MEETING DATE: 12/14/09

AGENDA ITEM: **REDEVELOPMENT AGENCY BOARD AGENDA ITEM: Consideration to Adopt a Resolution that Terminates the Disposition and Development Agreement with Rush Pacifica LLC for 9300 Culver Boulevard; Consideration to Approve a Notice of Termination of the Disposition and Development Agreement with Rush Pacifica LLC for 9300 Culver Boulevard; and Consideration to Terminate the Infrastructure Improvement Agreement with Rush Pacifica LLC for Construction of the Town Plaza Expansion.**

ATTACHMENTS

ATTACHMENT 1

Culver CITY

REDEVELOPMENT AGENCY

June 4, 2009

Via Email and FedEx

Dr. Jeffrey L. Rush
Rush Pacifica, LLC
12348 High Bluff Drive, Suite 100
San Diego, California 92130

Evan Stone, Esq.
Pacific Medical Buildings, L.P.
12348 High Bluff Drive, Suite 100
San Diego, CA 92130

Re: NOTICE OF DEFAULT and RIGHT TO TERMINATE UPON BOARD APPROVAL: Disposition and Development Agreement (9300 Culver Blvd.)

Gentlemen:

Reference is made to that certain Disposition and Development Agreement (9300 Culver Blvd.), dated for identification purposes only as of October 16, 2006, by and between the Culver City Redevelopment Agency, a public body, corporate and politic (the "Agency"), and Rush Pacifica, LLC, a California limited liability company (the "Developer"), as amended by Amendment Nos. 1 and 2 thereto (collectively, the "DDA"). Capitalized terms used but not defined in this letter shall have the meaning given in the DDA.

Per Section 701(a) of the DDA, this letter acts as Notice to the Developer of a Default of the DDA by Developer. In accordance with Section 701 of the DDA, a 30-day right-to-cure period will commence effective upon your receipt of this letter.

Several Defaults of Developer currently exist under the DDA. Those Defaults are as follows: (i) Developer failed to submit its Evidence of Financing by March 5, 2008, as required by the Schedule of Performance; (ii) Developer failed to meet the Agency's Conditions Precedent to Closing and accept conveyance of the Property by the Outside Closing Date (April 21, 2008), as required by the Schedule of Performance; (iii) Developer failed to commence construction by May 6, 2008, as required by the Schedule of Performance; and (iv) the Letter of Credit provided by Developer for the deposit on the purchase of the Property has expired in contravention of Section 301.2 of the DDA.

ATTACHMENT 1

Further, please note that pursuant to Section 704 of the DDA, the Agency has the right to terminate the DDA as a result of Developer's failure to meet the Agency's Conditions Precedent to Closing and accept conveyance of the Property by the Outside Closing Date.

Agency hereby reserves all rights, interests and remedies available to it under the DDA and any applicable law, including, but not limited to, the exercise of its full rights and remedies in the event of any similar or additional default. Agency may exercise such rights, interests and remedies as Agency deems to be in its best interest at any time and from time to time.

Any negotiations or discussions with any representative of Agency regarding the foregoing shall not be binding upon Agency unless and until documented in writing and signed by an authorized representative of Agency.

Please contact the undersigned within ten (10) days of your receipt of this letter to acknowledge receipt and indicate any intention to cure the defaults under the DDA. If you have any questions, you may contact the undersigned.

Sincerely,

CULVER CITY REDEVELOPMENT AGENCY, a public body, corporate and politic

By: Sol Blumenfeld
Its: Assistant Executive Director

cc: Mark Scott, Executive Director
Todd Tipton, Redevelopment Administrator
Joe Susca, Redevelopment Project Manager
Murray O. Kane, Esq., Kane Ballmer & Berkman
Greg Nelson, Senior Vice President, Pacific Medical Buildings
Barbara Zeid Leibold, Esq., Leibold, McClendon and Mann
Joy Heuser Otsuki, Esq., Leibold, McClendon and Mann

[continued on next page]

ATTACHMENT 1

The City of Culver City, in its capacity as a third party beneficiary of the DDA, hereby reserves all rights, interests and remedies available to it under the DDA and any applicable law.

THE CITY OF CULVER CITY,
A California municipal corporation

By: Mark Scott

By: Mark Scott
It's: City Manager

ATTACHMENT 2

E V A N   M E A D   S T O N E
A PROFESSIONAL CORPORATION
ATTORNEY AT LAW

EMS

12348 HIGH BLUFF DRIVE
SUITE 100
SAN DIEGO, CA 92130-3545
TEL: 858.350.1950
FAX: 858.350.1953
EMAIL: estone@estonelaw.com

July 6, 2009

Via Overnight Courier and Email

Culver City Redevelopment Agency
Attn: Sol Blumenfeld, Assistant Executive Director
9770 Culver Boulevard
Culver City CA 90232-0507

Via Overnight Courier and Email

The City of Culver City
Attn: Mark Scott, City Manager
9770 Culver Boulevard
Culver City CA 90232-0507

Re: **Culver Studios Plaza**

Mr. Blumenfeld and Mr. Scott:

We are in receipt of your June 4th letter (received by us on June 10th) that purports to claim that Developer is in default under the DDA and that a 30-day cure period has commenced. All initial-capitalized terms in this letter shall have the same meaning as set forth in the DDA.

