# OFFICE SPACE LEASE

FOR

401 WEST A STREET

By and Between

401 WEST A STREET SD PT, LLC,
a Delaware limited liability company

Landlord

and

SAN DIEGO CITY EMPLOYEES' RETIREMENT SYSTEM,
a city charter created public pension system

Tenant

## TABLE OF CONTENTS


| ARTICLE | | Page No. |
|---|---|---|
| BASIC LEASE PROVISIONS | | 1 |
| ARTICLE 1 | PROPERTY LEASED | 3 |
| ARTICLE 2 | TERM | 4 |
| ARTICLE 3 | RENT | 4 |
| ARTICLE 4 | REIMBURSEMENT OF OPERATING COSTS | 5 |
| ARTICLE 5 | TENANT'S TAXES | 9 |
| ARTICLE 6 | SERVICES AND UTILITIES | 9 |
| ARTICLE 7 | ASSIGNMENT AND SUBLETTING | 12 |
| ARTICLE 8 | MAINTENANCE AND REPAIRS | 16 |
| ARTICLE 9 | INSURANCE | 18 |
| ARTICLE 10 | INDEMNITY | 20 |
| ARTICLE 11 | SECURITY DEPOSIT | 21 |
| ARTICLE 12 | USE OF PREMISES | 21 |
| ARTICLE 13 | PARKING | 24 |
| ARTICLE 14 | SIGNS | 25 |
| ARTICLE 15 | ALTERATIONS, ADDITIONS AND TRADE FIXTURES | 26 |
| ARTICLE 16 | MECHANICS' LIENS | 29 |
| ARTICLE 17 | DESTRUCTION | 29 |
| ARTICLE 18 | CONDEMNATION | 31 |
| ARTICLE 19 | DEFAULT | 32 |
| ARTICLE 20 | ENTRY BY LANDLORD | 36 |
| ARTICLE 21 | HOLDING OVER | 37 |
| ARTICLE 22 | ATTORNEYS' FEES | 37 |
| ARTICLE 23 | LATE PAYMENTS; INTEREST AND LATE CHARGES | 37 |
| ARTICLE 24 | MORTGAGE PROTECTION/SUBORDINATION | 38 |
| ARTICLE 25 | ESTOPPEL CERTIFICATE/FINANCIAL STATEMENTS | 39 |
| ARTICLE 26 | BROKER | 39 |
| ARTICLE 27 | RELEASE OF PARTNERS OF LANDLORD | 40 |
| ARTICLE 28 | NOTICES | 40 |

**TABLE OF CONTENTS**
(continued)


| | | Page |
|---|---|---|
| ARTICLE 29 | QUIET ENJOYMENT | 40 |
| ARTICLE 30 | SUBSTITUTED PREMISES | 41 |
| ARTICLE 31 | GENERAL | 41 |
| ARTICLE 32 | EXECUTION | 43 |
| ARTICLE 33 | OPTIONS TO EXTEND | 44 |
| ARTICLE 34 | EXPANSION OPTIONS | 46 |
| ARTICLE 35 | RIGHT OF FIRST REFUSAL | 48 |
| ARTICLE 36 | MOVING ALLOWANCE | 49 |
| ARTICLE 37 | BUILDING CONFERENCE FACILITY | 49 |
| EXHIBIT A | SITE PLAN | A |
| EXHIBIT B | FLOOR PLAN OF THE PREMISES, EXPANSION SPACE AND CONFERENCE FACILITY | B |
| EXHIBIT C | WORK LETTER | C |
| EXHIBIT D | RULES AND REGULATIONS | D |

THIS OFFICE SPACE LEASE ("**Lease**") is dated this 16th day of April, 2007, by and between Landlord and Tenant.

BASIC LEASE PROVISIONS

The following provisions shall be referred to in this Lease as the "Basic Lease Provisions." This Lease shall consist of the Basic Lease Provisions, the Standard Lease Provisions and the Exhibits attached hereto. In the event of any conflict, inconsistency or ambiguity between the Basic Lease Provisions and the Standard Lease Provisions, the Basic Lease Provisions shall govern.

