- 320 13.3. Hire, discharge, pay, provide customary benefits for and supervise sufficient  
experienced and qualified personnel who will render the services required by this  
Agreement for the professional, businesslike and efficient operation of the Retail  
Property. Manager shall not provide any on-site employees. All persons employed to  
provide the services hereunder shall be employees or agents of Owner and not of  
Manager. In hiring such persons, Manager shall not discriminate against any  
325 employee or prospective employee because of race, creed, color, national origin or  
sex or other classification then protected by applicable law.
- 13.4. Handle and promptly respond to all Tenant requests, negotiations and complaints in a  
professional and businesslike manner consistent with Manager's authority and duties  
hereunder.
- 330 13.5. Perform repairs and maintenance of a custodial nature and arrange and supervise  
routine improvements, alterations and repairs as may be required by Owner and good  
management standards. Without limiting the foregoing, Manager shall:
- 335 13.5.1. Supervise the performance of the following, subject to any limitations imposed by  
Owner: all interior and exterior cleaning, painting, decorating, and carpentry; the  
maintenance and repair of plumbing, heating, and ventilation systems, electrical  
systems and elevators; the maintenance of outdoor grounds and facilities; and any  
other normal maintenance and repair work that becomes necessary.

13.5.2. Systematically and promptly receive and investigate all service requests from tenants, take any necessary action, and keep records of the action taken. Emergency requests shall be received and serviced on a 24-hour basis. Complaints of a serious nature shall be reported to Owner after investigation by Manager.

13.5.3. Purchase materials, supplies, equipment, tools, appliances, and services that are necessary for the operation and maintenance of the Retail Property. Supervise the continuing performance of preventative maintenance for the Retail Property as deemed reasonably necessary by Manager.

13.5.4. Contract with independent contractors, as deemed necessary by Manager, for the maintenance and repair of air conditioning and heating systems, elevators, and other items requiring special maintenance and repair skills not usually possessed by regular maintenance employees.

13.6. With Owner's prior written approval as to any contracts over \$3,000 bid, negotiate and enter into, and supervise, all repair, maintenance service, material and utility contracts on behalf of Owner and the Retail Property; provided, however, that such limitation shall not apply to recurring expenses within the limits of the Business Plan, to emergency repairs involving imminent danger to persons or property, or to expenditures required to avoid suspension of any necessary service to the Property. In each such instance, however, Manager shall notify Agency of all relevant facts as soon as reasonably possible after the occurrence of the event giving rise to the expenditure.

13.7. Promptly notify Owner of any matter that in Manager's reasonable judgment requires Owner's attention.

13.8. Advise and cooperate with Owner in the development and implementation of rules and regulations applicable to the Retail Property and enforce such applicable rules and regulations as Owner shall adopt.

13.9. Coordinate review and approval of tenant improvement plans and signage.

13.10. Supervise construction of tenant improvements and move-in arrangements for all tenants in the Retail Property.

13.11. Contract on Owner's behalf for all services and utilities necessary for the efficient operation and maintenance of the Retail Property, including water, electricity, gas, telephone, pest extermination, rubbish hauling, and window cleaning; provided, however, that Manager shall not enter into any contract on behalf of Owner that has a term in excess of one (1) year or requires an annual expenditure in excess of \$3,000.00 without first obtaining the prior written consent of Owner (which consent shall not be unreasonably withheld, conditioned or delayed).

13.12. Cause the Retail Property to comply with all building codes, zoning and licensing requirements, and other requirements of federal, state, and local authorities having jurisdiction over the Retail Property; provided, however, Manager shall first promptly notify Owner of all written orders and notices received by Manager from any government authority requiring a capital expenditure in excess of \$3,000.00, and shall

380 obtain Owner's written approval prior to making the expenditure (which consent shall  
not be unreasonably withheld, conditioned or delayed).

385 13.13. Conduct annually, with the Owner, a complete and thorough inspection of the Retail  
Property at a time mutually agreed upon; provided, however, Manager shall promptly  
call to the attention of the Owner any conditions of the Retail Property which, in  
order to be rectified properly, would require some form of work of improvement,  
repair or restoration in or to the Retail Property. For each work of improvement for  
which the cost would exceed \$3,000, Manager shall supply Owner a capital  
expenditure budget and upon written approval thereof by Owner, Manager will  
promptly engage contractors to perform the improvement. Promptly after completion  
390 of any of the aforesaid work improvements, Manager shall submit to Owner a  
complete and itemized written statement of all work performed and a designation as  
to whom payment was made. Lien releases will be obtained whenever appropriate.

#### **14. Accounting and Fiduciary Services.**

395 14.1. Manager shall bill and take all reasonably necessary action to collect all rents and  
other amounts due Owner under the leases in accordance with the terms thereof.

400 14.2. Manager shall establish and maintain, in a bank whose deposits are insured by the  
Federal Deposit Insurance Corporation, a trust account for the deposit of all rent and  
other revenue collected from the Retail Property. This real estate property  
management trust account shall be designated the "Operating Account". Collected  
funds shall be deposited into the Operating Account not later than the second banking  
day following their receipt.