This letter is a preliminary response on behalf of the Developer, Rush Pacifica LLC, and The Plaza at Culver Studios LLC, to your June 4th letter. We reserve the right to supplement this letter as we deem appropriate.

Your letter also purports to list several areas in which Developer defaulted under the DDA.

First, you claim that "Developer failed to submit its Evidence of Financing by March 5, 2008, as required by the Schedule of Performance." As you are aware, this assertion is baseless and has no relation to the reality faced by both the Agency and Developer as time has passed. As the project evolved and the parties mutually cooperated, the actions of the Agency and the City waived the time limit. The following timeline might be of assistance in this regard:

October 26, 2004	Developer and Agency signed their Exclusive Negotiation Agreement.
December 2004	Developer engaged Gensler Architects to design the project, as Agency did not like the original design proposed prior to Developer selection.
July 2005	City decided to move forward with the process of closing Washington Boulevard, which contributed significantly to the

	delay in the signing of the DDA. This added 14 months to the original schedule.
November 8, 2005	Developer received first draft of the DDA from the City's attorney.
February 2006	Developer and Agency agreed on the price of Parcel B following 19 months of negotiations.
February 24, 2006	Developer agreed to cause an affiliate to supervise all construction management for the Town Plaza public works project without remuneration as an accommodation to the Agency and City.
April 17, 2006	At Agency's request, Developer agreed to hire Christine Deshaine of Lee Associates to handle retail leasing.
February-to-October 2006	Developer continued pre-leasing activity and presented several retail and restaurant tenants to Agency. Agency rejected the majority of prospective tenants because, although creditworthy, they were not sufficiently unique and boutique to satisfy the subjective tastes of Agency personnel.
October 16, 2006	Developer and Agency finally signed DDA, two full years after the ENA was signed. The last four months were dedicated to negotiating the Infrastructure Improvement Agreement (Town Plaza public works agreement), which arose due to Developer's acquiescence to the Agency's request for Developer to oversee the public works project.
November 17, 2006	Developer submitted preliminary drawings for review.
December 20, 2006	City/Agency approved preliminary design.
January 15, 2007	Developer submitted schematic drawings.
February 7, 2007	In a meeting with the Agency and its sub-committee, the Agency rejected the revised exterior architectural detailing and colors, in spite of the fact that the Agency had previously approved the design.
March 26, 2007	After working with City/Agency staff and obtaining staff's preliminary approval, Developer re-submitted exterior redesign.
April 3, 2007	City notified Developer that it again rejected exterior color and asked for additional architectural changes to the exterior. City also notified Developer that the City Manager had determined that a formal approval by the Agency with public input was required.
July 11, 2007	City Council approved project design drawings nearly eight months after Developer submitted its preliminary drawings and

	six months after submitting schematic drawings. The DDA Schedule of Performance requirements were ignored as the City had second thoughts about having initially approved Developer's design.
July 25, 2007	Parties signed 2nd Amendment to DDA, extending the closing date to 4/21/08.
August 28, 2007	Agency rejected Vitamin Shoppe as potential tenants. This was but one of several rejections of prospective tenants by Agency.
October 4, 2007	Resubmitted revised design development drawings to Agency.
October 30, 2007	Agency approved revised drawings with staff comments.
February 6, 2008	Developer timely submitted construction plans to Agency/City for permit approval as required by the revised schedule.
May 30, 2008	Final Plan Check documents delivered to City.
June 25, 2008	City approved plans for permit issuance. Process took 4½ months involving extensive plan check delays from the City.
September 2008	Lehman Brothers (controlling partner of Culver Studios and a joint venture partner with Developer) withdrew as joint venture partner in early September and declared bankruptcy on September 15th.
November 2008	PCCP (minor partner in Culver Studios) notified Developer that Culver Studios would not fulfill the Lease it had signed for the entire 3rd floor. In spite of this, Developer continued to work with its lenders by agreeing to a much lower loan in order to move forward with the project.
February 2009	Room & Board, Inc. withdrew as a tenant of approx. 39,614 sf.

As this timeline demonstrates, Developer was repeatedly delayed in moving forward with the project due to the actions, delays, and inactions of the City and Agency. Time and again, the project was delayed due to the City and Agency to the point that Developer found itself subject to an entirely new reality caused by the economic meltdown that was in full swing by late summer 2008.

The impact of this reality is that, since late 2008, construction and permanent financing was no longer available, other than those with onerous terms that likely would have resulted in a foreclosed project. The pool of prospective tenants for Parcel B dried up, which underscored the regrettable and repeated rejections of numerous tenants by the Agency over the past two years on grounds that were arbitrary and meaningless.

This negative environment was made worse by the ever-increasing supply of cheap office and retail space in the west Los Angeles/Culver City market. This made it even more unrealistic to lease space at sensible rents to any tenant that would justify the cost to complete the proposed Parcel B project, let alone at the rents that the Agency might deem to approve on any given date.

ATTACHMENT 2

The City and Agency were fully aware of these and other challenges, yet now they are arguing that Developer unduly delayed the project. This is difficult to understand in light of the City's and Agency's knowledge of Developer's ongoing expenditure of funds and demonstration of its commitment to complete the project. Moreover, both the City and Agency knew that Developer repeatedly undertook to ensure the success of the project and even agreed to undertake construction oversight duties for the public works project to facilitate the request of the Agency. It is difficult to see how the City and Agency could make this first claim in good faith in light of their actual knowledge of the facts.