1. "**Landlord**" means 401 WEST A STREET SD PT, LLC, a Delaware limited liability company.

2. "**Tenant**" means SAN DIEGO CITY EMPLOYEES' RETIREMENT SYSTEM, a city charter created public pension system. Tenant's Federal Tax Identification Number is: 20-1800126.

3. "**Building**" means the building in which the Premises are located, which is located at 401 West A Street, San Diego, California 92101, which Building consists of approximately 553,715 rentable square feet.

4. "**Project**" means the Building, together with the underlying land, underground parking facilities and any on and off-site improvements shown on the site plan attached hereto as Exhibit A.

5. "**Premises**" means all of the fourth (4th) floor and a portion of the third (3rd) floor of the Building, presently known as Suites 310, 330 and 400 and consisting of a total of 28,629 rentable (24,479 usable) square feet (which square footage amounts shall be conclusive and binding upon the parties) substantially as shown (hatched) on Exhibit B attached hereto.

6. "**Beneficial Occupancy Commencement Date**" means the date of Substantial Completion of the Tenant Improvements (as such terms are defined in the Work Letter). The Beneficial Occupancy Commencement Date is anticipated to be August 1, 2007. "**Term Commencement Date**" means the date which is twelve (12) months after the Beneficial Occupancy Commencement Date.

7. "**Expiration Date**" means the date immediately preceding the tenth (10th) anniversary of the Term Commencement Date; provided, however, that if the Term Commencement Date is a date other than the first (1st) day of a month, the expiration date shall be the last day of the month which is one hundred twenty (120) months after the month in which the Term Commencement Date falls, or such earlier date upon which this Lease may expire or terminate.

8. "**Fixed Rent**" means the amounts set forth below:

| Lease Year | Fixed Rent Per Rentable Sq. Ft. Per Month | Monthly Fixed Rent |
|---|---|---|
| 1 | $2.54 | $72,717.66 |
| 2 | $2.62 | $75,007.98 |
| 3 | $2.72 | $77,870.88 |
| 4 | $2.81 | $80,447.49 |
| 5 | $2.91 | $83,310.39 |
| 6 | $3.01 | $86,173.29 |
| 7 | $3.12 | $89,322.48 |
| 8 | $3.23 | $92,471.67 |
| 9 | $3.34 | $95,620.86 |
| 10 | $3.46 | $99,056.34 |

9. "**Base Operating Costs**" means the Operating Costs paid or incurred by Landlord for calendar year 2008 (the "**Base Year**").

10. "**Tenant's Proportionate Share**" means 5.17%, based on 28,629 rentable square feet in the Premises divided by 553,715 total rentable square feet in the Building.

11. "**Security Deposit**" has been waived.

12. "**Permitted Use**" means general office use and other legally permitted non-retail uses compatible with a first-class office building.

13. "**Parking Space Allocation**" means twenty-four (24) unreserved parking spaces within the parking structure of the Building which shall be provided on an in-common, non-exclusive, and unreserved basis, subject to Tenant's payment of the monthly parking charge for all such allocated space(s) as set forth below. The current monthly rate for Tenant's Parking Space Allocation is One Hundred Seventy-Five and 00/100 Dollars ($175.00) per unreserved space per month, subject to increase upon fifteen (15) days prior notice to reflect the then prevailing market rate for such parking as determined by Landlord in its sole discretion.

14. "**Brokers**" means Irving Hughes (for Tenant) and SENTRE Partners (for Landlord).

15. "**Landlord's Address for Notice**" means:

401 West A Street SD PT, LLC
c/o SENTRE Partners
401 West A Street, Suite 750
San Diego, CA 92101
Attn: First National Bank Center Property Manager

16. "**Landlord's Address for Rent**" shall be designated by written notice from Landlord to Tenant.

17. "**Tenant's Address for Notice**" means:

San Diego City Employees' Retirement System
401 West A Street, Suite 400
San Diego, CA 92101
Attn: Patrick Lane

Prior to the date Tenant commences business operations in the Premises, Tenant's business address for notices shall be 401 B Street, Suite 400, San Diego, CA 92101.

