
Gross Lease Agreement

Between

Gateway Chula Vista LLC, a California Limited Liability Company as Landlord

and

San Joaquin Valley College

as Tenant

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EXHIBITS

| |
|--|
| “A” Legal Description |
| “B-1” Site Plan |
| “B-2” Premises Plan |
| “B-3” Floor Plan |
| “C-1” Office Suite Condition of Premises at Delivery |
| “C-2” Building Standards for Office Tenant Improvements |
| “C-3” Tenant Work Letter |
| “D” Rules and Regulations For Project/Building |
| “E” Sign Criteria |
| “F” Hazardous Materials Warning And Disclaimer/ ADA Disclosure |
| “G” Reserved and Designated Parking |
| “H” Option To Renew |

THIS DRAFT LEASE IS PROVIDED FOR INFORMATION ONLY. THE LANDLORD AND ITS OFFICERS, MEMBERS, AGENTS AND AFFILIATES ARE NOT OBLIGATED IN ANY MANNER BY VIRTUE OF YOUR RECEIPT OF THIS INFORMATION. ALL TERMS AND CONDITIONS OF ANY ACTUAL AGREEMENT REMAIN NEGOTIABLE UNTIL THE EXECUTION OF A WRITTEN AGREEMENT BY THE PARTIES.

LEASE

In consideration of the rents and covenants set forth in this Lease, Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the premises described below, subject to all the provisions of this Lease.

SUMMARY OF BASIC LEASE PROVISIONS

EFFECTIVE DATE: _____

LANDLORD: _____

TENANT: _____

TENANT'S GUARANTOR: _____

BUILDING ADDRESS (Section 1.1): **333 H Street, Chula Vista CA 91910**

NUMBER OF RENTABLE SQUARE FEET IN BUILDING: _____; IN PROJECT: _____ APPROXIMATELY _____ RENTABLE SQUARE FEET OF SPACE AND _____ USABLE SQUARE FEET OF SPACE LOCATED ON THE _____ FLOOR(S), AS SET FORTH IN "**Exhibit B-2**," KNOWN AS SUITE NO. _____ ("**Premises**")

SIGNAGE (Section 18.4, "**Exhibit E**"): _____

PARKING (Section 8.5): Tenant shall receive _____ parking passes.

COMMENCEMENT DATE:(**date**)

RENT COMMENCEMENT DATE: (**date, should be same as commencement date**)

LEASE TERM (Section 2.1): _____

EXPIRATION DATE (Sections 2.1; 2.2): _____

BASE RENTAL RATE: _____

ANNUAL ADJUSTMENT TO BASE RENTAL RATE: (Section 3.2.1) On the first anniversary of the Commencement Date and on each anniversary thereafter, the Base Rental Rate shall be adjusted by **4%** (four percent).

UTILITIES: Tenant shall pay Premise Utilities pursuant Article XV Section 15.2

ADDITIONAL RENT: (ARTICLE IV)

(a) Base Year: The calendar year of 2012

(b) Tenant's Share: (Section 4.3)

TENANT IMPROVEMENT ALLOWANCE Lessor shall provide up to \$ _____ per Usable Square foot as further described in Exhibit "C-3"

PERMITTED USE OF PREMISES (Section 7.1):

SECURITY DEPOSIT (Section 18.6): _____

PREPAID RENT: _____(First month's rent and Last month's rental deposit)

LANDLORD'S BROKER (Section 18.14): _____

TENANT'S BROKER (Section 18.14): _____

ADDRESS FOR NOTICES (Section 18.11):

To Landlord: _____
_____, Ste. _____
Chula Vista, CA 91910
Fax: _____

To Tenant: SJVC
801 S. Akers St.,
Visalia, CA 93277
Fax: 559 734-9048

The Summary of Basic Lease Provisions are an integral part of this Lease and each reference in this Lease to any of the Summary of Basic Lease Provisions shall be construed to incorporate all of the terms provided under each such Summary of Basic Lease Provision. In the event of any conflict between any Summary of Basic Lease Provision and the balance of this Lease, the balance of this Lease shall control. References to specific Sections are for convenience only and designate some of the Sections where references to the particular Summary of Basic Lease Provisions appear.

LANDLORD:

By:

Its.:

By:

Its.:

By: _____

By: _____

TENANT:

San Joaquin Valley College

By: _____

Name: _____

Its: _____

ARTICLE I. THE PREMISES:

1.1 Description. Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, within the _____ project located at _____ Chula Vista, California (the "Project" or "Real Property"), premises within the _____ building (the "Building") (collectively, the Project and the Building are sometimes referred to herein as the "Project/Building." The Project and the Building are more fully described in the attached "**Exhibit A.**" Tenant's premises (the "Premises") consist of the leased area set forth in the Summary of Basic Lease Provisions. The location of the Premises within the Building is shown by cross-hatching on the plot plan of the Project/Building, which plot plan is attached to this Lease as "**Exhibit B-2.**"

1.2 Right of Entry. Landlord shall have the right to enter the Premises to inspect the Premises, to prevent waste, to clean the Premises if required of Landlord under this Lease, and to repair the Premises (if Tenant fails to do so) without abatement of rent, providing that the business of Tenant shall not be interfered with unreasonably. Except in emergencies and in cases where Landlord is entering as a patron, Landlord shall give reasonable notice to Tenant of Landlord's intention to enter the Premises to inspect, repair, and to prevent waste.

1.3 Tenants of Project/Building. Landlord reserves the absolute right to enter into such leases for the Project/Building as Landlord determines, in its sole discretion.

1.4 Description of Premises. For purposes of this Lease: (1) "Rentable Area" shall be calculated pursuant to the _____ Standard Method For Measuring Floor Area in Office Buildings; (2) "Rentable Square Feet" and "Rentable Footage" shall have the same meaning as the term "Rentable Area"; and (3) "Usable Square Feet" and "Usable Square Footage" shall have the meaning as the term "Usable Area." The Rentable Area of the Premises and the Building/Project is subject to verification from time to time by Landlord's consultant(s). That verification shall be made in accordance with this Section 1.4. Tenant's consultants may consult with Landlord's consultant(s) regarding that verification. The determination of Landlord's consultant(s), however, shall be conclusive and binding on the parties. If Landlord's consultant(s) determine that the Rentable Area of the Premises or the Building/Project is different from that stated in this Lease, all rent that is based on that incorrect amount shall be modified in accordance with that determination. If that determination is made, it shall be confirmed in writing by Landlord to Tenant. Landlord believes the Premises consist of the approximate number of square feet set forth in the Summary of Basic Lease Provisions; however, Landlord has not actually measured the Premises. It is understood and agreed that the square footage set forth herein is an approximation which Landlord and Tenant agree is reasonable and shall not be subject to revision or dispute except in connection with an actual change in the size of the Premises pursuant to an agreement in writing between Landlord and Tenant.

1.5 Substitution of Other Premises. Landlord shall have the right to relocate Tenant to other space in the Building comparable to the Premises, and all terms of this Lease shall apply to the new space with equal force. If Landlord decides to relocate Tenant, Landlord shall:

- (a) Give Tenant prior notice;
- (b) Provide Tenant at Landlord's expense with tenant improvements at least equal in quality to those in the Premises;
- (c) Move Tenant's effects at Landlord's expense to the new space at a time and in a manner that will inconvenience Tenant as little as possible.

The parties shall execute an amendment to this Lease stating the relocation of the Premises.

ARTICLE II. TERM AND POSSESSION:

2.1 Term. The term of this Lease shall begin on the Commencement Date and shall terminate on the Expiration Date (as specified in the "Commencement Date" and "Expiration Date" of the Summary of Basic Lease Provisions).

2.2 Commencement Date. The Commencement Date shall be the date certain specified in the Summary of Basic Lease Provisions as the Commencement Date. The Rent Commencement Date shall be same as the Commencement Date.

2.3 Acceptance of Premises: Tenant acknowledges that is has inspected the Premises and accepts the Premises "AS IS, Where IS" in its present condition and that Landlord has made no representation or warranty regarding the condition of the Premises or the Project/Building except as specifically stated in this Lease. By taking possession of the Premises and causing its improvements to be commenced, Tenant shall be deemed to have (a) accepted the Premises, (b) acknowledged that the same are in the condition called for herein, and (c) agreed that the obligations of Landlord imposed herein have been fully performed.

2.4 Possession: Following Tenant and Landlord executing this Lease, and after Tenant has paid Landlord the Security Deposit, the first month's rent, the last month's rent, and any other payments required under this Lease to be paid prior to or concurrent with the Commencement Date, Tenant shall be given notice (the "Delivery Notice") stating that it can take possession of the Premises for the purpose of fixturing the Premises. After receipt of the Delivery Notice, Tenant shall promptly commence the installation of fixtures and equipment and all other "Tenant's Work" attached hereto as "**Exhibit C-2**" and Tenant shall diligently pursue such installation and work to completion.

If Landlord is unable to deliver possession of the Premises to Tenant on or before the project estimated delivery date, Landlord shall not be subject to any liability for its failure to do so. This failure shall not affect the validity of this Lease or the obligations of Tenant under it.

On or before Tenant takes possession of the Premises, Tenant shall deliver certificates of insurance required by Article XII. Tenant's time to complete Tenant's Work commences on the date it is given possession of the Premises.

Tenant shall take possession of the Premises only after delivery of the certificates of insurance required hereunder.

As provided for in Paragraph 2.3 above, Tenant agrees to take the Premises in its "**as is, where is**" condition. Tenant waives any right or claim against the Landlord for any cause directly or indirectly arising out of the condition of the Premises and the Project/Building appurtenances thereto, the improvements thereon and the equipment thereof. Tenant shall save and hold harmless Landlord from liability as provided in this Lease. Landlord shall not be liable for any latent or patent defects therein.

Prior to commencement of Tenant's Work, Tenant shall notify Landlord in writing of the date Tenant will commence fixturing. Tenant shall commence fixturing Tenant's Work promptly upon possession of the Premises by Tenant and shall diligently pursue such construction to completion. From the date of the Delivery Notice, Tenant shall complete fixturing within the time period described in the Summary of Basic Lease Provisions under the Rent Commencement Date.

Before commencing any alteration or repair which involves the automatic fire sprinkler system, if any, servicing the Premises and/or the Project/Building, Tenant shall notify Landlord and submit to Landlord for approval Fire Marshal Approved fire sprinkler drawings (which have previously been approved by all applicable governmental authorities) certifying that such work does not jeopardize the rating of the system. Tenant shall be responsible for all interruptions to fire monitoring systems and shall indemnify, protect, defend and hold Landlord harmless from any and liabilities, costs and expenses associated with such work.

ARTICLE III. RENT:

3.1 Definition of "Base Rent"-No Setoff. Tenant shall pay to Landlord base rent (Base Rent) in equal monthly installments as set forth in Summary of Basic Lease Provisions in advance on or before the first day of every calendar month during the Lease Term, without any setoff or deduction. Payment shall be made at the management office of the Building or at any other place that Landlord may from time to time designate in writing. Payment must be in United

States dollars, either in the form of a check (drawn on a bank located in the State of California) or via electronically transmitted funds.

3.2 Initial Payment: Proration. The Base Rent for the first full calendar month of the Lease Term shall be paid when Tenant executes this Lease. If any payment date (including the Lease Commencement Date) for “Rent,” as defined in section 3.1, falls on a day other than the first day of that calendar month, or if any Rent payment is for a period shorter than one calendar month, the Rent for that fractional calendar month shall accrue on a daily basis for each day of that fractional month at a daily rate equal to 1/365 of the total annual Rent. All other payments or adjustments that are required to be made under the terms of this Lease and that require proration on a time basis shall be prorated on the same basis.

3.2.1 Annual Adjustment to Base Rental Rate. On the first anniversary of the Commencement Date and on each anniversary thereafter, the Base Rental Rate shall be adjusted by **4% (four percent)**.

3.3 Application of Payments. All payments received by Landlord from Tenant shall be applied to the oldest payment obligation owed by Tenant to Landlord. No designation by Tenant, either in a separate writing or on a check or money order, shall modify this clause or have any force or effect.

3.4 Place of Payments. Tenant agrees to pay the rental and all other payments to be made to Landlord under this Lease at the address specified in the Summary of Basic Lease Provisions, or to such other person and/or at such other place as Landlord may from time to time designate to Tenant in writing.

3.5 Late Payments.

(a) Tenant hereby acknowledges that late payment by Tenant of any rent, additional rent or other amounts due under this Lease will cause Landlord to incur costs not contemplated by this Lease, the exact amount of such costs being extremely difficult and impracticable to ascertain. Accordingly, if any rent, additional rent or any other amounts due from Tenant is not actually received by Landlord within ten (10) calendar days after it is due, Tenant shall pay to Landlord an additional amount equal to ten percent (10%) of such overdue payment, which amount shall immediately become due to Landlord.

(b) All delinquent rent, additional rent or other amounts due to Landlord, plus the late charge(s), shall bear interest as provided for in Section 18.7. This late charge shall be deemed “additional rent” within this Lease.

(c) Any payment returned for insufficient funds will be considered a late payment and subject to the late charge as provided in this Section 3.5.

(d) Tenant’s payment of rent after the due date more than two (2) times in any twelve (12) month period shall constitute a default under the terms of this Lease entitling Landlord to exercise any and all rights under the Lease and at law available to Landlord. Specifically, Landlord may, in its sole discretion, require Tenant to pay rent three (3) months in advance for the remaining term of the Lease. If Tenant’s payment of rent is late more than four (4) times in any twelve (12) month period, Landlord may terminate the Lease by giving to Tenant a three (3) day notice to quit and immediately thereafter exercise the remedies available to Landlord for unlawful detainers and breach of lease, and any other remedies available to Landlord, under California law and this Lease.

3.6 Rent Defined; Set-Off. All rent payments due Landlord under this Lease shall be paid on their specified due date, without demand, set-off or deduction. All monetary charges of any kind, including without limitation Base Rent, Additional Rent, late charges, etc., under or resulting from this Lease payable by Tenant to Landlord, shall collectively and individually, in general, be referred to as and, for purposes of California law, be deemed “rent.”

3.7 Abated Rent. In the event Landlord has elected to abate any requirement by Tenant to pay Base Rent, during such abatement period Tenant shall still be responsible for all of Tenant’s other monetary obligations under the Lease, including, without limitation, all Operating Expenses and any expenses relative to Tenant’s use and occupancy of the Premises.

