

**SECOND AMENDMENT TO
INDUSTRIAL DEVELOPMENT LEASE AND
OPTION TO PURCHASE**

This Second Amendment ("Amendment") is made as of March 10, 2000, among **U.S. National Leasing LLC**, an Alaska limited liability company ("Tenant"), and the **City of Sacramento**, a charter municipal corporation ("Landlord"), and consented to by **Packard Bell NEC, Inc.**, a Delaware corporation ("Former Tenant").

Recitals

A. Landlord and Former Tenant executed an "Industrial Development Lease and Option to Purchase," dated as of December 15, 1994, as amended by "First Amendment to Industrial Development Lease," dated as of December 16, 1994 (collectively, "Lease") pursuant to which Landlord leased to Former Tenant and Former Tenant leased from Landlord that certain Property described in the Lease ("Leased Property") for the term specified in Section 4 of the Lease, commencing on December 15, 1994, subject to termination as provided in the Lease (with any initially capitalized terms appearing in this Amendment not otherwise defined herein, to have the same meanings as attributed to such terms in the Lease).

B. Former Tenant desires to assign its interest in the Lease to Tenant and Tenant desires to assume the rights and obligations of Former Tenant under the Lease, upon the terms and conditions set forth in that certain agreement between Tenant and Former Tenant entitled "Agreement for Assignment of Industrial Development Agreement and Option to Purchase and Assignee's Interest in Leasehold Improvements" (the "Assignment Agreement").

C. The Lease specifies at Section 19 that Landlord must consent to the assignment of the Lease; Landlord is willing to consent to the assignment of the Lease from Former Tenant to Tenant subject to certain conditions, one of which is that certain amendments to the Lease be executed as part of the assignment transaction.

The terms and conditions of the assignment are embodied in an agreement Between Tenant and Former Tenant entitled "Agreement for Assignment of Industrial Development Agreement and Option to Purchase" (Assignment Agreement").

D. The parties desire to consummate the assignment of the Lease, the Consent of Landlord and this Amendment in the context of an escrow, which the parties intend to close upon the full occurrence and satisfaction of all conditions specified in the Assignment Agreement.

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E. The execution and delivery of this Amendment by the parties is agreed to and shall irrevocably be deemed to constitute: (i) the assignment by Former Tenant to Tenant of all of Former's Tenant's right, title and interest in the Lease; (ii) the assumption by Tenant of all obligations and liabilities of Former Tenant under the Lease, as amended by this Amendment; (iii) the assignment by Former Tenant to Tenant of all of Former Tenant's interest in any leasehold improvements made to the Leased Premises; (iv) the consent of Landlord to the assignment of the interest of Former Tenant in the Lease to Tenant; and (v) the release of Former Tenant by Landlord of all of Former Tenant's obligations and liabilities under the Lease other than (a) Section 20.(a), relating to indemnification for Losses, as defined in the Lease, but solely for Losses occurring during the period prior to the date of this Amendment; (b) those provisions limiting or otherwise affecting Assignor/Seller's right to indemnification under Section 20.(b); and (c) Tenant's obligations under Section 55, relating to taking of further actions relating to finalizing the intended effect of this Agreement.

F. The parties recognize that Assignee does not intend to occupy any of the Leased Premises, but rather intends to enter into third party subleases with respect to the Leased Premises.

Agreement

Now, therefore, the parties agree that the Recitals set forth above are true and correct, and that the following terms and conditions constitute their agreement relating to amendment of the Lease:

1. **Recital E** is deleted.

2. **Section 1, at page 6**, is amended to delete the definition of "Initial Office Term".

3. **Section 2.(d)(ii)** is amended to delete therefrom the words: "however, if Landlord does act in its capacity as a municipal government in a manner inconsistent with the preceding sentences in this Subsection (d), Landlord shall indemnify Tenant for any losses caused thereby."

4. **Section 3.(b)** is deleted and the following substituted therefor:

"(b) Intentionally blank."

5. **Section 4.(a)** is deleted, and the following substituted therefor:

"(a) Initial Term. The initial term of this Lease shall commence on December 15, 1994, and shall end on

December 14, 2049, unless sooner terminated according to this Lease, with respect to both the Office Premises and the Warehouse Premises."

6. **Section 4.(b)** is deleted, and the following substituted therefor:

"(b) Intentionally blank."

7. **Sections 4.(c), 4.(d) and 4.(e)** are deleted and the following substituted therefor:

"(c) Intentionally blank."

"(d) Intentionally blank."

"(e) Intentionally blank."

