

ORIGINAL

LEASE AGREEMENT

by and between

BALBOA BUILDING OWNER LLC,  
a Delaware limited liability company

and

THE CITY OF SAN DIEGO,  
a California municipal corporation

Dated: march 28, 2022

DOCUMENT NO. 313950  
FILED MAR 08 2022  
OFFICE OF THE CITY CLERK  
SAN DIEGO, CALIFORNIA

## LEASE AGREEMENT

THIS LEASE AGREEMENT (this "Lease") is made and entered into on this 28<sup>th</sup> day of march, 2022 (the "Effective Date"), by and between BALBOA BUILDING OWNER LLC, a Delaware limited liability company, hereinafter designated as "Lessor," and THE CITY OF SAN DIEGO, a California municipal corporation, hereinafter designated as "Lessee."

## RECITALS

A. Lessor owns that certain office building and related improvements (the "Property") located on that certain real property located at 9444 Balboa Avenue, San Diego, California 92123 (the "Land").

B. Lessor and Lessee desire to enter into this Lease for the Premises (as defined below), on the terms and conditions as described below.

NOW THEREFORE, for good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

## AGREEMENT

### 1. PREMISES

On the terms and conditions contained herein, Lessor hereby leases to Lessee and Lessee hereby leases from Lessor that certain office suite designated as Suite 375, containing approximately 4,712 rentable square feet, as indicated on the space plan attached hereto as Exhibit A (the "Premises"). The Premises are a part of the office building located on the Property (the "Building"). The Land and the Property, including without limitation the Building, together with the adjacent building located on the Land, are hereinafter collectively referred to as the "Project." Lessor and Lessee agree that for purposes of this Lease: (i) the current rentable square footage of the Building and the adjacent building located on the Land is 120,992 square feet; and (ii) Lessee's Pro Rata Share (as such term is used in Sections 4.1, 4.3 and elsewhere in the Lease) is three and eighty-nine hundredths percent (3.89%), which is the ratio that the rentable square footage of the Premises (4,712 rentable square feet) currently bears to the rentable square footage of the Building (120,992 rentable square feet).

### 2. TERM

2.1 Initial Term. Except as otherwise specifically provided herein, the term of this Lease shall be for a period of sixty-six (66) months (the "Term").

2.2 Term Commencement Date. The Term shall commence upon the later of March 7, 2022 or Substantial Completion of Improvements, as defined in Exhibit C attached hereto (the "Commencement Date") and shall end sixty-six (66) months after the Commencement Date (the "Termination Date"). Lessor's failure to achieve Substantial Completion of the Improvements by March 7, 2022 shall not be a default under the Lease, nor provide Lessee any additional rights hereunder. Subject to Lessor's consent, which shall not be unreasonably withheld, delayed or conditioned, Lessee may enter the Premises for a period of time not to exceed thirty (30) days before the Commencement Date for the purpose of installing furniture, fixtures and equipment. Upon the entry of Lessee, Lessee shall have all obligations under the Lease except the obligation to pay Base Rental. If Lessee takes possession of the Premises before the Commencement Date and opens for business, the Term hereunder shall commence as of such date, but the Termination Date shall not change. Upon Substantial Completion, Lessee shall execute a written

acknowledgement in the form attached as Exhibit D, confirming the Commencement Date, the Termination Date and such other matters described therein.

2.3 Holding Over. If Lessee remains in possession of the Premises after the expiration or termination of this Lease, Lessee shall be deemed a Lessee on a month-to-month basis on the terms and conditions herein, at one hundred -twenty-five percent (125%) of the then current base monthly rental in effect hereunder immediately prior to the date of such expiration or termination (as Base Rental hereunder and not as liquidated damages).

2.4 Lessee Annual Fiscal Year Budget Condition. Notwithstanding anything to the contrary in the Lease, Lessee's obligation to pay Base Rental and Lessee's associated right to occupy the Premises after June 30, 2022, are subject to the City Council of Lessee ("City Council") appropriating money to pay Base Rental under the Lease in Lessee's fiscal years following Lessee's 2021-2022 fiscal year (July 1, 2021 – June 30, 2022), in the City Council's sole and absolute discretion. Lessee agrees to annually take all necessary action to include Base Rental payments under the Lease in Lessee's future proposed annual budgets for all Lessee fiscal years following Lessee's 2021-2022 fiscal year in which any part of the Term occurs, subject to the reserved sole and absolute discretion of the City Council to approve each such budget, with or without appropriating money for Base Rental payments under the Lease. The parties acknowledge that the City Council adopts an annual fiscal year budget for Lessee before the end of each fiscal year. If the City Council does not appropriate money to pay Base Rental under the Lease in a Lessee annual budget for a fiscal year in which any part of the Term occurs, Lessee may terminate the Lease by written notice to Lessor within three (3) days of such budget adoption by the City Council and shall vacate the Premises on or before the end of the then current Lessee fiscal year. Lessee will notify Lessor in writing when any Lessee budget item is noticed for consideration at a public City Council meeting during the months of April, May or June of each Lessee fiscal year during the Term.

### 3. RENTAL

3.1 Base Rental. Lessee shall pay to Lessor, for the use and occupancy of the Premises, "Base Rental" per Table A below and as follows: (a) the first full non-abated month's rent to be paid within thirty (30) days of the execution of this Lease ( $4,712 \times \$3.05 = \$14,371.60$ ), and (b) in advance on the first day of the second non-abated month of the Term, and on the first day of each and every calendar month thereafter in advance. If the Term commences or terminates on a day other than the first day of a calendar month, then the Base Rental for said partial month shall be prorated on a per diem basis.

3.2 Payment. Base Rental and all other sums payable pursuant hereto, all of which other sums shall be deemed to be Additional Rental (and together with Base Rental may be referred to as "Rent"), shall be paid without deduction, offset, prior notice or demand to:

Standard Mail:

Balboa Building Owner, LLC  
P.O. Box 515640  
Los Angeles, CA 90051-4546

Overnight Mail:

Balboa Building Owner, LLC  
Attn: Lockbox Operations Box 515640  
20500 Belshaw Ave.  
Carson, CA 90746

or at such other place or to such other person as Lessor may from time to time designate by notice hereunder. Payment shall be made in lawful money of the United States of America. Lessor shall have the right to

require Lessee to pay all past due obligations, including late charges (defined below) payable and interest at the default interest rate (defined below), in cash or certified funds.

3.3 Rental Taxes. Together with and in addition to any payment of Rent or any other sums payable to or for the benefit of Lessor pursuant to this Lease, Lessee shall pay to Lessor any excise, sales or transaction privilege tax levied by any governmental authority upon Lessor (except Lessor's income tax) as a result and to the extent of such payments hereunder, or as a result of Lessee's use or occupancy of the Premises.

Table A

Month 1:

\$3.05 Per Square Foot (multiplied by 4,712 square feet)  
\$14,371.60\*\* Monthly Rental, plus applicable taxes  
\$172,459.20 Annual Rental, plus applicable taxes

Month 2 through Month 7\*:

\$3.05 Per Square Foot (multiplied by 4,712 square feet)  
\$14,371.60\*\* Monthly Rental, plus applicable taxes  
\$172,459.20 Annual Rental, plus applicable taxes

\* Base Rental for this period of six (6) months (as well as any early occupancy by Lessee permitted by Lessor prior to Month 1) shall be fully abated and only payable by Lessee in the event of an uncured event of default by Lessee as of the end of the Term or earlier termination of this Lease (see Article 32.2(d) below).

Month 8 through Month 12:

\$3.05 Per Square Foot (multiplied by 4,712 square feet)  
\$14,371.60\*\* Monthly Rental, plus applicable taxes  
\$172,459.20 Annual Rental, plus applicable taxes

Month 13 through Month 24:

\$3.14 Per Square Foot (multiplied by 4,712 square feet)  
\$14,802.75\*\* Monthly Rental, plus applicable taxes  
\$177,633.00 Annual Rental, plus applicable taxes

Month 25 through Month 36:

\$3.24 Per Square Foot (multiplied by 4,712 square feet)  
\$15,246.83\*\* Monthly Rental, plus applicable taxes  
\$182,962.00 Annual Rental, plus applicable taxes

Month 37 through Month 48:

\$3.33 Per Square Foot (multiplied by 4,712 square feet)  
\$15,704.24\*\* Monthly Rental, plus applicable taxes  
\$188,450.82 Annual Rental, plus applicable taxes

Month 49 through Month 60:

\$3.43 Per Square Foot (multiplied by 4,712 square feet)  
\$16,175.36\*\* Monthly Rental, plus applicable taxes  
\$194,104.35 Annual Rental, plus applicable taxes

Month 61 through Month 66:

\$3.54 Per Square Foot (multiplied by 4,712 square feet)  
\$16,660.62\*\* Monthly Rental, plus applicable taxes

\$199,927.48     Annual Rental, plus applicable taxes

\*\* plus applicable rental tax (if any), Lessee's Pro Rata Share of Operating Costs, Lessee's Pro Rata Share of Electrical Costs, and parking fees (if any).

3.4     Late Charges. Lessee hereby acknowledges that late payment by Lessee to Lessor of rent and other sums due hereunder will cause Lessor to incur costs not contemplated by this Lease, the exact amount of which will be very difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges and late charges which may be imposed on Lessor by the terms of any mortgage or deed of trust covering the Premises. Accordingly, if any monthly installment of rental or other amount due to Lessor hereunder shall not be received by Lessor within ten (10) days after the due date, Lessee shall pay to Lessor a late charge equal to five percent (5%) of such amount due (the "Late Charge") without further demand or notice from Lessor. The parties hereby agree that the Late Charge represents a fair and reasonable estimate of the costs Lessor will incur by reason of late payment by Lessee, and shall be in addition to any interest which may accrue thereon pursuant to Section 3.5 below.

3.5     Interest on Past-Due Obligations. Any amount due to Lessor which is not paid when due shall bear interest from the date due until paid at a rate equal to ten percent (10%) per annum (the "Default Interest Rate"). Payment of the Default Interest Rate shall not excuse or cure any default by Lessee under this Lease.

#### 4.     OPERATING COSTS

4.1     Lessee's Pro Rata Share of Operating Costs. In addition to the Base Rental and all other sums payable pursuant hereto, Lessee shall pay to Lessor during the entire term of this Lease, as "Additional Rental" hereunder, Lessee's Pro Rata Share of that amount by which the Operating Costs (as defined below) for each calendar year during the Term exceeds the actual expenses from the Base Year. The calendar year in which the Term commences (2022) is referred to herein as the "Base Year" and each calendar year thereafter is referred to herein as a "Lease Year". As soon as reasonably possible after the expiration of the Base Year or any Lease Year, Lessor shall furnish Lessee with a statement setting forth in reasonable detail the Operating Costs for the Base Year or the Lease Year, as the case may be, determined on an accrual basis, as of the 31st day of December of each such calendar year, and Lessee's Pro Rata Share of any excess of said costs over the actual expenses from the Base Year. Within forty five (45) days of the receipt of such statement for the Lease Year, Lessee shall pay in full Lessee's Pro Rata Share of said excess. In addition, said amount shall be used as an estimate for the then current Lease Year and shall be divided into twelve (12) equal monthly installments, and Lessee shall pay to Lessor one installment per month concurrently with the monthly Base Rental next due after the receipt of such statement from Lessor. If the amount of excess costs paid by Lessee on a monthly basis for any Lease Year as provided for above is greater than Lessee's Pro Rata Share of the actual excess as set forth in the statement delivered by Lessor to Lessee for said Lease Year, then Lessor shall credit the additional amount paid by Lessee toward the next installment of Base Rental and Additional Rental. If the amount paid by Lessee is less than Lessee's Pro Rata Share of the excess, then Lessee shall pay the additional amount owing to Lessor on or before sixty (60) days after receipt by Lessee of said statement, and the monthly amount to be paid by Lessee for the then current Lease Year shall be increased accordingly. If the Term commences or terminates on a day other than the first or last day of a calendar year, Lessee's Pro Rata Share of excess Operating Costs for the Base Year in which this Lease commences and the Lease Year in which this Lease terminates shall be prorated on a per diem basis. If Lessor's statement for said final Lease Year discloses that Lessee has underpaid or overpaid Lessee's Pro Rata Share, then Lessor or Lessee, as the case may be, shall remit the difference to the other party on or before sixty (60) days after Lessee's receipt of said statement.

Notwithstanding any of the foregoing to the contrary, (a) the Operating Costs that vary with occupancy and are attributable to any part of the Term in which less than ninety-five percent (95%) of the rentable area of the Building is occupied by lessees will be adjusted by Lessor to the amount that the Operating Costs would have been if ninety-five percent (95%) of the rentable area of the Building had been

occupied by lessees, and (b) if Lessor furnishes a service to lessees in the Building, the cost of which constitutes an Operating Cost, and a lessee other than Lessee has undertaken to perform such service itself, Operating Costs shall be increased by the amount that Lessor would have incurred if Lessor had furnished such service to such Lessee.

4.2 Definition of Operating Costs. The term "Operating Costs" means all costs, expenses, and fees incurred by Lessor in owning, managing, maintaining, repairing and operating the Project (whether or not now customary or in the contemplation of the parties), including, but not limited to, the following: (a) real property taxes and assessments and any other taxes imposed or levied by any governmental entity upon the Project; personal property taxes on equipment, fixtures and other property of Lessor located on the Project and used in connection with the operation thereof; and costs, expenses and fees (including, but not limited to, attorneys' fees) incurred by Lessor in contesting any of said taxes; (b) property management and building superintendent fees; the cost of security personnel and services of independent contractors; and wages, charges, taxes, fringe benefits or other labor costs; (c) equipment, supplies and materials (new or replacement) used on the Project; the cost of water, sewer service, gas, and other utilities and services for the Project (except telephone service for the lessees, which shall be the obligation of each lessee, and any utilities for which a separate meter has been installed for the Premises and which are paid by Lessee pursuant to the terms of this Lease or paid by other lessees pursuant to the terms of their leases, and excluding Electrical Costs which are paid pursuant to Section 4.3); the cost of refuse, garbage and trash removal, collection and disposal and the cost of pest control; (d) the cost of janitorial service for the Project; the cost of upkeep and maintenance of the Building, including the roof and structural elements thereof and any elevators, plumbing, electrical, heating and air conditioning systems; the cost of upkeep and maintenance of any parking areas (including any covered parking canopies), sidewalks, hallways, stairways, toilets and other common facilities; the cost of landscaping and landscape maintenance; the cost of cleaning and other care of the Project and the improvements comprising the same; (e) the cost of fire and extended coverage insurance, comprehensive public liability insurance and other insurance in such amounts as Lessor may determine; and (f) expenditures for improvements normally designated as capital improvements which result in operational or maintenance economies or which are imposed or required by or result in operational or maintenance economies or which are imposed or required by or result from statutes or regulations, or interpretations thereof, promulgated by any governmental authority; provided, however, the cost of any such capital improvements shall be amortized in accordance with generally accepted accounting principles and only the portion of such amortization applicable to any calendar year shall be included as an expense for that calendar year.