Second, you claim that Developer "failed to meet the Agency's Conditions Precedent to Closing and accept conveyance of the Property by the Outside Closing Date, which was 4/28/08". As the City and Agency are fully aware, this date was impossible to meet since the plans were not approved by the City until May 25, 2008. The City and Agency waived this date and continued thereafter to cooperate with Developer to move the project forward.

With complete disclosure and cooperation, Developer placed its steel order on May 15, 2008 for $4,104,170. While Developer offered to close the land purchase on multiple occasions, it could not close the construction loan and commence construction without a complete set of construction drawings and 80% pre-leasing. Agency delays, commencing in December 2006 when it questioned the pre-approved building design and exterior architecture, are significant contributors to the delays. With few exceptions, the Agency approval process took considerably longer than outlined in the DDA's Schedule of Performance.

As stated above, it was unrealistic and impossible for Developer to meet the May 25th deadline, and the City and Agency fully waived compliance with it.

Third, you claim that Developer committed a default by failing to commence construction by May 6, 2008. Even after that date however, notwithstanding significant delays, the loss of the two main tenants and a market meltdown (all of which were beyond Developer's control), Developer, Agency and Agency's outside counsel continued to work in good faith to finalize the 3rd Amendment to the DDA well into early 2009. This can hardly be deemed a default when all parties were aware that Developer could not be held to this deadline.

In February 2009, the Agency requested a meeting to discuss the future of Parcel B. It was clear that the market conditions and leasing market had deteriorated significantly and continued cooperation was essential. Over the next couple of months, the Agency took the liberty of holding meetings with Developer's leasing agents to determine if there were tenants willing to commit to lease sufficient space and at rents to satisfy the bank's pre-leasing requirements.

For these and the above reasons, Developer rejects this third claim of default.

Fourth, you claim that the letter of credit ("LOC") provided by Developer expired in contravention of DDA § 301.2. In March, the Agency asked for a proposal from Developer for a revised Schedule of Performance and details as to the leasing program. The City and Agency were aware that the LOC was payable to Rush Pacifica LLC, not the Agency, and therefore the LOC served no purpose whatsoever other than to show good faith and Developer's financial abilities. The LOC cost Developer the bank fees to acquire or renew. Its presence or absence did nothing to enhance the Agency's position.

The only conceivable purpose of the LOC was to demonstrate that Developer was willing to throw away its funds without any project or political benefit. What would possibly be the point and what form of public scrutiny would argue in its favor? Developer's expenditures and financial condition clearly indicate its wherewithal and ability to perform to make this project succeed.

The Agency and City consistently failed to meet their own schedule requirements, not the least effect of which is the excessive time lost after each of the submissions of concept, schematic, design documents and construction documents. Developer believes that without the Agency's delays, the project could very well have been in construction 18 months to two years earlier and well before the economic collapse.

On May 10, 2009, Developer requested additional time to (1) allow the market to recover to avoid costly redesign of the building plans in reaction to falling market lease rates and conditions, (2) continue a pre-leasing effort, (3) explore all options with the Agency and its contractors to reduce the cost of the building, (4) look for any other reasonable options that may make sense for both parties, and (5) preserve the time and money invested over the past 4½ years.

Developer has invested nearly $1,300,000 in the building design alone. Developer has incurred nearly $4,000,000 in total project expenses to date. The City's and Agency's June 4th letter ignores their responsibilities and would result in Developer's loss of its investment and future profits, a result that Developer will not permit to happen. Developer would prefer not to argue about its rights under the law and DDA, but it will not hesitate to enforce those rights if the City and Agency leave it with no other choice.

Rest assured that Developer stands ready, willing and able to pursue this project with the cooperation of the City and Agency and it expects your cooperation as requested in our May 10, 2009 letter.

Sincerely,

Evan Mead Stone

cc: Leibold, McClendon & Mann, PC
Attn: Barbara Zeid Leibold, Esq.
Attn: Joy Heuser Otsuki, Esq.
23422 Mill Creek Drive, Suite 105
Laguna Hills CA 92653

Joe Susca / Agency

ATTACHMENT 3

Culver CITY

REDEVELOPMENT AGENCY

August 18, 2009

Via Email and FedEx

Dr. Jeffrey L. Rush
Rush Pacifica, LLC
12348 High Bluff Drive, Suite 100
San Diego, California 92130

Mr. Evan Stone, Esq.
Pacific Medical Buildings, L.P.
12348 High Bluff Drive, Suite 100
San Diego, CA 92130

Re: NOTICE OF DEFAULT and RIGHT TO TERMINATE UPON BOARD APPROVAL: Disposition and Development Agreement (9300 Culver Blvd.)

Gentlemen:

As you know, by letter dated June 4, 2009, the Culver City Redevelopment Agency ("Agency") notified Rush Pacifica, LLC ("Developer") of its default under the Disposition and Development Agreement (9300 Culver Blvd.), as amended (the "DDA"). For ease of reference, we hereinafter refer to our June 4, 2009 letter as the "Default Letter."