In the event of a default by Tenant under the terms of this Lease which results in early termination pursuant to the provisions of Article 16 of this Lease, then as a part of the recovery permitted under Article 16, Landlord shall be entitled to recover the entire amount of Base Rent which was abated under the provisions of this Section plus a prorated amount of any commissions paid to Brokers and costs incurred by Landlord to improve the Premises. Any such amount that Landlord is entitled to recover hereinabove shall become immediately due and payable as unpaid rent, which had been earned at the date of termination.

3.8 Application of Payments. All payments received by Landlord from Tenant shall be applied in the following order (1) to late charges, (2) to attorneys' fees and costs and (3) to other rent. No designation by Tenant, either in a separate writing or on a check or money order, shall modify this clause or have any force or effect.

ARTICLE IV. ADDITIONAL RENT

4.1 Additional Rent. In addition to paying the Base Rent specified in Article 3, Tenant shall pay, as additional rent, Tenant's Share of the annual Direct Expenses (as defined in subsections 4.2(b) and 4.2(f)) that are in excess of the amount of Direct Expenses applicable to the Base Year (as defined in subsection 4.2(a)). That additional rent, together with other amounts of any kind (other than Base Rent) payable by Tenant to Landlord under the terms of this Lease, shall be collectively referred to in this Lease as "Additional Rent." All amounts due under this Article 4 as Additional Rent are payable for the same periods and in the same manner, time, and place as the Base Rent. Without limitation on other obligations of Tenant that survive the expiration of the Lease Term, Tenant's obligations to pay the Additional Rent provided for in this Article 4 survive the expiration of the Lease Term.

4.2 Definitions. The following definitions apply in this Article.

(a) Base Year. "Base Year" means the period stated in Summary of Basic Lease Provision under "Additional Rent."

(b) Direct Expenses. "Direct Expenses," means Operating Expenses plus Tax Expenses.

(c) Expense Year. "Expense Year" means each calendar year in which any portion of the Lease Term falls, through and including the calendar year in which the Lease Term expires.

(d) Operating Expenses. "Operating Expenses" means all expenses, costs, and amounts of every kind that Landlord pays or incurs during any Expense Year because of or in connection with the ownership, operation, management, maintenance, repair, replacement, or restoration of the Real Property.

(1) Examples of Operating Expenses. The definition of "Operating Expenses" includes, without limitation, any amounts paid or incurred for:

(i) The cost of supplying any utilities.

(ii) The cost of operating, managing, maintaining, and repairing the following systems: utility, mechanical, sanitary, storm drainage, escalator, and elevator.

(iii) The cost of supplies and tools and of equipment, maintenance, and service contracts in connection with those systems.

(iv) The cost of licenses, certificates, permits, and inspections.

(v) The cost of contesting the validity or applicability of any government enactments that may affect the Operating Expenses.

(vi) The costs incurred in connection with the implementation and operation of a building system management and security program or similar program.

(vii) The cost of insurance carried by Landlord, in amounts reasonably determined by Landlord.

(viii) Fees, charges, and other costs including management fees (or amounts in lieu of such fees), consulting fees, legal fees, and accounting fees of all persons engaged by Landlord or otherwise reasonably incurred by Landlord in connection with the operation, management, maintenance, and repair of the Real Property.

(ix) The cost of parking area maintenance, repair, and restoration, including resurfacing, repainting, restriping, and cleaning.

(x) Wages, salaries, and other compensation and benefits of all persons engaged in the operation, maintenance, or security of the Building plus employer's Social Security taxes, unemployment taxes, insurance, and any other taxes imposed on Landlord that may be levied on those wages, salaries, and other compensation and benefits. If any of Landlord's employees provide services for more than one building of Landlord, only the prorated portion of those employees' wages, salaries, other compensation and benefits, and taxes reflecting the percentage of their working time devoted to the Real Property shall be included in Operating Expenses.

(xi) Payments under any easement, license, operating agreement, declaration, restrictive covenant, or instrument relating to the sharing of costs by the Building.

(xii) Amortization (including interest on the unamortized cost at a rate equal to the floating commercial loan rate announced from time to time by Wall Street Journal Prime Rate as its prime rate plus two (2) percentage points per annum) of the cost of acquiring or renting personal property used in the maintenance, repair, and operation of the Building and Real Property.

(xiii) The cost of capital improvements or other costs incurred in connection with the Real Property that (1) are intended as a labor-saving device or to effect other economies in the maintenance or operation of all or part of the Real Property or (2) are required under any government law or regulation but that were not required in connection with the Real Property when permits for the construction of the Building were obtained. All permitted capital expenditures shall be amortized (including interest on the unamortized cost at the rate stated in subparagraph (1)) over their useful life, as reasonably determined by Landlord.

(2) Adjustment of Operating Expenses. Operating Expenses shall be adjusted as follows:

(i) Gross-Up Adjustment When Building Is Less Than Fully Occupied. If the occupancy of the Building during any part of any Expense Year (including the Base Year) is less than ninety-five percent (95%), Landlord shall make an appropriate adjustment of the variable components of Operating Expenses for that Expense Year, as reasonably determined by Landlord using sound accounting and management principles, to determine the amount of Operating Expenses that would have been incurred had the Building been ninety-five percent (95%) occupied. This amount shall be considered to have been the amount of Operating Expenses for that Expense Year. For purposes of this subsection 4.2(d)(2)(i), "variable components" include only those component expenses that are affected by variations in occupancy levels.

(ii) Adjustment When Landlord Does Not Furnish a Service to All Tenants. If, during any part of any Expense Year (including the Base Year), Landlord is not furnishing a particular service or work (the cost of which, if furnished by Landlord, would be included in Operating Expenses) to a tenant (other than Tenant) that has undertaken to perform such service or work in lieu of receiving it from Landlord, Operating Expenses for that Expense Year shall be considered to be increased by an amount equal to the additional Operating Expenses that Landlord would reasonably have incurred during this period if Landlord had furnished such service or work to that tenant.

(iii) Exclusions From Operating Expenses. Despite any other provision of subsection 4.2 (d), Operating Expenses shall not include:

(a) Depreciation, interest, or amortization on mortgages or ground lease payments, except as otherwise stated in this section 4.2.

(b) Legal fees incurred in negotiating and enforcing tenant leases.

(c) Real estate brokers' leasing commissions.

(d) Initial improvements or alterations to tenant spaces.

(e) The cost of providing any service directly to and paid directly by any tenant.

(f) Any costs expressly excluded from Operating Expenses elsewhere in this Lease.

(g) Costs of any items for which Landlord receives reimbursement from insurance proceeds or a third party. Insurance proceeds shall be excluded from Operating Expenses in the year in which they are received, except that any deductible amount under any insurance policy shall be included within Operating Expenses.

(h) Costs of capital improvements, except as otherwise stated in this section 4.2.

(e) Tax Expenses. "Tax Expenses" means all federal, state, county, or local government or municipal taxes, fees, charges, or other impositions of every kind (whether general, special, ordinary, or extraordinary) that are paid or incurred by Landlord during any Expense Year (without regard to any different fiscal year used by any government or municipal authority) because of or in connection with the ownership, leasing, and operation of the Real Property. These expenses include taxes, fees, and charges such as real property taxes, general and special assessments, transit taxes, leasehold taxes, and taxes based on the receipt of rent (including gross receipts or sales taxes applicable to the receipt of rent, unless required to be paid by Tenant); personal property taxes imposed on the fixtures, machinery, equipment, apparatus, systems, and equipment; appurtenances; furniture; and other personal property used in connection with the Building.

(1) Adjustment of Taxes. For purposes of this Lease, Tax Expenses shall be calculated as if the tenant improvements in the Building were fully constructed and the Real Property, the Building, and all tenant improvements in the Building were fully assessed for real estate tax purposes. Landlord specifically agrees that the gross-receipts component of Tax Expenses for the Base Year and each subsequent year shall be calculated as if the Building were one-hundred-percent (100%) occupied with rent-paying tenants. Accordingly, during the portion of any Expense Year occurring after the Base Year, Tax Expenses shall be considered to be increased appropriately.

(2) Included Tax Expenses. Tax Expenses shall include:

(i) Any assessment, tax, fee, levy, or charge in addition to, or in partial or total substitution of, any assessment, tax, fee, levy, or charge previously included within the definition of "real property tax." Tenant and Landlord acknowledge that Proposition 13 was adopted by the voters of the State of California in June 1978 and that assessments, taxes, fees, levies, and charges may be imposed by government agencies for services such as fire protection; street, sidewalk, and road maintenance; conservation; refuse removal; and other government services formerly provided without charge to property owners or occupants. In further recognition of the decrease in the level and quality of government services and amenities as a result of Proposition 13 (or as a result of any other restriction on real property taxes whether by law or by choice of the applicable legislative or assessing body), Tax Expenses shall also include any government or private assessments (or the Building's contribution toward a government or private cost-sharing agreement) for the purpose of augmenting or improving the quality of services and amenities normally provided by government agencies. Tenant and Landlord intend that all new and increased assessments, taxes,

fees, levies, and charges and all similar assessments, taxes, fees, levies, and charges be included within the definition of "Tax Expenses" for purposes of this Lease.

(ii) Any assessment, tax, fee, levy, or charge allocable to, or measured by, the area of the Premises or the rent payable under this Lease, including any gross income tax with respect to the receipt of that rent, or on or relating to the possession, leasing, operating, management, maintenance, alteration, repair, use, or occupancy by Tenant of the Premises or any portion of the Premises.

(iii) Any assessment, tax, fee, levy, or charge on this transaction or any document to which Tenant is a party, creating or transferring an interest or an estate in the Premises.

(iv) Any possessory taxes charged or levied in place of real property taxes.

(3) Contest Costs; Refunds. Any expenses incurred by Landlord in attempting to protest, reduce, or minimize Tax Expenses shall be included in Tax Expenses in the Expense Year in which those expenses are paid. Tax refunds shall be deducted from Tax Expenses. Such tax refunds shall be deducted from Tax Expenses in the Expense Year in which they are received by Landlord.

(4) Excluded Taxes. Despite any other provision of subsection 4.2(e) (except as provided in subsection 4.2(e)(2) or levied entirely or partially in lieu of Tax Expenses), the following shall be excluded from Tax Expenses:

(i) All excess profits taxes, franchise taxes, gift taxes, capital stock taxes, inheritance and succession taxes, estate taxes, federal and state income taxes, and other taxes applied or measured by Landlord's general or net income (as opposed to rents, receipts, or income attributable to operations at the Building);

(ii) Any items included as Operating Expenses;

and

(iii) Any items paid by Tenant under section 4.5.

(f) Tenant's Share. "Tenant's Share" means the percentage stated in Summary of Basic Lease Provision. Tenant's Share is calculated by multiplying the number of Rentable Square Feet of the Premises by 100 and dividing the product by the total Rentable Square Feet in the Building. If either the Premises or the Building is expanded or reduced, Tenant's Share shall be appropriately adjusted. Tenant's Share for the Expense Year in which that change occurs shall be determined on the basis of the number of days during the Expense Year in which each such Tenant's Share was in effect.

4.3 Calculation and Payment of Additional Rent. The Tenant's Share is determined by dividing the approximate Floor Area of the Premises by the total Floor Area that is rented or available for rent in the Project/Building. The Tenant's share of any Direct Expenses for any Expense Year shall be calculated and paid as follows:

(a) Calculation of Excess. If Tenant's Share of Direct Expenses for any Expense Year ending or beginning within the Lease Term exceeds Tenant's Share of the amount of Direct Expenses applicable to the Base Year, Tenant shall pay as Additional Rent to Landlord an amount equal to that excess ("Excess"), in the manner stated in subsection 4.3(b).

(b) Statement of Actual Direct Expenses and Payment by Tenant. Landlord shall endeavor to give to Tenant on or before the first day of April following the end of each Expense Year a statement ("Statement") stating the Direct Expenses incurred or accrued for that preceding Expense Year and indicating the amount, if any, of any Excess. On receipt of the Statement for each Expense Year ending during the Lease Term for which an Excess exists, Tenant shall pay, with its next installment of Base Rent due, the full amount of that Excess, less the amounts (if any) paid during that Expense Year as Estimated Excess (as defined in subsection 4.3(c)). Landlord's failure to furnish the Statement for any Expense Year in a timely manner shall not prejudice Landlord from enforcing its rights under this Article 4. Even if the Lease Term has expired and Tenant has vacated the Premises, if an Excess exists when the final determination is made of Tenant's Share of the Direct Expenses for the Expense Year in which

this Lease terminates, Tenant shall immediately pay to Landlord the amount calculated under subsection 4.3(a). The provisions of this subsection 4.3(b) shall survive the expiration or earlier termination of the Lease Term.

(c) Statement of Estimated Direct Expenses. Landlord shall give Tenant a yearly expense estimate statement ("Estimate Statement") stating:

(1) Landlord's reasonable estimate ("Estimate") of the total amount of Direct Expenses for the then-current Expense Year; and

(2) The estimated excess ("Estimated Excess"). The Estimated Excess shall be calculated by comparing estimated Direct Expenses (which shall be based on the Estimate) to the amount of Direct Expenses applicable to the Base Year. Landlord's failure to furnish the Estimate Statement for any Expense Year in a timely manner shall not preclude Landlord from enforcing its rights to collect any Estimated Excess under this Article 4. If an Estimated Excess is calculated for the then-current Expense Year, Tenant shall pay, with its next installment of Base Rent due, a fraction of that Estimated Excess for the then-current Expense Year (reduced by any amounts paid as provided in the last sentence of this subsection 4.3.c). The numerator of that fraction shall be the number of months that have elapsed in that current Expense Year (including the month of the payment), and the denominator shall be twelve (12). Until a new Estimate Statement is furnished, Tenant shall pay monthly, along with the monthly Base Rent installments, an amount equal to one twelfth (1/12th) of the total Estimated Excess stated in the previous Estimate Statement delivered by Landlord to Tenant.