4.3 Lessee's Pro Rata Share and Use of Electrical Services by Lessee.

A. Lessee shall pay Lessor, as "Additional Rental" hereunder, Lessee's Pro Rata Share of Electrical Costs (defined below) for each applicable calendar year or portion thereof during the Term. Before the Commencement Date and before January 1 of each calendar year during the Term, or as soon thereafter as practical, Lessor shall make a good faith estimate of Electrical Costs for the applicable calendar year and Lessee's Pro Rata Share. On or before the first day of each month during the calendar year, Lessee shall pay Lessor, as Additional Rental, a monthly installment equal to one-twelfth of Lessee's Pro Rata Share of Lessor's estimate of Electrical Costs. Lessor shall have the right from time to time to revise the estimate of Electrical Costs for the year and provide Lessee with a revised statement, and the amount Lessee shall pay each following month shall be based upon the revised estimate. If Lessor does not provide Lessee with an estimate of the Electrical Costs by January 1 of a calendar year, Lessee shall continue to pay monthly based on the previous year's estimate until Lessor provides Lessee with the new estimate. Upon receipt of the new estimate, an adjustment shall be made for any month during the current year for which Lessee paid monthly installments of Additional Rental based on the previous year's estimate. Lessee shall pay Lessor the amount of any underpayment within thirty (30) days after demand. Any overpayment shall, at Lessor's option, be refunded to Lessee or credited against the installment of Additional Rental next due. Amounts paid by Lessee based on any estimate shall be subject to adjustment

pursuant to the immediately following paragraph when actual Electrical Costs are determined for the calendar year.

Following the end of each calendar year, Lessor shall furnish Lessee with a statement of actual Electrical Costs for the previous calendar year. If the amount of estimated Electrical Costs paid by Lessee for the prior year is greater than Lessee's Pro Rata Share of actual Electrical Costs for the prior year, Lessor shall apply the overpayment against Additional Rental next due or becoming due, provided that if the Term expires before the determination of the overpayment, Lessor shall refund the overpayment to Lessee after first deducting the amount of Rent due. Likewise, Lessee shall pay Lessor, within thirty (30) days after demand, any underpayment for the prior year, whether or not the Lease has terminated prior to receipt by Lessee of a statement for the underpayment. This clause shall survive the expiration or earlier termination of the Lease.

B. "Electrical Costs" means: (i) charges paid by Lessor for electricity to the Building and Property; and (ii) costs incurred in connection with an energy management program for the Building or the Property, including, without limitation, costs incurred for the replacement of lights and ballasts and other similar routine maintenance and the purchase and installation of sensors and other energy saving equipment. Electrical Costs shall be adjusted as follows: (a) amounts received by Lessor as reimbursement for above standard electrical consumption shall be deducted from Electrical Costs, and (b) the cost of electricity incurred to provide overtime HVAC to specific tenants (as reasonably estimated by Lessor) shall be deducted from Electrical Costs. Lessor shall have the exclusive right to select any company providing electrical service to the Premises, to aggregate the electrical service for the Building and Premises with other buildings, to purchase electricity through a broker and/or buyers group and to change the providers and manner of purchasing electricity.

C. Lessee's use of electrical service shall not exceed, either in voltage, rated capacity, use beyond Building Service Hours or overall load, that which Lessor reasonably deems to be standard for the Building. If Lessee requests permission to consume excess electrical service, Lessor may refuse to consent or may condition consent upon conditions that Lessor reasonably elects (including, without limitation, the installation of utility service upgrades, meters, submeters, air handlers or cooling units), and the additional usage (to the extent permitted by Law), installation and maintenance cost shall be paid for by Lessee. Lessor shall have the right to separately submeter electrical usage for the Premises or to measure electrical usage by survey or other methods that Lessor, in its reasonable judgment, deems appropriate, and the reasonable cost of any submeter installed by Lessor to measure the electrical consumption in the Premises shall be paid by Lessee.

5. INTENTIONALLY OMITTED

6. REAL ESTATE BROKERAGE

Lessor shall pay a commission to CBRE (Nick Bonner), "Broker", in an amount set forth in a separate agreement between Lessor and Broker. Lessee represents that, other than the Broker it has not had dealings with any other real estate broker, finder, or other person with respect to this Lease. If any person shall assert a claim to a finder's fee, brokerage commission or other compensation on account of alleged employment as a finder or broker or for performance of services as a finder or broker in connection with this transaction, other than the Broker, the party under whom the finder or broker is claiming shall indemnify, defend, and hold harmless the other party for, from and against any and all obligations, debts, covenants, conditions, representations, costs, and liabilities and any and all demands, causes of action, and claims, of every type, kind, nature or character, direct or indirect, known or unknown, absolute or contingent, determined or speculative, at law, in equity or otherwise, including attorneys' fees and litigation and court costs, in connection with such claim or any action or proceeding brought on such claim.

## 7. USE OF PREMISES

7.1 Permitted Uses. Lessee shall not use or permit the use of the Premises for any purpose except general office use. Notwithstanding the foregoing, Lessee shall not use the Premises for any use or activity prohibited by applicable Laws (as defined in Section 7.4 below).

7.2 Insurance Requirements. Lessee shall not engage in or permit any activity which will cause the cancellation of or increase the existing premium rate of fire, liability, or other insurance on or relating to the Premises, the Building or the Project. In the event Lessee engages in or permits any activity that causes an increase in the existing premium rate of any such insurance, in addition to any other remedies available to Lessor under the terms of this Lease, Lessor shall have the right to demand and receive from Lessee an amount equal to the increase in the existing premium rate. Lessee shall not sell or permit to remain in or about the Premises any article that may be prohibited by standard form all risk, fire, and extended coverage insurance policies. Lessee shall comply with all requirements pertaining to the use of the Premises necessary for maintenance of such fire and public liability insurance, as may hereinafter be required by Lessor's insurance provider, for the Premises, the Building or the Project.

7.3 Waste, Nuisance, Etc. Lessee shall not commit or permit any waste on the Premises or in any manner deface or injure the Premises, the Building or the Project, and shall not use the Premises for the production or distribution of pornographic materials or other purposes which Lessor, in its sole discretion, deems offensive or immoral, or commit or permit on the Premises or any part of the Project any offensive, noisy or dangerous activity or other nuisance or other activity or thing which may disturb the quiet enjoyment or peaceable possession of any other lessee in the Project. Lessee shall not overload the floor of the Premises beyond the limit established by Lessor. Lessee shall not employ any sound emitting device in or about the Premises that is audible outside the Premises, except fire and burglar alarms.

7.4 Compliance with Laws. Lessee shall comply, at its expense, with all laws, ordinances, rules and regulations of any public authority at any time now or hereafter applicable to the Premises, or any activity therein or use thereof (collectively, "Laws"), and shall, at its expense, construct and install any improvements which may be required from time to time by applicable Laws, or the Rules and Regulations defined in Section 7.7 below. Lessee shall not permit anything to be done in or about the Premises which will in any way conflict with any law, statute, ordinance or governmental rule or regulation currently in force or which hereafter may be enacted or promulgated.

7.5 Trash. Lessee shall place all refuse and trash in receptacles provided by Lessor. If Lessee creates an unusual amount of trash in the reasonable opinion of Lessor and Lessor so requests in writing, Lessee shall provide, at its own cost, for its own trash disposal and pickup at such intervals as Lessor may deem reasonably necessary so that no refuse or trash is visible on the Premises.

7.6 Sidewalks, Signs, Exterior, Etc. Lessee shall not display or exhibit any products, goods, wares or merchandise and shall not distribute advertising materials within the Project. Lessee shall not erect or place on or about the exterior of the Building, or on any windows, glass partitions or doors thereof, any signs or other written information unless approved in writing by Lessor. Lessee shall not install exterior lighting on or decorate, paint or otherwise alter or improve the structure or roof of the Building. Lessee shall not install any objects on the roof of the Building. Lessee shall not store products, containers or merchandise outside of the Premises except for such short periods of time as may be necessary for loading or unloading service vehicles.

7.7 Rules and Regulations. Lessee, its employees, agents, contractors, customers and invitees, shall comply with the Rules and Regulations of the Project attached to the Lease as Exhibit B and made a part hereof by reference (the "Rules and Regulations"), and with such modifications thereto as Lessor, in its sole discretion, may hereafter make for the Project; provided, however, that such Rules and Regulations shall not contradict or abrogate any right or privilege herein expressly granted to Lessee. Lessee agrees to faithfully observe and comply with the Rules and Regulations and all modifications thereto from time to

time in effect, and any violation of such Rules and Regulations by Lessee, its employees, agents, contractors, customers or invitees shall constitute a breach of this Lease. Lessor shall not be responsible to Lessee for the non-performance by any other lessee or occupant of the Project of the Rules and Regulations or any modifications thereof.

## 8. CONDITION OF PREMISES; LESSEE'S ACKNOWLEDGMENT; PREMISES IMPROVEMENTS.

8.1 Condition of Premises; As-Is. Lessee acknowledges, represents and agrees to the following: (i) Lessee shall be responsible for making its own inspection and investigation of the Premises, the Building and the Project, (ii) Lessee shall be responsible for investigating and establishing the suitability of the Premises for Lessee's intended use thereof, and all zoning and regulatory matters pertinent thereto, and (iii) With the exception of the improvements described in Exhibit C, attached hereto (the "Improvements"), Lessee is leasing the Premises "AS IS" based on its own inspection and investigation and not in reliance on any statement, representation, inducement or agreement of Lessor, except as expressly set forth herein. By taking possession of the Premises, Lessee shall be deemed to have accepted the Premises as being in satisfactory condition and completed in accordance with any requirements of Lessee set forth herein.

8.2 Construction Obligations. The Improvements shall be constructed in accordance with the Premises Construction Procedures attached or to be attached as Exhibit C. Lessor shall not be obligated to construct or install any other improvements concerning the Premises. If Exhibit C is omitted, Lessor shall have no obligation to construct, install or pay for the construction of any Improvements to the Premises.

8.3 Lessor's Property. All of the Improvements shall remain the property of Lessor upon expiration or termination of the Lease. This extends to, but is not limited by, all cabinetry, wall coverings, floor coverings, window coverings, electrical and plumbing fixtures and conduits, lighting and the Improvements placed upon, installed or attached to the Premises.

8.4 Liens. During the installation of Lessee's trade fixtures, equipment, furniture and personal property and at all times thereafter, Lessee shall keep the Premises (and the Building and real property upon which the Building is constructed) free from liens arising out of work performed, materials furnished or obligations incurred in connection therewith, as provided in Section 12 herein.

## 9. BUILDING SERVICES

9.1 Services. Subject to the Rules and Regulations attached to this Lease, and except to the extent governed by Section 4.3 above, Lessor agrees to furnish to the Premises, during normal business hours of generally recognized business days (as determined by Lessor in its reasonable discretion), janitorial service, elevator service, plumbing suitable for the typical use of the Premises, and electricity and heat and air conditioning required in Lessor's reasonable judgment for the comfortable use and occupation of the Premises and in accordance with Section 4.3 (and the costs of all of such services shall be included in Operating Costs (except Electrical Costs which shall be provided and paid for in accordance with Section 4.3)). Normal business hours are Monday through Friday, from 8:00 a.m. to 6:00 p.m., and Saturday from 9:00 a.m. to 1:00 p.m., excluding holidays ("Building Service Hours"). In the event Lessee has a restroom or kitchen (or if the Premises is an entire floor of the Building), Lessee shall pay at their sole cost and expense for all janitorial supplies for restroom and kitchen facilities. Lessor shall have the right to separately meter the Premises and to charge Lessee for the cost of all utilities furnished to the Premises beyond the Building Service Hours normal business hours of generally recognized business days as determined by Lessor. Lessor shall not be liable for, nor shall Lessee be entitled to, any abatement or reduction of rental or other sums due hereunder by reason of Lessor's failure to furnish any of the foregoing services when such failure is caused by the acts of Lessee or by any cause beyond the reasonable control of Lessor, including but not limited to accidents, breakage, remodeling, improvements, material shortage, shipping

and delivery delays, repairs, strikes, lockouts or other labor disturbances or labor disputes of any character, or by any other cause, similar or dissimilar. It is expressly understood that Lessor shall not be liable under any circumstances for loss or damage, however occurring, incurred in connection with or incidental to the failure to furnish any of the foregoing services. Wherever heat generating machines or equipment are used in the Premises which affect the temperature, Lessor reserves the right to install supplementary air conditioning units in the Premises and a separate submeter (collectively, the "Extra Utilities") and the cost of the Extra Utilities, including the cost of installation, operation and maintenance, shall be paid by Lessee to Lessor as follows: (i) Lessee shall pay Lessor the initial costs of installation of the Extra Utilities within ten (10) days after Lessee's receipt of Lessor's invoice thereof; (ii) Lessee shall thereafter pay such charges for the Extra Utilities as Lessor shall from time to time establish with respect thereto; and (iii) all ongoing charges for such Extra Utilities shall be due at the same time as the installment of Base Rent with which the same are billed, or, if billed separately, shall be due within ten (10) days after such billing.