Pursuant to the Default Letter, Notice to Developer of a Default of the DDA by Developer was given. In accordance with Section 701 of the DDA, a 30-day right-to-cure period commenced upon June 10, 2009, the date of your receipt of the Default Letter. Those Defaults, among others, are as follows: (i) Developer failed to submit its Evidence of Financing by March 5, 2008, as required by the Schedule of Performance; (ii) Developer failed to meet the Agency's Conditions Precedent to Closing and accept conveyance of the Property by the Outside Closing Date (April 21, 2008), as required by the Schedule of Performance; (iii) Developer failed to commence construction by May 6, 2008, as required by the Schedule of Performance; and (iv) the Letter of Credit provided by Developer for the deposit on the purchase of the Property has expired in contravention of Section 301.2 of the DDA.

In response to the Default Letter, Evan Mead Stone prepared and forwarded a letter dated July 6, 2009 on behalf of the Developer (the "Response Letter"). With the

ATTACHMENT 3

exception of the Response Letter, the Agency has not received any communication from Developer regarding its Default under the DDA, nor has Developer notified Agency of any intention to cure its Default under the DDA. The Response Letter refers to Developer's letter of May 10, 2009, which requests a 24-month extension of the Schedule of Performance attached to the DDA. The Agency has previously considered and rejected this request.

Agency Comments on the Developer's Timeline:

In its Response Letter, Developer set forth a timeline of events with respect to the negotiation, execution and performance of the DDA. The Agency's comments on the timeline are indicated in underline below:

Date	Developer Timeline	Agency Comments
October 26, 2004	Developer and Agency signed their Exclusive Negotiation Agreement.	Agency signed the ENA after approving the ENA at a meeting on November 15, 2004.
December 2004	Developer engaged Gensler Architects to design the project, as Agency did not like the original design proposed prior to Developer selection.	
July 2005	City decided to move forward with the process of closing Washington Boulevard, which contributed significantly to the delay in signing of the DDA. This added 14 months to the original schedule.	On December 5, 2005 the Agency approved a 5-month extension to the ENA to accommodate the Washington Boulevard realignment. Also, the realignment was required in order to legally describe the property being conveyed pursuant to the DDA as the parcel boundaries changed as a result of the realignment. Developer agreed at the time that the realignment and resulting expansion of the plaza improved the quality and enhanced desirability of the Project to be constructed on

		the Property.
November 8, 2005	Developer received first draft of the DDA from the City's attorney.	Draft was received from the Agency's attorney.
February 2006	Developer and Agency agreed on the price of Parcel B following 19 months of negotiations.	
February 24, 2006	Developer agreed to cause an affiliate to supervise all construction management for the Town Plaza public works project without remuneration as an accommodation to the Agency and City. .	This is not correct. The fee paid for the construction management pursuant to the IIA is 3%, and Developer agreed to this amount
April 17, 2006	At Agency's request Developer agreed to hire Christine Deschaine of Lee Associates to handle retail leasing.	This request was made because the Developer was using an office space broker who was unsuccessful in attracting retailers to the Project.
February-to-October 2006	Developer continued pre-leasing activity and presented several retail and restaurant tenants to Agency. Agency rejected the majority of prospective tenants because, although creditworthy, they were not sufficiently unique and boutique to satisfy the subjective tastes of Agency personnel.	Developer agreed in the DDA to enter into leases with tenants that are "unique, high-end, and high-quality" Any rejection by Agency staff of a proposed tenant was entirely based on this previously agreed to criteria. Developer subsequently executed DDA Implementation Agreements regarding the tenant mix for the ground floor reiterating their continued commitment in meeting the Agency's goals in this regard.
October 16,	Developer and Agency finally signed DDA, two full	Simultaneously with the execution of the DDA,

2006	years after the ENA was signed. The last four months were dedicated to negotiating the Infrastructure Improvement Agreement (Town Plaza public works agreement), which arose due to Developer's acquiescence to the Agency's request for Developer to oversee the public works project.	Developer executed the original IIA on July 10, 2006. Subsequently, Developer attempted to renege on the IIA agreement. The Agency required the Developer to adhere to it. Therefore, the last four months delay in revising the IIA was entirely the result of the Developer's decision to fail to adhere to the original IIA and thus was in no way the fault of the Agency
November 17, 2006	Developer submitted preliminary drawings for review.	
December 20, 2006	City/Agency approved preliminary design.	Design approval is a City function. Only the height and massing were approved, as indicated in this excerpt from a letter dated December 20, 2006 from Thomas Gorham: *"The Planning Division has reviewed your preliminary plans received by us on November 17, 2006 for development of Parcel B. In comparing your proposal with the plans that were approved for ModificationNo. 1 to Site Plan Review, SPR P-1999044, we can make the determination that the proposal is in conformance with the 2001 approved plans in relation to building height and massing. As staff has discussed with you, we have not been given enough architectural detail (i.e. materials, colors, detailed*