4.4 Allocation of Direct Expenses. Despite any other provision of this Article 4, in the calculation of Direct Expenses for the Base Year:

(a) Direct Expenses shall not include any increase in Tax Expenses attributable to (1) special assessments, charges, costs, or fees; or (2) modifications or changes in government laws or regulations, including institution of a split tax roll; and

(b) Operating Expenses shall exclude market-wide labor-rate increases arising from extraordinary circumstances (such as boycotts and strikes).

4.5 Taxes and Other Charges for Which Tenant Is Directly Responsible. Tenant shall reimburse Landlord, on demand, as Additional Rent, for any taxes required to be paid by Landlord that are not already included in Tax Expenses, excluding state, local, and federal personal or corporate income taxes measured by the net income of Landlord from all sources and estate and inheritance taxes, regardless of whether such taxes are now customary or within the contemplation of the parties to this Lease, when those taxes are:

(a) Measured by or reasonably attributable to:

(1) The cost or value of Tenant's equipment, furniture, fixtures, and other personal property located in the Premises; or

(2) The cost or value of any leasehold improvements made in or to the Premises by or for Tenant (to the extent that the cost or value of those leasehold improvements exceeds the cost or value of a building-standard build-out, as determined by Landlord, regardless of whether title to those improvements is vested in Tenant or Landlord);

(b) Assessed on or related to the possession, leasing, operation, management, maintenance, alteration, repair, use, or occupancy by Tenant of:

(1) The Premises;

(2) Any portion of the Real Property; or

(3) The parking facility used by Tenant in connection with this Lease; or

(c) Assessed either on this transaction or on any document to which Tenant is a party that creates or transfers an interest or an estate in the Premises.

4.6 Landlord's Books and Records. If Tenant disputes the amount of Additional Rent stated in the Statement, Tenant may designate, within thirty (30) days after receipt of that Statement, an independent certified public accountant to inspect Landlord's records. Tenant is not entitled to request that inspection, however, if Tenant is then in default under this Lease. The accountant must be a member of a nationally and regionally recognized accounting firm and must not charge a fee based on the amount of Additional Rent that the accountant is able to save Tenant by the inspection. Tenant must give reasonable notice to Landlord of the request for inspection, and the inspection must be conducted in Landlord's offices at a reasonable time or times. If, after that inspection, Tenant still disputes the Additional Rent, a certification of the proper amount shall be made, at Tenant's expense, by Landlord's independent certified public accountant. That certification shall be final and conclusive.

4.7 Tenant's Audit of Operating Expenses. On Tenant's written request given not more than ninety (90) days after Tenant's receipt of a statement for a particular calendar year, and provided that Tenant is not then in default under this Lease beyond the applicable cure period provided in this Lease and that Tenant has paid all amounts required to be paid under the applicable Operating Expense Statement or Estimate Statement, then Landlord shall provide Tenant with an audited statement (the "Accountant's Statement") of the building direct expenses for that calendar year from Landlord's independent certified public accountants, and Landlord shall also furnish Tenant with such reasonable supporting documentation in connection with the building direct expenses as Tenant may reasonably request.

Landlord shall provide this information and the Accountant's Statement to Tenant within sixty (60) days after Tenant's written request for it. The Accountant's Statement shall contain sufficient detail to enable Tenant to verify that, in computing the building direct expenses payable by Tenant, Landlord has adhered to the terms of exclusions and inclusions for Building Direct Expenses, as set forth in this lease.

Within 15 days following Tenant's receipt of the Accountant's Statement, Tenant and Landlord shall concurrently be provided with any audit report prepared for Tenant in connection with Tenant's review of the building direct expenses, and Tenant shall advise Landlord if Tenant disputes the building direct expenses and/or Tenant's share of them as set forth in the statement for the applicable calendar year. Thereafter, if Landlord determines that an error has been made, Tenant's sole remedy shall be for the parties to make such appropriate payments or reimbursements, as the case may be (including interest on any such amount at the interest rate set forth in section 18.7 of this Lease) to each other as are determined to be owing, provided that any reimbursements payable by Landlord to Tenant may, at Landlord's option, instead be credited against the base rent next coming due under this Lease unless the lease term has expired, in which event Landlord shall refund the appropriate amount to Tenant.

Tenant shall keep any information gained from its review of Landlord's records confidential and shall not disclose it to any other party, except as required by law. If requested by Landlord, Tenant shall require its employees or agents reviewing Landlord's records to sign a confidentiality agreement as a condition of Landlord providing the Accountant's Statement to Tenant.

ARTICLE V. TENANT FINANCIAL INFORMATION:

5.1 Financial Statements. In addition to the financial information provided by Tenant upon the execution of this Lease, in the event of a default by Tenant hereunder, and until such default is cured, Tenant shall, within ten (10) days after written request from Landlord, furnish to Landlord: (a) Financial statements, including, without limitation, balance sheets, profit and loss statements and changes to financial condition, reflecting Tenant's current financial condition, in form requested by Landlord; and (b) Tenant's federal and state income tax returns pertaining to Tenant's business conducted upon the Premises for the period requested by Landlord, not to exceed three (3) years. In each instance that Landlord request Tenant to furnish financial statements, Tenant shall furnish to Landlord the financial statements of any member of

Tenant who or which holds more than a ten percent (10%) interest of Tenant. In addition, whether or not there is a default, Tenant shall promptly deliver to any lender designated by Landlord any financial or other statements required by such lender to facilitate any financing or refinancing of the Project/Building by Landlord.

5.2 Tenant's Warranty and Representation of Financial Condition. Tenant and its members, partners, shareholders or principals hereby warrant and represent that all applications and financial statements which are presented by Tenant to Landlord, now or in the future, are and will be true and accurate as of the date of submission of such documents.

ARTICLE VI. TAXES:

6.1 Definitions.

(a) As used herein, the term "real property taxes" shall include any form of real estate tax or assessment, and any license fee, rental tax or assessment, improvement bond or other levy or tax (other than income tax) imposed on the Landlord or Tenant with respect to the Premises, the Project/Building, the common areas, or their underlying realty, by any authority having the direct or indirect power to tax, including, without limitation, any city, state or federal government, or any school, agricultural, sanitary, fire, street, drainage or other improvement district. Real property taxes shall also include all local parking and improvement district taxes or assessments attributable to the Project/Building.

(b) For the purpose of this Section, real property taxes, which are levied on a fiscal year basis, shall be deemed to apply one-twelfth (1/12) to each calendar month in such fiscal year.

6.2 Personal Property Taxes. During the term of this Lease, Tenant shall pay prior to delinquency all taxes, assessments, license fees and public charges levied, assessed or imposed upon Tenant's business operation, trade fixtures, furnishings, equipment, merchandise and all other personal property in, on or upon the Premises.

ARTICLE VII. USE:

7.1 Use of Premises. Tenant shall use the Premises solely for the purposes specified in the Summary of Basic Lease Provisions, and for no other purposes and under no other name without the prior written consent of Landlord, which consent shall not be unreasonably withheld.

7.2 Compliance With Laws, Rules and Regulations. Tenant, at Tenant's expense, shall promptly comply with all present and future laws, ordinances, orders, rules, regulations and requirements of all governmental authorities having jurisdiction, affecting or applicable to the Premises and the Project/Building or the cleanliness, safety, occupancy and use of the same. Tenant shall not use or allow the Premises to be used for any improper, immoral or objectionable purpose. Tenant shall be responsible for its agents, employees and invitees complying with all such laws, ordinances, orders, rules, regulations and requirements applicable to the Premises and Project/Building.

7.3 Business Conduct. Tenant agrees that it will conduct its business at all times in a first class and reputable manner, so as not to injure the reputation of the Project/Building nor interfere with other tenants and occupants.

7.4 Project/Building Name. Landlord reserves the right, in its sole discretion, to create or change the name and any logo for the Project/Building at any time.

ARTICLE VIII. COMMON AREAS:

8.1 Definition of Common Areas. The term "common areas" means all areas, spaces, improvements and equipment of the Project/Building (as such areas, etc., may be expanded or decreased at Landlord's option), except those areas, etc., which from time to time are designated by Landlord as being outside the common areas or are leased to or within the exclusive control of a tenant of the Project/Building. The common areas include, without

limitation, exterior walls, roofs, roof membranes, landscaped areas, pedestrian walkways, garages, parking areas, patios, stairways, ramps, restrooms, storage areas (including refuse enclosures), and all other areas, spaces, improvements, equipment and special services which are not included as part of the Premises or leased to other tenants.

8.2 Non-Exclusive Use. The common areas shall be available for Tenant's non-exclusive use for ingress, egress and other appropriate purposes during the full term of this Lease, subject to any maintenance or construction in the Project/Building. The rights of Tenant to the common areas shall at all times be subject to the rights of Landlord and the other tenants and their employees, invitees and customers to use the same in common with Tenant, and subject to rules and regulations for the use of the common areas as prescribed from time to time by Landlord, in its sole discretion. Tenant shall keep the common areas free and clear of any obstructions created or permitted by Tenant or resulting from Tenant's business operation. Tenant shall not use the common areas in any way for the display or sale of merchandise, except with the written consent of Landlord.

8.3 Maintenance of Common Areas. Landlord shall operate, manage, equip, light, repair, clean and maintain the common areas in such manner as Landlord may in its sole discretion determine to be appropriate. All expenses incurred in connection with the maintenance of the common areas required under this Section shall be charged to and paid by Tenant in the manner set forth in Article IV. Landlord shall have the right to use, and to close if necessary, portions of the common areas while engaged in making additional improvements or repairs or alterations to the Project/Building. Landlord shall not be liable for any inconvenience or interruption of business or other consequences resulting from the maintenance or making of repairs, replacements, improvements or alterations to or upon the Project/Building, including any of the common areas.

8.4 Control of Common Areas.

(a) Landlord shall at all times during the term of this Lease have the sole and exclusive control of all common areas. Landlord shall at all times have the right to make such changes to the common areas as the Landlord, in its sole discretion deems necessary or desirable, including, without limitation, the installation of prohibited areas, landscaped areas, and any other facilities. Landlord shall also have the unqualified right to expand or decrease the common areas, and to lease to tenants, for the sole benefit of Landlord, portions of what were previously considered common area. Landlord shall have the sole right to place public telephones on the common areas.

(b) Landlord reserves the right to utilize from time to time portions of the common areas for outdoor shows or displays, entertainment, or such other uses which in Landlord's judgment tend to attract the public or which Landlord is required to allow by law. Further, Landlord reserves the right to utilize any portions of the Project/Building, other than the Premises, for advertising purposes. Landlord may temporarily close any common areas for repairs or alterations, or for any other reason deemed sufficient by Landlord. Landlord also reserves the right to permit tenants of the Project/Building, for their sole use, to install vending machines within their premises.

8.5 Tenant Parking.

(a) Number of Parking Passes. Tenant shall rent from Landlord on a monthly basis throughout the Lease Term the number of parking passes set forth in Summary of Basic Lease Provisions.

(b) Location of Parking:

(i) Onsite Parking. Tenant's parking passes shall give Tenant the right to park in spaces in the Parking Garage located in the Project.

(ii) Changes in Location, Layout, and Service. Landlord specifically reserves the right to change the location, size, configuration, design, layout, and all other aspects of the parking facility, including the commencement or discontinuance of an escort or valet system. Landlord may close off or restrict access to the parking facility from time to time to facilitate construction, alteration, or improvements, without incurring any liability to Tenant and without any abatement of Rent under this Lease.

(c) **Parking Rates.** The initial monthly parking charge for parking passes shall be established on the Lease Commencement Date and be equal to the posted monthly rate charged at the Building. Parking rates shall be changed from time to time based on the then-posted monthly rates. If there are no parking charges at the Lease Commencement Date, Landlord reserves the right to impose charges on Tenant in the future. Tenant shall pay all taxes imposed by any government authority in connection with the renting of such parking passes or the use of the parking facility by Tenant.

(d) **Parking Rules and Regulations.** Tenant's continued right to use the parking passes is conditioned on Tenant's abiding by all rules and regulations prescribed from time to time for the orderly operation and use of the parking facility. Tenant shall use all reasonable efforts to ensure that Tenant's employees and visitors also comply with such rules and regulations.

(e) **Nontransferable Passes.** The parking passes rented by Tenant under this Lease are provided to Tenant solely for use by Tenant's personnel (not including Tenant's invitees and guests). These passes may not be transferred, assigned, subleased, or otherwise alienated by Tenant without Landlord's prior written approval.

8.6 Prohibited Activities. The following activities and conduct are forbidden in the Project/Building except to the extent otherwise expressly allowed in writing by Landlord or by the provisions of this Lease: (a) use of balloons, lights or other attention-getting devices or use of loud speakers or amplifiers; (b) solicitation of funds, gifts or subscriptions; (c) entertainment or plays, skits, dramatizations or the like; (d) distribution or display of commercial advertising, commercial pamphlets or commercial handbills; (e) marches or processions consisting of people, animals or vehicles or a combination thereof; (f) profanity, indecent behavior or other conduct that constitutes a tort or civil wrong to any person, or a crime or other violent, tumultuous, offensive or disorderly conduct; (g) posting, hanging or affixing pamphlets, cards, pictures, advertisements, banners, posters, flags, emblems, bunting, displays or similar devices to the Project/Building property or on motor vehicles of patrons, customers, tenants or employees of the Project/Building; (h) obstruction of or interference with sidewalks, breezeways, exits or common areas so as to impede free use, passage, ingress or egress thereof; (i) any activity which will mar, injure, destroy or deface, or aid in injuring, destroying or defacing, the property of the Project/Building or its tenants (j) the use or operation of any radio receiving set, musical instrument, television, drum or other machine or device for the production or reproduction of sound in such a manner as to cause to be made or conducted a noise which will disrupt or interfere with the business of any tenants or occupants of the Project/Building; and (k) loitering, which is hereby defined as remaining idle in essentially one location without apparent purpose suited to the business being conducted in the Project/Building; and (l) any other conduct which Landlord, in its reasonable judgment, determines is not in the best interests of the Project/Building, its tenants or customers.