9.2 Prohibitions. Lessee will not, without the written consent of Lessor, (i) use any apparatus or device in the Premises (including, without limitation, any data processing machines, punch card machines or other machines using current in excess of 110 volts) which will increase the amount of electricity, water or other utilities otherwise furnished or supplied for use of the Premises in accordance with the permitted use in Article 7.1; (ii) install any 220 volt outlets in the Premises, except those to be initially installed, if any; or (iii) connect into the electric current or the water supply except through existing electrical outlets or existing water taps in the Premises. Lessor may refuse to consent or may condition consent upon conditions that Lessor reasonably elects (including, without limitation, the installation of utility service upgrades, meters, submeters, air handlers or cooling units), and the additional usage (to the extent permitted by Law), installation and maintenance cost shall be paid for by Lessee. If Lessee shall require water, electric current or other utilities in excess of that which would otherwise be furnished or supplied for use of the Premises in accordance with the permitted use is Article 7.1, Lessee shall first procure the written consent of Lessor to the use thereof, and Lessor may cause a water meter, electric meter or other utility measuring device to be installed in the Premises for the purpose of measuring the amount of water, electric current or other utilities consumed for any such purpose. The cost of any such meters and the installation, maintenance and repair thereof shall be paid for by Lessee and Lessee agrees to pay Lessor promptly upon demand for the cost of all water, electric current or other utilities consumed as shown by said meters, at the rates charged for such services by the suppliers thereof. In the event separate meters cannot be installed, Lessor shall have the right to estimate the additional cost of the utilities utilized by Lessee and charge the same directly to Lessee, who agrees to promptly pay the same. Lessor shall have the right to measure electrical usage by survey or other methods that Lessor, in its reasonable judgment, deems appropriate.

## 10. MAINTENANCE AND REPAIR

10.1 Lessor's Obligations. Unless such maintenance or repairs are required because of any negligent or intentional act or omission of Lessee or its agents, employees, contractors, customers or invitees, Lessor shall maintain, subject to Lessor's right to recover the cost thereof under Article 4 above, in good order and repair the exterior (except any glass doors which are a part of the Premises), roof and structural elements of the Building, including existing electrical wiring and plumbing, exterior glass, heating, ventilation and air conditioning systems, and the parking area and other common areas of the Project, reasonable wear and tear excluded. In no event shall Lessee be entitled to undertake any such maintenance or repairs, whether at the expense of Lessee or Lessor, except as provided in Section 10.2.

10.2 Lessee's Maintenance Obligations. By taking possession of the Premises, Lessee accepts the Premises as being in the condition in which Lessor is obligated to deliver them, and accepts them as being in good and sanitary order, condition and repair. Unless such maintenance or repairs are required because of any grossly negligent or intentional act or omission of Lessor, or its agents, employees, contractors or invitees, or are specifically designated as the obligation of Lessor under Article 10.1 above, Lessee shall, at its expense, maintain in a safe and clean condition and in good order and repair (whether or not such portion of the Premises requiring repair, or the means of repairing the same, are reasonably or

readily accessible, and whether or not the need for such repairs occurs as a result of Lessee's use, any prior use, the elements or the age of such portion of the Premises) the interior of the Premises, all partitions and other interior improvements, interior ceilings, all walls and doors, all interior glass, Lessee's signs located in or on the Premises or about the Building (whether interior or exterior), all equipment and fixtures (including, by way of illustration and not limitation, all specialty lighting fixtures, all kitchen appliances fixtures and equipment and all other items exclusively used by Lessee), whether installed by Lessee or Lessor (excluding heating, ventilation and air conditioning systems, which will be Lessor's responsibility, subject to Lessor's right to recover the cost thereof under Article 4 above), reasonable wear and tear excluded. Lessee shall also perform promptly, at its expense, all maintenance or repairs to the Premises or the Project which are required because of any negligent or intentional acts or omissions of Lessee, its agents, employees, contractors, customers or invitees.

## 11. ALTERATIONS TO PREMISES

11.1 Lessee shall not make any alteration, addition or improvement to the Premises or to any fixture, wiring, plumbing, lighting, heating, air conditioning or other equipment therein without the prior written consent of Lessor, and Lessor shall be entitled to impose any reasonable condition to such consent as it may deem necessary or desirable, subject to Lessee's legal procurement requirements (including, without limitation, the posting of bonds or use of a contractor and architect designated or approved by Lessor). Upon completion, Lessee shall deliver to the Lessor a certificate of completion by the architect who supervised the construction, which shall state that all work has been completed in accordance with the approved plans and specifications, a certificate of occupancy as required by any appropriate governmental authority, proof of payment for the improvements, and statutory lien waivers. Lessee shall promptly pay for all work completed and prior to paying any construction draw, if applicable, shall receive statutory lien waivers for all work completed through the period covered by the prior payment from the appropriate contractors, subcontractors and suppliers. Lessee shall indemnify, defend and hold Lessor harmless from any and all claims and liens arising out of Lessee's work at the Premises and shall, if a lien is claimed, post a bond to remove the effect of such lien from the Premises and/or Project. Unless Lessor requires the removal thereof upon the termination of this Lease, all alterations, additions or improvements to the Premises by Lessee (except movable furniture, equipment and trade fixtures) shall become a part of the Premises and the property of Lessor immediately upon installation.

11.2 Any alteration, addition or improvement which Lessee is required or permitted to remove hereunder, together with any movable furniture, equipment and trade fixtures, shall be removed at Lessee's expense upon the termination of this Lease, and Lessee shall promptly repair any damage to the Premises caused by such removal. Any alteration, addition or improvement to which Lessor consents shall be completed in good and workmanlike manner in accordance with plans, specifications and drawings approved in writing by Lessor, and in compliance with all applicable laws, regulations and codes, and Lessee shall timely pay all costs and fees incurred by Lessee in connection therewith.

## 12. LIENS

Lessee shall keep the Premises, the Building and the Project free and clear of any liens arising out of any work performed, materials furnished or obligations incurred by or on behalf of Lessee. If any such lien is filed against the Premises, the Building or the Project, Lessee shall, within ten (10) days thereafter, cause the lien to be fully discharged by either paying the obligation secured thereby or, if applicable, obtaining and recording a payment bond in accordance with applicable law. Lessee is not authorized to act on behalf of Lessor as its agent, or otherwise, for the purpose of constructing any improvements to the Premises, and neither Lessor nor its interest in the Premises shall be subject to any obligations incurred by Lessee. Lessor shall be entitled to post on the Premises during the course of any construction by Lessee such notices of non-responsibility as Lessor deems appropriate for the protection of Lessor and its interest in the Premises. Lessee shall, before the commencement of any work which might result in any such liens, give to Lessor written notice of its intention to do so in sufficient time to permit the posting of such notices. If Lessee fails to fully discharge any such lien within a 10-day period, Lessor may (but shall not be so

obligated) pay the claim secured by such lien, and the amount so paid, together with any costs and reasonable attorneys' fees incurred in connection therewith, shall be immediately due and owing from Lessee to Lessor, and Lessee shall pay the same to Lessor with interest at the Default Interest Rate provided in Section 3.5 above from the dates of Lessor's payments. Should any claims of lien be filed against the Premises or any action affecting the title to such property be commenced, the party receiving notice of such lien or action shall give the other party written notice thereof.

### 13. LESSOR'S ENTRY

In addition to any other right of entry provided for in this Lease, upon at least 48 hours notice, Lessor shall be entitled to enter the Premises at any reasonable time for the purpose of conducting any inspections thereof, making repairs, additions, or alterations thereto or to the Building, showing the Premises to any prospective purchaser, Lessee, lender, mortgagee or insurer, posting "For Rent" signs or non-responsibility notices, and taking necessary action in the event of any emergency. In connection with such entry, Lessor shall be entitled to erect such scaffolding and other necessary structures or equipment as reasonably required by the character of the work to be performed, provided that Lessor shall not unreasonably interfere with the conduct of Lessee's business. Lessor shall be entitled to use in good faith any means to gain entry to the Premises in the event of any emergency and shall not be liable for any damages resulting from Lessor's entry.

### 14. INDEMNITY

14.1 Lessee's Indemnity. Lessee shall indemnify, defend and hold Lessor, any Ground Lessor and Mortgagee harmless for, from and against any and all claims arising from Lessee's use of the Premises, or from the conduct of Lessee's business thereon or from any activity, work or things done (including without limitation any mechanic's liens), permitted or suffered by Lessee in or about the Premises, and shall further indemnify, defend and hold Lessor, any Ground Lessor and Mortgagee harmless for, from and against any and all claims arising from any breach or default in the performance of any obligation on Lessee's part to be performed under the terms of this Lease, or arising from any negligence or willful misconduct of Lessee, or any of Lessee's agents, contractors, employees, customers or invitees, and from and against all costs, reasonable attorneys' fees, expenses and liabilities incurred in the defense of any such claim or any action or proceeding brought thereon. Notwithstanding the foregoing, Lessee shall have no duty to indemnify Lessor, any Ground Lessor or Mortgagee harmless for any claims which are caused by (i) the any breach or default in the performance of any obligation on Lessor's part to be performed under the terms of this Lease, (ii) the negligent acts of Lessor, any Ground Lessor or Mortgagee, or (iii) the willful misconduct of Lessor, any Ground Lessor or Mortgagee. The terms of this Section 14 shall survive any termination of the Lease.

14.2 Lessor's Indemnity. Lessor shall indemnify, defend and hold Lessee harmless for, from and against any and all claims arising from any breach or default in the performance of any obligation on Lessor's part to be performed under the terms of this Lease, or arising from any negligence or willful misconduct of Lessor, or any of Lessor's agents, contractors, employees, customers or invitees, and from and against all costs, reasonable attorneys' fees, expenses and liabilities incurred in the defense of any such claim or any action or proceeding brought thereon. Notwithstanding any provision of this Section 14.2 to the contrary, however, Lessor's indemnity obligation under this Section shall be limited to the amount of its liability insurance coverage.

## 15. INSURANCE

15.1 Required Insurance. Lessee, at its sole cost and expense, shall procure and maintain during the term hereof:

(a) A comprehensive general liability insurance policy against claims for bodily injury, death or property damage, occurring in, on or about the Premises, the elevators, the adjoining sidewalks and passageways, or other common areas located within the Project, or resulting from Lessee's use, occupancy or maintenance thereof, which policy shall name Lessor and Lessor's property manager, and at Lessor's request, any Ground Lessor and Mortgagee, as an additional insured. Such insurance shall be primary with respect to Lessor and shall be in the amount of at least Two Million Dollars (\$2,000,000) combined single limit for bodily injury, death and property damage liability. Any comprehensive general liability insurance carried by Lessor shall apply in excess of the primary coverage required herein to be carried by Lessee. The comprehensive general liability insurance policy maintained by Lessee shall be endorsed to indicate that such policy will cover Lessee's obligations under Article 14 to the coverage limit of such policy.

(b) Insurance against damage and destruction to Lessee's personal property and all fixtures, equipment, improvements, additions and other alterations to the Premises which Lessee is entitled or obligated to remove pursuant to this Lease in the amount of full replacement value. In the event such items are damaged or destroyed, Lessee hereby agrees to diligently and fully repair and restore said items. Lessee hereby waives as against Lessor, any Ground Lessor and Mortgagee any and all claims or demands whatsoever pertaining to damage, loss or injury to said items which shall be caused by or result from fire or other perils, events or occurrences which are or could have been covered by fire and extended coverage insurance.

(c) Such other insurance and in such amounts as may from time to time be reasonably required by Lessor against other insurable hazards which at the time are customarily insured against in the case of premises similarly situated in San Diego County, California, with due consideration for the height and type of the Building, its construction, use and occupancy.

15.2 Notice of Insurance. All insurance provided for in this Article shall be valid and enforceable policies issued by insurance companies authorized to do business in the State of California, and approved by Lessor. The policies of insurance shall be endorsed to indicate that Lessee's coverage shall not be invalid due to any act or omission on the part of Lessor, any Ground Lessor or Mortgagee. The insurance companies issuing such insurance shall agree to notify Lessor in writing of any cancellation, alteration or non-renewal of said insurance at least ten (10) days prior thereto. Lessee shall deliver to Lessor prior to execution of this Lease certificates evidencing the insurance coverage required herein and confirming that the premiums have been paid in full. Said certificates shall also include a footnote referring to this Lease and certifying that the policy or policies issued to Lessee comply with all of the provisions of this Article 15. If Lessee fails to obtain the insurance required herein and deliver said certificates thereof to Lessor as provided for above, Lessor shall be entitled, but without obligation, to obtain said policies at Lessee's expense. At Lessor's request, the original policies of insurance shall be delivered to Lessor.

15.3 Waiver of Subrogation; Release. Notwithstanding any other provisions in this Lease, Lessee and Lessor each hereby waive any and all rights of recovery against the other, or against the officers, employees, agents and representatives of the other, for loss of, or damage to, the waiving party, its property or the property of others under its control to the extent that such loss or damage is insured against under any insurance policy in force at the time of such loss or damage other than any self-insurance. Lessee shall, upon obtaining the policies of insurance required hereunder, give notice to the insurance carrier or carriers that the foregoing waiver of subrogation is contained in this Lease and shall obtain, at Lessee's expense, an

appropriate waiver of subrogation endorsement from the insurer. If the Premises, the Building, the Project or Lessee's personal property are damaged or destroyed by fire or any other cause against which Lessee is required to maintain insurance pursuant to this Lease, Lessor shall not be liable to Lessee for any such damage or destruction.

15.4 Lessee Self-insured. Notwithstanding anything to the contrary in this Lease, Lessee shall have the right to self-insure with respect to any of the insurance required to be carried by Lessee under this Lease. Lessee shall supply to Lessor a letter of self-insurance indicating the Lessee's self-insured status.