## ARTICLE 1
## PROPERTY LEASED

Section 1.01 Upon and subject to the terms, covenants and conditions hereinafter set forth, Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the Premises.

Section 1.02 Tenant acknowledges that it has inspected the Premises and agrees to accept possession of same in its "as-is" physical condition on the Beneficial Occupancy Commencement Date, it being understood and agreed that except as provided in the Work Letter, Landlord shall not be obligated to perform any alterations, improvements or repairs to the Premises or furnish to or remove from the Premises any alterations, improvements, fixtures, materials or any other property whatsoever. Tenant further acknowledges that it shall not be entitled to any free rent, concessions, credits or contributions of money from Landlord with respect to the Premises except as expressly provided in this Lease. Except as provided at the end of this Section 1.02, Tenant, by entering into occupancy of any part of the Premises, shall be conclusively deemed to have agreed that the Premises were in satisfactory condition as of the date of such occupancy unless within ten (10) days after such date Tenant shall give written notice to Landlord specifying the respects in which the same was not in such condition. Tenant acknowledges that neither Landlord, nor any agent or employee of Landlord, has made any representation with respect to the Premises, or the Building or Project, or with respect to the suitability of them to the conduct of Tenant's business. Notwithstanding the foregoing, or anything else in this Lease to the contrary, Landlord shall cause all systems in the Building to be in good working order as of the date Landlord delivers possession of the Premises to Tenant in

the condition required by this Lease, and Landlord shall cause such systems including, without limitation, the HVAC system serving the Premises, to be maintained and repaired (to the extent necessary) at no charge to Tenant and not as a charge to Operating Costs for a period of six (6) months following the Beneficial Occupancy Commencement Date. Further, with respect to the Tenant Improvements constructed pursuant to the terms and conditions of the Work Letter, Landlord shall obtain industry-standard warranties for any such work and, upon request from Tenant, shall use commercially reasonable efforts to enforce such warranties.

Section 1.03 Tenant shall have the right to the non-exclusive use of all of the Common Areas (as defined in Section 15.02(a) herein), subject however to all other provisions of this Lease.

## ARTICLE 2
## TERM

Section 2.01 Notwithstanding anything to the contrary contained in this Lease, Tenant shall have the right to commence and conduct business from the Premises during the period (the "**Beneficial Occupancy Period**") from the Beneficial Occupancy Commencement Date until the Term Commencement Date. All of the terms and conditions of this Lease shall apply during the Beneficial Occupancy Period including, without limitation, Tenant's obligations to pay parking fees pursuant to Article 13 below and Tenant's obligation to obtain and maintain insurance pursuant to Article 9 below, except that Tenant's obligation to pay Fixed Rent shall not apply during the Beneficial Occupancy Period.

Section 2.02 The term of the Lease shall commence on the Term Commencement Date and shall end on the Expiration Date. The period from the Term Commencement Date through and including the Expiration Date shall be referred to in this Lease as the "**Term.**" Tenant agrees that except as expressly provided in Section 8 of the Work Letter, Landlord shall have no liability, nor shall the Term of the Lease be extended or Tenant be entitled to terminate or cancel this Lease if Landlord does not deliver possession of, or Tenant does not occupy the Premises by, the anticipated Beneficial Occupancy Commencement Date. When the Beneficial Occupancy Commencement Date has been determined, Tenant shall execute and deliver to Landlord within ten (10) days after written request therefor a certificate in the form requested by Landlord stating the actual Beneficial Occupancy Commencement Date, Term Commencement Date and the Expiration Date, provided Tenant's failure to do so shall have no effect on such dates or the validity of this Lease.

## ARTICLE 3
## RENT

Section 3.01 Commencing on the Term Commencement Date, Tenant shall pay to Landlord during the Term, the Fixed Rent in the amount and subject to increase as set forth in Item 8 of the Basic Lease Provisions, which amount shall be payable by Tenant on or before the first day of each month, in advance, at the address specified for Landlord's Address for Rent in Item 16 of the Basic Lease Provisions, or such other place as Landlord shall designate, without any prior demand therefor and without any abatement, deduction or setoff whatsoever, except as specifically provided otherwise in this Lease. Fixed Rent for the first (1st) full month of the

Term shall be paid upon the execution hereof. If the Term Commencement Date should occur on a day other than the first day of a calendar month, then the Fixed Rent for such calendar month shall be prorated.