ARTICLE IX. MAINTENANCE, REPAIR AND REPLACEMENT:

9.1 Landlord's Obligations. Landlord shall maintain in good condition the structural parts of the Premises, which shall include only the foundations, bearing and exterior walls (excluding interior surfaces of exterior walls and excluding all windows, doors, door frames, door sills, door checks, plate glass and showcases), exterior roof, those portions of the electrical, plumbing and sewage systems lying outside the Premises, gutters and downspouts; provided, however, the cost of all such maintenance shall be prorated and paid as Operating Expenses, and Tenant shall reimburse Landlord for Tenant's share of such costs as set forth in Article IV. In no event shall Tenant be entitled to undertake any such maintenance or repairs, whether at the expense of Tenant or Landlord, without Landlord's consent, in Landlord's reasonable judgment. Tenant hereby waives the provisions of California Civil Code §§ 1941 and 1942 and any other law permitting Tenant to make repairs at Landlord's expense. Landlord shall have no obligation to perform any maintenance under this Section 9.1 unless Landlord determines, in its reasonable judgment, that such maintenance is necessary and until a reasonable time after receipt of written notice of the need for such maintenance.

9.2 Tenant's Obligations.

(a) Tenant shall, at Tenant's expense, keep and maintain in first class appearance, and in a condition equal to or better than that which existed when Tenant initially opened the Premises for business, the Premises and every part thereof.

(b) Tenant shall keep and maintain the Premises in a clean, sanitary and safe condition in accordance with the laws of the State of California and in accordance with all directions, rules and regulations of the health officer, fire marshal, Project/Building inspectors or other proper officials of the governmental agencies having jurisdiction, and Tenant shall comply with all requirements of laws, ordinances and other regulations affecting the Premises, all at the sole cost and expense of Tenant.

(c) Tenant shall keep the Premises and all other parts of the Project/Building free from any and all liens arising out of any work performed, materials furnished or obligations incurred by or for Tenant, and agrees to bond against or discharge any mechanic's or materialmen's lien within twenty (20) days after the lien has been filed or within twenty (20) days after receipt of written request from Landlord, whichever shall be the sooner. Tenant shall give Landlord at least fifteen (15) days written notice prior to commencing or causing to be commenced any work on the Premises regardless of whether the work is to be performed prior or subsequent to the commencement of the Lease term. Tenant shall reimburse Landlord for any and all costs and expenses (including attorneys' fees) which may be incurred by Landlord by reason of the filing of any such liens and/or removal of such liens, such reimbursement to be made within ten (10) days after receipt by Tenant from Landlord of a statement setting forth the amount of such costs and expenses.

(d) Tenant, at its own expense, shall install and maintain such fire extinguishers and other fire protection devices as may be required from time to time by any agency having jurisdiction and/or by the insurance underwriters insuring the Premises and the Project/Building in which the Premises are located.

(e) In the event Tenant fails, refuses or neglects to commence and complete repairs promptly and adequately, to remove any lien, to pay any cost or expense (except rent which shall be payable as otherwise provided herein), to reimburse Landlord, or otherwise to perform any act or fulfill any obligation required of Tenant pursuant to this Section 9.2 or Section 9.3 within ten (10) days after written demand by Landlord, Landlord may, but shall not be required to do so, make or complete any such repairs, remove such lien, pay such cost or perform such act or the like without prior notice to, but at the sole cost and expense of, Tenant. Tenant shall, within ten (10) days after receipt by Tenant from Landlord of a statement setting forth the amount of such costs and expenses, reimburse Landlord for all such costs and expenses incurred by Landlord plus an additional twenty percent (20%) of such costs and expenses as Landlord's additional overhead for performing the obligations.

9.3 Cleanliness, Waste and Nuisance. Tenant shall keep the Premises and the common areas adjacent thereto at all times in a neat, clean and sanitary condition, free from waste or debris and shall neither commit nor permit any waste or nuisance thereon. If Tenant's employees or customers deposit waste or debris, or leave any portion of the Project/Building or the common areas adjacent thereto in a dirty or messy condition, Tenant shall be responsible for providing or paying for services which will properly maintain such areas.

9.4 Increase in Costs Caused By Tenant. Tenant shall not carry any stock of goods, conduct any business or do anything in or about the Premises, nor will it allow its employees or customers to do so, which will in any way tend to increase the insurance rates on, or the other Operating Expenses of, the Project/Building and/or the Premises, above those rates or costs which would normally be associated with a normal or average commercial usage of the Premises. Tenant shall be responsible for the payment of any additional premium or costs resulting from violation of this Section.

9.5 Hazardous Materials.

(a) For purposes of this Lease, "Hazardous Materials" attached to this Lease as **Exhibit "F"**, shall mean, collectively, hazardous substances, hazardous wastes, hazardous materials, or toxic substances under any Hazardous Materials Laws.

(b) For purposes of this Lease, “Hazardous Materials Laws” shall mean all federal, state and local laws, ordinances and regulations relating to industrial hygiene, environmental protection or the use, analysis, generation, manufacture, storage, disposal or transportation of any oil, flammable explosives, asbestos, urea formaldehyde, radioactive materials or waste, or other hazardous, toxic, contaminated or polluting materials, substances or wastes, including, without limitation, any Hazardous Materials.

(c) To the best of Landlord’s knowledge, the Project/Building and the Premises are in full compliance with all Hazardous Materials Laws and there has been no prior release or presence of Hazardous Materials on, about or under them.

(d) Tenant shall not allow any activity to be conducted on the Premises for storing any hazardous material on the Premises that will increase premiums for or violate the terms of any insurance policy maintained by or for the benefit of Landlord or the Project/Building. Further, Tenant shall not cause or create any hazardous condition on or from the Premises, the Project/Building, the common areas, or the adjoining properties and Tenant shall comply with all applicable Hazardous Materials Laws in all material respects and will take all appropriate action to prevent the release of any Hazardous Materials from the Premises which would violate Hazardous Materials Laws in any material respect.

ARTICLE X. ALTERATIONS, ADDITIONS, IMPROVEMENTS, FIXTURES AND PERSONAL PROPERTY:

10.1 Alterations, Additions, and Improvements.

(a) No alterations, additions, improvements or changes exceeding the amount of fifteen thousand dollars (\$15,000) and/or requiring a building permit shall be made to the Premises unless and until the written approval of Landlord is first obtained, which approval shall not be unreasonably withheld, except Landlord shall be responsible according to this Lease to build the initial Tenant improvements. Tenant shall be directly responsible for any and all damages resulting from any of said alterations, additions, improvements and changes. Landlord may require, as a condition to granting such approval, that Tenant demonstrate and secure its ability to complete and pay for the alterations, additions, improvements and changes.

(b) Should Tenant desire to make or construct any such alterations, additions or improvements within the Premises (“Tenant’s Work”), Tenant shall first submit to Landlord two (2) sets of scale drawings prepared by a licensed architect or building designer at Tenant’s expense. The drawings shall indicate Tenant’s specific requirements for the Premises, clearly outlining in detail the Premises and the planned improvements within the Premises, including, without limitation, types of materials and colors, interior partitions, reflected ceiling plan if applicable, plumbing fixtures, and electrical plans. These drawings shall be subject to Landlord’s approval, in its reasonable discretion. If Landlord approves Tenant’s Work, then the following subparagraphs shall apply.

(c) Tenant agrees, at Tenant’s expense, to obtain and maintain public liability and worker’s compensation insurance adequate to fully protect Tenant as well as Landlord from and against any and all liability for death of or injury to person, or damage to property, arising out of or in connection with the construction of Tenant’s Work. Prior to commencement of construction, Tenant shall submit evidence of such proper insurance to Landlord.

(d) All of Tenant’s Work shall be at Tenant’s expense and shall not damage the Project/Building, or any part thereof.

(e) Tenant shall be responsible for the repair, replacement and clean-up of any damage done by Tenant’s contractor, including, without limitation, repair, replacement and clean-up of vehicular or pedestrian thoroughfares to the Premises which may be concurrently used by others other than Tenant.

(f) Tenant’s contractor shall keep the storage of materials and its operations within the Premises and such other space as it may be assigned by Landlord.

(g) All trash and surplus construction materials shall be stored within the Premises.

(h) Tenant is responsible for compliance with all applicable codes and regulations of duly constituted authorities having jurisdiction over the performance of Tenant's Work. Tenant further agrees to indemnify, defend and save Landlord harmless from and against any and all claims, demands, actions, damages, liability, costs and expenses (including, without limitation, attorneys' fees) arising from or in connection with Tenant's Work.

(i) Tenant's contractor shall not post signs on any part of the construction project or the Premises.

(j) If Tenant materially breaches any of its obligations under this Section 10.1, Landlord, at its option, shall have the right to commence and complete performance of all of Tenant's Work and charge Tenant with all costs and expenses incurred which shall be due upon Landlord's demand.

(k) All alterations, additions, improvements or changes to be made to the Premises shall be under the supervision of a competent architect or competent licensed structural engineer and made in accordance with plans and specifications with respect thereto. All work with respect to any alterations, additions, improvements and changes must be done in a good and workmanlike manner and diligently prosecuted to completion. All such work shall be performed in a manner that will not interfere with the quiet enjoyment of other tenants of the Project/Building and not obstruct the access of any other tenant or occupant of the Project/Building. Prior to commencement of any such work, Tenant shall post and file, on behalf of Landlord, a notice of non-responsibility or other similar notice permitted under applicable law and shall deliver to Landlord a lien and completion bond in the amount of one hundred fifty percent (150%) of the cost of such work. Tenant will, upon completion, deliver to Landlord a copy of a recorded Notice of Completion and appropriate lien releases relative to improvements made by Tenant. None of Tenant's Work shall result in any mechanic's lien being recorded against the Project/Building.

(l) All such alterations, additions, improvements and changes shall be considered improvements to the Premises and shall not be removed by Tenant, but shall be deemed attached to the realty and become a part of the Premises upon installation and shall become the property of Landlord upon expiration of the Lease term or upon sooner termination of this Lease, except for those alterations, additions, improvements and changes which Landlord demands be removed pursuant to Section 10.2. All alterations, additions, improvements, and changes shall be performed and done strictly in accordance with the laws and ordinances relating thereto.

(m) Landlord shall have the right but not the obligation to perform, on behalf of and for the account of Tenant, subject to reimbursement of the cost thereof by Tenant, any and all of the Tenant's Work which Landlord determines, in its sole discretion, should be performed immediately and on an emergency basis for the best interest of the Project/Building, including without limitation, work which pertains to structural components, mechanical, sprinkler and general utility systems, roofing and removal of unduly accumulated construction material and debris.

(n) Tenant shall provide and pay for all temporary utility facilities, and the removal of debris, as necessary and required in connection with the construction of the Premises. Storage of Tenant's contractors' construction material, tools, equipment and debris shall be confined to the Premises and in areas which may be designated for such purposes by Landlord. In no event shall any material or debris be stored on the sidewalks or service and exit corridors. During construction, Tenant shall maintain such barricades, fences or other measures as may be necessary to insure the security of the Premises and to prevent unauthorized persons from entering the Premises or any persons suffering any injury.

(o) Tenant shall cause reproducible "As-Built Drawings" to be delivered to Landlord and/or Landlord's representative no later than thirty (30) days after the completion of the Tenant's Work or any alterations, additions or improvements permitted by Landlord in accordance with the terms of this Lease. In the event these drawings are not received by such date, Landlord may, at its election, cause said drawings to be obtained and Tenant shall pay to Landlord, as additional rental, the cost of producing these drawings.

10.2 Title To and Removal Of Alterations, Additions, Improvements, Fixtures and Personal Property. Upon the expiration or earlier termination of the Lease term,

Tenant may remove from the Premises all of Tenant's property located therein including, without limitation, Tenant's trade fixtures, furniture, equipment and signs, so long as Tenant repairs any damage to the Premises caused by such removal. If Tenant elects not to remove any of the foregoing items, Landlord can require Tenant to do so at Tenant's sole cost and expense and to repair any damage to the Premises by reason of such removal. Upon the expiration or earlier termination of the Lease term, Tenant shall return the Premises to Landlord in a neat and clean condition equal to that which existed when Tenant initially opened the Premises for business.

10.3 Changes and Additions by Landlord. Landlord reserves the right at any time to (a) make or permit changes or revisions in the plan for the Project/Building including additions to, subtractions from, rearrangements of, alterations of, modifications of, or supplements to, the Project/Building areas or other common areas, (b) construct improvements in the Project/Building and to make alterations thereof or additions thereto and to build additional stories and buildings adjoining same, including (without limitation) displays in the common areas, and (c) make or permit changes or revisions in the Project/Building, including additions thereto, and to convey portions of the Project/Building to others for the purpose of constructing thereon other improvements.

Any changes or additions by Landlord to the Project/Building shall be performed in such a manner so as not to change, in a material, adverse and permanent way, the access to the Premises from the common areas adjacent to the Premises, if applicable. If Landlord deems it necessary for construction personnel to enter the Premises to construct any improvements, Landlord shall give Tenant no less than fifteen (15) days prior notice, and Tenant shall allow such entry. Tenant shall not be entitled to any damages or to reduction to Monthly Fixed Minimum Rent, Percentage Rent or Additional Rent for any interference or interruption of Tenant's use of the Premises or for any inconvenience caused by such construction work, unless such interference or interruption causes Tenant's business to cease, in which case Landlord will abate Tenant's rent for the period which such interference or interruption causes Tenant's business to cease.

ARTICLE XI. MECHANIC'S LIENS:

11.1 Indemnification. Tenant agrees that it will cause to be paid all costs of work done or caused to be done by it on the Premises, and Tenant will keep the Premises free and clear of all mechanic's liens and other liens on account of work done for the Tenant. Tenant agrees to and shall indemnify, defend and save Landlord free and harmless against any and all liability, loss, damages, costs, claims, demands, suits, actions, attorneys' fees, and all other expenses on account of claims of lien of laborers or materialmen or others for work performed or materials or supplies furnished for Tenant.

11.2 Contest. If Tenant shall desire to contest any claim of lien, it shall promptly furnish Landlord adequate security for the amount of the claim, plus estimated costs and interest, or a bond of a responsible corporate surety in such amount, conditioned on the discharge of the lien. If a final judgment establishing the validity or existence of a lien for any amount is entered, Tenant shall pay and satisfy the same at once. Tenant may, however, if applicable, appeal such final judgment at its sole cost and shall indemnify and hold harmless Landlord from and against any and all claims, demands, actions, damages, liability, costs and expenses (including, without limitation attorneys' fees), arising out of or in connection with the results of such appeal.