## 16. DAMAGE OR DESTRUCTION

16.1 Termination. If all or any portion of the Premises are damaged or destroyed by any cause which is insured by Lessor (an "Insured Casualty") or which is not insured by Lessor (an "Uninsured Casualty"), and if it would take more than two hundred seventy (270) days from the date of such casualty to repair such damage or destruction as determined by Lessor, then either party shall be entitled to terminate this Lease by written notice to the other party on or before thirty (30) days after the occurrence of such casualty. If (i) five percent (5%) or more of the replacement cost of the Premises is damaged or destroyed by an Uninsured Casualty, or (ii) five percent (5%) or more of the replacement cost of the Premises is damaged or destroyed during the last eighteen (18) months of the Term by any cause whatsoever, or (iii) twenty-five percent (25%) or more of the replacement cost of the Building or the Project is damaged or destroyed by any cause whatsoever (whether or not the Premises are damaged or destroyed), then Lessor shall be entitled to terminate this Lease by written notice to Lessee given on or before thirty (30) days after the occurrence of such casualty. Notwithstanding the foregoing, Lessee shall not be entitled to terminate this Lease if the damage or destruction was caused by any negligent or intentional act or omission of Lessee or its agents, employees, contractors, customers or invitees. The effective date of termination for the purposes hereof shall be ten (10) days after receipt by the non-terminating party of the notice of termination from the other party.

16.2 Repair. If this Lease is not terminated as provided above, then Lessor shall in the exercise of reasonable diligence and at its own expense repair any damage or destruction to the Premises utilizing the use of insurance proceeds made available to Lessor. Lessor shall not be obligated to repair or restore any damage or destruction caused by any act or neglect of Lessee or its employees, agents, contractors, customers or invitees until paid in advance by Lessee.

16.3 Abatement of Rent. During the period commencing with the date of any damage or destruction that Lessor is required or elects to repair, reconstruct or restore, and ending with the substantial completion of such repairs, reconstruction or restoration or the termination of this Lease in accordance with its terms or applicable law, whichever occurs first, Base Rental, Lessee's Pro Rata Share of Operating Costs, Lessee's Pro Rata Share of Electrical Costs, and any other payments due under this Lease shall be proportionately abated in an amount equal to the proportion which the number of square feet of floor area in the Premises rendered untenable bears to the total square feet of floor area in the Premises immediately prior to such damage and destruction. Except for the possible abatement in Base Rental, Lessee's Pro Rata Share of Operating Costs, Lessee's Pro Rata Share of Electrical Costs, and any other payments due under this Lease, Lessee shall not be entitled to any compensation, reduction, or reimbursement from Lessor as to such matters. Further, Base Rental, Lessee's Pro Rata Share of Operating Costs, Lessee's Pro Rata Share of Electrical Costs, and any other payments due under this Lease shall not abate if such damage or destruction was caused by the negligent or intentional act or omission of Lessee, its agents, employees, customers, contractors or invitees. Except as expressly set forth herein, Lessee shall not be entitled to terminate this Lease or to a reduction or abatement of rental or other sums payable hereunder in the event of any damage or destruction from any cause whatsoever.

## 17. CONDEMNATION

17.1 Termination. If the Premises or any portion thereof are taken under power of eminent domain or conveyed by Lessor under the threat thereof (a "Condemnation"), this Lease shall automatically terminate as to the part so taken or conveyed as of the date of Condemnation. If more than twenty-five percent (25%) of the floor area of the Premises is taken by Condemnation, then either party shall be entitled to terminate this Lease as of the date of Condemnation or conveyance under threat thereof by written notice to the other party given on or before twenty (20) days after said date. If more than twenty-five percent (25%) of the floor area of the Building and/or more than twenty-five percent (25%) of the land area of the entire Project is taken by Condemnation, then Lessor shall be entitled to terminate this Lease as of the date of Condemnation by written notice to Lessee on or before twenty (20) days after said date.

17.2 Abatement of Rent. In the event of Condemnation of only a portion of the Premises, Base Rental, Lessee's Pro Rata Share of Operating Costs, Lessee's Pro Rata Share of Electrical Costs, and any other sums payable under this Lease shall be reduced in proportion to the amount of space which was taken.

17.3 Restoration. If only a part of the Premises is condemned and this Lease is not terminated, then Lessor shall, in the exercise of reasonable diligence and at its own cost, restore the Premises to its previous condition as nearly as is reasonable under the circumstances. In no event, however, shall Lessor be obligated to commence such restoration until it has received the entire Condemnation award for the Premises and in no event shall Lessor be obligated to incur expenses in making such restoration in an amount greater than such award, less costs, expenses, and fees (including attorneys' fees) incurred by Lessor in collecting said award.

17.4 Award. In the event of a Condemnation award for any partial or entire taking of the Premises or other portion of the Project, Lessor and Lessee shall be entitled to seek compensation for their respective rights in the Premises. In the event of such Condemnation award, Lessee shall also be entitled to seek from the condemning party compensation for any damages to Lessee's business and any costs or losses incurred by Lessee in removing Lessee's property.

17.5 Date of Condemnation. The date of Condemnation, for the purposes hereof, is the earlier of the date (i) possession of the Premises or the subject portion thereof is delivered to the taking authority, or (ii) title to the Premises or the subject portion thereof is vested in the taking authority.

## 18. QUIET ENJOYMENT

Upon Lessee's timely paying the rental and other sums payable hereunder and performing all of the other provisions hereof, Lessor shall take no action to disturb Lessee's peaceable and quiet possession of the Premises during the Term. This covenant shall not extend to, and Lessor shall not be liable for, any disturbance, act or condition caused by any other lessee in the Project that is not acting on behalf of Lessor, performing work for Lessor, or engaged in activities with Lessor's prior approval, nor to any disturbance, act or condition permitted to be taken by or on behalf of Lessor under this Lease.

## 19. ESTOPPEL CERTIFICATE

Upon receipt of a written request from Lessor, Lessee shall, from time to time, and within twenty (20) days after receipt of such request, execute, acknowledge and deliver to Lessor a statement in writing, (i) certifying a true and complete copy of this Lease, with all amendments, if any; (ii) certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect) and the dates to which the rental and other charges are paid in advance, if any, (iii) acknowledging that there are no uncured defaults on the part of Lessor, or specifying such defaults if any are claimed, and (iv) certifying or acknowledging such other matters that Lessor may reasonably request for certification or acknowledgement. Any such statements may be relied upon by any prospective purchaser or lender of all or any portion of the Premises, the Building or the Project. Lessee's failure to deliver such statement within such time shall be conclusive against Lessee that (i) this Lease is in full force and effect, without modification except as may be represented by Lessor, (ii) there are no uncured defaults in Lessor's performance, and (iii) not more than one month's rent has been paid in advance.

## 20. LESSOR LIABILITY

20.1 Default by Lessor. Lessor shall not be considered in default or breach of this Lease for the non-performance of any obligation imposed herein unless Lessee provides Lessor with written notice of said non-performance and:

(a) If said non-performance relates solely to the non-payment of money, Lessor fails to perform within thirty (30) days after receipt of said written notice.

(b) If said non-performance does not relate solely to the non-payment of money, if Lessor fails to commence performance within said 30-day period and diligently continue such performance until the obligation for which performance is being rendered is fulfilled.

If a Lessor default results in damage to the Premises or interference with the Lessee's quiet enjoyment of the Premises, to the extent that Lessee's ability to use or occupy the Premises is substantially impaired or prohibited, Lessee shall have the right to abate Base Rental, Lessee's Pro Rata Share of Operating Costs, Lessee's Pro Rata Share of Electrical Costs, and any payments due under this Lease from the first day that Lessee is unable to use and occupy the Premises until the date that Lessee is able to re-occupy and use the Premises.

If Lessor grants a security interest in this Lease to any person or entity and if Lessee has been notified in writing of the name and address of said lienholder, then Lessee shall, simultaneously upon giving any notice of non-performance to Lessor deliver a copy of same to each such lienholder, by personal delivery or certified or registered United States mail, postage prepaid. Notwithstanding Article 31 below, notices sent by mail pursuant to this Article 20.1 shall be deemed delivered only upon actual receipt thereof by such lienholder. Each such lienholder shall be entitled to perform such obligation within thirty (30) days after the expiration of any period of time within which Lessor is entitled to perform such obligation.

20.2 Sale of Lessor's Interest. In the event of any sale or conveyance of Lessor's interest in this Lease, Lessor shall be entirely relieved of all liability for Lessor's obligations under this Lease accruing thereafter, and the assignee or purchaser shall be deemed, without any further agreement between the parties or their successors in interest, to have assumed all of the duties and obligations of Lessor under this Lease accruing after such conveyance.

20.3 No Liability for Loss, Theft, Etc. Except with respect to any loss, damage or injury resulting from Lessor's negligence or willful misconduct, Lessor shall not be liable for any loss, theft, or damage to property or business or injury to or death of Lessee, its employees, agents, contractors, customers

or invitees, on or about the Premises, including without limitation fire, explosion, falling plaster, steam, gas, electricity, any act or omission of co-Lessees or other occupants of the Project or of adjoining or contiguous property or buildings, water or rain which may leak from any part of the Premises or the Building or from the pipes, tanks, appliances or plumbing works therein, or from the roof, street or subsurface, or from any other place. Lessor and its agents shall not be liable to Lessee for interference with the natural light. Lessee shall give prompt notice to Lessor of any fire, accident or defect discovered within the Premises or the Project.

20.4 Liability of Lessor. If Lessor shall fail to perform any covenant, term or condition of this Lease that Lessor is obligated to perform and, as a consequence of such non-performance, Lessee shall receive a money judgment against Lessor, such judgment shall be satisfied only out of the proceeds of sale received upon execution of such judgment and levy thereon against the right, title and interest of Lessor in the Project and out of rents or other income from the Project receivable by Lessor, or out of the consideration received by Lessor from the sale or other disposition of all or any part of Lessor's right, title and interest in the Project. Neither Lessor nor any of the members, officers, directors, employees or agents of the Lessor shall be liable for any deficiency.

## 21. ASSIGNMENT AND SUBLETTING

21.1 Lessor's Consent Required. Lessee shall not convey, transfer, sublease, assign, hypothecate, encumber or otherwise dispose of this Lease or any right, title or interest therein, whether voluntarily or by operation of law (each, a "Transfer"), without the prior written consent of Lessor, which may be granted or withheld in Lessor's reasonable discretion. If Lessee shall desire Lessor's consent to any Transfer, Lessee shall notify Lessor in writing (a "Transfer Notice"), which Transfer Notice shall include: (a) the proposed effective date (which shall not be less than thirty (30) days, nor more than ninety (90) days, after the date of the Transfer Notice); (b) the portion of the Premises to be Transferred (herein called the "Subject Space"); (c) the name and address of the proposed Transferee, and a copy of all documentation pertaining to the proposed Transfer; and (d) current financial statements of the proposed Transferee certified by an officer, partner, or owner thereof, and any other information required by Lessor to enable Lessor to determine the financial responsibility, character, and reputation of the proposed Transferee, the nature of such Transferee's business and proposed use of the Subject Space, and such other information as Lessor may reasonably require. Any such Transfer made without Lessor's written consent shall be void and, at the option of Lessor, give Lessor the right to terminate this Lease or to immediately exercise any of the remedies contained in Article 32.2. The consent by Lessor to any Transfer shall not be construed as consent to any other Transfer.

21.2 No Release of Lessee. Regardless of whether Lessor's consent is granted, no Transfer shall release Lessee of Lessee's obligations hereunder or alter the primary liability of Lessee to pay the rent and to perform all other obligations to be performed by Lessee hereunder. The acceptance of rent by Lessor from any other person shall not be deemed to be a waiver by Lessor of any provision hereof. In the event of default by any assignee or successor of Lessee in the performance of any of the terms hereof, Lessor may proceed directly against Lessee without the necessity of exhausting remedies against said assignee or successor.

21.3 Attorneys' Fees. In the event Lessor is asked to consent to a Transfer, Lessee shall pay \$500.00 towards Lessor's review and processing expenses concurrently with Lessee's submission of its Transfer Notice hereunder. Lessee shall also reimburse Lessor for reasonable attorneys' fees incurred by Lessor in connection with reviewing the information regarding the proposed assignee and the documenting and granting of such consent. Lessor may request and Lessee shall advance, upon such request, the estimated costs for said attorney's fees.

21.4 Corporations, Limited Liability Companies and Partnerships. If Lessee is an entity, the transfer, assignment or hypothecation of any ownership interest in such entity in the aggregate in excess of

twenty-five percent (25%), or the transfer of management control of such entity, shall be deemed an assignment within the meaning and provisions of this Article 21.

21.5 No Merger. The voluntary or other surrender of this Lease by Lessee, a mutual cancellation of this Lease, or the termination of this Lease by Lessor pursuant to any provision contained herein, shall not work as a merger, but, at Lessor's option, shall either terminate any or all existing subleases hereunder, or operate as an assignment to Lessor of any such subleases.

## 22. COMMON AREAS; RESERVED PARKING

22.1 Subject to the Rules and Regulations attached to this Lease and the provisions of Article 30 below, Lessee shall be entitled to the non-exclusive use in common with Lessor and other owners and lessees of the Project and their employees, agents, contractors, customers and invitees, of such parking areas, sidewalks, hallways, stairways, toilets and other common areas and facilities in the Project as Lessor shall from time to time designate ("Common Areas"). At any time, Lessor may close any common areas to perform any acts that are reasonable or desirable, in Lessor's judgment, relative to the Project. Any parking spaces which Lessor may agree to provide to Lessee, if any, will be provided on the basis of a reasonable monthly charge per space, as determined by Lessor, and Lessee shall be obligated to pay the same, together with any rental tax due with respect thereto, at the time and in the manner Lessee is required to pay the Base Rental due hereunder.

22.2 Lessee is entitled to and shall lease the following parking spaces in the Project parking areas: twenty-one (21) covered, unreserved parking spaces at no charge. In the event Lessor approves Lessee's lease of additional parking spaces, any such additional parking spaces shall be leased at the then prevailing market rates and at the discretion of Lessor based on availability. All parking spaces at the Project other than those parking spaces reserved to other lessees of the Building, are to be used by Lessee, its employees and invitees, in common with the other lessees of the Building, and their respective employees and invitees. The use by Lessee and its employees of the parking spaces in the Project is subject in all events to the Rules and Regulations attached hereto as Exhibit B, as well as any other rules and regulations applicable to the Project parking areas as the same may be amended from time to time. Lessor reserves the right to build improvements upon, reduce the size of, relocate, reconfigure, eliminate, and/or make alterations or additions to such parking facilities at any time, and further reserves the right to tow or cause to be towed any violator(s) of the applicable parking rules and regulations, which towing shall be at the sole cost and expense of such violator(s). Lessor further reserves the right to regulate parking within the parking areas, including the right to preclude Lessee from parking in certain parking spaces or requiring Lessee and its employees to park their cars only in areas specifically designated from time to time by Lessor for that purpose. No overnight parking is allowed unless expressly otherwise authorized by Lessor. Automobile license numbers of Lessee's employees' cars shall be furnished to Lessor upon Lessor's request. Lessee shall not permit vehicles to be abandoned or stored in the parking areas, nor shall Lessee permit or authorize any truck or delivery vehicle parking within the parking areas at any time.