405 14.3. From the funds collected and deposited in the Operating Account (as defined below),  
Manager shall cause to be disbursed regularly and punctually all recurring operating  
expenses or budgeted expenses of the Retail Property as authorized by this  
Agreement, excluding the payment of Manager's compensation under Article 7,  
below.

14.4. Except for the disbursements described in Section 13 of this Agreement, funds shall  
be disbursed or transferred from the Operating Account only as directed by Owner.

410 14.5. If the balance in the Operating Account is at any time insufficient to pay  
disbursements due and payable, Manager shall promptly inform Owner of that fact  
and Owner shall then remit to Manager sufficient funds to cover the deficiency failing  
which, Manager shall be released from all responsibilities for which it has not been  
provided sufficient funds. Manager shall not be obligated to pay any expense of  
Owner with Manager's funds to discharge its duties and responsibilities hereunder.  
415 The Operating Account will have a minimum reserve of \$5,000.00.

14.6. Manager shall organize and maintain a system of controls designed to insure the  
authenticity of bills, invoices, and statements charged and paid. In carrying out this  
responsibility, Manager shall authorize all purchasing and the hiring of services for  
the Retail Property only by supervisory personnel at Manager's office.

420 **15. Remittance to Owner.** On or before the 10th day of each month, Manager shall remit to  
Owner the net profit, if any, shown on the preceding month's income and expense report less

budgeted expenses and \$5,000.00, for each property which shall be retained by Manager as a reserve to pay expenses that are anticipated but not yet due.

## **ARTICLE V. BOOKS AND RECORDS**

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425 **16. Books and Records.** Manager agrees to keep accurate, complete, and separate books and records of account in accordance with accepted accounting standards and procedures on the basis of a City of Hercules Fiscal Year and a cash basis of accounting. These books and records shall show all income and expenditures, accounts payable, accounts receivable, available cash, and other assets and liabilities pertaining to the Retail Property. Owner may, at any time during Manager's normal business hours and either in person or through a representative, inspect all records and supporting and related documentation kept by Manager relating to the management and operation of the Retail Property, including checks, bills, vouchers, statements, cash receipts, and correspondence. Owner may, at Owner's expense, have an audit made of all account books and records connected with the management of the Retail Property. Monthly bank statement reconciliations will be done against the cash accounts and kept on file.

440 **17. Income and Expense Reports.** Each month Manager shall prepare and submit to Owner an income and expense cash flow report that shows a summary of all rents and other income collected and all operating expenses for the Retail Property. The monthly income and expense report shall separately set forth data for both the current month and the year to date (including the current month). Manager shall deliver to Owner all bills paid by Manager for the preceding month. Simultaneously with delivery of the monthly income and expense report, Manager shall also deliver to Owner a rent roll and check register.

445 **18. Delinquency and Vacancy Reports.** On or before the tenth (10<sup>th</sup>) day of each month, Manager shall prepare and submit to Owner a tenant delinquency report for the Retail Property. A vacancy report shall be prepared by Manager and submitted to Owner on a monthly basis.

450 **19. Annual Reconciliation of Common Area Charges/ Taxes and Insurance.** For each Fiscal Year ending during the Term, Manager shall prepare a reconciliation of the estimated common area maintenance charges and expenses with the actual charges incurred, and, as called for under each of the leases for the Retail Property, submit invoices to the tenants detailing the net amount to be either paid by or paid to the tenants. Manager shall use commercially reasonable efforts to deliver such statements to the tenants no later than 90 days after the end of each Fiscal Year.

## **ARTICLE VI. OWNER'S DUTIES**

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460 **20. Information and Cooperation.** Owner shall (a) provide Manager one copy of all files in its possession pertaining to the Retail Property, (b) furnish Manager with all information in Owner's possession reasonably necessary to enable Manager to perform its duties hereunder, (c) obtain all authorities and approvals necessary to delegate to Manager the authority to represent the Retail Property and offer, negotiate, execute and deliver leases to tenants on behalf of Owner; provided, that such acts are conducted by Manager in accordance with the terms and conditions of this Agreement; and (d) otherwise cooperate with, and assist

Manager in, performance of Manager's duties including, without limitation, cooperating with Manager in marketing, soliciting and effecting leases.

465 **21. Approval Policy.** Owner has delivered to Manager a list of those parties empowered to approve matters requiring Owner's approval under this Agreement. Owner may revise such list from time to time by delivering written notice to Manager. Owner shall cooperate with Manager in granting or withholding approvals required under this Agreement in a timely manner. When seeking Owner's approval of matters hereunder, Manager shall endeavor to  
470 provide such supporting information as may be reasonably necessary to enable Owner to evaluate the matter in question.

**22. Funding.** Owner shall provide all funds required to enable Manager to perform its duties hereunder and for Manager's compensation.

475 **23. Tax Returns.** Throughout the Term, Owner shall be solely responsible for preparing and filing its own income tax returns, if applicable. Notwithstanding the foregoing, Manager agrees that the records and reports on the Retail Property furnished to Owner by Manager under this Agreement shall set forth all required data as to operating expenses and income and shall be otherwise reasonably sufficient for the preparation of Owner's income tax return.