Section 3.02 Tenant shall pay to Landlord when due all Fixed Rent, all additional rent required to be paid pursuant to Article 4 and all other sums of money or charges required to be paid by Tenant under this Lease as additional rent, whether or not the same is designated additional rent. If such amounts or charges are not paid at the time provided in this Lease, they shall nevertheless be collectible with the next installment of Fixed Rent thereafter following due, but nothing herein contained shall be deemed to suspend or delay the payment of any amount of money or charge at the time the same becomes due and payable hereunder or limit any other remedy of Landlord.

Section 3.03 For purposes of this Lease, the term "**Lease Year**" shall mean each consecutive twelve (12) month period during the Term, with the first (1st) Lease Year commencing on the Term Commencement Date; however, (a) if the Term Commencement Date falls on a day other than the first (1st) day of a calendar month, the first (1st) Lease Year shall end on the last day of the eleventh (11th) month after the Term Commencement Date and the second (2nd) and each succeeding Lease Year shall commence on the first (1st) day of the next calendar month, and (b) the last Lease Year shall end on the Expiration Date.

## ARTICLE 4
## REIMBURSEMENT OF OPERATING COSTS

Section 4.01 (a) "**Taxes**" shall mean any and all real property taxes and personal property taxes (including taxes, assessments or other charges levied or collected in addition to or in lieu of real property or personal property taxes), improvement bonds, surcharges, service charges, fees and other charges and assessments which are levied or assessed against Landlord or the Project relating to the Project (but not with respect to Landlord's development of the Project) and any improvements, fixtures and equipment and all other property of Landlord, real or personal, located in the Project used in connection with the operation of the Project, including any increase in such taxes, whether resulting from a reassessment (occurring by sale or otherwise) of the value of the Project, or any portion thereof, or any other reason, imposed by any governmental authority. Taxes as defined above shall be interpreted to include all amounts levied or charged on any interest of Landlord in the Project including, but not be limited to, school fees, transportation corridor fees, city transportation fees, transportation management fees, development fees (other than those required to be paid in the ordinary course of obtaining building permits), license fees, commercial rental taxes, or other taxes upon Landlord's business ~~of leasing the Building. Taxes shall also include reasonable legal and other professional fees and~~ other reasonable costs and expenses incurred in connection with proceedings to reasonably contest, determine or reduce Taxes. However, (i) any audit conducted by Tenant pursuant to Section 4.04 below may include a determination as to whether such legal and other professional fees incurred in connection with proceedings to contest, determine or reduce Taxes were, in fact, reasonable, and (ii) any refunds of Taxes received by Landlord shall apply, on a retroactive basis, to the year in which the refund is applicable and if, as a result of such refund, Tenant has overpaid Excess Operating Costs for the applicable year(s), Landlord shall refund to Tenant any

such overpayment. Tenant shall have no right to contest or appeal any assessment of Taxes. Taxes shall not include any federal or state income tax, or any franchise, capital stock, estate, inheritance, succession, transfer and excess profit taxes imposed upon Landlord.

(b) "**Utilities Costs**" shall mean the aggregate of all costs and expenses payable by Landlord for water, electricity, gas and any other utilities furnished to the Premises, to other tenants' premises and otherwise for the Project. Charges for any utilities furnished by Landlord as a result of uses or demands by Tenant in excess of those charges which are normally furnished to other tenants in the Building shall not be included in Tenants' Utilities Costs but shall be payable by Tenant within thirty (30) days after Landlord delivers a statement for such utilities charges to Tenant.