## 23. ABANDONMENT OF PREMISES

Lessee shall at all times during the Term occupy and use the Premises during normal business hours. If Lessee ceases to so occupy and use the Premises or abandons, vacates or surrenders the Premises or is dispossessed by process of law or otherwise, Lessee's property remaining on the Premises shall be deemed abandoned, at the option of Lessor. The failure of Lessee to occupy and use the Premises for a period of ten (10) consecutive business days or longer shall constitute an abandonment of the Premises; provided, however, such occurrence shall not be the exclusive test for determining whether abandonment has occurred.

## 24. REMOVAL OF LESSEE'S PROPERTY

Unless Lessee is in default hereunder, Lessee may remove any movable furniture, equipment, trade fixtures and signs of Lessee in or on the Premises or the Project immediately upon the expiration or termination of this Lease. If any such property of Lessee remains on the Premises upon expiration or termination of the Lease, Lessor shall provide Lessee with written notice and Lessee shall have twenty (20) days to remove such property. If Lessee fails to remove such property within such 20-day period, Lessor may dispose of any such property as it sees fit. Lessee shall promptly repair any damage to the Premises caused by the installation or removal of Lessee's movable furniture, equipment, trade fixtures and signs. Notwithstanding anything to the contrary, the moving of any movable furniture, equipment, trade fixtures and signs shall comply with all Rules and Regulations. Lessee or any vendor shall schedule the move during Building hours designated for such moves, and any vendor shall provide Lessor a certificate of insurance prior to entry to the Building.

## 25. SUBORDINATION

25.1 Subordination. This Lease and all rights of Lessee hereunder shall be deemed to be subordinate to (a) all matters of record; (b) any ground lease of the Building, the Property or the land thereunder now or hereafter existing; (c) all mortgages and deeds of trust (collectively referred to as the "mortgages") which may now or hereafter encumber or affect the rights of Lessor in the Building; and (d) all renewals, modifications, amendments, replacements and extensions of the ground lease and mortgages. The provisions of this Section 25.1 shall be self-operative and no further instruments of subordination shall be required. If requested by Lessor, Lessee shall promptly execute, acknowledge and deliver any instrument that Lessor, the ground lessor under any ground lease or the holder of any mortgage or any of their respective assigns or successors in interest may reasonably request to evidence such subordination; provided, however, such form and content must be reasonably acceptable to Lessee, and provided such Ground Lessor or Mortgagee (each as defined below) acknowledges this Lease and agrees not to disturb Lessee's possessory rights under this Lease so long as Lessee is not in default hereunder beyond any applicable cure period. Any ground lease to which this Lease is subject and subordinate is called a "Ground Lease" and the lessor under the Ground Lease or its assigns or successors in interest is called a "Ground Lessor". Any mortgage to which this Lease is subject and subordinate is called a "Mortgage" and the holder of a Mortgage is called a "Mortgagee". If Lessor, the Ground Lessor or Mortgagee requires that such instruments be executed by Lessee, Lessee's failure to do so within ten (10) days after request therefor shall be deemed an event of default under this Lease.

25.2 Attornment. If the Ground Lessor or a Mortgagee (or any purchaser at a foreclosure sale) acquires the Property and succeeds to the rights of Lessor under this Lease, whether through possession or foreclosure action, or the delivery of a new lease or deed (a "Successor Landlord"), Lessee shall attorn to and recognize such Successor Landlord as Lessee's landlord under this Lease and shall promptly execute and deliver any instrument that such Successor Landlord may reasonably request to evidence such attornment, provided such instrument is reasonably acceptable to Lessee and provided such successor Lessor acknowledges this Lease and agree not to disturb Lessee's possessory rights hereunder so long as Lessee is not in default hereunder beyond any applicable cure periods.

## 26. SURRENDER

Upon the expiration or termination of this Lease for any reason, Lessee shall peaceably surrender the Premises to Lessor in a safe and clean condition and in good order and repair, reasonable wear and tear excepted. Should Lessee fail to surrender the Premises upon the expiration or termination of this Lease, Lessor shall have the immediate right to re-enter the Premises and act in accordance with Article 32.2(a) hereof.

## 27. INTENTIONALLY OMITTED

28. TAXES ON LESSEE'S PROPERTY

Lessee shall pay, prior to delinquency, all taxes assessed against or levied upon Lessee's fixtures, furnishings, equipment and other personal property located in or upon the Premises. Lessee shall cause said fixtures, furnishings, equipment and other personal property to be assessed and billed separately from the real property of which the Premises form a part. In the event any or all of Lessee's fixtures, furnishings, equipment and other personal property shall be assessed and taxed with said real property, Lessee shall pay to Lessor its share of such taxes, as determined by Lessor, within ten (10) days after delivery to Lessee by Lessor of a statement in writing setting forth the amount of such taxes applicable to Lessee's personal property.

29. FORCE MAJEURE

If either party hereto is delayed or prevented from the performance of any act required hereunder by reason of acts of God, strikes, lockouts, labor troubles, civil disorder, inability to procure materials, restrictive governmental laws or regulations or other cause without fault and beyond the reasonable control of the party obligated (financial inability excepted), performance of such act shall be excused for the period of delay; provided, however, nothing herein shall excuse Lessee from the timely payment of any rental or other sum required to be paid by Lessee.

30. RIGHTS RESERVED BY LESSOR

Lessor hereby reserves the right to (i) change the name or street address of the Project or the Building, (ii) add to, improve or alter any part or all of the Project or the Building, (iii) add to, improve or alter any part or all of the parking areas, sidewalks, hallways or other common areas and facilities in the Project, (iv) grant to anyone the exclusive right to conduct any business in or render any service to the Project, provided such exclusive right shall not operate to exclude Lessee from the use expressly permitted herein, (v) grant to any Lessee the exclusive right to use designated parking spaces, (vi) require the employees of Lessee to park in designated spaces or areas on the Project, and (vii) elect not to enforce against one or more of the lessees of the Project one or more of the Rules and Regulations of the Project. The foregoing rights are exercisable without notice to Lessee or liability for any inconvenience suffered by Lessee as a result thereof (including any diminution of light, air or view) and Lessee shall not be entitled by reason thereof to terminate this Lease or any abatement or reduction of rental hereunder.

31. NOTICES

No notice, consent, approval or other communication given in connection herewith shall be validly given, made, delivered or served unless in writing and sent by registered or certified United States mail, postage prepaid, return receipt requested, or by personal delivery, to Lessor or Lessee, as the case may be, at the addresses set forth below, or to such other addresses as either party hereto may from time to time designate in writing and delivered in accordance herewith to the other party. The addresses for all notices shall be in the United States and shall not include post office boxes or similar delivery addresses. Notices, consents, approvals or communications shall be deemed given or received upon personal delivery or forty-eight (48) hours after deposit in the mail as hereinabove provided. Said notices shall be addressed as follows:

LESSOR:

BALBOA BUILDING OWNER LLC  
c/o Admiral 2R Management LLC  
52 Vanderbilt Avenue, Suite 1000  
New York, New York, 10017  
ATTN: Andrew Stone

LESSEE

THE CITY OF SAN DIEGO  
1200 Third Avenue Suite 1700  
San Diego, CA 92101  
ATTN: Director  
Email: N/A

A copy of any notice to Lessor shall be sent by email or personal delivery or overnight delivery to: (i) Marc D. Blonstein, Berens Blonstein PLC, 7033 East Greenway Parkway, Suite 210, Scottsdale, Arizona, 85254 ([mblonstein@berensblonstein.com](mailto:mblonstein@berensblonstein.com)) and (ii) any property manager for Lessor.

### 32. DEFAULTS; REMEDIES

32.1 Defaults. The occurrence of any one or more of the following events shall constitute a material default and breach of this Lease by Lessee:

- (a) Lessee abandoning (as defined in Article 23) or vacating the Premises.
- (b) Lessee's failure to make any payment of rental or any other sum due under this Lease, together with interest thereon as herein provided, as and when due, where such failure shall continue for a period of seven (7) days after written notice thereof from Lessor to Lessee.
- (c) Lessee failing to provide an estoppel certificate in accordance with Section 19, where such failure shall continue for a period of twenty (20) days after written notice thereof from Lessor to Lessee.
- (d) Lessee's failure to timely observe or perform any of the covenants, conditions or provisions of this Lease to be observed or performed by Lessee, other than as described in Article 32.1(b) above, where such failure shall continue for a period of thirty (30) days after written notice thereof from Lessor to Lessee.
- (e) To the extent a declaration of default is not prohibited by law, (i) the making by Lessee of any general assignment, or general arrangement for the benefit of creditors; (ii) the filing by or against Lessee of a proceeding under state or federal insolvency and/or bankruptcy laws (unless, in the case of a petition filed against Lessee, the same is dismissed within forty-five (45) days); (iii) the appointment of a trustee or receiver to take possession of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where possession is not restored to Lessee within thirty (30) days; or (iv) the attachment, execution or other judicial seizure of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease.
- (f) If any guarantor of this Lease revokes or otherwise terminates, or purports to revoke or terminate, any guaranty of all or any portion of Lessee's obligations under this lease; unless otherwise expressly provided, no guaranty of the Lease is revocable.

32.2 Remedies. In the event of any such default or breach by Lessee, Lessor shall be entitled to exercise the following rights and remedies at any time thereafter, with or without notice or demand, and without limiting Lessor in the exercise of any other right or remedy which Lessor may have by reason of such default or breach:

- (a) Lessor shall have the immediate right of re-entry and may remove all persons and property from the Premises. Such property may be removed and stored at Lessor's discretion at the cost of and for the account of Lessee. Should Lessor elect to re-enter as herein provided, or should it take possession pursuant to legal proceedings or pursuant to any notice provided by law, it may either terminate this Lease, or it may from time to time, without termination of this Lease, relet the premises or any part thereof for such term or terms (which may be for a term extending beyond the Term of this Lease) and such rental and upon such other terms and conditions as Lessor, in its sole discretion, may deem advisable, with the right to make alterations and repairs to the Premises; provided,

however, that Lessor may lease other space in the Project prior to reletting or attempting to relet the Premises. Should Lessor elect to relet the Premises without terminating the Lease, upon such reletting, the rents received by Lessor shall be applied first to the payment of any indebtedness other than rent due hereunder from Lessee to Lessor; second, to the payment of any costs and expenses of such reletting and of such alterations and repairs; third, to the payment of rent due and unpaid hereunder; and the residue, if any, shall be held by Lessor and applied to payment of future rent as the same may become due and payable hereunder. If the rents received from such reletting during any month are less than that to be paid during that month by Lessee hereunder, Lessee shall immediately pay any such deficiency to Lessor. Such deficiency shall be calculated and paid monthly. No such re-entry or taking possession of the Premises by Lessor shall be construed as an election on its part to terminate this Lease unless a written notice of such intention is given to Lessee or unless the termination thereof is decreed by a court of competent jurisdiction. Notwithstanding any such reletting without termination, Lessor may, at any time thereafter, elect to terminate this Lease for such previous breach.

(b) Lessor shall have the right, but not the obligation, to render the performance required to cure such default or breach and to charge to Lessee all costs and expenses incurred in connection therewith, together with interest thereon from the date incurred at the Default Interest Rate provided in Section 3.5 above, and Lessee shall immediately pay the same upon presentment of a statement to Lessee indicating the amount thereof.

(c) If this Lease provides for a postponement of any monthly rental payments, a period of "free" rent or other rent concession, such postponed rent or "free" rent is called the "Abated Rent". Lessee shall be credited with having paid all of the Abated Rent on the expiration of the Term only if the Lessee has fully, faithfully and punctually performed all of Lessee's obligations hereunder, including the payment of all Base Rental, Additional Rental, its Pro Rata Share of Operating Costs and Pro Rata Share of Electrical Costs, and all other monetary obligations in the surrender of the Premises in the physical condition required by this Lease. Lessee acknowledges that its rights to receive credit for the Abated Rent are absolutely conditional upon Lessee's full, faithful and punctual performance of its obligations under this Lease. If Lessee defaults and does not cure within the applicable grace period, the Abated Rent shall immediately become due and payable in full and this Lease shall be enforced as if there were no such rent abatement or rent concession. In such case, such Abated Rent shall be calculated based on the full initial rent payable under this Lease.

(d) Lessor shall have the remedy described in California Civil Code § 1951.4 (lessor may continue lease in effect after lessee's breach and abandonment and recover Rent as it becomes due, if lessee has the right to sublet or assign, subject only to reasonable limitations). Accordingly, if Lessor does not elect to terminate this Lease on account of any default by Lessee, Lessor may, from time to time, without terminating this Lease, enforce all of its rights and remedies hereunder, including the right to recover all Rent as it becomes due.

(e) No remedy herein conferred upon Lessor shall be considered exclusive of any other remedy, but shall be cumulative and in addition to every other remedy given hereunder, or now or hereafter existing at law or in equity or by statute, including, but not limited to, the right to maintain an action to recover all amounts due hereunder. Lessor may exercise its rights and remedies at any time, in any order, to any extent, and as often as Lessor deems advisable. No delay or omission of Lessor to exercise any right or power arising from any default shall impair any such right or power, or shall be construed to be a

waiver of any such default or an acquiescence therein. No waiver of a default shall be effective unless it is in writing.

32.3 No Acceptance of Surrender. No act or conduct of Lessor, whether consisting of the acceptance of the keys to the Premises, or otherwise, shall be deemed to be or constitute an acceptance by Lessor of the surrender of the Premises by Lessee prior to the expiration of the Term, and such acceptance by Lessor of surrender by Lessee shall only flow from, and must be evidenced by, written acknowledgement of acceptance of surrender signed by Lessor.