## **ARTICLE VII. LIABILITY INSURANCE AND RISK ALLOCATION**

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480 **24. Errors and Omissions Insurance.** Manager shall maintain, and provide Owner evidence of, Errors and Omissions insurance coverage acceptable to Owner, with broad coverage of all officers, employees or other persons acting in any capacity with respect to the Retail Property, insuring Owner against losses including those arising from theft, embezzlement, fraud, or misplacement of funds, money or documents. The minimum coverage under any  
485 such bond shall be at least \$1,000,000.

**25. General Liability.** Throughout the Term, Owner shall maintain, at Owner's expense, a general liability, bodily injury and property damage, insurance policy not less than \$2,000,000 combined single limit with \$4,000,000 aggregate coverage.

490 **26. Property Coverage.** Throughout the Term, Owner shall maintain a fire and extended coverage hazard insurance policy in an amount equal to the full replacement costs of the structures and other improvements situated on the Retail Property, fire and extended coverage insurance covering the personal property of Owner and Agent located at the Retail Property and loss of rental income. Said insurance shall name Owner and Agent as insured as their respective interests may appear during the duration of this Agreement.

495 **27. Copies of Policies.** Throughout the Term, Owner shall furnish Manager with copies of all insurance policies relating to the Retail Property together with the name of the agent or agents to whom claims and/or losses are to be presented. The Manager shall be named additionally insured in all liability policies.

500 **28. Mutual Waiver of Subrogation.** Each party waives on behalf of the insurers of such party's property any and all claims or rights of subrogation of any such insurer against the other party hereto for loss or damage to any property so insured.

## 29. Indemnification.

505 29.1. **Parties' Indemnities.** Subject to the terms and conditions of this Agreement, Manager shall indemnify and defend Owner, and Owner's directors, officers and employees from and against any and all loss, cost, damage, liability and expense, including reasonable counsel fees, incurred by Owner, resulting from Manager's negligence, willful misconduct, fraud, or breach of this Agreement. Except for the matters against which Manager has afforded Owner indemnity in accordance with the preceding sentence and subject to the terms and conditions of this Agreement, Owner  
510 shall indemnify and defend Manager, and Manager's directors, officers and employees from and against any and all loss, cost, damage, liability and expense, including reasonable counsel fees, incurred by Manager and resulting from Manager's performance of its duties and obligations in accordance with this Agreement. The provisions of this Section 29 are not in lieu of, but are in addition to,  
515 any other rights and obligations of an indemnified party.

520 29.2. **Notice.** Upon receipt by any party entitled to indemnification under Section 29.1 (an "Indemnified Party") of a complaint, claim or other notice of any loss, damage or liability giving rise to a claim for indemnification under Section 29.1, such Indemnified Party shall promptly notify the party from whom indemnification is sought (the "Indemnifying Party"), but failure to provide such Notice shall not relieve the Indemnifying Party from its duty to indemnify unless the Indemnifying Party is materially prejudiced by such failure and had no actual knowledge of such complaint, claim or other notice.

525 29.3. **Indemnification Rights.** With respect to any claim made or threatened against any party for which such party is or may be entitled to indemnification hereunder, the Indemnifying Party shall have the right, upon reasonable prior notice, in its sole discretion and at its sole expense, but subject to the right of any insurance company having an interest in the outcome of such claim to exercise any rights it may have under any applicable insurance coverage, to (a) participate in the investigation,  
530 defense and settlement of such claims and (b) control the defense of such claim, including the right to designate counsel and to control all negotiations, litigation, arbitration, settlements, compromises and appeals of any such claim, provided that the Indemnifying Party shall have advised the Indemnified Party that such party is entitled to be fully indemnified with respect to such claim. The Indemnified Party and  
535 the Indemnifying Party shall cooperate and act in good faith in the conduct of the defense of any claims to be indemnified hereunder.

29.4. **Survival.** The terms and provisions of this Section 29 shall survive the expiration or termination of this Agreement.

## ARTICLE VIII. MANAGER'S COMPENSATION

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540 **30. Asset Management Fee.** For performing its Asset Management duties hereunder, Agency shall exclusively negotiate a Disposition Agreement with Manager. Such Disposition Agreement shall provide the terms and conditions by which Manager is to acquire from Agency the Retail Property at a certain date and for a certain exchange of value. If by March 1, 2010, the Agency and Manager have not agreed a mutually acceptable Disposition

Agreement, and the Agency Board in its sole discretion has not approved the Disposition Agreement, then MSPS shall have the option, at its sole discretion, upon 30 days notice, to terminate its services and quit this Agreement.

**31. Property Management Fee.** For performing its property management duties hereunder, Owner shall pay to Manager a monthly fee (the "Property Management Fee") equal to the greater of (a) Five Thousand Dollars (\$5,000.00), and (b) five percent (5%) of the gross revenues from the Retail Property actually collected. The Asset Management Fee shall be calculated and paid on a monthly basis and shall be paid on or before the tenth (10th) day of each calendar month following the month in which the services have been provided.