		drawings/renderings) to make a determination on the architectural conformance. It is my understanding that this additional information will be submitted in January 2007."
January 15, 2007	Developer submitted schematic drawings.	This is the first submission from Developer that included detailed architectural features
February 7, 2007	In a meeting with the Agency and its sub-committee, the Agency rejected the revised exterior architectural detailing and colors, in spite of the fact that the Agency had previously approved the design.	Meeting was with the City, not the Agency, who rejected the revised exterior architectural detailing and colors. See above – the City had NOT previously approved the design – only the height and massing.
March 26, 2007	After working with City/Agency staff and obtaining staff's preliminary approval, Developer re-submitted exterior redesign.	
April 3, 2007	City notified Developer that it again rejected exterior color and asked for additional architectural changes to the exterior. City also notified Developer that the City Manager had determined that a formal approval by the Agency with public input was required.	Formal approval was required by the City, not the Agency. The approval was required because, as the Developer was aware, the architectural details of the building were not in substantial conformance with the 2001 approved plans as required by the DDA.
July 11, 2007	City Council approved project design drawings nearly eight months after Developer submitted its preliminary drawings and six months after submitting	Project design was approved by the City's Planning Commission. As noted above, the City only initially approved height and massing. The City is not a party to the DDA, and

	schematic drawings. The DDA Schedule of Performance requirements were ignored as the City had second thoughts about having initially approved Developer's design.	therefore is not bound by the Schedule of Performance in the DDA. Nonetheless, the Schedule of Performance was extended pursuant to the 2nd Amendment to the DDA as a result of this event.
July 25, 2007	Parties signed 2nd Amendment to DDA, extending the closing date to 4/21/09.	
August 28, 2007	Agency rejected Vitamin Shoppe as potential tenants. This was but one of several rejections of prospective tenants by Agency.	As noted above, the Developer agreed in the DDA to pursue tenants who were "unique, high-quality and high end." Vitamin Shoppe does not fit those criteria.
October 4, 2007	Resubmitted revised design development drawings to Agency.	Resubmittal was to the City, not the Agency
October 30, 2007	Agency approved revised drawings with staff comments.	The City, not the Agency, approved the drawings.
February 6, 2008	Developer timely submitted construction plans to Agency/City for permit approval as required by the revised schedule.	Construction Plans were submitted to the City only.
March 20, 2008		Agency, in a letter dated March 20, 2008, notified Developer that it had failed to meet the requirement in the DDA for submission of their Evidence of Financing due March 8, 2008 and other matters.

ATTACHMENT 3

May 30, 2008	Final Plan Check documents delivered to City.	
June 25, 2008	City approved plans for permit issuance. Process took 4½ months involving extensive plan check delays from the City. .	The Schedule of Performance required completion by April 18, 2008, so completion of this milestone was approximately 2 months late. Further, the Developer took 6 weeks to make requested changes to permit # 71642, and 5 weeks in other instances. It was the Developer, and not the City, that caused completion of this milestone to be 2 months late
September 2008	Lehman Brothers (controlling partner of The Culver Studios and a joint venture partner with Developer) withdrew as joint venture partner in early September and declared bankruptcy on September 15th.	
November 2008	PCCP (a minor partner in The Culver Studios) notified Developer that The Culver Studios would not fulfill the Lease it had signed for the entire 3rd floor. In spite of this, Developer continued to work with its lenders by agreeing to a much lower loan amount in order to move forward with the project.	
December 1, 2008		Agency approved a six month extension to the Schedule of Performance to the DDA. Developer refused to sign

		such an extension.
February 2009	Room & Board, Inc. withdrew as a tenant of approx. 39,614 sf.	

Agency Comments on Developer's Other Arguments:

1. The Agency did not waive any of its rights by negotiating with Developer.

In response to the four Defaults enumerated in the Default Letter (reiterated in the 2nd paragraph of this letter), Developer's counsel argues that, with respect to the first three Defaults, Agency waived any default of these provisions by continuing to negotiate with Developer following the expiration of those deadlines.

Both the law and the DDA are clear: failure to act (e.g. failure to give notice of a default) does not constitute a waiver. The DDA states in several places that failure to provide notice of default does *not* constitute a waiver.

For example, Section 701 of the DDA, entitled "Defaults - General" is unequivocal. It states: "Failure or delay in giving such notice shall not constitute a waiver of any Default, nor shall it change the time of Default."

Section 711 of the DDA is also very straightforward:

711. Inaction Not a Waiver of Default

> Any failures or delays by either Party in asserting any of its rights and remedies as to any Default shall not operate as a waiver of any Default or of any such rights or remedies, or deprive either such Party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies at any time.

Additionally, Section 820 of the DDA requires that any waiver be documented **in writing**:

> All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the Agency or the Developer, and all amendments hereto must be in writing and signed by the appropriate authorities of the Agency and the Developer.

The Agency has never provided Developer with a written waiver signed by the Agency, nor was the Agency and Developer successful in negotiating and signing an amendment to the DDA which would have extended the Schedule of Performance attached to the DDA. Therefore, the Agency has not waived any of the deadlines in the DDA.

Customary contract law practice when approaching a deadline in an effective agreement between two parties is that the party seeking to bind the other party seek a written, signed extension of any deadline prior to the expiration of such deadline. Developer has never made any written requests of the Agency to waive or extend the dates specified in the DDA. In fact, the Agency in certain instances urged the Developer to sign a written extension of the Schedule of Performance (which would have extended the dates noted in the 2nd paragraph of this letter), but the Developer refused to do so.

The Agency continued to negotiate in good faith beyond the deadlines noted in the 2nd paragraph of this letter because it anticipated that an amendment extending the deadlines acceptable to the Agency would eventually be completed. Such an amendment was never satisfactorily negotiated nor signed by the parties. However, as stated so unequivocally by the sections of the DDA cited above, Agency's failure to give notice of Developer's Default *for any reason* (whether it be continuance of negotiation, knowledge of Developer's activities, or other occurrences) does not, under any circumstances, constitute a waiver by the Agency.