32.4 Efforts to Relet. Unless Lessor provides Lessee with express notice to the contrary, no re-entry, repossession, repair, maintenance, change, alteration, addition, reletting, appointment of a receiver or other action or omission by Lessor shall (a) be construed as an election by Lessor to terminate this Lease or Lessee's right to possession, or to accept a surrender of the Premises, or (b) operate to release Lessee from any of its obligations hereunder.

32.5 No Accord and Satisfaction. No payment by Lessee or receipt by Lessor of a lesser amount than the rent or other sum provided to be paid shall be deemed to be other than on account of the earliest rent or any other sum due and payable under this Lease, nor shall any endorsement or statement or any check or any letter accompanying any check or payment as rent or other sum due and payable be deemed an accord and satisfaction, unless expressly agreed to, in writing, by Lessor. Lessor may accept any such check or payment without prejudice to Lessor's right to recover the balance of such rents or pursue any other remedy provided in this Lease.

32.6 Attorneys' Fees. The prevailing party shall be entitled to recover from the other party all costs and attorneys' fees incurred by the prevailing party in enforcing its rights and remedies under this Lease.

33. INTENTIONALLY OMITTED

34. OTHER PROVISIONS

34.1 Captions. The descriptive headings of the Articles and Sections of this Lease are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

34.2 Time is of the Essence. Time is of the essence for this Lease.

34.3 No Third Party Rights. Except as expressly provided herein, no term or provision of this Lease is intended to or shall be for the benefit of any person not a party hereto, and no such other person shall have any right or cause or action hereunder.

34.4 No Partnership. Nothing contained in this Lease shall create any partnership, joint venture, or other arrangement between Lessor and Lessee.

34.5 Entire Agreement. This Lease constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and shall not be changed or added to except in writing signed by all parties hereto. All prior and contemporaneous agreements, representations and understandings of the parties, oral or written, pertaining to the subject matter hereof, are hereby superseded and merged herein.

34.6 Authority to Execute. Any individual executing this Lease on behalf of or as representative for a corporation or other person, firm, partnership or entity represents and warrants that he or she is duly authorized to execute and deliver this Lease on behalf of said corporation, person, firm, partnership or other entity and that this Lease is binding upon said entity in accordance with its terms.

34.7 Governing Law. This Lease shall be construed and enforced in accordance with the Laws of the State of California.

34.8 Partial Invalidity. If any term, covenant, condition or provision of this Lease is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

34.9 Incorporation of Exhibits. All exhibits attached hereto and referenced herein shall be deemed a part of this Lease.

34.10 Binding on Successors and Assigns. Each of the provisions of this Lease shall bind, extend to, and inure to the benefit of the respective heirs, legal representatives, successors and assigns of both Lessor and Lessee; provided, however, that this clause shall not permit any assignment contrary to the provisions of Article 21.

34.11 Lessor's Liability. As used in this Lease, the term "Lessor" means only the current owner or owners of the Property at the time in question. Each Lessor is obligated to perform the obligations of Lessor under this Lease only during the time such Lessor owned such fee interest or title. Any Lessor who transfers its title or interest is relieved of all liability with respect to the obligations of Lessor under this Lease to be performed on or after the date of transfer. Each Lessor shall deliver to its transferee all funds that Lessee previously paid, if such funds have not yet been applied under the terms of the Lease.

34.12 Not Binding Until Signed. Submission of this instrument for examination or signature by Lessee does not constitute a reservation or option for Lease, and it is not effective as a Lease or otherwise until executed by both Lessor and Lessee.

34.13 Impartial Interpretation. This Lease is the result of negotiations between Lessor and Lessee. Therefore, the language contained in this Lease shall be construed as a whole according to its fair meaning and not strictly for or against either Lessor or Lessee.

34.14 Plurals. The words "Lessor" and "Lessee", as herein used, shall include the plural as well as the singular. Also, the neuter gender includes the masculine and feminine.

34.15 Memorandum of Lease. This Lease shall not be recorded.

34.16 Environmental Covenants. Lessee agrees it shall not use, generate, manufacture, store or dispose of, in, under or about the Premises or transport to or from the Premises any Hazardous Materials. For purposes of this Lease, "Hazardous Materials" shall include, but shall not be limited to (i) flammable, explosive or radioactive materials, hazardous wastes, toxic substances or related materials, (ii) all substances defined as "hazardous substances," "hazardous materials," or "toxic substances" in the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, 42 U.S.C. §9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. §1801, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. §6901, et seq.; and (iii) all substances defined as "hazardous wastes" under applicable law. In the event of a breach of this covenant, which is not remedied within five (5) days of written demand, Lessor may enter the Premises and take any action necessary to remedy such breach and to abate, contain, or otherwise limit any environmental risk or damage arising from such breach, and the costs of such action shall be payable by Lessee immediately upon demand from Lessor. Lessee shall be solely responsible for, and shall defend, indemnify and hold harmless Lessor and its successors and assigns for, from and against any loss, damage, cost, expense or liability directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release, discharge, or disposal by Lessee or its agents, employees, or invitees of Hazardous Materials on, under or about the Premises arising subsequent to the date on which this Lease was executed, including without limitation: (a) all foreseeable consequential damages; (b) the costs of any required or necessary repairs, cleanup or detoxification of the Premises, and the preparation and implementation of any closure, remediation or other required plans; and

(c) all reasonable costs and expenses incurred by Lessor in connection with clauses (a) and (b), including but not limited to reasonable attorneys' fees.

34.17 ADA Covenants. Lessee agrees it shall comply in all respects with the Americans with Disabilities Act of 1990, as amended (the "ADA") and any similar state law. In the event additions, alterations or other accommodations to the Premises, the Building, or Common Areas are required as a result of Lessee's actions, which would not otherwise be required of Lessor by the ADA, Lessee shall be solely responsible for, and shall indemnify, defend and hold Lessor harmless and its successors and assigns for, from and against any loss, damage, cost, expense or liability directly or indirectly arising out of or attributable to such action.

34.18 Counterparts and Signatures. This Lease may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Lease. This Lease may be executed by either or all parties by "PDF" or electronic "DocuSign" signatures emailed, and any such signature shall be deemed an original signature.

### 35. SIGNAGE

35.1 Building Directory and Suite Signage. Lessor shall provide Lessee reasonable building directory signage and suite signage at no additional cost to Lessee, as may be updated from time to time.

35.2 Additional Signage. Lessee shall not be entitled to additional signage within the Project.

### 36. INTENTIONALLY OMITTED

### 37. EXHIBITS

The following exhibits are attached hereto, are incorporated herein by this reference and made a part hereof:

|            |                               |
|------------|-------------------------------|
| Exhibit A: | Space Plan of the Premises    |
| Exhibit B: | Project Rules and Regulations |
| Exhibit C: | Construction Procedures       |
| Exhibit D: | Acceptance Letter             |
| Exhibit E: | Intentionally Omitted         |
| Exhibit F: | Judicial Reference            |
| Exhibit G: | Additional Provisions         |

*[signature page follows]*

IN WITNESS WHEREOF, the parties hereto have executed this Lease on the day and year first hereinabove written.

LESSOR:

**BALBOA BUILDING OWNER LLC,**

a Delaware limited liability company

By: Andrew Stone  
Andrew Stone (Jan 19, 2022 16:17 CST)  
Its: President

LESSEE:

**CITY OF SAN DIEGO,**

a California municipal corporation

By: Penny Maus  
Name: Penny Maus  
Its: Director, Dept of Real Estate & Airport Management

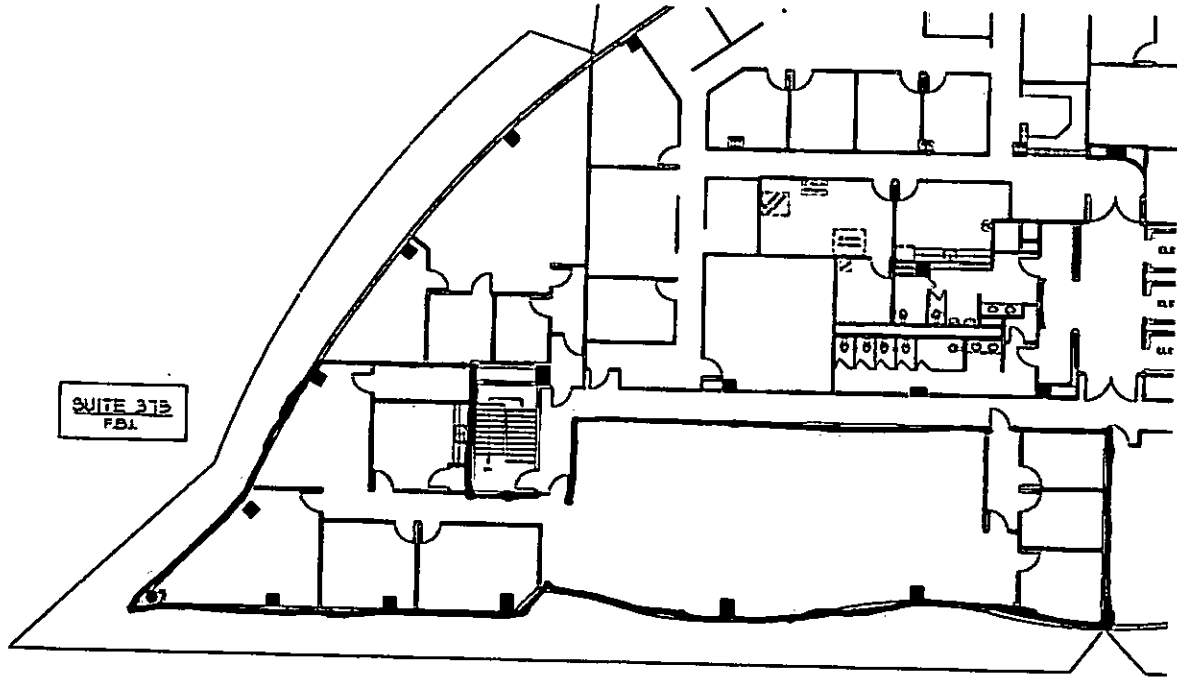
Approved as to form on  
March 28, 2022:

MARA W. ELLIOTT  
CITY ATTORNEY

By: Julie Gough Inman  
Name: Julie Gough Inman  
Title: Deputy City Attorney

R-313950

**EXHIBIT A**  
**SPACE PLAN OF THE PREMISES**



## EXHIBIT B

### RULES AND REGULATIONS

Lessee shall comply with the following rules and regulations (as modified or supplemented from time to time, the "**Rules and Regulations**"). Lessor shall not be responsible to Lessee for the nonperformance of any of the Rules and Regulations by any other tenants or occupants of the Project. In the event of any conflict between the Rules and Regulations and the other provisions of this Lease, the latter shall control.

1. Lessee shall not alter any lock or install any new or additional locks or bolts on any doors or windows of the Premises without obtaining Lessor's prior consent. Lessee shall bear the cost of any lock changes or repairs required by Lessee. Two (2) keys will be furnished by Lessor for the Premises, and any additional keys required by Lessee must be obtained from Lessor at a reasonable cost to be established by Lessor. Upon the termination of this Lease, Lessee shall restore to Lessor all keys of stores, offices and toilet rooms furnished to or otherwise procured by Lessee, and if any such keys are lost, Lessee shall pay Lessor the cost of replacing them or of changing the applicable locks if Lessor deems such changes necessary.

2. All doors opening to public corridors shall be kept closed at all times except for normal ingress and egress to the Premises.

3. Lessor may close and keep locked all entrance and exit doors of the Building during such hours as are customary for Comparable Buildings. Lessee shall cause its employees, agents, contractors, invitees and licensees who use Building doors during such hours to securely close and lock them after such use. Any person entering or leaving the Building during such hours, or when the Building doors are otherwise locked, may be required to sign the Building register, and access to the Building may be refused unless such person has proper identification or has a previously arranged access pass. Lessor will furnish passes to persons for whom Lessee requests them. Lessee shall be responsible for all persons for whom Lessee requests passes and shall be liable to Lessor for all acts of such persons. Lessor and its agents shall not be liable for damages for any error with regard to the admission or exclusion of any person to or from the Building. In case of invasion, mob, riot, public excitement or other commotion, Lessor may prevent access to the Building or the Project during the continuance thereof by any means it deems appropriate for the safety and protection of life and property.

4. No furniture, freight or equipment larger than 4' long or 4' wide shall be brought into the Building without prior notice to Lessor. All moving activity into or out of the Building shall be scheduled with Lessor and done only at such time and in such manner as Lessor designates. Lessor may prescribe the weight, size and position of all safes and other heavy property brought into the Building and also the times and manner of moving the same in and out of the Building. Safes and other heavy objects shall, if considered necessary by Lessor, stand on supports of such thickness as is necessary to properly distribute the weight. Lessor will not be responsible for loss of or damage to any such safe or property. Any damage to the Building, its contents, occupants or invitees resulting from Lessee's moving or maintaining any such safe or other heavy property shall be the sole responsibility and expense of Lessee.

5. No furniture, packages, supplies, equipment or merchandise will be received in the Building or carried up or down in the elevators, except between such hours, in such specific elevator and by such personnel as shall be reasonably designated by Lessor.

6. Employees of Lessor shall not perform any work or do anything outside their regular duties unless under special instructions from Lessor.

7. No sign, advertisement, notice or handbill shall be exhibited, distributed, painted or affixed by Lessee on any part of the Premises or the Building without Lessor's prior consent. Lessor consents to Lessee's posting of customary Human Resources and business bulletins, notices and information within the Premises. Lessee shall not disturb, solicit, peddle or canvass any occupant of the Project.

8. The toilet rooms, urinals, wash bowls and other apparatus shall not be used for any purpose other than that for which they were constructed, and no foreign substance shall be thrown therein. Lessee shall bear the expense of any breakage, stoppage or damage resulting from any violation of this rule by Lessee or any of its employees, agents, contractors, invitees or licensees.

9. Lessee shall not overload the floor of the Premises, or mark, drive nails or screws or drill into the partitions, woodwork (other than by reasonable methods in order to hang customary lightweight office decorations such as pictures and bulletin and white boards) or drywall of the Premises, or otherwise deface the Premises, without Lessor's prior consent. Lessee shall not purchase bottled water, ice, towel, linen, maintenance or other like services from any person not approved by Lessor.