8. **Section 5.(a)** is amended to read as follows:

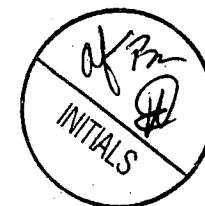
"(a) During the Term of this Lease, Tenant shall pay to Landlord rental ("Base Rent"), for both the Office Premises and the Warehouse Premises, in the amount of One Dollar (\$1.00) per year payable on January 2nd of each year; provided, however, that commencing December 14, 2014, Base Rent for the Office Premises shall be payable monthly on or before the first day of the month and shall be increased to ninety percent (90%) of the then prevailing Fair Market Rent for Comparable Space."

9. **Section 5.(b)** is amended to:

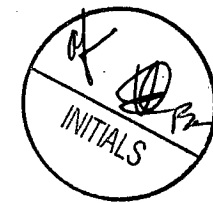
(A) delete clause (i) thereof; and

(B) add the following sentence between the second and third sentences thereof:

"The accrual of "offset amounts" is terminated as of the date of the Second Amendment to Lease, with Landlord and Tenant agreeing that the accrued "offset amounts" equal \$** (of which amount \$450,000 has been applied to pay all previously accrued and all future accruing Purchase Option payments payable by Tenant to Landlord pursuant to Section 8(b)). ~~The total offset amounts shall be quantified~~
**\$1,764,696.43



~~and agreed upon in good faith by Landlord and Former Tenant at or before the closing of the Agreement For Assignment of Lease to which this Amendment is attached as an Exhibit and such agreed amount inserted herein.~~



10. **Section 6.(a)(ii)** is deleted entirely, and the following is substituted therefor:

"(ii) Tenant shall bear the Common Area Expenses incurred by Tenant in providing such services. Tenant may collect a pro rata share of Common Area Expenses from other tenants of Occupiable Buildings leased to other tenants."

11. **Section 6.(e)** is amended to delete the following:

(a) The words "Tenant shall contract with a reputable security company to provide 24-hour security to the Project, or shall hire its own security employees to provide such security", appearing at lines 9 and 10 of this subsection.

(b) The words "its pro rata share (as calculated in Subsection 6(a)(i) below) or Tenant's Share" from the last sentence of this section.

12. **Section 6.(f)** is amended to delete the words: "Tenant's Share, subject to Subsection 6(a)(i), of".

13. **Section 6.(g)** is amended as follows:

(a) The words "Notwithstanding the foregoing, Landlord shall be responsible for the cost of utilities serving Occupiable Buildings on the Leased Premises as follows:" are deleted from the first paragraph of Section 6.(g).

(b) The words "Landlord shall not be responsible for any capital expenditures or for the cost of utility hookup or connection charges." are added to the first paragraph of Section 6.(g).

(c) **Subsections 6.(g)(i), (ii), and (iii)** are deleted and the following substituted therefor:

"(i) Intentionally blank."

"(ii) Intentionally blank."

"(iii) Intentionally blank."

14. **Section 7.(b)** is amended to delete the last two sentences, and to substitute therefor the following new sentence: "Tenant shall pay all costs associated with designating the Project as a Foreign Trade Zone and fees to activate Tenant and the Leased Premises for purposes of manufacturing."

15. **Section 7.(c)** is deleted and the following is substituted therefor:

"(c) Intentionally blank."

16. **Sections 7.(e), (f), (g) and (h)** are deleted, and the following is substituted therefor:

"(e) Intentionally blank."

"(f) Intentionally blank."

"(g) Intentionally blank."

"(h) Intentionally blank."

17. **Section 7.(i)** is amended to delete therefrom the last sentence.

18. **Sections 7.(j), (k), (l) and (m)** are deleted and the following substituted therefor:

"(j) Intentionally blank."

"(k) Intentionally blank."

"(l) Intentionally blank."

"(m) Intentionally blank."

19. **Section 7.(o)** is amended to delete therefrom the words "except for Subsection (g) hereof, which shall survive the expiration or termination of this Lease until December 14, 2004".

20. **Section 8.(c)** is amended to add the following sentence to the end of the section: "Tenant shall have the right to exercise the Purchase Option as to "Phase I" depicted on Exhibit "A" to this Amendment, attached hereto and incorporated herein by this reference, by describing the parcel or parcels being purchased in the same manner

that such parcels were described upon conveyance of said parcel or parcels by the Army to Landlord. As to any land within the Project which is not included within "Phase I", Tenant's notice of exercise of the Purchase Option shall specify the legal description of the parcel or parcels being purchased solely in accordance with the provisions of the Subdivision Map Act and Title 40 of the Sacramento City Code. Landlord shall have no obligation to convey any parcel or parcels not included in "Phase I" unless and until Tenant shall have obtained, at its sole expense, a final parcel map in accordance with the Subdivision Map Act and Title 40 of the Sacramento City Code, which map includes the parcel or parcels as to which Tenant exercises the Purchase Option. Landlord shall allow Tenant to process required applications pursuant to the Subdivision Map Act and Title 40 of the Sacramento City Code. Nothing in this Agreement shall be construed to limit the discretion of the City Council and the City Planning Commission in the review, conditioning and decision making process with respect to applications filed by Tenant pursuant to this Section."