<u>2. Developer expressly assumed the risk of an adverse economic environment</u>.

The Response Letter in several places argues that the Developer was unable to perform in accordance with the deadlines in the DDA due to the deterioration of the economy. Such events do not operate to delay any required performance by the Developer under the DDA.

Section 806 of the DDA states in part as follows:

> The lack of funding to complete the development of the Site shall not constitute grounds of Force Majeure delay pursuant to this Section 806. <u>Developer expressly assumes the risk of real estate market conditions, construction costs, interest rates, and other similar general economic circumstances that may make funding and/or construction of the Project difficult, more expensive, or infeasible, whether or not such events or causes are foreseeable as of the date of this Agreement.</u> Developer acknowledges and agrees that the provisions of this Section 806 shall not operate to excuse Developer from prompt payment of Purchase Price or other monies when due.

Further, pursuant to Section 806 of the DDA, Developer is required to provide Agency with written notice of Developer's intent to invoke a Force Majeure event under the DDA.

Section 806 states in part as follows: *"provided, however, that the Party claiming the existence of a Force Majeure delay and an extension of its obligation to perform shall notify the other Party in writing of the nature of the matter causing the delay within thirty (30) days from the occurrence thereof."*

Agency has never received a written notice from Developer invoking the Force Majeure section of the DDA, and Developer expressly assumed the risk of an adverse economic environment.

3. Developer fails to distinguish between the Agency and the City as separate legal entities.

The Response Letter cites various instances where it alleges that the Agency delayed design approvals and drawings. The City is not bound by the terms of the DDA. The Agency is a party to the DDA, and not the City, and it is the City that is responsible for processing compliance with pre-approved building design and exterior architecture. The Agency is not legally responsible for the actions of the City, and the Developer is bound by the deadlines to which it agreed in the DDA.

4. Regardless of whether or not the Developer believes that the Letter of Credit ("LOC") serves a valid purpose, the Developer agreed to provide the Agency with the LOC, and has since failed to renew it.

Such failure constitutes a Default under the DDA. Though the Developer argues that the LOC *"serves no purpose other than to show good faith and Developer's financial abilities,"* those two criteria are consideration that the Agency bargained for in signing the DDA. The Developer signed a binding agreement when it signed the DDA, and refusing to abide by its terms constitutes a Default regardless as to whether the Developer has changed its mind about the agreements it once made.

Further Comments:

The Agency understands that Developer has committed resources to the Project. Developer acknowledges in its Response Letter that the Agency continued to negotiate in good faith beyond the deadlines set forth in the DDA. As stated above, the Agency's failure to notify Developer of its Defaults under the DDA while the Agency and Developer continued to negotiate does not constitute a waiver by the Agency. Developer unequivocally assumed the risk of any adverse economic conditions when it signed the DDA. Though Developer cites a number of reasons as to why it has not performed under the DDA, none of those reasons change the fact that the Developer has failed to perform its obligations under the DDA and is therefore in Default under the DDA.

The Agency hereby notifies Developer that the 30-day right-to-cure period which commenced upon June 10, 2009 has expired without Developer tendering a cure for the Defaults described in the Default Letter.

Please contact the undersigned if you desire to attempt to negotiate a termination of the DDA satisfactory to both parties. In the absence of the parties coming to an agreement to the termination within thirty calendar days of this letter, the Agency will pursue its options as a result of the Developer's failure to cure the defaults, which such actions may include termination of the DDA.

Sincerely,

CULVER CITY REDEVELOPMENT AGENCY,
a public body, corporate and politic

By: Sol Blumenfeld
Its: Assistant Executive Director

cc: Mark Scott, Executive Director
Todd Tipton, Redevelopment Administrator
Joe Susca, Redevelopment Project Manager
Murray O. Kane, Esq., Kane Ballmer & Berkman
Greg Nelson, Senior Vice President, Pacific Medical Buildings
Barbara Zeid Leibold, Esq., Leibold, McClendon and Mann
Joy Heuser Otsuki, Esq., Leibold McClendon and Mann

ATTACHMENT 4

Culver CITY

REDEVELOPMENT AGENCY

December 8, 2009

Via Email and FedEx

Dr. Jeffrey L. Rush
Rush Pacifica, LLC
12348 High Bluff Drive, Suite 100
San Diego, CA 92130

Evan Stone, Esq.
Pacific Medical Buildings, L.P.
12348 High Bluff Drive, Suite 100
San Diego, CA 92130

Re: Disposition and Development Agreement (9300 Culver Blvd.) and Infrastructure Improvement Agreement

Gentlemen:

Reference is made to that certain Disposition and Development Agreement (9300 Culver Blvd.), dated for identification purposes only as of October 16, 2006, by and between the Culver City Redevelopment Agency, a public body, corporate and politic (the "Agency"), and Rush Pacifica, LLC, a California limited liability company (the "Developer"), as amended by Amendment Nos. 1 and 2 thereto (collectively, the "DDA"). Capitalized terms used but not defined in this letter shall have the meaning given in the DDA.