10. Except for vending machines intended for the sole use of Lessee's employees and invitees, no vending machine or machines other than fractional horsepower office machines shall be installed, maintained or operated in the Premises without Lessor's prior consent.

11. Lessee shall not, without Lessor's prior consent, use, store, install, disturb, spill, remove, release or dispose of, within or about the Premises or any other portion of the Project, any asbestos-containing materials, any solid, liquid or gaseous material now or subsequently considered toxic or hazardous under the provisions of 42 U.S.C. Section 9601 et seq. or any other applicable environmental Law, or any inflammable, explosive or dangerous fluid or substance; provided, however, that Lessee may use, store and dispose of such substances in such amounts as are typically found in similar premises used for general office purposes provided that such use, storage and disposal does not damage any part of the Premises, Building or Project and is performed in a safe manner and in accordance with all Laws. Lessee shall comply with all Laws pertaining to and governing the use of such materials by Lessee and shall remain solely liable for the costs of abatement and removal. No burning candle or other open flame shall be ignited or kept by Lessee in or about the Premises, Building or Project.

12. Lessee shall not, without Lessor's prior consent, use any method of heating or air conditioning other than that supplied by Lessor.

13. Lessee shall not use or keep any foul or noxious gas or substance in or on the Premises, or occupy or use the Premises in a manner offensive or objectionable to Lessor or other occupants of the Project by reason of noise, odors or vibrations, or interfere with other occupants or those having business therein, whether by the use of any musical instrument, radio, CD player or otherwise. Lessee shall not throw anything out of doors, windows or skylights or down passageways.

14. Lessee shall not bring into or keep within the Project, the Building or the Premises any animals (other than service animals), birds, aquariums, or, except in areas designated by Lessor, bicycles or other vehicles.

15. No cooking shall be done in the Premises, nor shall the Premises be used for lodging, for living quarters or sleeping apartments, or for any improper, objectionable or immoral purposes. Notwithstanding the foregoing, Underwriters' Laboratory-approved equipment and microwave ovens may be used in the Premises for heating food and brewing coffee, tea, hot chocolate and similar beverages for employees and invitees, provided that such use complies with all Laws.

16. The Premises shall not be used for manufacturing or for the storage of merchandise except to the extent such storage may be incidental to the Permitted Use. Lessee shall not occupy the Premises as an office for a messenger-type operation or dispatch office, public stenographer or typist, or for the manufacture or sale of liquor, narcotics or tobacco, or as a medical office, a barber or manicure shop, or an employment bureau, without Lessor's prior consent. Lessee shall not engage or pay any employees in the Premises except those actually working for Lessee in the Premises, nor advertise for laborers giving an address at the Premises.

17. Lessor may exclude from the Project any person who, in Lessor's judgment, is intoxicated or under the influence of liquor or drugs, or who violates any of these Rules and Regulations.

18. Lessee shall not loiter in or on the entrances, corridors, sidewalks, lobbies, courts, halls, stairways, elevators, vestibules or any Common Areas for the purpose of smoking tobacco products or for any other purpose, nor in any way obstruct such areas, and shall use them only as a means of ingress and egress for the Premises.

19. Lessee shall not waste electricity, water or air conditioning, shall cooperate with Lessor to ensure the most effective operation of the Building's heating and air conditioning system, and shall not attempt to adjust any controls. Lessee shall install and use in the Premises only ENERGY STAR rated equipment, where available. Lessee shall use recycled paper in the Premises to the extent consistent with its business requirements.

20. Lessee shall store all its trash and garbage inside the Premises. No material shall be placed in the trash or garbage receptacles if, under Law, it may not be disposed of in the ordinary and customary manner of disposing of trash and garbage in the vicinity of the Building. All trash, garbage and refuse disposal shall be made only through entryways and elevators provided for such purposes at such times as Lessor shall designate. Lessee shall comply with Lessor's recycling program, if any.

21. Lessee shall comply with all safety, fire protection and evacuation procedures and regulations established by Lessor or any governmental agency.

22. Any persons employed by Lessee to do janitorial work (a) shall be subject to Lessor's prior consent; (b) shall not, in Lessor's reasonable judgment, disturb labor harmony with any workforce or trades engaged in performing other work or services at the Project; and (c) while in the Building and outside of the Premises, shall be subject to the control and direction of the Building manager (but not as an agent or employee of such manager or Lessor), and Lessee shall be responsible for all acts of such persons.

23. No awning or other projection shall be attached to the outside walls of the Building without Lessor's prior consent. Other than Lessor's Building-standard window coverings, no curtains, blinds, shades or screens shall be attached to or hung in, or used in connection with, any window or door of the Premises. All electrical ceiling fixtures hung in the Premises or spaces along the perimeter of the Building must be fluorescent and/or of a quality, type, design and a warm white bulb color approved in advance by Lessor. Neither the interior nor exterior of any windows shall be coated or otherwise sunscreened without Lessor's prior consent. Lessee shall abide by Lessor's regulations concerning the opening and closing of window coverings.

24. Lessee shall not obstruct any sashes, sash doors, skylights, windows or doors that reflect or admit light or air into the halls, passageways or other public places in the Building, nor shall Lessee place any bottles, parcels or other articles on the windowsills.

25. Lessee must comply with requests by Lessor concerning the informing of their employees of items of importance to the Lessor.

26. Lessee must comply with the State of California "No Smoking" law set forth in California Labor Code Section 6404.5 and with any local "No Smoking" ordinance that is not superseded by such law.

27. Lessee shall cooperate in any reasonable safety or security program developed by Lessor or required by Law.

28. All office equipment of an electrical or mechanical nature shall be placed by Lessee in the Premises in settings approved by Lessor, to absorb or prevent any vibration, noise or annoyance.

29. Lessee shall not use any hand trucks except those equipped with rubber tires and rubber side guards.

30. No auction, liquidation, fire sale, going-out-of-business or bankruptcy sale shall be conducted in the Premises without Lessor's prior consent.

31. Lessee shall not (a) use any name of the Building or Project for any purpose other than to identify the address of the business to be conducted by Lessee in the Premises, (b) use any image of the Building or Project in any advertising or other publicity without Lessor's prior consent, or (c) use any name or image of the Building or Project in any manner that would infringe any trade name, trade mark, copyright or similar right of Lessor or any third party in or to any name or image of the Building or Project. Without limiting the foregoing, Lessee shall not, in any signage displayed at the Building or Project, on its website, or in any other advertising or promotional material, identify, describe, or refer to itself or its business as "[Lessee's name or trade name] [name of Building or Project]" or "[Lessee's name or trade name] At [name of Building or Project]."

Lessor may from time to time modify or supplement these Rules and Regulations in a manner that, in Lessor's reasonable judgment, is appropriate for the management, safety, care and cleanliness of the Premises, the Building, the Common Areas and the Project, for the preservation of good order therein, and for the convenience of other occupants and tenants thereof, provided that no such modification or supplement shall materially reduce Lessee's rights or materially increase Lessee's obligations hereunder. Lessor may waive any of these Rules and Regulations for the benefit of any tenant, but no such waiver shall be construed as a waiver of such Rule and Regulation in favor of any other tenant nor prevent Lessor from thereafter enforcing such Rule and Regulation against any tenant. Notwithstanding the foregoing, no rule that is added to the initial Rules and Regulations shall be enforced against Lessee in a manner that unreasonably discriminates in favor of any other similarly situated tenant.

## EXHIBIT C

### CONSTRUCTION PROCEDURES

1. **Final Space Plan.** On a turn-key basis, Lessor shall complete the improvements (the "Improvements") set forth on the Space Plan attached to this Lease as Exhibit A, using building standard materials, and subject to the Construction Procedures set forth herein. Specifically, the Improvements include new carpet and touch up paint throughout the Premises. Any increase in costs resulting from special materials or finishes requested by Lessee to the Improvements other than building standard materials, due to changes requested by Lessee to the Improvements as outlined on the Final Space Plan (and agreed to by Lessor, in Lessor's sole discretion), and/or associated with Lessee's trade fixtures or equipment, shall be at Lessee's sole cost and expense. Notwithstanding the foregoing, Lessor shall also be responsible, at Lessor's sole cost and expense, to move any existing furniture located in the Premises out as necessary to complete the Improvements and move it back into the Premises upon completion of the Improvements, including disconnecting and reconnecting all power in the cubicle walls, all computers, monitors and phone systems. Other than completion of the Improvements, Lessee shall accept the Leased Premises on the Commencement Date in its "as is" condition, and Lessor shall not be deemed to have made any representations or warranties with respect to the suitability of the Leased Premises for Lessee's use, or otherwise.

2. **Changes.** Any changes to the space plans requested by Lessee must be provided to Lessor in writing for approval in Lessor's sole discretion. Any such changes must be generally consistent with the previously approved plans and may not materially change the estimated completion date of the Improvements. If Lessor approves of the revisions, Lessee must approve the final space plan within five (5) business days of delivery to Lessee. Lessee shall pay all costs of changes to the plans made by, requested or caused by Lessee to Lessor upon demand. Lessor is not responsible for any delays caused by changes to the plans requested by Lessee.

3. **Governmental Approvals.** Lessee acknowledges that the construction drawings and specifications (and any changes thereto) must be submitted for approval to the applicable governmental agencies, and that: (a) the applicable governmental agencies are not required to issue approvals, permits and a Certificate of Occupancy within any specified period of time; (b) the applicable governmental agencies may impose additional requirements as a condition of issuing approvals, permits and a Certificate of Occupancy which could cause delays; and (c) that the Lessor is not responsible for the length of the period of time taken by applicable governmental agencies, or any delays caused by additional requirements of the applicable governmental agencies, in obtaining such approvals, permits and Certificate of Occupancy.

4. **Contractor.** All construction will be done through Lessor's contractors.

5. **Permits.** Lessor's contractor will secure all required governmental permits for the construction of the Premises Improvements and also will obtain the final Certificate of Occupancy upon Substantial Completion, as defined below.

6. **Commencement Date.** For purposes of calculating the Commencement Date of this Lease, Substantial Completion shall be defined to mean: (a) the point at which the Premises are ready for use and occupancy and any defective or incomplete work is of such a nature that there will be no material interference with Lessee's enjoyment of the Premises; or (b) upon receipt of all governmental approvals, permits and a Certificate of Occupancy; whichever occurs first. If Substantial Completion is delayed due to labor trouble, inability to procure materials, strike, lockout, civil commotion, warlike operation, invasion, rebellion, hostilities, military or usurped power, sabotage or vandalism, government regulation or controls,

acts of God, or any other cause beyond the control of Lessor, the Commencement Date of the Lease Term will be extended by a period equal to such delay(s), without liability of Lessor. If Substantial Completion of the Premises Improvements is delayed by Lessee's failure to timely meet with the space planner or approve the space plans, construction drawings and specifications within the time periods set forth in this Exhibit, or by interference by any of Lessee's personnel or contractors, or due to changes initiated by Lessee, or due to special materials or finishes associated with Lessee's trade fixtures or equipment, the Commencement Date (and Lessee's obligation to begin payment of Minimum Rent) will not be extended.

**7. Construction Supervision.** Any and all contractors providing any service to Lessee must contact Lessor or Lessor's contractor in advance and obtain permission to provide materials or work to the Premises, and for Lessor's supervision, approval and control of performance, including installation of Lessee's trade fixtures, equipment and furniture. This provision applies to all work performed in or around the Building, including without limitation, installation of telephone devices, medical appliances and installations of any nature affecting doors, walls, lighting, electrical connections, the HVAC system, ductwork, woodwork, trim, windows, ceilings, the equipment or other physical portions of the Building.

**7.1** Movement in and out of the Building by Lessee and Lessee's contractors of trade fixtures, equipment and furniture or dispatch or receipt by Lessee of any merchandise or materials which require the use of stairways, elevators or the movement through Building entrances or corridors shall be restricted to hours approved by Lessor and all such movement shall be under supervision of Lessor by prearrangement before performance. Lessee assumes all risk of damage of said articles being moved through the buildings and any injury to persons or public engaged or not engaged in such moving. Any hand trucks, carryalls or similar appliances used for delivery or receipt of merchandise or equipment shall be equipped with rubber tires, side guards and other safeguards as Lessor shall reasonably require.

**7.2** Lessee and its contractors must not make nor permit to make any unseemly or disturbing noises that interfere with occupants of the Building, the Premises or those having business with other tenants whether by the noise from equipment and installations, use of any musical instrument or loud talk.

**7.3** If Lessee or Lessee's contractors are performing any of the Improvements, Lessee will indemnify Lessor from and against any materialman and mechanics' liens and provide payment bonds upon Lessor's request. If Lessor is supplying an Allowance, payment will be conditioned upon receipt of appropriate lien waivers.

**7.4** Lessee and its contractors must observe all other rules and regulations of Lessor.

**8. Communications and Computer Lines.** All Lines installed pursuant to this Lease shall be (a) installed in accordance with these construction procedures; and (b) clearly marked with adhesive plastic labels (or plastic tags attached to such Lines with wire) to show Lessee's name, suite number, and the purpose of such Lines (i) every six (6) feet outside the Premises (including the electrical room risers and any Common Areas), and (ii) at their termination points. Lessor may designate specific contractors for work relating to vertical Lines. Sufficient spare cables and space for additional cables shall be maintained for other occupants, as reasonably determined by Lessor. Unless otherwise notified by Lessor, Lessee, at its expense and before the expiration or earlier termination hereof, shall remove all Lines and repair any resulting damage. As used herein, "Lines" means all communications or computer wires and cables serving the Premises, whenever and by whomever installed or paid for, including any such wires or cables installed pursuant to any prior lease.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2022.

LESSOR:

**BALBOA BUILDING OWNER LLC,**  
a Delaware limited liability company

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

LESSEE:

**THE CITY OF SAN DIEGO,**  
a California municipal corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

Approved as to form on  
\_\_\_\_\_, 2022:

MARA W. ELLIOTT  
CITY ATTORNEY

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## EXHIBIT D

### ACCEPTANCE LETTER

Lessor: BALBOA BUILDING OWNER LLC, a Delaware limited liability company

Lessee: THE CITY OF SAN DIEGO, a California municipal corporation

Premises: 9444 Balboa Avenue, Suite 375, San Diego, California 92123 ("Premises").