**32. Leasing Commissions.** For services rendered in connection with the leasing of the Retail Property, Owner shall pay Manager a commission according to the leasing commission schedule set forth below. Commissions shall be deemed fully earned upon the execution by all parties of each lease for all or any part of the Retail Property; provided, however, nothing contained herein shall be deemed to require Owner to execute any lease that is not on terms consistent with this Agreement and otherwise acceptable to Owner. For each lease renewal or exercise of an option to renew procured by Manager, Owner shall pay Manager a commission equal to one-half of the amount set forth in the leasing commission schedule set forth below. If Owner reduces the rent due under any lease or offers free rent or other rental concessions, the commissions due hereunder shall not be reduced. All commissions shall be payable one-half (1/2) upon the full execution of the lease and the remaining one-half (1/2) shall be paid upon the earlier of rent commencement or the date the applicable tenant opens for business. Manager shall submit an invoice to Owner upon the occurrence of the foregoing event and all such commissions shall be due and payable upon receipt thereof. Any commissions not fully paid within forty-five (45) days shall accrue interest at the lesser of one-and on-half percent (1/5%) per month or the highest amount of interest permitted under applicable law.

Leasing Commission Schedule	
<b>The greater of:</b>	7% of the rent for the first twelve (12) months of the term of the lease; 7% of the rent for the second twelve (12) months of the term of the lease; 6% of the rent for the third twelve (12) months of the term of the lease; 5% of the rent for the fourth twelve (12) months of the term of the lease; 5% of the rent for the fifth twelve (12) months of the term of the lease; and 4% of the rent for the remaining term;
<b>or:</b>	a minimum of Eight Dollars (\$8.00) per square foot of gross leasable area.

**33. Pending Transactions.** Within thirty (30) days of the expiration of the Term or earlier termination of this Agreement, Manager shall provide Owner with a list of prospective tenants with whom Manager has toured, met with or discussed deal points. If at the expiration or termination of the Term a leasing transaction for which Manager has provided services is pending, and such transaction is consummated within 180 days following such

expiration or termination, then Manager shall be paid a commission in the same manner as provided above, notwithstanding the expiration or termination of the Term.

580 **34. Additional Services.** If Owner requests Manager to perform services other than those required hereunder, such additional services, if performed, shall be compensated separately on terms agreed upon by Manager and Owner prior to the performance of such services, which terms shall not be (a) less favorable to Manager than the terms under which qualified unaffiliated persons are then performing such services for comparable organizations, or (b) less favorable to Owner than the terms under which Owner could obtain such services from qualified unaffiliated third persons.

585 **35. Other Forms of Compensation Prohibited.** All rebates, discounts, or commissions collected by Manager, or credited to Manager's use, that relate to the purchasing of supplies or the rendering of services for the Retail Property, shall be fully disclosed to Owner. Any part of any rebate, discount, or commission that is allocable to the purchasing of supplies, or to the rendering of services for the Retail Property, shall be credited to Owner's account.

## 590 **ARTICLE IX. TERM**

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595 **36. Term.** This Agreement shall commence on the Effective Date and continue until the fifth (5th) anniversary thereof, and shall thereafter continue in effect on a year to year basis unless terminated by either party giving written notice to the other not later than ninety (90) days prior to the then effective termination date (the "Term"). The Term is subject to earlier termination as provided below and shall also end upon the disposition thereof by Owner to a third party that is not an Affiliate.

600 **37. Termination.** In addition to any other rights or remedies available at law or in equity, if either party fails to perform any of its duties or obligations hereunder, which failure continues for a period of thirty (30) days after notice is given thereof by the other party, then the non-defaulting party may terminate this Agreement by giving written notice thereof to the defaulting party

605 **38. Right to Terminate on Bankruptcy.** If Manager is adjudicated as bankrupt, voluntarily files for bankruptcy, or makes any assignment for the benefit of creditors; then the non-bankrupt party may terminate this Agreement by giving the bankrupt party written notice of termination. The Agreement shall terminate on the date specified in the notice of termination.

### **39. Duties on Termination or Expiration.**

610 39.1. **Manager's Duties.** Upon termination or expiration of this Agreement for any reason Manager shall within fifteen (15) days thereafter deliver to Owner complete copies of all books and records of the Retail Property in question and all funds, supplies, equipment or other item in possession of Manager belonging to Owner or received by Manager with regard to the Retail Property. Manager must immediately vacate and terminate any office or other possessory interest in the premises. Manager's right to compensation in any capacity shall immediately cease, except that Manager is entitled to compensation for services rendered before the termination date and Manager shall have no further right or authority to act for or on behalf of Owner



39.2. **Owner's Duties.** Owner shall, within fifteen (15) days following the end of the Term and delivery by Manager of all records and a final invoice, compensate Manager for all fees and reimbursements due hereunder through the date of termination or expiration.

## **ARTICLE X. OPTION TO PURCHASE; EXCLUSIVE RIGHT TO NEGOTIATE**

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**40. Option to Purchase Retail Property.** Concurrently with this Agreement, Owner and Manager shall in good faith negotiate a Disposition Agreement for the Retail Property.

**41. Exclusive Right to Negotiate.** Concurrently with this Agreement, Owner and Manager shall in good faith negotiate an exclusive right to negotiate (the "ERN"), pursuant to which Owner shall grant Manager an exclusive right to negotiate with Owner for the option to (a) manage Sycamore South, and (b) purchase Sycamore South.