(c) "**Operating Costs**" shall mean the aggregate of all costs and expenses incurred or payable by Landlord in connection with the ownership, operation, management and maintenance of the Project, including but not limited to, the cost of (a) landscaping, repaving (but only the portion applicable to the given year, based on amortization over the useful life of such item), resurfacing (but only the portion applicable to the given year, based on amortization over the useful life of such item), repairing, replacing (but only the portion applicable to the given year, based on amortization over the useful life of such item), painting, lighting, cleaning, removing trash and similar items; (b) all Taxes and Utilities Costs; (c) all insurance coverages obtained by Landlord and any commercially reasonable deductible required to be paid by Landlord; (d) trash disposal service; (e) operating, repairing and maintaining life safety systems, including, without limitation, sprinkler systems; (f) operating, repairing, and maintaining the heating, ventilation and air conditioning (HVAC) system and elevator services; (g) painting, window washing, general cleaning and janitorial services; (h) monitoring services, if provided by Landlord, including, without limitation, any monitoring or control device used by Landlord in regulating the parking areas (i) legal, accounting and consulting fees and expenses; (j) compensation (including employment taxes and fringe benefits) of all persons who perform duties connected with the Project, provided that if any such individuals do not spend all of their time at the Project, such compensation shall be prorated based upon the actual amount of time spent at the Project; (k) intentionally deleted; (l) municipal inspection fees or charges; (m) the cost of compliance with Applicable Laws, Covenants and Conditions (as defined in Section 12.02 herein) enacted after the Beneficial Occupancy Commencement Date; (n) the cost and expense of implementing any transportation management program required by any governmental authority; (o) any other costs or expenses incurred by Landlord in connection with the Common Areas which are not otherwise reimbursed directly by tenants; (p) a reasonable management fee not to exceed three percent (3%) of revenues from the Building per year; (q) that part of office rent or rental value of space used or furnished by Landlord to enhance, manage, operate and maintain the Project; (r) current amortization of capital improvements which are either (1) required by laws enacted after the Beneficial Occupancy Commencement Date (including, but not limited to, improvements required to comply with The Americans With Disabilities Act of 1990, 42 U.S.C. Section 12101 et seq. and the regulations promulgated thereunder (hereinafter "**ADA**") and Title 24 of the California Code of Regulations (hereinafter "**Title 24**"), or (2) are installed for the purpose of reducing Operating Costs over the period of such amortization, but only where the annual

amount reasonably anticipated to be saved as a result of such improvement is reasonably expected to exceed the annual amortized cost of such improvement; and (s) any additional services not provided to the Project at the Beneficial Occupancy Commencement Date but thereafter provided by Landlord which Landlord reasonably deems necessary or desirable in connection with the management or operation of the Project (provided that in such case, from and after the date such additional service is provided, Landlord shall adjust Operating Costs for the Base Year to include the amount Landlord reasonably determines would have been incurred during the Base Year had such additional service been provided throughout the Base Year). Charges for any services, goods or materials provided or furnished by Landlord at Tenant's request or as a result of uses or demands by Tenant in excess of those normally furnished to other tenants in the Project and all other sums payable by Tenant under this Lease shall not be included in Operating Costs but shall be payable by Tenant (together with an administrative fee of five percent (5%) of the total amount thereof) within thirty (30) days after Landlord delivers to Tenant a statement for such services, goods or materials. If the Building is not at least ninety-five percent (95%) occupied during all or any portion of any calendar year, including the Base Year, then Landlord shall make an appropriate adjustment of the Operating Costs for such calendar year to determine what the Operating Costs would have been for such year if the Building had been ninety-five percent (95%) occupied and the amount so determined shall be deemed to be the amount of the Operating Costs for the year.

Notwithstanding anything to the contrary contained herein, when calculating Operating Costs for the Base Year, unless Operating Costs for the applicable subsequent calendar year include the applicable following items, Operating Costs shall exclude (i) increases due to extraordinary circumstances including, but not limited to, boycotts and strikes and catastrophic events, and (ii) amortization of any capital items including, but not limited to, capital improvements, capital repairs and capital replacements where the actual improvement, repair or replacement was made in prior years.

(d) "**Excess Operating Costs**" means the amount by which the Operating Costs for any calendar year (or part thereof during the Term) exceeds the Base Operating Costs.