Re: Lease Agreement, dated \_\_\_\_\_, 2022, by and between Lessor and Lessee with respect to the Premises ("Lease").

This is to advise that the undersigned, as Lessee, has inspected the improvements at the above-referenced Premises and hereby confirms the following:

1. Provided that Lessee has delivered to Lessor either (i) a certificate of insurance evidencing that Lessee has obtained the coverage required pursuant to the Lease and that Lessor, its property manager and such other parties as Lessor may require are each named as an additional insured ("Certificate of Insurance") or (ii) a letter of self-insurance indicating the Lessee's self-insured status, Lessee has accepted possession of the Premises pursuant to the terms of the Lease. If Lessee has not delivered to Lessor a Certificate of Insurance or a letter of self-insurance indicating the Lessee's self-insured status prior to the date of this Letter, the Commencement Date of the Lease shall remain as set forth herein and Lessor will deliver possession of the Premises to Lessee within three (3) business days of Lessor's receipt of Lessee's Certificate of Insurance or letter of self-insurance indicating the Lessee's self-insured status, unless otherwise agreed by Lessee.
2. That the improvements and space required to be furnished according to the aforesaid Lease have been completed and supplied by Lessor in all respects and in compliance with all requirements of the Lease and applicable codes.
3. That as of the date hereof, Lessor has fulfilled all of its obligations under the Lease.
4. That there are no existing defenses or offsets which the undersigned Lessee has against the enforcement of said Lease by Lessor.
5. That the aforesaid Lease has not been modified or altered, except as set forth herein.
6. The Commencement Date is the \_\_\_\_ day of \_\_\_\_\_, 202\_\_.
7. The Termination of the Lease, assuming no exercise of the option to renew, is \_\_\_\_\_, 20\_\_.
8. That Table A of Section 3.3 of the Lease shall be replaced with the following:

Month 1 ( \_ / \_ / \_ - \_ / \_ / \_ ):

\$3.05 Per Square Foot (multiplied by 4,712 square feet)  
\$14,371.60\*\* Monthly Rental, plus applicable taxes  
\$172,459.20 Annual Rental, plus applicable taxes

Month 2 through Month 7 ( \_ / \_ / \_ - \_ / \_ / \_ )\*:

\$3.05 Per Square Foot (multiplied by 4,712 square feet)  
\$14,371.60\*\* Monthly Rental, plus applicable taxes  
\$172,459.20 Annual Rental, plus applicable taxes

\* Base Rental for this period of six (6) months (as well as any early occupancy by Lessee permitted by Lessor prior to Month 1) shall be fully abated and only payable by Lessee in the event of an uncured event of default by Lessee as of the end of the Term or earlier termination of this Lease (see Article 32.2(d) below).

Month 8 through Month 12 ( \_ / \_ / \_ - \_ / \_ / \_ ):

\$3.05 Per Square Foot (multiplied by 4,712 square feet)  
\$14,371.60\*\* Monthly Rental, plus applicable taxes  
\$172,459.20 Annual Rental, plus applicable taxes

Month 13 through Month 24 ( \_ / \_ / \_ - \_ / \_ / \_ ):

\$3.14 Per Square Foot (multiplied by 4,712 square feet)  
\$14,802.75\*\* Monthly Rental, plus applicable taxes  
\$177,633.00 Annual Rental, plus applicable taxes

Month 25 through Month 36 ( \_ / \_ / \_ - \_ / \_ / \_ ):

\$3.24 Per Square Foot (multiplied by 4,712 square feet)  
\$15,246.83\*\* Monthly Rental, plus applicable taxes  
\$182,962.00 Annual Rental, plus applicable taxes

Month 37 through Month 48 ( \_ / \_ / \_ - \_ / \_ / \_ ):

\$3.33 Per Square Foot (multiplied by 4,712 square feet)  
\$15,704.24\*\* Monthly Rental, plus applicable taxes  
\$188,450.82 Annual Rental, plus applicable taxes

Month 49 through Month 60 ( \_ / \_ / \_ - \_ / \_ / \_ ):

\$3.43 Per Square Foot (multiplied by 4,712 square feet)  
\$16,175.36\*\* Monthly Rental, plus applicable taxes  
\$194,104.35 Annual Rental, plus applicable taxes

Month 61 through Month 66 ( \_ / \_ / \_ - \_ / \_ / \_ ):

\$3.54 Per Square Foot (multiplied by 4,712 square feet)  
\$16,660.62\*\* Monthly Rental, plus applicable taxes  
\$199,927.48 Annual Rental, plus applicable taxes

\*\* plus applicable rental tax (if any), Lessee's Pro Rata Share of Operating Costs, Lessee's Pro Rata Share of Electrical Costs, and parking fees (if any).

9. That the Lease is now in full force and effect.

*[signature page follows]*

IN WITNESS WHEREOF, Lessee has executed this Acceptance Letter on the day and year first hereinabove written.

LESSEE:  
**THE CITY OF SAN DIEGO,**  
a California municipal corporation

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

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

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

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

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

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

Approved as to form on  
\_\_\_\_\_, 2022:

MARA W. ELLIOTT  
CITY ATTORNEY

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

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

Title: \_\_\_\_\_

**EXHIBIT E**

**INTENTIONALLY OMITTED**

## EXHIBIT F

### BALBOA EXECUTIVE CENTER

#### JUDICIAL REFERENCE

IF THE JURY-WAIVER PROVISIONS OF SECTION 34.8 OF THIS LEASE ARE NOT ENFORCEABLE UNDER CALIFORNIA LAW, THE PROVISIONS SET FORTH BELOW SHALL APPLY.

It is the desire and intention of the parties to agree upon a mechanism and procedure under which controversies and disputes arising out of this Lease or related to the Premises will be resolved in a prompt and expeditious manner. Accordingly, except with respect to actions for unlawful or forcible detainer or with respect to the prejudgment remedy of attachment, any action, proceeding or counterclaim brought by either party hereto against the other (and/or against its officers, directors, employees, agents or subsidiaries or affiliated entities) on any matters arising out of or in any way connected with this Lease, Lessee's use or occupancy of the Premises and/or any claim of injury or damage, whether sounding in contract, tort, or otherwise, shall be heard and resolved by a referee under the provisions of the California Code of Civil Procedure, Sections 638 — 645.1, inclusive (as same may be amended, or any successor statute(s) thereto) (the "**Referee Sections**"). Any fee to initiate the judicial reference proceedings and all fees charged and costs incurred by the referee shall be paid by the party initiating such procedure (except that if a reporter is requested by either party, then a reporter shall be present at all proceedings where requested and the fees of such reporter — except for copies ordered by the other parties — shall be borne by the party requesting the reporter); provided however, that allocation of the costs and fees, including any initiation fee, of such proceeding shall be ultimately determined in accordance with Section 25.6 of this Lease. The venue of the proceedings shall be in the county in which the Premises are located. Within 10 days of receipt by any party of a request to resolve any dispute or controversy pursuant to this Exhibit F, the parties shall agree upon a single referee who shall try all issues, whether of fact or law, and report a finding and judgment on such issues as required by the Referee Sections. If the parties are unable to agree upon a referee within such 10-day period, then any party may thereafter file a lawsuit in the county in which the Premises are located for the purpose of appointment of a referee under the Referee Sections. If the referee is appointed by the court, the referee shall be a neutral and impartial retired judge with substantial experience in the relevant matters to be determined, from Jams/Endispute, Inc., ADR Services, Inc. or a similar mediation/arbitration entity approved by each party in its sole and absolute discretion. The proposed referee may be challenged by any party for any of the grounds listed in the Referee Sections. The referee shall have the power to decide all issues of fact and law and report his or her decision on such issues, and to issue all recognized remedies available at law or in equity for any cause of action that is before the referee, including an award of attorneys' fees and costs in accordance with this Lease. The referee shall not, however, have the power to award punitive damages, nor any other damages that are not permitted by the express provisions of this Lease, and the parties waive any right to recover any such damages. The parties may conduct all discovery as provided in the California Code of Civil Procedure, and the referee shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge, with rights to regulate discovery and to issue and enforce subpoenas, protective orders and other limitations on discovery available under California Law. The reference proceeding shall be conducted in accordance with California Law (including the rules of evidence), and in all regards, the referee shall follow California Law applicable at the time of the reference proceeding. The parties shall promptly and diligently cooperate with one another and the referee, and shall perform such acts as may be necessary to obtain a prompt and expeditious resolution of the dispute or controversy in accordance with the terms of this Exhibit F. In this regard, the parties agree that the parties and the referee shall use best efforts to ensure that (a) discovery be

conducted for a period no longer than six (6) months from the date the referee is appointed, excluding motions regarding discovery, and (b) a trial date be set within nine (9) months of the date the referee is appointed. In accordance with Section 644 of the California Code of Civil Procedure, the decision of the referee upon the whole issue must stand as the decision of the court, and upon the filing of the statement of decision with the clerk of the court, or with the judge if there is no clerk, judgment may be entered thereon in the same manner as if the action had been tried by the court. Any decision of the referee and/or judgment or other order entered thereon shall be appealable to the same extent and in the same manner that such decision, judgment, or order would be appealable if rendered by a judge of the superior court in which venue is proper hereunder. The referee shall in his/her statement of decision set forth his/her findings of fact and conclusions of law. The parties intend this general reference agreement to be specifically enforceable in accordance with the Code of Civil Procedure. Nothing in this **Exhibit F** shall prejudice the right of any party to obtain provisional relief or other equitable remedies from a court of competent jurisdiction as shall otherwise be available under the Code of Civil Procedure and/or applicable court rules.

**EXHIBIT G**

**BALBOA EXECUTIVE CENTER**

**ADDITIONAL PROVISIONS**

1. **California Civil Code Section 1938.** Pursuant to California Civil Code § 1938(a), Lessor hereby states that the Premises have not undergone inspection by a Certified Access Specialist (CAsp) (defined in California Civil Code § 55.52). Accordingly, pursuant to California Civil Code § 1938(e), Lessor hereby further states as follows:

A Certified Access Specialist (CAsp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CAsp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CAsp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CAsp inspection, the payment of the fee for the CAsp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises.

In accordance with the foregoing, Lessor and Lessee agree that if Lessee obtains a CAsp inspection of the Premises, then Lessee shall pay (i) the fee for such inspection, and (ii) except as may be otherwise expressly provided in this Lease, the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the Premises.

#1016  
03/08/2022

(R-2022-332)

RESOLUTION NUMBER R- 313950

DATE OF FINAL PASSAGE MAR 22 2022

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO APPROVING THE LEASE AGREEMENT BETWEEN THE CITY OF SAN DIEGO AND BALBOA BUILDING OWNER LLC FOR 4,712 SQUARE FEET OF OFFICE SPACE LOCATED AT 9444 BALBOA AVENUE, SAN DIEGO, CALIFORNIA 92123, AND AUTHORIZING THE EXPENDITURE OF FUNDS THEREFORE.

WHEREAS, the Federal Bureau of Investigations (FBI) currently leases from Balboa Building Owner LLC (Lessor) office space located at 9444 Balboa Avenue, San Diego, California 92123 (Property); and

WHEREAS, the City of San Diego (City) currently occupies a portion of the office space that FBI leases from Lessor at the Property, which is used by the San Diego Police Department's (SDPD) Internet Crimes Against Children (ICAC) Task Force; and

WHEREAS, FBI's lease with Lessor expires in March 2022, and FBI will be vacating its portion of the leased premises; and

WHEREAS, City staff has determined that it is most cost effective and will prevent disruption to SDPD ICAC Task Force's operations if the City negotiates with Lessor a lease for office space at the Property; and

WHEREAS, the City and Lessor have negotiated a 66-month lease (Lease) for 4,712 square feet of office space at the Property, subject to Council's approval; and

WHEREAS, the total base rent for the 66-month term of the Lease is \$1,015,573.09, subject to a rent abatement in the amount of \$86,229.60, which the City is entitled to receive if it does not default on the Lease; and

WHEREAS, City staff has determined that the rent amount is consistent with or slightly below market rates for comparable office spaces; NOW THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, as follows:

1. The Council approves the Lease.
2. The Mayor or designee is authorized and directed to execute the Lease, a copy of which, when fully signed, shall be placed on file in the Office of the City Clerk as Document No.

RR- 313950

3. The Chief Financial Officer is authorized to expend an amount not to exceed \$1,015,573.09 for base rent and an estimated \$93,300 for operating expenses for the 66-month term of the Lease, contingent upon the adoption of the annual funds for the applicable fiscal year and upon the Chief Financial Officer furnishing one or more certificates certifying that funds necessary for expenditure, are, or will be, on deposit with the City Treasurer.

APPROVED: MARA W. ELLIOTT, City Attorney

By /s/ Julie Gough Inman  
Julie Gough Inman  
Deputy City Attorney

JGI:jdf  
02/23/2022  
Or. Dept: DREAM  
Doc. No.: 2899384

I certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of MAR 08 2022.

ELIZABETH S. MALAND

City Clerk

By Connie Patterson  
Deputy City Clerk

Approved: 3/24/22  
(date)

Todd Gloria  
TODD GLORIA, Mayor

Vetoed: \_\_\_\_\_  
(date)

\_\_\_\_\_  
TODD GLORIA, Mayor

Passed by the Council of The City of San Diego on MAR 08 2022, by the following vote:

| Councilmembers           | Yeas                                | Nays                     | Not Present              | Recused                  |
|--------------------------|-------------------------------------|--------------------------|--------------------------|--------------------------|
| Joe LaCava               | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Jennifer Campbell        | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Stephen Whitburn         | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Monica Montgomery Steppe | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Marni von Wilpert        | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Chris Cate               | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Raul A. Campillo         | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Vivian Moreno            | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Sean Elo-Rivera          | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

Date of final passage MAR 22 2022

(Please note: When a resolution is approved by the Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)

AUTHENTICATED BY:

TODD GLORIA  
Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND  
City Clerk of The City of San Diego, California.

By

 for Connie P.  
Deputy

Office of the City Clerk, San Diego, California

Resolution Number R- 313950

By: Alexander, Deputy