ARTICLE XII. INSURANCE; INDEMNITY:

12.1 Tenant's Insurance.

Types. Tenant, at its sole cost and expense, shall, commencing on the date Tenant is given access to the Premises for any purpose, and during the Lease term, procure, pay for and keep in full force:

(1) comprehensive liability insurance with respect to the Premises and the operations, maintenance, use or occupancy of or on behalf of Tenant in, on or about the Premises in an amount, as reasonably determined by Landlord, but not less than Two Million Dollars (\$2,000,000.00) combined single limit bodily injury, personal injury, death and

property damage liability per occurrence, subject to such increases in the amount of coverage as Landlord may reasonably require from time to time. The policy or policies shall include a provision that (i) coverage shall be primary as it respects any loss or claim arising directly or indirectly out of the operations of Tenant, and that any policies carried by Landlord shall be excess and non-contributing with such policy or policies, and (ii) that Landlord and any other parties in interest shall be an additional insured under such policy or policies;

(2) worker's compensation coverage as required by law, together with employer's liability coverage;

(3) with respect to Tenant's leasehold improvements, merchandise, stock, trade fixtures, furnishings, equipment and other items of personal property of Tenant or Tenant's customers located on or in the Premises, insurance against fire, extended coverage, vandalism, and malicious mischief, and such other additional perils as now are or may be included in standard "all risk" forms, for an amount not less than ninety percent (90%) of the actual replacement cost thereof;

(4) rental loss insurance covering at least six (6) months' rental loss;

(5) plate glass insurance at full replacement value;

(6) any and all other insurance required by law or governmental regulation.

12.2 Landlord's Insurance.

(a) Landlord shall at all times during the term of this Lease maintain in effect a policy or policies of insurance covering the Premises and the Project/Building, providing protection against the perils included from time to time in the designation "all risk of physical loss," also providing protection against the perils of earthquake and flood if deemed necessary by Landlord in Landlord's sole judgment, and including up to one year's rent abatement insurance ("casualty insurance"). Landlord reserves the right to periodically review the replacement cost of the Project/Building, common areas, improvements and remaining portions of the Project/Building and to maintain insurance, as selected by Landlord in its sole discretion, covering said areas in an amount equal to replacement cost. If such replacement costs are not readily available to Landlord, then Landlord's reasonable determination of such replacement costs, in good faith, made from the best information reasonably available, shall be conclusive for the purposes of this Section.

(b) If Tenant fails to procure, maintain and/or pay for, at the times and for the durations specified, any insurance required by Section 12.1, or fails to carry insurance required by law or governmental regulation, Landlord may (but without obligation to do so) at any time, procure such insurance and pay the premiums, in which event Tenant shall repay Landlord all such amounts paid by Landlord together with any costs or expenses incurred by Landlord in connection therewith, plus interest as provided for in Section 18.7, within ten (10) days following Landlord's written demand to Tenant for such payment.

12.3 Insurance Policies.

(a) All policies of insurance required to be carried by Tenant under this Lease shall be issued by responsible and solvent insurance companies authorized to do business in the State of California, which shall have ratings of not less than A and a financial rating of not less than Class X, as rated in the most current available "Best's Key Rating Guide." All such policies, except for the Worker's Compensation coverage, shall name and shall be for the mutual and joint benefit and protection of Landlord, Tenant and Landlord's agents and mortgagee(s) or beneficiary(ies) as additional insureds. The policies of insurance shall also name Landlord and mortgagee(s) or beneficiary(ies) as loss payee. A copy of each paid-up policy evidencing such insurance, or a certificate of the insurer certifying that such policy has been issued which provides the coverage required by this Section, shall be delivered to Landlord prior to the date Tenant is given the right of possession of the Premises, and upon renewals, not less than thirty (30) days prior to the expiration of such coverage. Landlord may, at any time, and from time to time, inspect and/or copy any and all insurance policies required to be procured by Tenant. In no event shall the limits of any policy be considered as limiting the liability of

Tenant under this Lease. No policy required to be maintained by Tenant shall have a deductible greater than Twenty-five Thousand Dollars (\$25,000) unless approved in writing by Landlord, except for earthquake insurance, if applicable.

(b) Each policy evidencing insurance required to be carried by Tenant pursuant to this Article shall contain a provision that the insurer will not cancel or materially change the coverage provided by such policy without first giving Landlord thirty (30) days prior written notice. All policies required of Tenant herein shall be endorsed to read such policies are primary policies and any insurance carried by Landlord or Landlord's property manager shall be noncontributing with such policies.

12.4 Blanket Policies. Notwithstanding anything to the contrary contained in this Article XI, Tenant's obligations to carry insurance may be satisfied by coverage under a so-called blanket policy of insurance; provided, however, Landlord and Landlord's mortgagee shall be named as additional insureds as their interests may appear, the coverage afforded Landlord will not be reduced or diminished and the requirements set forth in this Lease are otherwise satisfied.

12.5 Increase in Insurance Premiums. Tenant will not do or suffer to be done, or keep or suffer to be kept, anything in, upon or about the Premises which will violate Landlord's policies of hazard or liability insurance or which will prevent Landlord from procuring such policies in companies acceptable to Landlord. If anything done, omitted to be done or suffered by Tenant to be kept in, upon or about the Premises shall cause the rate of fire or other insurance on the Premises or on the Project/Building or of others within the Project/Building to be increased beyond the minimum rate from time to time applicable to the Premises or to any such property for the use or uses made thereof, Tenant will pay, as Additional Rent, the amount of any such increase upon Landlord's demand.

Tenant shall not do any act in or about the Premises that will tend to increase the insurance rates upon the Premises or the Project/Building of which the Premises are a part. Tenant agrees to pay to Landlord, upon demand, the amount of any increase in premium for insurance resulting from Tenant's use of the Premises, whether or not Landlord shall have consented to the act on the part of Tenant. If Tenant installs upon the Premises any electrical equipment which constitutes an overload of the electrical lines servicing the Premises, Tenant, at its own expense, shall make whatever changes are necessary to comply with the requirements of the insurance underwriters and any appropriate governmental authority.

12.6 Waiver of Subrogation. Except to the extent Tenant's insurance covers loss to Landlord, Landlord and Tenant each waive any rights each may have against the other on account of any loss or damage occasioned to Landlord or Tenant, as the case may be, their respective property, the Premises or its contents, or to other portions of the Project/Building arising from any liability, loss, damage or injury caused by fire or other casualty for which property insurance is carried or required to be carried pursuant to this Lease. The insurance policies obtained by Landlord and Tenant pursuant to this Lease shall contain endorsements or other provisions, waiving any right of subrogation which the insurer may otherwise have against the noninsuring party. If Landlord has contracted with a third party for the management of the Project/Building, the waiver of subrogation by Tenant herein shall also run in favor of such third party. The provisions of this Section shall not limit the indemnification for liability to third parties pursuant to Section 12.8.

12.7 Sufficiency of Coverage. Neither Landlord nor any of Landlord's agents make any representation that the types of insurance and limits specified to be carried by Tenant under this Lease are adequate to protect Tenant. If Tenant believes that any such insurance coverage is insufficient, Tenant shall provide, at its own expense, such additional insurance as Tenant deems adequate. Nothing contained herein shall limit Tenant's liability under this Lease.

12.8 Indemnity. Tenant agrees to and shall indemnify, defend and hold Landlord free and harmless from and against any and all claims, demands, actions, damages, liability, costs and expenses (including, without limitation attorneys' fees), (collectively, "Liability") arising out of or in connection with loss of life, bodily injury and/or damage to property arising out of or in connection with any occurrence in, upon, or at the Premises, or the occupancy or use by Tenant of the Premises or any part thereof, or arising out of or in connection with Tenant's failure to comply with any provision of this Lease or otherwise occasioned wholly or in part by any act or omission of Tenant, its agents, representatives, contractors, employees,

servants or customers, unless such Liability results from Landlord's gross negligence or willful acts. In case Landlord shall, without fault on its part, be made a party to any litigation commenced by or against Tenant, then Tenant shall protect and hold Landlord harmless and shall pay all costs, expenses and attorneys' fees incurred or paid by Landlord in connection with such litigation. Landlord may, at its option, require Tenant to assume Landlord's defense in any action covered by this Section through counsel satisfactory to Landlord.

12.9 Exemption of Landlord from Liability. Landlord shall not be liable for injury, loss of business or damage which may be sustained by the person, goods, wares, merchandise or property of Tenant, its employees, invitees or customers, or any other person in or about the Premises from any cause including, without limitation, fire, steam, electricity, gas, water or rain, which may leak or flow from or into any part of the Premises, or from the breakage, leakage, obstruction or other defects of the pipes, sprinklers, wires, appliances, plumbing, heating, air conditioning or light fixtures of the same, whether the said damage, loss of business, or injury results from conditions arising upon the Premises or upon other portions of the Project/Building, or from other sources. Landlord shall not be liable for any damages arising from any act or neglect of any other tenant of the Project/Building.

ARTICLE XIII. DAMAGE OR DESTRUCTION; REPAIRS AND RESTORATION:

13.1 Reconstruction Of Premises.

(a) If the Premises shall be partially or totally destroyed by fire or other casualty insured by Landlord such that they are partially or totally untenable, Landlord, at its cost, shall reconstruct or repair the Premises. However, Landlord shall not be obligated to cause such reconstruction or repairs if Landlord elects, at its sole option, not to rebuild or repair the Premises as herein provided.

(b) In no event shall Landlord be required to repair or replace Tenant's merchandise, trade fixtures, furnishings, equipment or leasehold improvements.

13.2 Landlord's Option To Terminate. If (a) more than thirty-five percent (35%) of the Project/Building shall be damaged or destroyed by fire or other casualty, or (b) during the last year of the Lease term, more than ten percent (10%) of the Floor Area of the Premises (as defined in Section 18.3) or more than twenty percent (20%) of the Project/Building, shall be damaged or destroyed by fire or other casualty, or (c) all or any part of the Project/Building or the Premises are damaged or destroyed at any time by the occurrence of any risk not fully insured, then Landlord may elect either to repair or rebuild the Project/Building and/or Premises, as the case may be, or, in its sole option, to terminate this Lease by giving written notice to Tenant of Landlord's election to so terminate, such notice to be given within forty-five (45) days after the occurrence of such damage or destruction.

13.3 Replacement of Tenant's Improvements, Fixtures and Personal Property. If the Premises are repaired or rebuilt by Landlord, Tenant, at its sole cost and expense, shall repair and/or replace Tenant's leasehold improvements, merchandise, trade fixtures, furnishings and equipment in a manner and to at least a condition equal in quality to that which existed prior to the damage or destruction, and shall promptly reopen for business if closed by the casualty.

13.4 Abatement of Rent

(a) If the Premises are destroyed or damaged, and Landlord repairs or restores them pursuant to the provisions of this Article, Tenant shall continue the operation of its business in the Premises to the extent reasonably practicable from the standpoint of prudent business management, and the Fixed Minimum Rent payable under this Lease for the period during which such damage, repair or restoration continues shall be abated equitably in proportion to the degree to which the Premises are rendered untenable and only to the extent Landlord actually receives proceeds from rental loss or business interruption insurance. Tenant shall have no claim against Landlord for any damage suffered by Tenant by reason of such damage, destruction, repair or restoration.

(b) With respect to any damage or destruction that Landlord is obligated to repair or may elect to repair under terms of this Article, Tenant hereby waives the

provisions of Section 1932, Subdivision 2, and of Section 1933, Subdivision 4 of the Civil Code of the State of California and any amendments thereto and any law, regulation or ordinance authorizing a termination of a lease upon the complete or partial destruction of the leased premises.

ARTICLE XIV. ASSIGNMENT AND SUBLETTING:

14.1 Assignment and Subletting.

(a) Tenant shall not assign, sublet, sell, mortgage, encumber, pledge, hypothecate or otherwise transfer all or any part of Tenant's interest in this Lease, or permit the Premises to be occupied by anyone other than Tenant or Tenant's employees, without first obtaining the written consent of Landlord, which consent shall not be unreasonably withheld. All of the acts described in the preceding sentence are collectively referred to in this Section as a "Transfer." Any attempted Transfer made without the prior written consent of Landlord shall be void and, at the option of Landlord, shall constitute a material default under this Lease by Tenant without any cure period under Section 16 being applicable.

(b) Tenant shall have the absolute right to sublet, assign or otherwise transfer its interest in this Lease to a Licensee, Franchisee or any parent or operating subsidiary of Tenant, or subsidiary of Tenant, or subsidiary of Tenant's parent, or to a corporation or a limited liability company, with which it may merge or consolidate (collectively "Permitted Transfer" and the transferee under this paragraph shall be called "Permitted Transferee"), without Landlord's approval, written or otherwise, as long as: (i) Tenant remains fully liable for full performance of all its obligations under this Lease, (ii) the business conducted at the Premises continues to be conducted under the name set forth for Tenant under the Summary of Basic Lease Provisions or a similar name, (iii) such transferee agrees in writing, for the express benefit of Landlord, to perform and be bound by all of the covenants of this Lease required to be performed by Tenant, (iv) Landlord is given written notice of the transfer, and (v) Tenant furnishes to Landlord the items requested under paragraphs 14.2(a)(1), (3), (4), (5), (6) and (7) below, at least sixty (60) days before the effective date of the Permitted Transfer and the items requested under paragraph 14.2(a)(2) at least thirty (30) days before the effective date of the Permitted Transfer.

(c) Landlord's consent to a Transfer shall not relieve Tenant from the obligation to obtain Landlord's express written consent to any other Transfer. The provisions of any Transfer consented to by Landlord cannot be modified without the prior written consent of Landlord. The acceptance by Landlord of the payment of rent following any assignment or other transfer prohibited by this Article shall not be deemed to be a consent by Landlord to any such assignment or other transfer nor shall the same be deemed to be a waiver of any right or remedy of Landlord hereunder.

