

LEASE AGREEMENT

SUPPLEMENTAL LEASE AGREEMENT NO.	TO LEASE NO.	DATE	PAGE
3	GS-07B-16863		1 of 1
ADDRESS OF PREMISES	10711 Burnet Road, 2 nd Floor Austin, Texas 78758		

THIS AGREEMENT, made and entered into this date by and between Burnet & Brockton Joint Venture, LP
Whose address is 3345 Bee Cave Rd, Suite 203
Austin, TX 78746

hereinafter called the Lessor, and the **UNITED STATES OF AMERICA**, hereinafter called the Government:

WHEREAS, the parties hereto desire to amend the above lease.

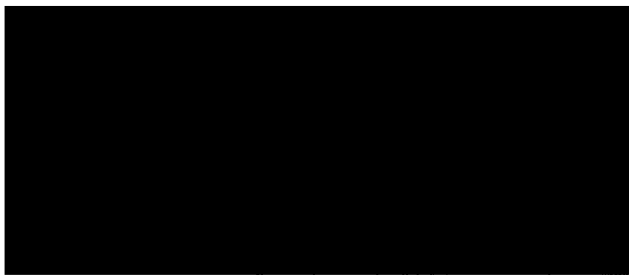
NOW THEREFORE, these parties for the considerations hereinafter mentioned covenant and agree that the said lease is amended effective November 1, 2012, as follows:

The purpose of Lease Agreement (LA) Number 3 is to update the Payee:

- Amended as follows:
Kennedy-Wilson Austin Inc
9442 Capital of Tx Hwy N
Plaza II, Suite 140
Austin, TX 78759

Telephone number: (512) 483-9457

All other terms and conditions remain in full force and effect.



unto subscribed their names as of the date first above written.

LESSOR

NAME OF SIGNER

Douglas M Hartman

3345 Bee Cave Rd #203, Austin, TX 78746

IN PRESENCE OF

NAME OF SIGNER

Shirley J Wolfe

ADDRESS 3345 Bee Cave Rd #203, Austin, TX 78746

UNITED STATES OF AMERICA

NAME OF SIGNER

TRACY A. HARTER

OFFICIAL TITLE OF SIGNER

Lease Contracting Officer

FINAL

MANAGEMENT CONTRACT

THIS AGREEMENT is made effective the 1st day of November, 20 12 between Burnet & Brockton Joint Venture, LP (the "Owner") and Kennedy-Wilson Austin Inc. (the "Manager").

WITNESS TO:

WHEREAS, the Owner is the Owner of a tract of land with improvements thereon which is operated at 10711 Burnet Road and more particularly described in Exhibit A attached hereto and incorporated by reference herein; and

WHEREAS, the Manager is experienced in the operation, management and supervision of developments such as the Project; and

WHEREAS, the Owner desires to obtain the services of the Manager and the Manager desires to make its services available to the Owner to manage the Project on the terms set forth in this Agreement,

NOW, THEREFORE, in consideration of the mutual promises herein contained, the Owner and the Manager agree as follows:

1. **Engagement of Manager.** The Owner hereby engages the Manager and the Manager hereby accepts such engagement as the sole and exclusive Manager of the Project. Subject to the terms of this Agreement, the Manager will have full control over the management and operation of the project. Anything herein to the contrary notwithstanding, the Manager for all purposes will be deemed an independent contractor within the meaning of the Internal Revenue Code of 1986, as amended, and will not be deemed the agent, employee, partner or co-tenant of the Owner.
2. **Term.** The initial term for this Agreement will be effective November 1, 2012. Thereafter, this Agreement shall automatically continue for one (1) year periods unless terminated as herein provided. Owner and Manager shall have the mutual option to terminate this Agreement by delivery of written notice stating an effective date of termination which shall not be less than sixty (60) days after the date of delivery of said notice, and if the termination is by Manager, Manager must complete the management services hereunder for the full month in which termination would occur with 60 days notice (for example if Manager sends notice of termination on October 5, sixty days would be up December 5, so Manager would continue services through the last day of December).
 - 2.1 **Procedure on Termination.** Upon termination of this Agreement, the Manager shall fully and actively assist Owner in the transition of management in any reasonable way requested by Owner, and shall:

2.1.1 *Records.* Deliver to the Owner all records and files in the possession of the Manager pertaining to the management, maintenance, operation, leasing, marketing and use of the Project together with any property of the Owner in the possession of the Manager;

2.1.2 *Accounting.* Render final statements to the Owner for all collections and expenses resulting from the management and operation of the Project since the last financial statements prepared in accordance with this Agreement and remit to the Owner all funds held by the Manager for the Owner's account;

2.1.3 *Assignments.* Assign all existing contracts related to the operation maintenance, leasing and marketing of the Project to such parties as the Owner directs in writing.

2.2 *Termination Rights.* On termination of the Agreement, the Owner and Manager will be released from further performance hereunder. Notwithstanding the foregoing, neither Owner nor Manager shall be released from any obligation or liability which has arisen or the basis for which has arisen during the term of the Agreement and the parties hereto agree that all the indemnities contained in this Agreement shall survive the termination of this Agreement.

3. *Manager's Duties.* Throughout the term of this Agreement, the Manager will use the Manager's best efforts and due diligence to manage the Project for the efficient production of maximum income in accordance with the written policies and programs approved from time-to-time by the Owner. In pursuance of the foregoing, the Manager will perform the following specific services:

3.1 *Annual Budget.* The Manager will within sixty (60) days after commencement of the agreement or within sixty (60) days prior to the end of each calendar year submit a written preliminary budget. The preliminary budget will be prepared on a form satisfactory to Owner and submitted to the Owner for approval and the Owner will have the right to make any changes thereto and finalize the budget in a manner satisfactory to the Owner in the Owner's sole discretion. The Owner may request the Manager to secure three bids on all line items in excess of \$5,000.00 and provide each bid to Owner in connection with the proposed budget. The Manager will negotiate with any bidder to seek terms desired by Owner.

3.2 *Personnel Employment.* All employees will be employees of the Manager and not the Owner and shall be paid by Manager at its expense.



- 3.3 *Service Contract.* The Manager will negotiate and, after approval by Owner, enter into contracts in the name of and at the expense of the Owner for janitorial, maintenance, water, electricity, gas, fuel, oil, telephone, vermin extermination, trash removal and other services, if any, required to operate the Project. Owner's prior written consent shall be obtained by Manager prior to execution of any such contract. The Owner may request the Manager to secure three bids on all service contracts in excess of \$5,000.00 and provide each bid to Owner.
- 3.4 *Purchases.* The Manager will purchase on behalf of and at the expense of the Owner all necessary supplies, equipment and material which may be required to operate and maintain the Project as indicated on a budget approved by Owner.
- 3.5 *Maintenance.* The Manager will, at the expense of the Owner, maintain the buildings, appurtenances, grounds, operating equipment and personal property comprising the Project in a condition equivalent to comparable projects similarly located, in accordance with a budget approved by Owner.
- 3.6 *Licenses.* The Manager will take such action as might be necessary to comply with all statutes, ordinances, laws, rules, regulations and orders affecting or issued in connection with the Project by any governmental authority having jurisdiction thereof and will secure and maintain any and all appropriate licenses and permits with respect thereto and with respect to the qualifications of Manager to conduct its business as contemplated hereunder.
- 3.7 *Bank Account.* The manager will establish and maintain on behalf of the Owner a separate bank account in a manner to indicate the custodial nature thereof with withdrawal therefrom to be by signature of either the Manager or the Owner or such other individual as the Owner might designate. The Manager will deposit into such account all monies furnished by the Owner as working funds and all rentals, income, receipts and all other monies collected in the operation of the Project. All funds and all interest payable thereon shall at all times be and remain the property of Owner and shall be indicated as such on the records maintained by the Manager and shall be separated from funds of the Manager, or sent directly to Owner when requested. The Manager will timely pay from such account all taxes, assessments, levies, debits, mortgages and other obligations incurred in operation of or payable with respect to the Project and all amounts otherwise authorized by this Agreement, including the management fee and other amounts authorized by the Budget. Owner may sweep any such account into other accounts as Owner deems desirable.
- 3.8 *Collection and Tenant Relations.* The Manager will collect and deposit into the Owner's bank account, all rents, tenant reimbursements, and other charges due from