In a letter dated June 4, 2009, the Agency notified you of your default(s) under the DDA (the "Default Letter"). In accordance with Section 701 of the DDA, a 30-day right-to-cure period commenced upon your receipt of that letter.

Thank you for taking the time to meet with us on September 15, 2009 to discuss the Default Letter and various matters related thereto. Unfortunately, the Agency Board did not provide Agency staff with any negotiation instructions at its meeting on November 30, 2009. As a result, the Agency will consider termination of the DDA and the Infrastructure Improvement Agreement (the "IIA") in open session at its meeting at 7:00 pm on December 14, 2009 in the Mike Balkman Council Chambers located at City Hall; 9770 Culver Boulevard in Culver City. You are welcome to attend that meeting if you so desire.

ATTACHMENT 4

In preparation for that meeting, Agency staff has prepared a staff report for consideration by the Agency Board, a copy of which is attached for your records. Also enclosed as attachments to the staff report are (i) the proposed Agency Resolution terminating the DDA, and (ii) the proposed letters of termination of the DDA and IIA to be considered by the Agency Board.

If you have any questions, you may contact the undersigned.

Sincerely,

CULVER CITY REDEVELOPMENT AGENCY, a public body, corporate and politic

By: Sol Blumenfeld
Its: Assistant Executive Director

Enclosures

cc: Mark Scott, Executive Director
Todd Tipton, Redevelopment Administrator
Joe Susca, Redevelopment Project Manager
Murray O. Kane, Esq., Kane Ballmer & Berkman
Greg Nelson, Senior Vice President, Pacific Medical Buildings
Barbara Zeid Leibold, Esq., Leibold, McClendon and Mann
Joy Heuser Otsuki, Esq., Leibold, McClendon and Mann

ATTACHMENT 5

To be considered by Agency Board December 14, 2009

Culver CITY
REDEVELOPMENT AGENCY

December 15, 2009

Via Email and FedEx

Dr. Jeffrey L. Rush
Rush Pacifica, LLC
12348 High Bluff Drive, Suite 100
San Diego, CA 92130

Evan Stone, Esq.
Pacific Medical Buildings, L.P.
12348 High Bluff Drive, Suite 100
San Diego, CA 92130

Re: NOTICE OF TERMINATION: Disposition and Development Agreement (9300 Culver Blvd.)

Gentlemen:

Reference is made to that certain Disposition and Development Agreement (9300 Culver Blvd.), dated for identification purposes only as of October 16, 2006, by and between the Culver City Redevelopment Agency, a public body, corporate and politic (the "Agency"), and Rush Pacifica, LLC, a California limited liability company (the "Developer"), as amended by Amendment Nos. 1 and 2 thereto (collectively, the "DDA"). Capitalized terms used but not defined in this letter shall have the meaning given in the DDA.

In a letter dated June 4, 2009, the Agency notified you of your default(s) under the DDA (the "Default Letter"). In accordance with Section 701 of the DDA, a 30-day right-to-cure period commenced upon your receipt of that letter. No cure has been tendered to date, resulting in an Event of Default under the DDA.

Further, the Default Letter notified you that, pursuant to Section 704 of the DDA, the Agency has additional rights to terminate the DDA as set forth therein.

ATTACHMENT 5

At its meeting at 7:00 pm on December 14, 2009, the Agency Board voted to terminate the DDA. This letter acts as Notice to the Developer of Termination of the DDA by the Agency pursuant to Section 701 of the DDA. From this date forward, the DDA is hereby terminated.

If you have any questions, you may contact the undersigned.

Sincerely,

CULVER CITY REDEVELOPMENT AGENCY, a public body, corporate and politic

DRAFT

By: Sol Blumenfeld
Its: Assistant Executive Director

cc: Mark Scott, Executive Director
Todd Tipton, Redevelopment Administrator
Joe Susca, Redevelopment Project Manager
Murray O. Kane, Esq., Kane Ballmer & Berkman
Greg Nelson, Senior Vice President, Pacific Medical Buildings
Barbara Zeid Leibold, Esq., Leibold, McClendon and Mann
Joy Heuser Otsuki, Esq., Leibold, McClendon and Mann

ATTACHMENT 6

<u>To be considered</u>
<u>by Agency Board</u>
<u>December 14, 2009</u>

Culver CITY
REDEVELOPMENT AGENCY

December 15, 2009

<u>Via Email and FedEx</u>

Dr. Jeffrey L. Rush, President
Rush Pacifica, Inc.
12348 High Bluff Drive, Suite 100
San Diego, California 92130

Evan Stone, Esq.
Pacific Medical Buildings, L.P.
12348 High Bluff Drive, Suite 100
San Diego, CA 92130

Re: NOTICE OF TERMINATION: Infrastructure Improvement Agreement

Gentlemen:

The Culver City Redevelopment Agency**,** a public body, corporate and politic (the "Agency") and Rush Pacifica Inc., a California corporation (the "Developer") have previously entered into that certain Infrastructure Improvement Agreement (the "Agreement") dated for identification purposes as of October 16, 2006. All capitalized terms not defined herein shall have the meaning set forth in the Agreement.

Pursuant to Section 6.10 of the Agreement, the Agreement may be terminated for convenience in accordance with Section 9.1 of the Construction Manager Obligations. Section 9.1.2 of the Construction Manager Obligations states that the Agency may, at any time, for any reason and upon thirty days' (30 days') written notice, terminate the Agreement.