## **ARTICLE XI. MISCELLANEOUS**

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**42. Business Continuity.** Owner, at its sole cost and expense, shall have the right to obtain and maintain life and or disability insurance coverage against the risk of death or substantial disability of Manager's principal Craig Semmelmeier. Manager and Craig Semmelmeier agree to reasonably cooperate with Owner's efforts to obtain such insurance.

**43. Intellectual Property.** Owner shall own all intellectual property relating to the Retail Property whether created by Manager or by subcontractors. Manager shall have no proprietary rights to public records produced or held by Owner.

**44. Prohibition Against Assignment.** Manager shall not assign this Agreement without Owner's prior written consent, which consent shall not be unreasonably withheld, conditions or denied; provided, however, that Manager shall have the right to assign this Agreement to any entity that is owned, controlled by or under common control with Manager or that acquires all or substantially the entire Manager.

**45. Binding on Heirs and Successors.** The provisions of this Agreement shall be binding on and shall inure to the benefit of both of the parties and to their respective heirs, executors, administrators, successors, and assigns, but nothing in this Section shall be construed as a consent by Owner to any assignment of this Agreement or any interest in it by Manager, except as provided in Section 44 of this Agreement.

**46. Governing Law.** This Agreement shall be construed in accordance with and governed by the laws of the State of California.

**47. Sole Agreement.** This Agreement constitutes the sole agreement between the parties regarding the matters contained in it.

**48. Partial Invalidity.** In the event any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of the Agreement shall remain in full force and effect.

**49. Notices.** Except as otherwise expressly provided by law, any and all notices or other communications required or permitted by this Agreement or by law to be served on or given to either party to this Agreement by the other party shall be in writing. All such notices or

other communications shall be deemed duly served and given when personally delivered to the party to whom they are directed, or in lieu of personal service when deposited in the United States mail, first-class postage prepaid, addressed to Owner at the Redevelopment Agency of the City of Hercules c/o Executive Director, 111 Civic Drive, Hercules, California 94547 or to Manager at Main Street Property Services, Inc., 985 Moraga Road, Suite 202, Lafayette, California 94549 Attn: Craig Semmelmeier. Either party may change its address for the purpose of this Paragraph by giving written notice of the change to the other party in the manner provided in this Section. Delivery of notices by e-mail shall be considered "personally delivered" when the sending party receives a reply acknowledgement of receipt, containing the complete contents of the message sent.

**50. Modifications; Amendment.** This Agreement may not be changed or modified except by a writing executed by both of the parties.

**51. Waivers.** Either party may waive the satisfaction or performance of any conditions or agreements in this Agreement which have been inserted for its own and exclusive benefit, so long as the waiver is signed (unless the Agreement provides for a non-written waiver) and specifies the waived condition or agreement and is delivered to the other party hereto.

**52. Attorneys' Fees.** If any litigation is commenced between the parties to this Agreement concerning the Retail Property, this Agreement, or the rights and duties of either party with respect to this Agreement, each party shall bear its own attorneys' fees and costs.

**53. Independent Contractor.** Manager is engaged by Owner as an independent contractor. Manager shall hire, as its own expense, its own employees and train and supervise such employees as may be necessary or appropriate to manage the Retail Property. Under no circumstances shall such employees be considered or deemed employees of Owner. Manager is engaged independently in the business of managing the Retail Property and all employment arrangements are therefore solely Manager's concern. In the event a person is directly hired and paid by the Owner, it shall be the responsibility of the Manager to supervise such persons to assure their compliance with all applicable state and federal laws.