tenants of the Project or otherwise arising out of the Project. Manager will use its best efforts to secure, as fully as practicable, the compliance by tenants with the terms, covenants and conditions of their respective leases and will keep all tenants informed of all rules and regulations covering tenant's use and occupation of space within the Project. The Manager will maintain businesslike relations with tenants of the Project and all tenant requests will be received, logged and resolved in a systematic fashion. Complaints of a serious nature will, after thorough investigation, be reported to the Owner with appropriate recommendations. The Manager will institute with Owner's written approval (in the Manager's name or, if required by applicable law, in the name of the Owner) any necessary legal actions or proceedings to collect charges, rent or other income arising from the operation of the Project; provided, however, the Manager will not permit such legal proceedings to terminate any lease or dispossess the occupancy rights of any tenant or user of the Project without the prior written consent of the Owner. Manager will promptly deliver to Owner all security deposits for the Project, if any, generated and collected from any tenant at the Project. Owner shall have sole control over the use and distribution of the deposits. .

- 3.9 ***Compliance with Contracts.*** The Manager will cause the Project to comply with all of the terms, conditions and obligations contained in any mortgage, lease or other agreement executed by or on behalf of the Owner, which relates to the Project. The Owner will notify the Manager in writing of the existence of any such mortgage, lease or other agreement; but the Manager will be deemed to have notice of any such document prepared or negotiated by the Manager.
- 3.10 ***Expenditures.*** With respect to any expenditure made by Manager according to the terms of this Agreement, the Manager will at all times act in the best interest of the Owner and will secure for the benefit of the Owner any discounts, commissions or rebates obtainable as a result of such expenditures.
- 3.11 **Expenses.** Owner shall have all control for securing and payment of insurance and payment and contest of property taxes on the Project.
- 3.12 **Emergency.** In the event there is a need for any emergency repair and Manager cannot reach owner, Manager may undertake to remedy such emergency repair. Manager will make best efforts to use preapproved vendors or contractors.
- 3.13 **Construction.** Manager shall obtain all bids for tenant finish out and other construction desired by Owner. Manager shall supervise all tenant finish out and other construction. Manager shall secure at least three bids for all work, construction and tenant finish out, including from any Owner preferred vendor/contractor.

- 3.14 In connection with any item, service, good or material required to be bid hereunder, Manager shall use any preferred provider of Owner as one of the bidding parties. In the event that there are not three local providers of any item, service, good or material required to be bid hereunder, bids may be provided from the number of providers that exist locally.
- 3.15 All contractors, either maintenance, service, or construction, must provide valid up to date proof of general liability insurance in the following amounts: \$1,000,000 per occurrence and \$2,000,000 general aggregate. Exceptions to these minimums will be reviewed on a case by case basis and approved by Owner. Owner shall be named as an additional insured on all policies. Manager shall obtain and maintain in its file current certificates for all contractors and service providers.
4. **Accounting and Distribution of Monies.** The Manager will keep full and adequate books of account and such other records as might be appropriate to reflect the financial operations of the project. Such books and records will be organized and will be maintained in a manner reasonably acceptable to the Owner. The Owner (and any person designated by Owner) will have access to such books and records at all reasonable times. The Manager will render statements in form and content acceptable to the Owner as follows:
- 4.1 **Monthly Statements.** The Manager will cut off cash transactions on the 25th of the prior month and deliver to the Owner (and any persons designated by the Owner) accrual basis financial statements by the twenty-fifth (25th) of the following month. This would include detailed statement of receipts and disbursements, tenant arrearage, bank reconciliation, defaults and variances arising in the course of the operations of the Project for the current calendar month with cumulative year-to-date accounting and budget comparison.
- 4.2 **Other Reports.** The Manager will deliver to the Owner (and any persons designated by the Owner) at the Owner's expense, any other statements or reports reasonably requested by the Owner. One such report will be an annual comparative report after the first full year of operation.
5. **Compensation of Manager.** As compensation for all services to be rendered by the Manager during the term of this Agreement, the Owner agrees to pay the Manager a Management Fee hereinafter described:
- 5.1 **Management Fee.** The Owner will pay to the Manager monthly (the "Management Fee") equal to 2 % of the cash receipts (as hereinafter defined) per month with a minimum guaranteed amount of \$ 2,000.00 per month. The term "gross revenue" shall be mean all rents and other similar income and charges from the