14.2 Procedures.

(a) Should Tenant desire to enter into a Transfer, Tenant shall in writing request Landlord's consent to the Transfer at least sixty (60) days before the effective date of the Transfer and shall provide to Landlord the following: (1) the name and address of the proposed subtenant, transferee, or assignee (collectively, "Transferee"); (2) the full particulars of the proposed Transfer, including its nature, effective date, terms and conditions, and copies of any offers, draft agreements, subleases, letters of commitment or intent, escrow instructions and other documents pertaining to the proposed Transfer; (3) a description of the net worth and previous business experience of the proposed Transferee, including, without limitation, copies of the proposed Transferee's financial statements; (4) all of the proposed Transferee's federal and state tax returns for the past three (3) years; (5) financial statements and documents of Tenant of the type set forth in Article V; (6) a detailed description of the proposed use of the Premises by the proposed Transferee, together, if applicable, with the trade name of the proposed Transferee; and (7) any further information relevant to the proposed Transfer which Landlord may request.

(b) Within thirty (30) days after receipt of Tenant's request for consent, together with all of the above required information, Landlord shall respond as follows: (1) consent to the proposed Transfer, subject to its review and consent to the information to be provided under paragraph 14.2(a)(2) above and subject to Sections 14.3 through 14.6 below; or (2) refuse to consent on any reasonable grounds, which Landlord and Tenant agree include,

without limitation, the following: (i) The proposed Transferee's use of the Premises conflicts with the use of Premises or trade name as set forth in Section 7.1; (ii) in Landlord's reasonable business judgment, the proposed Transferee lacks sufficient business reputation or experience to operate a successful business of the type and quality permitted under this Lease; (iii) Tenant is in default of this Lease; (iv) in Landlord's reasonable business judgment, the net worth of the proposed Transferee is inadequate to operate the proposed business in the Premises and/or afford the Premises; and/or (v) the Transfer would breach any covenant of Landlord respecting radius, location, use or exclusivity in any other lease, financing agreement or other agreement relating to the Project/Building. Tenant acknowledges and agrees that each of the rights of Landlord set forth above, in the event of a request for Landlord's consent to an Assignment, is a reasonable restriction for purposes of California Civil Code, Section 1951.4.

14.3 No Release; Assumption of Obligations.

(a) If Landlord consents to Tenant's proposed Transfer, Tenant shall remain directly, primarily and fully liable for the prompt and complete performance of all of Tenant's obligations under this Lease. Furthermore, each Transferee, other than Landlord, shall assume and covenant to perform all obligations of Tenant under this Lease. No Transfer shall be binding on Landlord unless such Transferee and Tenant shall deliver to Landlord an instrument in writing, fully signed by all parties to the agreement, which contains a covenant of assumption of the Transferee, satisfactory in substance and form to Landlord. If any default occurs under this Lease, Landlord may proceed directly against Tenant without first exhausting any remedies for that default which Landlord may have against any person or entity, including, but not limited to, any Transferee occupying the Premises with or without Landlord's consent.

(b) If any default occurs under this Lease, Landlord may, in addition to proceeding against Tenant and/or exercising any other remedies provided for in this Lease or by law, collect directly from any proposed Transferee, assignee, subtenant or other person or entity occupying the Premises (with or without Landlord's consent) all rents and other payments and consideration becoming due to Tenant in connection with a Transfer, and may apply those collections against any amounts due to Landlord from Tenant under this Lease. No such collection shall be construed as a novation or a release of Tenant from the further performance of Tenant's obligations under this Lease. Landlord's acceptance of rent or other payments or consideration from a proposed Transferee shall not constitute consent to the proposed Transfer.

14.4 Form. Any Transfer shall be evidenced by an instrument in writing satisfactory to Landlord and shall be executed by the Tenant and the Transferee in each instance.

14.5 Excess Rent. Landlord and Tenant, having freely negotiated the matter, agree that if Landlord does consent to any proposed Transfer, then in addition to the payment of all rent due to Landlord under this Lease, there shall be paid or assigned to Landlord by Tenant one hundred percent (100%) of any and all rent or other form of consideration attributable to rent, whether or not called such, received by Tenant from a Transferee as part of the Transfer by Tenant to Transferee of the Premises and Tenant's business therein. Tenant shall be entitled to all consideration relating to the purchase price paid by a Transferee for Tenant's business.

14.6 Fees. Tenant agrees to reimburse Landlord for all reasonable attorneys' fees incurred by Landlord in conjunction with the processing and documentation of any requested Transfer. In addition, Tenant shall pay to Landlord upon Landlord's demand the greater of the amount of Five Hundred Dollars (\$500.00) or Landlord's actual costs as reimbursement to Landlord for its review and processing of the application.

ARTICLE XV. UTILITY SERVICES:

15.1 Services Provided by Landlord. Subject to applicable government rules, regulations and guidelines and the rules and actions of public utility furnishing the service, Landlord shall provide the following utilities during all days during the Lease Term, unless otherwise stated herein.

(a) Heating and Air-Conditioning. Landlord shall provide heating and air-conditioning when necessary for normal comfort for normal use in the Premises, as reasonably determined by Landlord, on Mondays through Fridays from 7 a.m. to 6 p.m., and on

Saturdays from 7 a.m. to noon (Building Hours), or such shorter periods as may be prescribed by any applicable policies or regulations adopted by any utility or governmental agency, except for the dates of observation of New Year's Day, Memorial Day, Independent Day, Labor Day, Thanksgiving Day and the day immediately thereafter, Christmas Day and other locally or nationally recognized holidays that are observed by a majority of comparable projects/buildings.

(b) Electricity.

(c) Water. Landlord shall provide city water from the regular Building outlets for drinking, lavatory, and toilet purposes.

(d) Janitorial Services.

15.2 Payment by Tenant. Tenant agrees, at its own expense, to pay for all gas, electric, telephone, sewer hook-up fees, and all other utilities and services used by Tenant on the Premises from and after the delivery of possession thereof by Landlord. If any such charges are not paid when due, Landlord may pay the same, and any amount so paid by Landlord shall thereupon become due to Landlord from Tenant, as additional rent, immediately upon demand by Landlord. Notwithstanding the foregoing, most if not all of Tenant's utilities serving the Premises will be separately metered, for which Tenant shall have the responsibility of paying. Regardless of the Premises being separately metered, if Tenant fails to pay for its utilities when due, then Landlord may pay them without having any obligation to do so, and Tenant shall reimburse Landlord for such Landlord advance within ten (10) days of Landlord invoicing Tenant for such advances.

15.3 Interruption of Service. Tenant agrees that Landlord shall not be liable for damages, by abatement of rent or otherwise, for failure to furnish or delay in furnishing any service (including telephone and telecommunication services) or for diminution in the quality or quantity of any service when the failure, delay, or diminution is entirely or partially caused by:

(a) Breakage, repairs, replacements, or improvements;

(b) Strike, lockout, or other labor trouble;

(c) Inability to secure electricity, gas, water, or other fuel at the Building after reasonable effort to do so;

(d) Accident or casualty;

(e) Act or default of Tenant or other parties; or

(f) Any other cause beyond Landlord's reasonable control.

Such failure, delay, or diminution shall not be considered to constitute an eviction or a disturbance of Tenant's use and possession of the Premises or relieve Tenant from paying rent or performing any of its obligations under this Lease.

Landlord shall not be liable under any circumstances for a loss of or injury to property or for injury to or interference with Tenant's business, including loss of profits through, in connection with, or incidental to a failure to furnish any of the utilities or services under this Section 15. Tenant will comply with mandatory or voluntary controls or guidelines promulgated by any government entity relating to the use or conservation of energy, water, gas, light, or electricity or the reduction of automobile or other emissions. If Landlord complies with controls or guidelines, Landlord's compliance will not create any liability of Landlord to Tenant under this Lease as long as compliance with voluntary controls or guidelines does not materially and unreasonably Interfere with Tenant's use of the Premises.

15.4 Overstandard Tenant Use. Tenant shall not, without Landlord's prior written consent, use heat-generating machines, machines other than normal fractional horsepower office machines, or equipment or lighting other than building standard lights in the Premises that may affect the temperature otherwise maintained by the air-conditioning system or increase the water normally furnished to the Premises by Landlord under section 15.1.

If such consent is given, Landlord shall have the right to install supplementary air-conditioning units or other facilities in the Premises, including supplementary or additional

metering devices. On billing by Landlord, Tenant shall pay the cost for such supplementary facilities, including the cost of (a) installation, operation, and maintenance; (b) increased wear and tear on existing equipment; and (c) other similar charges.

If Tenant uses water, electricity, heat, or air-conditioning in excess of that required to be supplied by Landlord under section 15.1, Tenant shall pay to Landlord, on billing, the cost of (a) the excess service; (b) installation, operation, and maintenance of equipment installed to supply the excess service; and (c) increased wear and tear on existing equipment caused by Tenant's excess consumption. Landlord may install devices to separately meter any increased use. On demand, Tenant shall pay the increased cost directly to Landlord, including the cost of the additional metering devices.

Tenant's use of electricity shall never exceed the capacity of the feeders serving the Building and Premises or the risers or wiring installation. If Tenant wishes to use heat, ventilation, or air-conditioning during hours other than those for which Landlord is obligated to supply such utilities under section 15.1, Tenant shall give Landlord such prior notice as Landlord shall from time to time establish as appropriate, and Landlord shall supply such utilities to Tenant at an hourly cost to Tenant as Landlord shall from time to time establish. Amounts payable by Tenant to Landlord under this section 15.4 for use of additional utilities shall be considered Additional Rent under this Lease and shall be billed on a monthly basis.

15.5 Other Conditions of Utility Services. Landlord, in its sole discretion, shall have the right, from time to time, to alter the heating, ventilating and air-conditioning systems and equipment serving the Project/Building, or any part thereof, and Tenant agrees to execute and deliver to Landlord such documentation as may be required to effect such alteration; provided, however, that Tenant shall not be required to bear any portion of the cost of such alteration or to incur any additional financial obligation as a result of such alteration.

15.6 Utility Providers. Landlord may, in Landlord's sole and absolute discretion, at any time and from time to time, contract, or require Tenant to contract, for utility services (including generation, transmission, or delivery of the utility service) with a utility service provider(s) of Landlord's choosing. Tenant shall fully cooperate with Landlord and any utility service provider selected by Landlord. Tenant shall permit Landlord and the utility service provider to have reasonable access to the Premises and the utility equipment serving the Premises, including lines, feeders, risers, wiring, pipes, and meters. Tenant shall either pay or reimburse Landlord for all costs associated with any change of utility service, including the cost of any new utility equipment, within ten (10) days after Landlord's written demand for payment or reimbursement. Under no circumstances shall Landlord be responsible or liable for any loss, damage, or expense that Tenant may incur as a result of any change of utility service, including any change that makes the utility supplied less suitable for Tenant's needs, or for any failure, interference, or defect in any utility service. No such change, failure, interference, or defect shall constitute an actual or constructive eviction of Tenant, or entitle Tenant to any abatement of rent, or relieve Tenant from any of Tenant's obligations under this Lease.

ARTICLE XVI. DEFAULTS:

16.1 Default.

(a) Each of the following events shall be a default by Tenant and a material breach of this Lease:

(1) Failure or refusal (i) to pay when due any installment of rent, additional rent or any other amount required by this Lease to be paid by Tenant or (ii) to observe or perform any other covenant or condition of this Lease.

(2) The abandonment of the Premises by Tenant.

(3) Tenant's (i) application for, consent to, or suffering of, the appointment of a receiver, trustee or liquidator for all or for a substantial portion of its assets; (ii) making a general assignment for the benefit of creditors; (iii) admitting in writing its inability to pay its debts or its willingness to be adjudged a bankrupt; (iv) becoming unable to or failing to pay its debts as they mature; (v) being adjudged bankrupt; (vi) filing a voluntary petition or suffering an involuntary petition under any bankruptcy, arrangement, reorganization or

insolvency law (unless in the case of an involuntary petition, which is dismissed within thirty (30) days of such filing); (vii) convening a meeting of its creditors or any class thereof for purposes of effecting a moratorium, extension or composition of its debts; (viii) suffering or permitting to continue unstayed and in effect for ten (10) consecutive days any attachment, levy, execution or seizure of all or a substantial portion of Tenant's assets or of Tenant's interest in this Lease; or (ix) meeting with the intent to file any petition for protection under bankruptcy law. Except to the extent expressly provided otherwise in clauses (vi) and (viii) of this Section, the events in this Section shall constitute an immediate default by Tenant and no notice or cure period under this Lease shall be applicable.

(4) It shall constitute a Default of the Lessee if any Guarantor fails or refuses, upon request to provide: (a) evidence of the execution of the guaranty, including the authority of the party signing on Guarantor's behalf to obligate Guarantor and in the case of a corporate Guarantor, a certified copy of a resolution of its board of directors authorizing the making of such guaranty, (b) current financial statements, (c) a Tenancy Statement, or (d) written confirmation that the guaranty is still in effect.

(b) As a condition to pursuing any remedy for an alleged default by Tenant within Section 16.1(a), Landlord shall, unless expressly relieved of the duty to provide notice for the default under a provision of this Lease, give notice of the default to Tenant. If Landlord serves Tenant with a Notice To Pay Rent or Quit pursuant to applicable unlawful detainer statutes, that Notice To Pay Rent or Quit shall also constitute the notice of default required by this Section. If the alleged default is for nonpayment of rent, additional rent, taxes or other monetary amounts to be paid by Tenant to Landlord or any third party under this Lease, Tenant shall have three (3) days after notice is given to cure the default. For the cure of any other default, except where provided otherwise in this Lease, Tenant shall promptly and diligently, after notice, commence curing the default and shall have thirty (30) days after notice is given to complete the cure or, in the case of a failure or omission that cannot be cured by the payment of money and cannot be cured within thirty (30) days, such additional time as is reasonably required for the curing of the default; provided, however, Tenant must commence curing a non-monetary default within such 30 day period if the performance of such non-monetary default would reasonably take more than 30 days to cure and must diligently prosecute the same to completion.

(c) Landlord and Tenant agree that if an attorney is consulted by Landlord in connection with a default or breach, \$400.00 is a reasonable minimum amount per such occurrence for services and costs in preparing and serving a notice of default, and that Landlord may include the cost of such services and costs in said notice as rent due and payable to cure said default.