## ARTICLE XII. EXECUTION BY SIGNATURES

685 IN WITNESS WHEREOF, Owner and Manager have executed this Agreement as of the  
date first above written.

OWNER: REDEVELOPMENT AGENCY OF THE CITY OF  
HERCULES

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

Name: \_\_\_\_\_

Its: \_\_\_\_\_

695      MANAGER:

MAIN STREET PROPERTY SERVICES, INC.,

a California corporation

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

Name: Craig Semmelmeyer

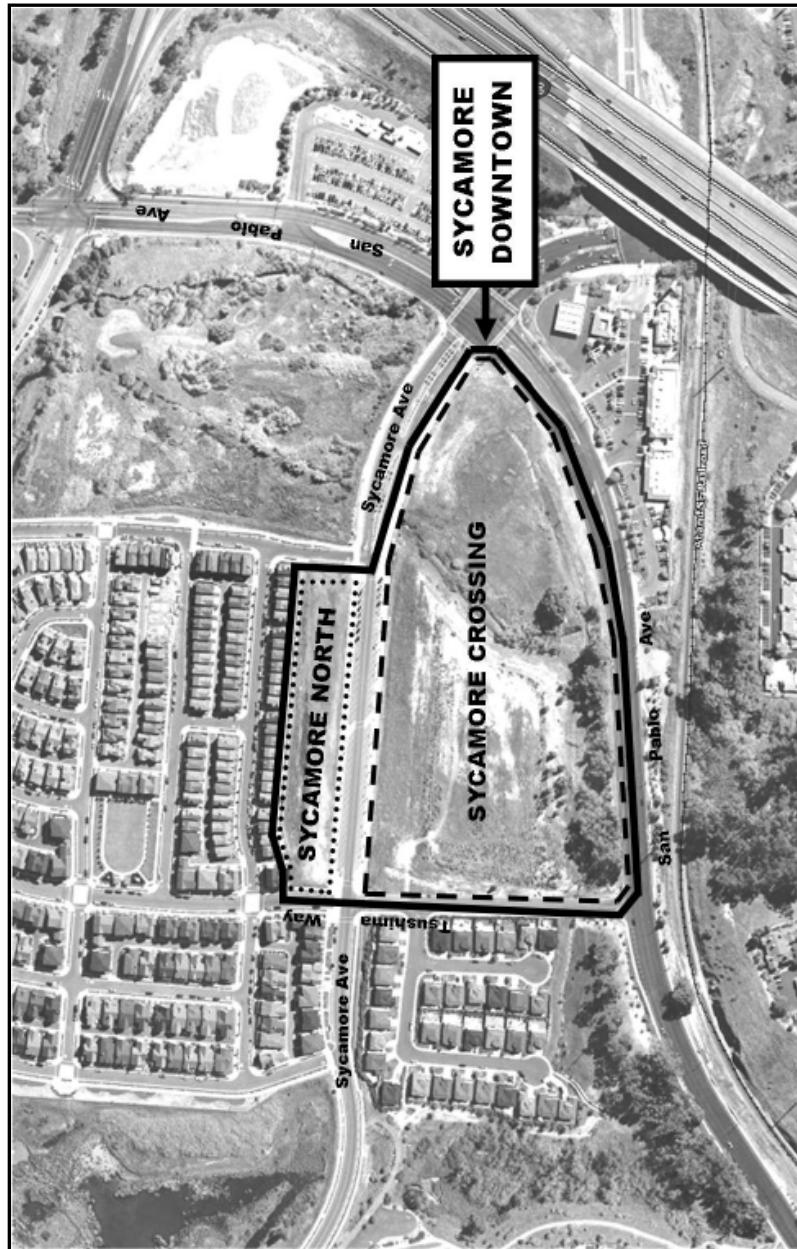
700

Its: President

## EXHIBIT A

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Sheet A-1:  
Location of Sycamore Downtown,  
including Sycamore North and Sycamore Crossing



**EXHIBIT A**

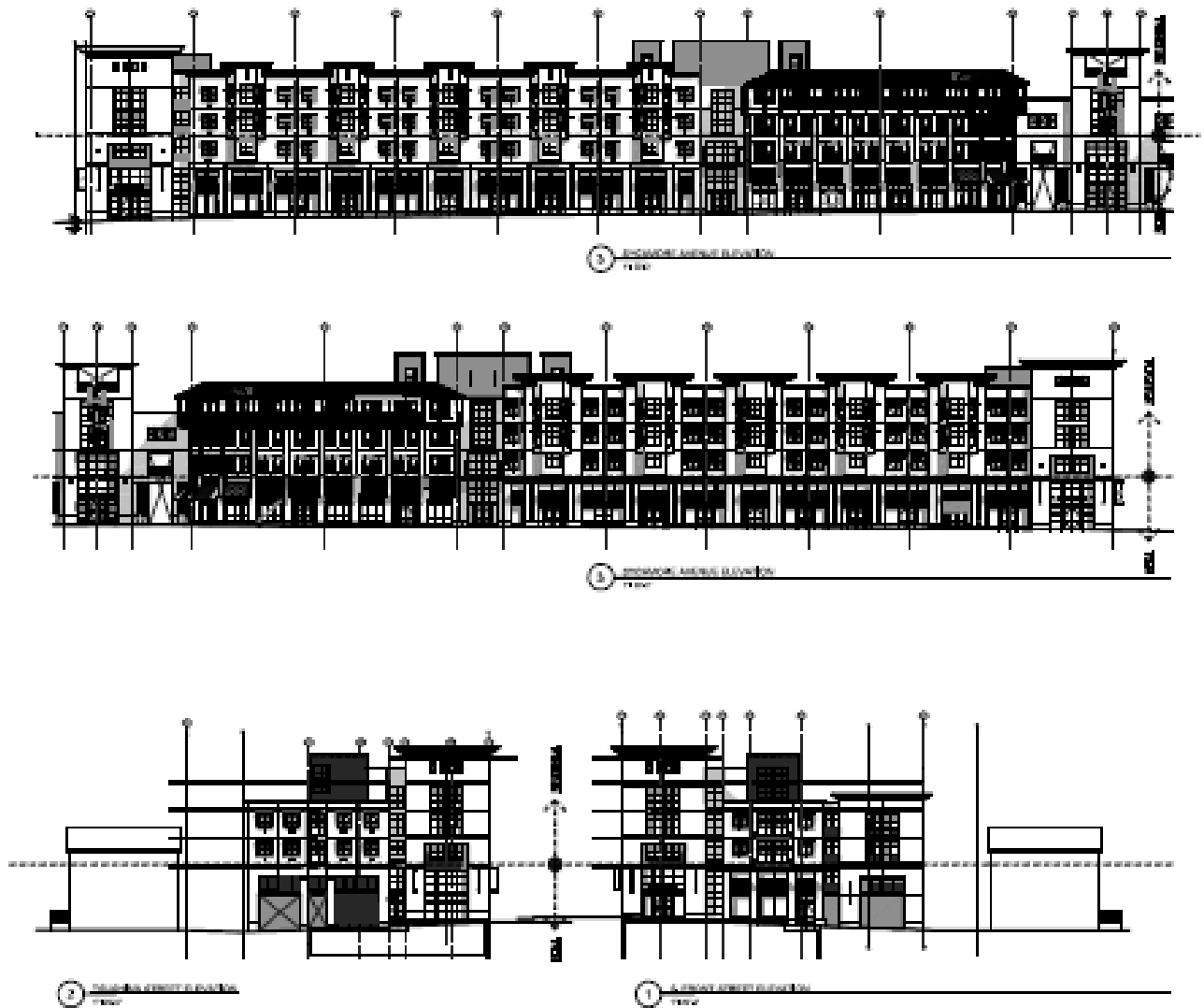
**Sheet A-2:  
General Location of Sycamore South within Sycamore Crossing  
(labeled “Future Penterra Development”)**