21. **Section 8.(d)(v)** is amended to delete the first sentence therefrom, and substitute the following new sentence in its place: "Escrow shall close within a reasonable time, not to exceed ** (120) days following the Election Date; provided, however, that by their mutual agreement, Tenant and Landlord may extend the closing date to a mutually agreeable date." ****one hundred twenty**

22. **Section 8.(d)(vi)** is deleted and the following substituted therefor:

"(vi) Intentionally blank."

23. **Section 13.(a)** is amended to delete the words "and (ii) the reasonably estimated cost of which does not exceed Seventy-five Thousand Dollars (\$75,000)", appearing in lines 8 and 9 of said subsection.

24. **Section 13.(c)(iii)** is deleted and the following substituted therefor:

"(iii) Intentionally blank."

25. **Section 15.(e)**, as amended by the First Amendment, is deleted and the following substituted therefor:

"(e) Landlord's Insurance. Landlord, in Landlord's discretion, may carry casualty insurance as to any aspect of this Lease, and may insure as against any risk hereunder with its self-insurance program."

26. **Section 16.(b)** is amended to add the word "gross" before the word "negligence" in the first line of this section.



27. **Section 19.(c)(ii)** is deleted and the following substituted therefor:

"(ii) Intentionally blank."

28. **Section 19.(d)** is amended to read as follows:

"(d) Landlord's Consent. Landlord's Consent to a requested sublease or assignment shall not be unreasonably withheld, conditioned or delayed."

Delete all further text from subsection (d).

29. **Sections 19.(h) and (i)** are deleted and the following substituted therefor:

"(h) Intentionally blank."

"(i) Intentionally blank."

30. **Section 20.(a)** is amended to insert the word "gross" before "negligence" in the first line.

31. **Section 20.(b)** is amended to insert the word "gross" before "negligence" in the first line.

32. **Section 44.(b)** is deleted, and the following substituted therefor:

"(b) Intentionally blank."

33. **Section 57** is hereby added to read as follows:

57. Employee Hiring Provisions.

(a) **Provisions to be included in any sublease.** In the event that Tenant desires to enter into a sublease of any portion of the Leased Premises, Tenant shall in addition to complying with all other provisions of this Lease relating to Landlord approval of subleases, submit to Landlord accurate written information regarding the proposed subtenant, including but not limited to the following: sublessee's actual name and business entity identification; the number of employees in sublessee's workforce; number of employees being relocated to the Leased Premises by the sublessee; number of employees that will need to be hired by the sublessee for the Leased Premises. The requirements of this section 57 shall be included in any proposed sublease. Landlord will not consent to any sublease unless and until Tenant has complied with this provision.

(b) **Landlord's use of information.** Upon receipt of the information specified in subsection 57.(a) above, Landlord shall submit the information to the Sacramento Training and Response Team ("START"), a consortium of Sacramento area organizations which conduct outreach and related programs designed to promote use of local human resources and to assist employers in hiring qualified persons from the pool of local human resources. Tenant shall include provisions in each proposed sublease which will require that the sublessee use reasonable good faith efforts to contact, respond to and work with START and other local organizations in an effort to hire qualified persons from the pool of local human resources, with the goal of employment of local persons to the maximum extent feasible.

(c) **No default by Tenant.** In the event that a sublessee is in default for failure to comply with those provisions to be included in the sublease in accordance with the terms of this section 57, Tenant shall not be deemed to be in default under this Lease by virtue of such sublessee default.

The parties have executed this Agreement as of the date first above written.

"Tenant"

U.S. NATIONAL LEASING LLC,
an Alaska Limited Liability Company

By [Signature]
Title [Signature]

"Landlord"

THE CITY OF SACRAMENTO,
a Charter Municipal Corporation

By [Signature]
Title _____

Approved as to form:

[Signature]
City Attorney

ATTEST:

[Signature]
CITY CLERK

"Former Tenant"

PACKARD BELL NEC, INC.,
a Delaware Corporation

By Almarie Falbo
Title GM & COO