16.2 Landlord's Remedies. If any default by Tenant is not cured within the applicable period permitted by this Lease, Landlord has the following remedies in addition to all other rights and remedies provided by law or equity or specifically granted by other provisions of this Lease, to which Landlord may resort cumulatively or in the alternative:

(a) Landlord may, at Landlord's election, terminate this Lease by giving Tenant written notice of termination. On the giving of the notice, all Tenant's rights in the Premises and, subject to any of Tenant's lender's narrowly defined and reasonable rights, in all fixtures, furniture, equipment, signs, other personal property, improvements, alterations, additions and changes (collectively referred to, for purposes of this Section 16.2 only, as "Improvements") shall terminate. Promptly after notice of termination, Tenant shall surrender and vacate the Premises and all Improvements, in a clean condition equal to that or better than that which existed when Tenant initially opened the Premises for business, as determined by Landlord, and Landlord may re-enter and take possession of the Premises and all remaining Improvements and eject all parties in possession or eject some and not others or eject none. Termination of this Lease under this Section 16.2 shall not relieve Tenant from the payment of any amount then due to Landlord or from any claim for damages previously accrued or then accruing against Tenant.

(b) Landlord may elect to have this Lease continue in effect for as long as Landlord does not terminate Tenant's right to possession, and Landlord may enforce all rights and remedies under this Lease, including the right to recover the rent as it becomes due. None of the following shall constitute a termination of Tenant's right to possession:

Improvements thereon;

Premises for such purpose; and

interest under this Lease.

(c) Landlord shall, upon Landlord's election to terminate this Lease in accordance with Section 16.2 (a), be entitled to damages in the following amounts:

(1) The unpaid rent and additional rent, which had been earned at the time of termination, plus interest as provided for in Section 18.7.

(2) The amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that the Tenant proves could have been reasonably avoided, plus interest as provided for in Section 18.7.

(3) The worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of the award exceeds the amount of such rental loss that the Tenant proves could be reasonably avoided; and

(4) Any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under the Lease, including, without limitation, the cost of recovering possession of the Premises, expenses of reletting, costs of necessary repair, renovation and alteration of the Premises, real estate commissions previously paid by Landlord for the then unexpired portion of the Lease term, real estate commissions paid by Landlord for finding another tenant, reasonable attorneys' fees, and any other reasonable costs.

The "worth at the time of award" of the amount referred to in subsection (c)(3) of this Section 16.2 is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%).

(d) Without terminating or affecting a forfeiture of this Lease, or constituting Landlord's acceptance of a surrender of the Premises, or otherwise relieving Tenant of any obligation hereunder, Landlord may, but need not, relet the Premises, or any portion thereof, at any time and for such terms and upon such conditions and rental as Landlord, in its sole discretion, may deem proper. Whether or not the Premises are relet, Tenant shall pay to Landlord all amounts required by Tenant under this Lease up to the date that Landlord terminates Tenant's right to possession of the Premises. Such payments by Tenant shall be due at the times provided in this Lease, and Landlord need not wait until the termination of this Lease to recover them by legal action or in any other manner. If Landlord relets the Premises or any portion of the Premises, such reletting shall not relieve Tenant of any obligation under this Lease, except that Landlord shall apply the rent or other proceeds actually collected by it for such reletting against amounts due from Tenant under this Lease, to the extent such proceeds compensate Landlord for non-performance of any obligation of Tenant under this Lease. Landlord may execute any lease made pursuant to this Section in its own name, and the new tenant shall be under no obligation to pay any proceeds to Tenant named in this Lease, nor shall Tenant have any right to collect any such proceeds.

(e) In the event of any default by Tenant in the payment of money, other than rent, or in the performance of obligations required of Tenant under this Lease, then in addition to the other remedies herein granted to Landlord, Landlord (without waiving or releasing Tenant from any obligations of this Lease) may make, but shall not be obligated to make, any such payment and perform any other act on Tenant's part to be made or performed under this Lease. All amounts so paid by Landlord and all necessary incidental costs, together with interest as provided for in Section 18.7, from the date of such payment by Landlord, shall be payable by Tenant to Landlord.

(f) Inducement Recapture. Any agreement for free or abated rent or other charges, or for the giving or paying by Lessor to or for Lessee of any cash or other

bonus, inducement or consideration for Lessee's entering into this Lease, all of which concessions are hereinafter referred to as "**Inducement Provisions**," shall be deemed conditioned upon Lessee's full and faithful performance of all of the terms, covenants and conditions of this Lease. Upon Breach of this Lease by Lessee, any such Inducement Provisions shall automatically be deemed deleted from this Lease and of no further force or effect, and any rent, other charge, bonus, inducement or consideration theretofore abated, given or paid by Lessor under such an Inducement Provisions shall be immediately due and payable by Lessee to Lessor, notwithstanding any subsequent cure of said Breach by Lessee. The acceptance by Lessor of rent or the cure of the Breach which initiated the operation of this paragraph shall not be deemed a waiver by Lessor of the provisions of this paragraph unless specifically so stated in writing by Lessor at the time of such acceptance.

(g) Nothing in this Section 16.2 affects the rights of Landlord to any indemnification or protection provided for under this Lease.

(h) No delay or omission of Landlord to exercise any right or remedy shall be construed as a waiver of any right or remedy or of any default by Tenant under this Lease. The election of one remedy by Landlord for any one item shall not foreclose an election of any other remedy for another item or for the same item at a later time. The acceptance by Landlord of rent, additional rent, or any other amounts under this Lease shall not be a waiver of any preceding breach or default by Tenant of any provision of this Lease or a waiver of Landlord's right to exercise any remedy available to Landlord by virtue of such breach or default, other than the failure of Tenant to pay the particular rent, additional rent or other amount accepted, regardless of Landlord's knowledge of such preceding breach or default at the time of acceptance of such rent, additional rent or other sum.

(i) Tenant hereby irrevocably consents to Landlord's peaceable re-entry into the Premises, if Landlord so elects, upon the occurrence of any of the events specified in Section 16.1 above, provided Landlord gives not less than twenty-four (24) hours prior notice to Tenant.

(j) Landlord shall not by any re-entry or other act be deemed to have accepted any surrender by Tenant of the Premises or Tenant's interest in the Premises, or be deemed to have terminated this Lease, or to have relieved Tenant of any obligation under this Lease.

16.3 Default by Landlord.

(a) Landlord shall not be deemed to be in default in the performance of any obligation required to be performed under this Lease unless and until Landlord has failed to perform such obligation within thirty (30) days after Tenant has given written notice to Landlord, specifying that Landlord has failed to perform such obligation; provided, however, that if the nature of Landlord's obligation is such that more than thirty (30) days are required for its performance, then Landlord shall not be deemed to be in default if it shall commence such performance within such thirty (30) day period and thereafter diligently prosecute the same to completion. Further, nothing in this Paragraph shall prohibit Tenant from giving Landlord a shorter notice in the case of an emergency. Tenant has no rights to enforce, nor is Landlord obligated to enforce, any provision(s) contained in any lease of any other tenant in the Project/Building.

(b) If Landlord is deemed or found to be in default of this Lease, Tenant's remedy for such default shall be limited to only those damages sustained by Tenant as a direct result of Landlord's default, and Tenant shall not be entitled to terminate this Lease as a result thereof; provided, however, it is expressly understood and agreed that any money judgment resulting from any default or other claim arising under this Lease shall be satisfied only out of net rents, issues, profits and other income, actually received by Landlord from the operation of the Project/Building, and from no other source.

ARTICLE XVII. EMINENT DOMAIN:

17.1 Entire or Substantial Taking. If the entire Premises (other than common areas) is taken under the power of eminent domain or if more than twenty-five percent (25%) of the Floor Area of the Premises is taken and the balance of the Premises is not reasonably

adequate for the conduct of Tenant's business notwithstanding restoration by Landlord as hereinafter provided ("substantial taking"), this Lease shall automatically terminate as of the date on which the condemning authority takes title or possession, whichever first occurs.

17.2 Common Areas. If any portion of the common areas, or the parking areas, shall be taken under the power of eminent domain, this Lease shall nevertheless continue in full force without abatement of rent.

17.3 Awards. Any award for any taking under the power of eminent domain of all or any part of the Project/Building or Premises, including, without limitation, the common areas or parking areas, shall be the property of Landlord, regardless of whether such award shall be made as compensation for diminution in value of the leasehold or for the taking of the fee.

17.4 Sale Under Threat of Condemnation. A sale by Landlord to any authority having the power of eminent domain, either under threat of condemnation or while condemnation proceedings are pending, shall be deemed a taking under the power of eminent domain for all purposes under this Lease.

17.5 Landlord's Option. A taking of twenty-five percent (25%) or more of the floor area of the Project/Building shall confer upon Landlord the option, to be exercised within ninety (90) days after the condemning authority takes or threatens to take title or possession (whichever is earlier) of such portions of the Project/Building, to terminate this Lease, upon written notice to Tenant, effective as of the date of such takings.

ARTICLE XVIII. MISCELLANEOUS:

18.1 Estoppel Certificate.

(a) Tenant shall, upon not less than ten (10) days prior written notice from Landlord execute, acknowledge and deliver to Landlord a statement in writing (1) certifying that this Lease is unmodified and in full force (or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force) and the dates to which the Fixed Minimum Rent and other charges are paid in advance, if any, and (2) acknowledging that there are not any uncured defaults under this Lease on the part of Landlord or specifying such defaults if any are claimed. Any such statement may be conclusively relied upon by any prospective purchaser or encumbrancer of the Premises or of all or any portion of the Project/Building.

(b) Tenant's failure to deliver such statement within such time shall at Landlord's option constitute a material default under this Lease without any further notice or cure period under this Lease being applicable to this default, and shall be a conclusive presumption that (1) this Lease is in full force, without modification except as may be represented by Landlord, (2) there are no uncured defaults in Landlord's performance, and (3) no more than one month's Fixed Minimum Rent has been paid in advance. However, the foregoing presumption shall not relieve Tenant of its continuing obligation to deliver the certificate and Landlord will be permitted to exercise all of its rights and remedies granted under this Lease.

18.2 Landlord's Liability. The term "Landlord" as used in this Lease so far as covenants or obligations on the part of Landlord are concerned shall be limited to mean and include only the owner or owners at the time in question of the fee title of the Project/Building of which the Premises are a part, and in the event of any transfer or transfers of such title or interest, Landlord herein named (and in case of any subsequent transfers or conveyances the then grantor) shall be automatically freed and relieved, from and after such transfer or conveyance, of all liability as respects the performance of any covenants or obligations on the part of Landlord contained in this Lease thereafter to be performed, provided that any funds in the hands of Landlord or the then grantor at the time of such transfer shall be subject as provided for in the Lease, and be binding on Landlord, its successors and assigns, only during and in respect to their respective periods of ownership.

18.3 Waiver of Right to Jury Trial. Landlord and Tenant waive their respective rights to trial by jury of any contract or tort claim, counterclaim, cross-complaint, or cause of action in any action, proceeding, or hearing brought by either party against the other on any matter arising out of or in any way connected with this lease, the relationship of landlord and tenant, or tenant's use or occupancy of the premises, including any claim of injury or damage or the enforcement of any remedy under any current or future law, statute, regulation, code, or ordinance.

Initials

Initials

18.4 Signs and Outdoor Improvements.

(a) Tenant will not place on any exterior door, wall or windows of the Premises, any sign, awning or canopy, or advertising matter or other thing of any kind, and will not place or maintain any decoration, lettering or advertising matter on the glass of any window or door of the Premises without first obtaining both (i) applicable governmental approvals, and (ii) Landlord's written approval and consent, which consent shall be given in Landlord's reasonable judgment. Tenant further agrees to maintain such sign, awning, canopy, decoration, lettering, advertising matter or other thing, as may be approved, in good condition and repair at all times.

(b) Tenant agrees, at Tenant's sole cost, to obtain all signs required by Landlord in strict conformance with Landlord's sign criteria as to design, material, color, location, size and letter style. Tenant's sign or signs shall be installed prior to Tenant's opening for business, or when otherwise permitted by Landlord. Tenant further agrees to maintain the signs. If Tenant does not install or maintain the signs, Landlord may do so. In this event, Tenant agrees to reimburse Landlord for the charges of such purchase, installation and maintenance of the signs, plus twenty percent (20%) of such charges as overhead. If Tenant installs a sign that does not conform to Landlord's specifications without Landlord's prior written approval, Landlord may have Tenant's sign removed and stored at Tenant's expense. The above-stated maintenance, removal and storage costs incurred by and payable to Landlord shall bear interest as set forth in Section 18.7. A copy of Landlord's sign criteria in effect at the time of execution of this Lease is attached to this Lease as "**Exhibit E.**"

(c) Landlord may impose charges for including Tenant's name on Building and Project directories and outside of Tenant's Premises.

(d) Landlord reserves the right from time to time to revise the sign criteria.

(e) Regardless of whether Landlord is or is not enforcing any of the provisions of this Section with respect to Tenant, Tenant has no rights to enforcement of any of the provisions of this Section with respect to any other tenant in the Project/Building, nor is Landlord obligated to enforce any of the provisions of this Section with respect to any other tenant of the Project/Building or in default of this Lease for failure to do so. Furthermore, Landlord's failure to enforce any of the provisions of this Section against Tenant at any time, shall not constitute a waiver of Landlord's rights to enforce any of the provisions of this Section against Tenant at a later time.

18.5 Severability. Any provision of this Lease which shall be proven to be invalid, void or illegal shall in no way affect, impair or invalidate any other provisions of this Lease, and such remaining provisions shall remain in full force.

18.6 Security Deposit.

(a) Tenant has deposited with Landlord a security deposit in the amount specified in the Summary of Basic Lease Provision as security for the full and faithful performance of every provision of this Lease to be performed by Tenant. If Tenant (1) at any time during the term of this Lease defaults with respect to any provisions of this Lease, including, without limitation, the provisions relating to the payment of rent, additional rent or other charges, or (2) at any time during the term of this Lease fails to repair any damage to the Premises, including the Project/Building and common areas, occasioned by such Tenant's want of ordinary care or greater degree of culpability, for a period greater than five (5) days after written demand to make such repairs is served on Tenant by Landlord, or (3) on termination of this tenancy for any reason leaves the Premises in any unclean condition, as determined by Landlord, then Landlord may use, apply or retain all or any part of the security deposit for the payment of any rent, additional rent or other charges in default, or for the payment of any other amount which Landlord may spend or become obligated to spend by reasons of Tenant's default, or to compensate Landlord for any other loss or damage which Landlord may suffer by reason of Tenant's default.