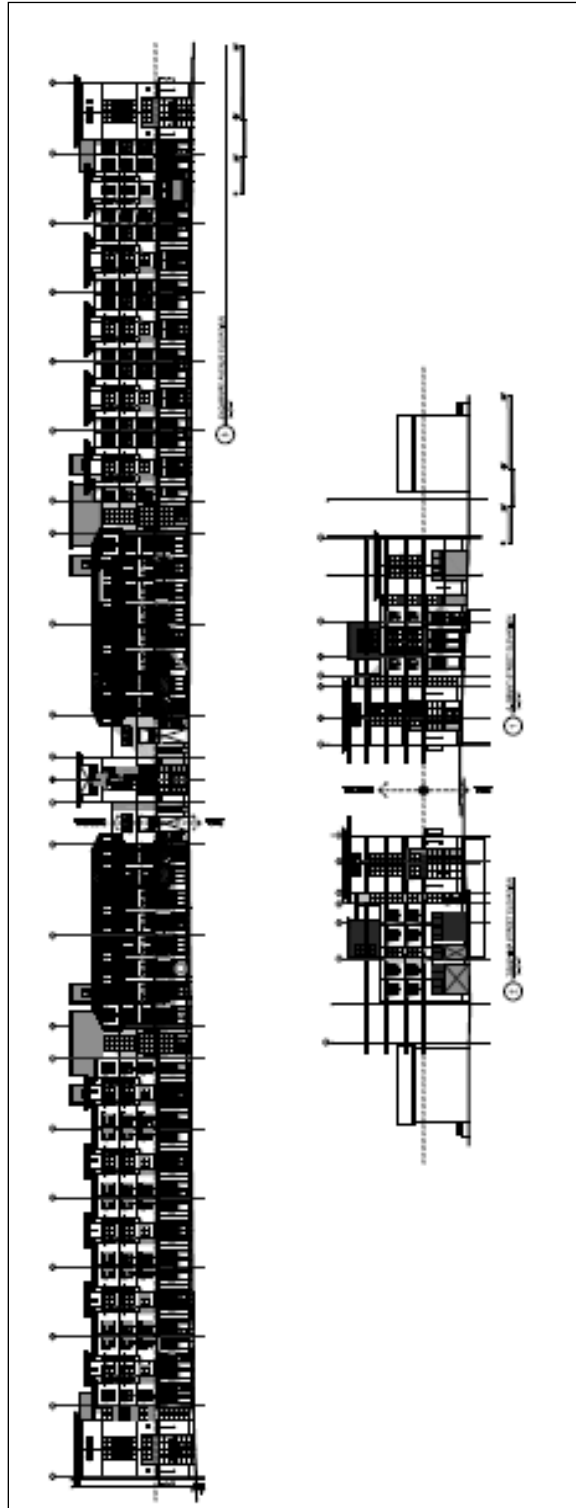
## EXHIBIT B

### Elevation Drawings of Sycamore North

#### Sheet B-1



## SHEET B-2



### Plan Diagram of Ground Story

*Showing, left to right, Gross Building Area, Residential Area,  
Floor Rentable Area, and Usable and Common Area*