At its meeting at 7:00 pm on December 14, 2009, the Agency Board voted to terminate the Agreement. This letter acts as Notice to the Developer of Termination of the Agreement by

ATTACHMENT 6

the Agency pursuant to Section 6.10 of the Agreement. From such date as is 30 days from your receipt of this letter, the Agreement is hereby terminated.

If you have any questions, you may contact the undersigned.

Sincerely,

CULVER CITY REDEVELOPMENT AGENCY, a public body, corporate and politic

DRAFT

By: Sol Blumenfeld
Its: Assistant Executive Director

cc: Mark Scott, Executive Director
Todd Tipton, Redevelopment Administrator
Joe Susca, Redevelopment Project Manager
Murray O. Kane, Esq., Kane Ballmer & Berkman
Greg Nelson, Senior Vice President, Pacific Medical Buildings
Barbara Zeid Leibold, Esq., Leibold, McClendon and Mann
Joy Heuser Otsuki, Esq., Leibold, McClendon and Mann

ATTACHMENT 7

CULVER CITY REDEVELOPMENT AGENCY

RESOLUTION NO._______

A RESOLUTION OF THE CULVER CITY REDEVELOPMENT AGENCY, MAKING CERTAIN FINDINGS AND DETERMINATIONS REGARDING THE TERMINATION OF THE DISPOSITION AND DEVELOPMENT AGREEMENT ("DDA") WITH RUSH PACIFICA, LLC (the "Developer") PERTAINING TO THE SALE OF 9300 CULVER BOULEVARD

WHEREAS, the California Community Redevelopment Law (California Health & Safety Code sections 33000 *et seq.*)(the "CRL") vests the Culver City Redevelopment Agency with powers to implement the Redevelopment Plan ("Redevelopment Plan") for the Culver City Redevelopment Project Area (the "Project Area"), approved and adopted by the City Council of the City of Culver City on November 23, 1998 by Ordinance No. 98-015 and amended on January 12, 2004; and

WHEREAS, Section 33437 of the CRL requires the Agency to obligate purchasers of property acquired in the Project Area to begin the redevelopment within a period of time which the Agency fixes as reasonable; and

WHEREAS, the Agency is the owner of that certain real property with legal address of 9300 Culver Boulevard, in the City of Culver City, California ("Property"); and

WHEREAS, the Property is located within the Project Area; and

WHEREAS, the Agency and Rush Pacifica, LLC, a California limited liability company ("Developer") entered into that certain Disposition and Development Agreement, dated for referenced purposes as October 16, 2006, and thereafter amended by Amendment Nos. 1 and 2 (collectively, the DDA"); and

WHEREAS, the DDA contemplates sale of the Property to the Developer and the redevelopment of the Property within a specific time, as agreed to by the Agency and Developer in the DDA; and

WHEREAS, Section 701 of the DDA authorizes the Agency to terminate the DDA, based upon Developer's default of any terms and conditions in the DDA ("Default"), subject to Agency's advance notice of the Default ("Notice of Default") to Developer and Developer's right to cure such Default within thirty (30) days of the notice ("Cure Period"); and

WHEREAS, Section 704 of the DDA further provides that the Agency has the right to terminate the DDA as a result of Developer's failure to cure a Default during the Cure Period and under certain other circumstances as described therein; and

ATTACHMENT 7

WHEREAS, the Agency provided Developer with a Notice of Default, dated June 4, 2009, based upon certain events and circumstances of Default more particularly described in the Notice of Default, which is available as a public record in the offices of the Agency at 9770 Culver Boulevard, in the City of Culver City, California, and which is incorporated into this Resolution by this reference as though fully set forth herein; and

WHEREAS, Developer has failed to cure said events and circumstances of Default described in the Notice of Default within the Cure Period, resulting in an Event of Default as described in Section 701 of the DDA; and

WHEREAS, to facilitate the redevelopment of the Property and fulfill the Agency's duties under the CRL, the Agency now seeks to utilize the termination provisions of the DDA to fulfill its obligations pertaining to the Redevelopment Plan; and

WHEREAS, Agency has reviewed and considered a draft notice of termination for the Agency's termination of the DDA ("Notice of Termination");

NOW, THEREFORE, the Culver City Redevelopment Agency, hereby resolves as follows:

1. The Agency hereby finds and determines that all recitals set forth in this resolution are true and correct and incorporated herein in full by this reference.

2. The Agency hereby finds and determines, based upon (i) the facts and circumstances presented in the Notice of Default and (ii) Developer's failure to cure said Default that the conditions for termination of the DDA have been satisfied and termination is necessary and warranted to ensure the Agency's ability to fulfill its duties under the CRL.

3. The Executive Director, or designee, is authorized to execute and deliver the Notice of Termination on behalf of the Agency to Rush Pacifica LLC, forthwith.

ATTACHMENT 7

PASSED AND ADOPTED THIS ________________ DAY OF ______________, 2009, BY THE FOLLOWING VOTE:

AYES:
NOES:
ABSENT:
ABSTAIN:

CULVER CITY REDEVELOPMENT AGENCY

____

ATTEST:

____
Agency Secretary

APPROVED AS TO FORM:

KANE BALLMER & BERKMAN

____
Murray O. Kane,
General Counsel to the Agency