normal operation of the Premises, including, but not limited to, rents, parking fees, and other miscellaneous income. Gross revenue shall NOT be deemed to include the interest income or income arising out of the sale of real property, any condemnation or other taking of any part of the property, or the settlement of fire or other casualty losses and items of a similar nature or forfeiture of any deposits. If the term of this Agreement commences on other than the first day of any month or terminates on other than the last day of any month, the Management Fee for the month in which such date occurs will be prorated based on a thirty (30) day month.

5.2 *Salary Contributions.* The Owner will reimburse manager for salaries in accordance with the schedule on Exhibit "B".

5.3 *Fee if Property Sells.* As compensation for additional time required during the due diligence period for the seller, the Owner will pay to Manager a fee equal to the last full month's Management Fee at the time the property closes.

5.4 *Construction Supervision Fee.* Manager will perform the construction bidding and administration on any interior tenant improvements or other capital improvements that may be required. The cost will be 4% construction management fee for all other tenant improvements or capital improvements for the duration of this agreement. Those duties would include material ordering and inventory, blueprint review; cost estimate reviews, approving payments to general contractor, field inspections, and obtaining permits and any other governmental approvals as required prior to approval for work performed.

5.5 *Other Costs.* All property related charges paid directly by Owner such as copies, postage and mileage reimbursement for the engineer.

6. *Insurance.* The Owner will, at the Owner's expense, obtain and keep in force insurance against physical damage (e.g., fire and extended coverage, boiler and machinery, etc.) and against liability for loss, damage or injury to property or persons which might arise out of the occupancy, management, operation or maintenance of the Project in accordance with the direction of Owner as to insuring companies, types and amounts of coverage and premiums. The Manager will be named as additional insured in all liability insurance maintained with respect to the Project. The Manager shall: (i) notify the Owner within twenty-four (24) hours after the Manager receives notice of any loss, damage or injury; (ii) take no action which bars the Owner from obtaining any protection afforded by any policy held by the Owner or which prejudices the Owner in the defense of a claim based on such loss, damage or injury; and (iii) agree that the Owner will have the exclusive right, at the Owner's option, to conduct the defense of any claim, demand or suit within the limits prescribed by the policy or policies of insurance. The Manager will furnish such information as might reasonably be requested by

the Owner for the purpose of establishing insurance coverage and will aid and cooperate in every reasonable way with respect to such insurance and any loss thereunder. The Owner and the Manager hereby waive in favor of the other any cause of action which either might have against the other on account of any loss or damage which is insured against, to the extent of such insurance, under any insurance policy which names either the Manager or the Owner as a named insured.

6.1 *Manager's Insurance.* Manager shall secure and maintain with one or more insurance companies, reasonably satisfactory to Owner, employer's liability insurance covering all employees of Manager in accordance with state law. Manager shall provide general comprehensive liability and non-owned or hired automobile liability insurance with bodily injury limits of not less than One Million Dollars (\$1,000,000.00) per person and Two Million Dollars (\$2,000,000.00) per accident and property damage limits of not less than Two Hundred Fifty Thousand Dollars (\$250,000.00) per event. Owner will be named an additional insured on Manager's policy, and such policy shall provide that it shall not be terminated without thirty (30) days prior written notice to Owner. Manager shall furnish satisfactory evidence of foregoing insurance to Owner. Manager shall also provide a Fidelity bond showing Owner as an insured in the amount of \$500,000.00 in form and content and from an issuer acceptable to Owner.