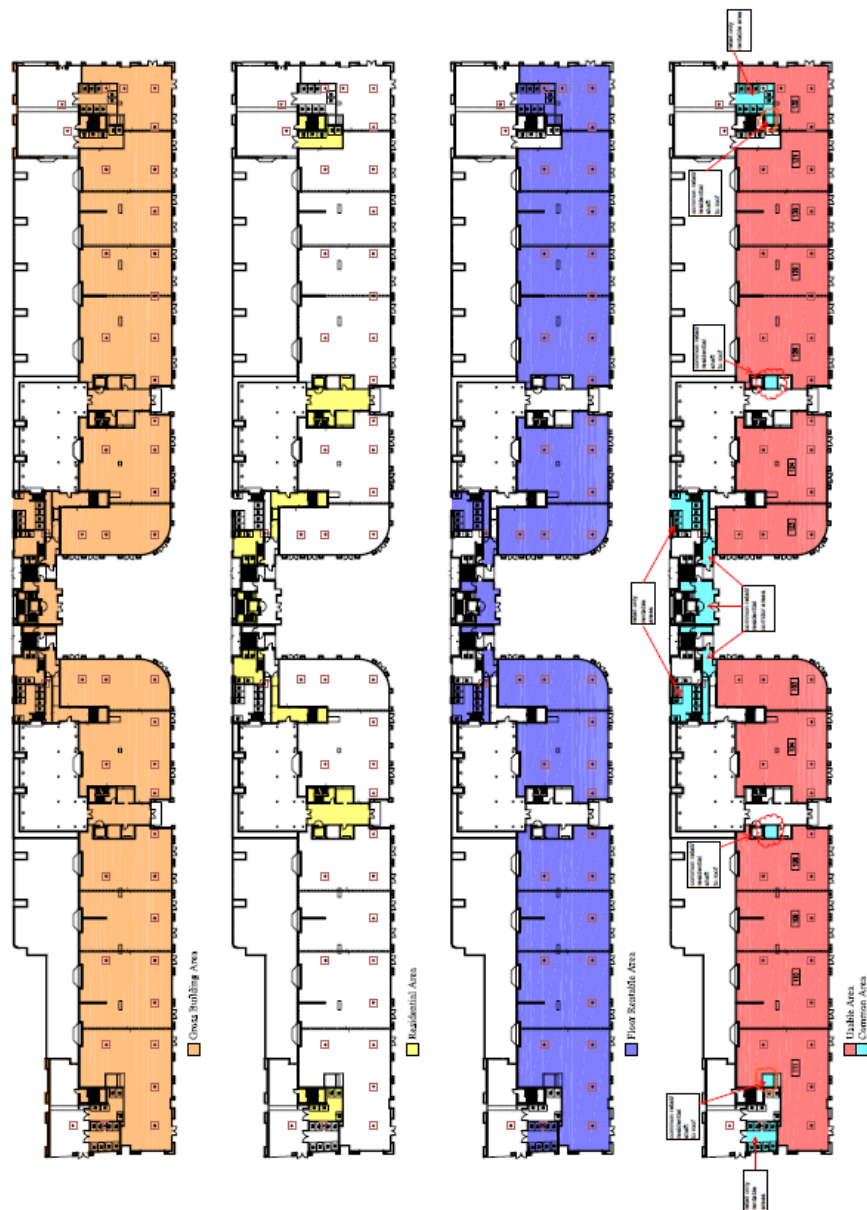
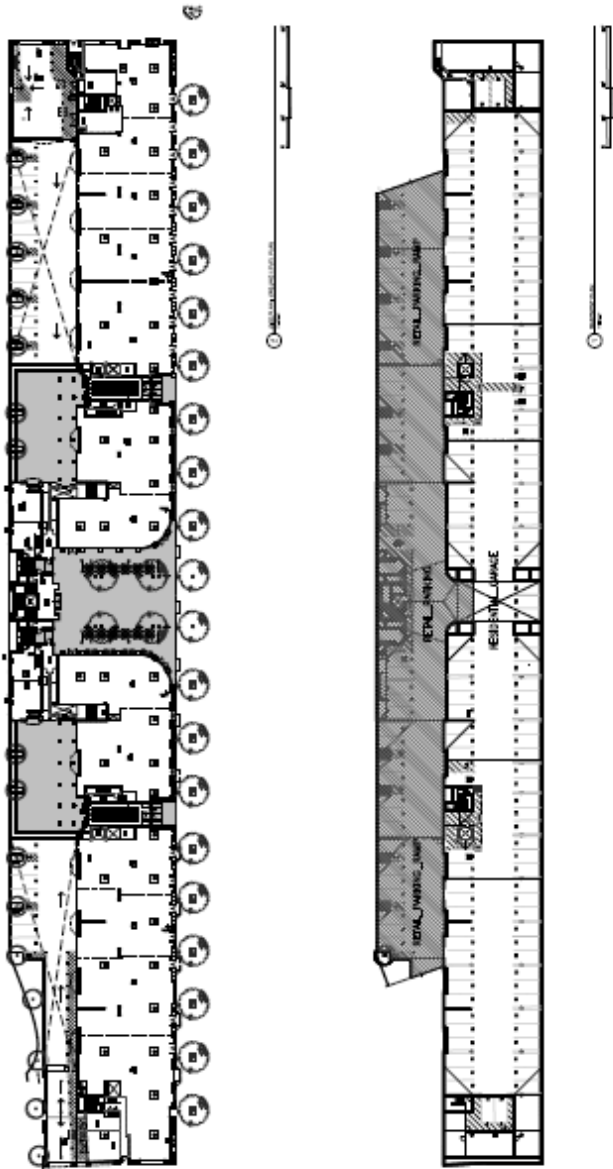




EXHIBIT D

Outdoor, Indoor and Parking Areas of the Retail Property



154