(b) If any portion of the Security Deposit is used or applied as provided for above, Tenant shall within ten (10) days after written demand therefore deposit cash with Landlord in an amount sufficient to restore said deposit to the original amount, and Tenant's failure to do so shall be a material breach of this Lease.

(c) Landlord shall not be required to keep the security deposit separate from its general accounts, and Tenant shall not be entitled to interest on said deposit.

(d) If Tenant shall fully and faithfully perform every provision of this Lease to be performed by it, the security deposit, or as much of the security deposit which has not been applied by Landlord, shall be returned without payment of interest or other increment for its use, to Tenant (or, at Landlord's option, to the last assignee of Tenant's interest hereunder) at the expiration or earlier termination of the Lease term, but in any event within thirty (30) days of the expiration or earlier termination of the Lease term. The making by Tenant of the security deposit, or the application of the security deposit by Landlord in the manner provided, shall not constitute nor be construed as a limitation upon the exercise by Landlord of any other rights or remedies provided to Landlord under the terms of this Lease in the event of Tenant's default.

18.7 Interest on Past-Due Obligations. Any amount due from Tenant to Landlord under this Lease which is not paid when due (including, without limitation, amounts due as reimbursement to Landlord for costs incurred by Landlord in performing obligations of Tenant under this Lease) shall bear interest at the lesser of ten percent (10%) per annum or the maximum lawful interest rate (the "Agreed Rate"), from the date due until paid, unless otherwise specifically provided herein, but the payment of such interest shall not excuse or cure any default by Tenant under this Lease.

18.8 Time of Essence. Time is of the essence with respect to the performance of every provision of this Lease.

18.9 Captions and Sections. The Articles and Section captions contained in this Lease are for convenience only and shall not limit, amplify or otherwise constitute a part of this Lease and are not to be considered in the construction or interpretation of any provision of this Lease. All references to numbered Sections are to Sections as numbered in this Lease.

18.10 Incorporation of Prior Agreements; Amendments. This Lease contains all of the agreements of the parties hereto with respect to any matter covered or mentioned in this Lease, and no prior agreement or understanding pertaining to any such matter shall be effective for any purpose. No provision of this Lease may be amended or added to except by an agreement in writing signed by the parties hereto or their respective successors in interest, expressing by its terms an intention to modify this Lease.

18.11 Notices. Any notice required or permitted to be given under this Lease shall be in writing and may be served personally or by mail; if served by mail it shall be addressed as specified in the applicable Summary of Basic Lease Provision and sent certified mail, return receipt requested, postage prepaid. Any notice so given by mail shall be deemed

effectively given and received forty-eight (48) hours after being deposited in the United States Mail. Either party may by written notice to the other specify a different address for notice purposes. In every instance that a notice is given under this Paragraph, the notice shall also be given by facsimile to the phone number specified in the Summary of Basic Lease Provisions.

18.12 Quitclaim Deed. At the expiration or earlier termination of this Lease, Tenant shall, upon the request of Landlord, execute, acknowledge, and deliver to Landlord, within five (5) days after such request, a quitclaim deed or other document acceptable to Landlord to remove the cloud of this Lease from the Premises.

18.13 Joint and Several Obligations. If more than one person executes this Lease as Tenant, their obligation hereunder is joint and several, and any act or notice of or to, or refund to, or the signature of, any one or more of them in relation to renewal or termination of this Lease, or under or with respect to any of the terms of this Lease, shall be fully binding upon each and all persons executing this Lease as a Tenant.

18.14 Brokers. Except as otherwise noted in the applicable Summary of Basic Lease Provisions, Tenant warrants that it has had no dealings with any real estate broker or agent in connection with the negotiation of this Lease and agrees to indemnify, defend and save Landlord free and harmless from and against any and all claims, liabilities, demands, damages and costs for commissions, fees or expenses (including, without limitation, attorneys' fees) asserted by others on the basis that they were acting as Tenant's broker or agent. Such agreement will survive the termination of this Lease.

18.15 Waivers. No waiver by Landlord of any provision of this Lease shall be deemed to be a waiver of any other provision hereof or of any subsequent breach by Tenant of the same or any other provision. Landlord's consent to or approval of any act shall not be deemed to render unnecessary the obtaining of Landlord's consent to or approval of any subsequent act by Tenant, whether or not similar to the act so consented to or approved.

18.16 Recording. Tenant shall not record this Lease or any short form Memorandum of Lease without the prior written consent of Landlord.

18.17 Holding Over. The term of this Lease shall expire without further notice upon the Expiration Date as specified in the Summary of Basic Lease Provisions and any holding over by Tenant after such expiration shall not constitute a renewal or extension of this Lease or give Tenant any rights under this Lease, except when in writing signed by both parties of this Lease. If Tenant shall hold over for any period after the Expiration Date, Landlord may, at its option, treat Tenant as a Tenant "at will" commencing on the first (1st) day following the expiration of this Lease and subject to all of the terms and conditions contained in this Lease, except that the Fixed Minimum Rent shall be one hundred fifty percent (150%) of the Fixed Minimum Rent applicable at the Expiration Date, or at the then currently scheduled rent for comparable space in the Project/Building, whichever is greater. If Tenant fails to surrender the Premises upon the expiration of this Lease, Tenant shall indemnify, defend and save Landlord free and harmless from any and all loss, liability, demands, damages, costs, expenses, fees (including, without limitation, attorneys' fees) and claims, including, without limitation, any claims made by any succeeding tenant, arising out of or in connection with such failure to surrender. Acceptance by Landlord of rent or additional rent, after such expiration or earlier termination shall not constitute consent to a holdover hereunder or result in a renewal of this Lease. The foregoing provisions of this Section are in addition to and do not affect Landlord's right of re-entry or any other rights of Landlord under this Lease or as otherwise provided by law.

18.18 Relationship of the Parties. Nothing herein contained shall create between the parties to this Lease, or be relied upon by others as creating, any relationship of partnership, association, joint venture, or otherwise. The sole relationship of the parties to this Lease shall be that of Landlord and Tenant.

18.19 Cumulative Remedies. No remedy or election given by any provision of this Lease shall be deemed exclusive unless so indicated, but it shall, whenever possible, be cumulative with all other remedies in law or equity and as otherwise herein specifically provided.

18.20 Covenants and Conditions. Each term and each provision of this Lease performable by Tenant shall be deemed both a covenant and a condition.

18.21 Binding Effect. Subject to any provisions hereof restricting Transfers (as defined in Section 14.1(a)) by Tenant, this Lease binds, applies and inures to the benefit of, as the case may require, the respective successors and assigns of Landlord and Tenant.

18.22 Tenant Defined; Use of Pronoun. The word "Tenant" shall be deemed and taken to mean each and every person or party mentioned as a Tenant herein. The word "person" as used in this Lease includes any individual, partnership, limited liability company, corporation, association, trust, or a group of two or more of any of them or any combination. The necessary grammatical changes required to make the provisions of this Lease apply in the plural sense where there is more than one Tenant and to either corporations, associations, partnerships, or individuals, males or females, shall in all instances be assumed as though in each case fully expressed.

18.23 Venue; Construction. This Lease shall be governed by and construed pursuant to the laws of the State of California. Any litigation or arbitration arising out of this Lease shall be filed and maintained in San Diego County, California, in the Superior Court most near the Project/Building. Although Landlord primarily wrote the provisions of this Lease, the provisions were negotiated by both Landlord and Tenant and shall not be construed either for or against Landlord or Tenant, but shall be interpreted in accordance with the general tenor of the language.

18.24 No Offer. The submission of this document for examination and negotiation does not constitute an offer to lease, or a reservation of, or option for, the Premises; and this document becomes effective and binding only upon execution and delivery hereof by Tenant and by Landlord (or, when duly authorized, by Landlord's agent or employee). No act or omission of any employer or agent of Landlord or of Landlord's broker, if any, shall alter, change or modify any of the provisions of this Lease.

18.25 Subordination and Attornment.

(a) This Lease, at Landlord's option, shall be subordinate to any mortgage, deed of trust or any other hypothecation for security now or hereafter placed upon the real property of which the Project/Building or Premises are a part and to any and all advances made on the security thereof and to all renewals, modifications, consolidations, replacements and extensions thereof.

(b) Tenant agrees to execute any documents in addition to this Lease which may be required to effectuate such subordination, and failing to do so within ten (10) days after written demand, does hereby make, constitute and irrevocably appoint Landlord as Tenant's attorney-in-fact and in Tenant's name, place and stead, to do so. Furthermore, Tenant's failure to execute such documents within such ten (10) day period shall, at Landlord's option, constitute a material default under this Lease, without further notice or cure period under this Lease being applicable to this default, and be a conclusive presumption that the Lease has been subordinated to the lien of any mortgage or deed of trust. However, the foregoing presumption shall not relieve Tenant of its continuing obligation to execute the documents, and Landlord will be permitted to exercise all of its rights and remedies granted under this Lease.

(c) In the event of a sale of the real property of which the Project/Building or the Premises are a part (pursuant to foreclosure or the exercise of a power of sale under any such mortgage, deed of trust or other security instrument), Tenant shall attorn to the purchaser, and recognize such person as the Landlord under this Lease.

18.26 Attorneys' Fees. Tenant agrees to pay Landlord, upon three (3) days prior written notice, any fees or costs incurred by Landlord in effecting the collection of past due rent, additional rent or other amounts due to Landlord under this Lease or assuring Tenant's compliance with any of the other terms and conditions of this Lease including, without limitation, fees and costs of an attorney or collection agency. Nothing contained in this Lease shall limit any other remedy by Landlord. Landlord and Tenant agree that in the event of any litigation arising out of or in connection with this Lease, to collect any indebtedness hereunder, or to enforce any other right or remedy hereunder, the prevailing party shall be entitled to recover from the losing party, in addition to any money judgment or other relief, such reasonable

attorneys' fees as may have been incurred by the prevailing party in instituting or defending such litigation, or any appeal thereon, together with such reasonable costs and expenses of litigation as may be allowed by the court, all of which attorneys' fees, costs and expenses the losing party hereby covenants to pay. For purposes of this Section, in any unlawful detainer or other action or proceeding instituted by Landlord based upon any default or alleged default by Tenant, Landlord shall be deemed the prevailing party if (a) judgment is entered in favor of Landlord or (b) prior to trial or judgment Tenant shall pay all or any portion of the rent and charges claimed by Landlord, eliminate the condition(s), cease the act(s) or otherwise cure the omission(s) claimed by Landlord to constitute a default by Tenant under this Lease.

18.27 Exhibits. All Exhibits described in this Lease or which are a part of this Lease are attached hereto and incorporated herein by reference.

18.28 Rules and Regulations. Tenant covenants and agrees to comply with and observe all rules and regulations established by Landlord from time to time, including, without limitation, the "Rules And Regulations For Project/Building" attached hereto as "**Exhibit D.**" Tenant's failure to observe any rules and regulations established by Landlord shall be considered a default under this Lease. In the case of any conflict between any rules and regulations and this Lease, this Lease shall be controlling. If the Premises are a part of a group of buildings controlled by Landlord, Tenant agrees that it will observe all reasonable rules and regulations which Landlord may make from time to time for the management, safety, and care of said properties, including the care and cleanliness of the grounds and including the parking, loading and unloading of vehicles, and that Tenant will pay its fair share of common expenses incurred in connection therewith.

18.29 Surrender of Premises. On the last day of the Lease term, or on any sooner termination, Tenant shall surrender the Premises to Landlord in the same condition as when received, broom clean, ordinary wear and tear excepted. Prior to the expiration or sooner termination of this Lease (subject to Section 10.2).

18.30 Accord and Satisfaction. No payment by Tenant or receipt by Landlord of a lesser amount than the rent, additional rent or other amount(as the case may be) herein stipulated shall be deemed to be other than on account of the earliest stipulated rent, additional rent or other amount due to Landlord under this Lease, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent, additional rent or other amount be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such rent, additional rent or other amount or pursue any other remedy provided for in this Lease.

18.31 Changes Requested By Lender. Tenant shall not unreasonably withhold its consent to changes or amendments to this Lease requested by a lender on Landlord's fee interest, so long as such changes do not materially alter the basic business terms of this Lease.

18.32 Substitute Operator. Landlord reserves the right to appoint a substitute operator, including, without limitation, any tenant or other occupant of the Project/Building, to carry out any or all of Landlord's rights, obligations and duties under this Lease. Landlord may enter into a contract with the substitute operator either by a separate document or in a lease agreement with such operator on such terms and for such period of time as Landlord elects.

18.33 Survival of Indemnities and Warranties. The obligations of the indemnifying party under each and every indemnification and hold harmless provision contained in this Lease shall survive the expiration or earlier termination of this Lease. The representations, warranties, and covenants of the parties contained herein shall survive the expiration or earlier termination of this Lease. However, Tenant acknowledges that it has not relied on any representations or warranties in executing and entering into this Lease.

18.34 Warranty Of Authority. If Tenant is a corporation, limited liability company or partnership, each individual executing this Lease on behalf of the corporation, limited liability company or partnership represents and warrants that he, she or it is duly authorized to execute and deliver this Lease on behalf of the corporation, limited liability company or partnership, and that this Lease is binding upon the corporation, limited liability company or partnership. If Tenant is a corporation or limited liability company, the persons executing this Lease on behalf of Tenant hereby covenant and warrant that (a) Tenant is a duly qualified entity and all steps have been taken prior to the date hereof to qualify Tenant to do

business in the State of California, (b) all franchise and corporate taxes have been paid to date, and (c) all future forms, reports, fees and other documents necessary to comply with applicable laws will be filed when due.

18.35 Force Majeure. In the event either party hereto shall be delayed or hindered in or prevented from the performance required hereunder by reason of strikes, lockouts, labor troubles, failure of power, riots, insurrection, war, acts of nature, or other reason of like nature not the fault of the party delayed in performing work or doing acts, such party shall be excused for the period of delay. The period of performance of any such act shall then be extended for the period of such delay. Notwithstanding the foregoing, however, force majeure shall not serve to excuse or postpone Tenant's obligations to pay rent unless expressly provided in this Lease.

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the date above first written.

LANDLORD:

By:

Its.:

By: _____

Date: _____

By:

Its.:

By: _____

Date: _____

TENANT:

By: _____

Name: _____

Its: _____

Date: _____