7. *Owner's Right to Inspect.* The Owner and the Owner's accountants, attorneys and agents will have the right to enter upon any part of the project at any time for the purpose of examining or inspecting the same or examining or making extracts from books and records of the Project or for any purpose which the Owner, in the Owner's discretion, deems necessary or advisable.

8. *Indemnification.* The Owner agrees to indemnify the Manager from damages payable to third parties which arise due to Owner's negligence, willful misconduct, fraud or criminal acts. Notwithstanding the foregoing, the Owner will not be required to indemnify the Manager against damages suffered as a result of gross negligence, willful misconduct, fraud or criminal acts on the part of the Manager or the Manager's agents or employees. Manager hereby agrees to indemnify and hold Owner, its agents and employees harmless from and against any and all liabilities, claims, suits, damages, costs and expenses (including attorney's fees and expenses) which arise due to Manager's negligence, willful misconduct, fraud or criminal acts or any other actions or inactions taken outside the scope of this Agreement.

9. *Miscellaneous.* The Owner and the Manager further agree as follows:

9.1 *Manager's Interest.* The Project will be operated solely for the benefit of the Owner



and this Agreement will not be deemed at any time to be or to create an interest in real property or a lien of any nature against the Project. This Agreement and all rights and amounts payable to the Manager hereunder are hereby expressly made junior, inferior and subordinate to the rights of the holder of any mortgage, lien or other encumbrance now existing or hereafter affected by the Owner covering all or any part of the Project.

- 9.2 **Notices.** All notices provided for herein will be in writing and sent by registered or certified mail addressed as follows:

Owner: *Burnet & Brockton Joint Venture, LP
clo Hartman & Associates, Inc.
Attention: Douglas M. Hartman
3345 Bee Cave Rd., Suite 203
Austin, Texas 78746*

Manager: *Kennedy-Wilson Austin Inc.
Attention: Jeff Bomer, Vice President
9442 Capital of Texas Hwy N
Plaza II, Suite 140
Austin, Texas 78759*

or to such other address as is designated from time-to-time in writing by those entitled to receive notice.

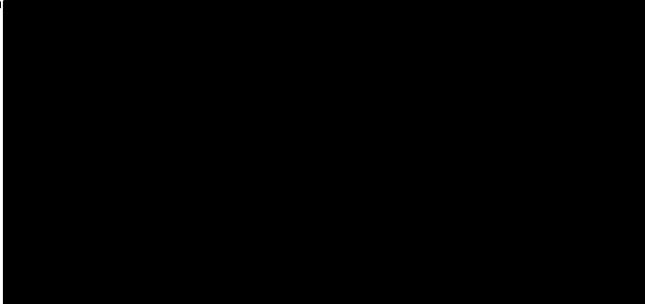
- 9.3 **Assignment.** Neither this Agreement nor any of the Manager's rights or obligations hereunder can be transferred voluntarily, by operation of law or otherwise. It is specifically understood that the Owner has placed great reliance on the experience, skill and abilities of the Manager in the execution of this Agreement and the same is intended to be a contract for the personal services of the Manager.

- 9.4 **Construction.** If any provision of this Agreement or the application thereof to any person or circumstances is determined, to any extent, to be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those to which the same is held invalid or unenforceable, will not be affected thereby, and each term and provision of this Agreement will be valid and enforceable to the fullest extent permitted by law. This Agreement is intended to be interpreted, construed and enforced in accordance with the laws of the State of Texas. This Agreement may be executed in any number of counterparts, each of which will be deemed an original and all of which will constitute one instrument.

9.5 *Entire Agreement.* This Agreement constitutes the entire Agreement between the parties with respect to the subject matter herein contained and no modification hereof will be effective unless made by a supplemental written agreement executed by both the parties hereto.

9.6 *Binding Effect.* This Agreement will be binding on the parties and their respective successors, legal representatives and permitted assigns.

IN WITNESS WHEREOF, the undersigned have executed and delivered this Agreement this 1st day of November, 2012 effective the date first above written.

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ral
By: 

(“Manager”) Kennedy-Wilson Austin Inc.

By: 