Section 4.02 Landlord shall deliver to Tenant an estimate of the anticipated Excess Operating Costs for the forthcoming calendar year. Tenant shall pay to Landlord, as additional rent, commencing on January 1, 2009 and continuing on the first day of each calendar month thereafter during the Term, an amount equal to one-twelfth (1/12th) of the product obtained by multiplying the then estimated Excess Operating Costs for the year times Tenant's Proportionate Share. The estimated monthly charge for the Excess Operating Costs may be adjusted periodically by Landlord during the calendar year on the basis of Landlord's anticipated costs. Any major expenditure by Landlord during the year which was not included in determining the estimated Excess Operating Costs, may be billed separately to Tenant according to Tenant's Proportionate Share of the Excess Operating Costs, as applicable, and shall be payable by Tenant upon receipt of said bill.

Section 4.03 After the end of each calendar year, Landlord shall furnish to Tenant a statement ("**Statement**") showing the (i) total Operating Costs for the calendar year just

ended, and (ii) Tenant's Proportionate Share of the Excess Operating Costs for the calendar year just ended. If the amount of estimated Excess Operating Costs paid by Tenant for any year during the Term exceeds the actual Excess Operating Costs for such year, Landlord may choose either to credit such excess against the next installments of Tenant's Proportionate Share of Excess Operating Costs due from Tenant to Landlord hereunder or to refund, within ten (10) business days after delivery of such Statement, such excess to Tenant. If the estimated Excess Operating Costs for such year are less than the actual Excess Operating Costs for such year, then Tenant shall pay to Landlord, within ten (10) business days of Tenant's receipt of Landlord's Statement, as additional rent, Tenant's Proportionate Share of the amount by which the actual Excess Operating Costs exceeds the estimated Excess Operating Costs. In the event the Term of this Lease expires or this Lease is otherwise terminated, Landlord shall compute the credit or deficiency up to the date this Lease expired or was terminated.

Section 4.04 Within one (1) year after receipt of a Statement by Tenant ("**Review Period**"), if Tenant disputes the amount set forth in the Statement, Tenant's employees or an independent certified public accountant (which accountant is a member of a nationally or regionally recognized accounting firm and is not retained on a contingency fee basis), designated by Tenant, may, after reasonable notice to Landlord ("**Review Notice**") and at reasonable times, inspect Landlord's records at Landlord's offices, provided that Tenant and such accountant or representative shall, and each of them shall use their commercially reasonable efforts to cause their respective agents and employees to, maintain all information contained in Landlord's records in strict confidence. Notwithstanding the foregoing, Tenant shall only have the right to review Landlord's records one (1) time for any calendar year. If after such inspection, but within thirty (30) days after the Review Period, Tenant notifies Landlord in writing ("**Dispute Notice**") that Tenant still disputes such amounts, a certification as to the proper amount shall be made at Tenant's expense (except as provided below), by an independent certified public accountant selected by Landlord and who is a member of a nationally or regionally recognized accounting firm and reasonably acceptable to Tenant. Tenant's failure to deliver the Review Notice within the Review Period or to deliver the Dispute Notice within thirty (30) days after the Review Period shall be deemed to constitute Tenant's approval of such Statement and Tenant, thereafter, waives the right or ability to dispute the amounts set forth in such Statement, except in the event of fraud. If Tenant timely delivers the Review Notice and the Dispute Notice, Landlord shall cooperate in good faith with Tenant and the accountant to show Tenant and the accountant the information upon which the certification is to be based. However, if such certification by the accountant proves that the Operating Costs set forth in the Statement were overstated by more than three percent (3%), then the cost of the accountant and the cost of such certification shall be paid for by Landlord. Promptly following the parties' receipt of such certification, the parties shall make such appropriate payments or reimbursements, as the case may be, to each other, as are determined to be owing pursuant to such certification. Tenant agrees that this section shall be the sole method to be used by Tenant to dispute the amount of any Operating Costs payable by Tenant pursuant to the terms of this Lease, and Tenant hereby waives any other rights at law or in equity relating thereto, except in the event of fraud.

## ARTICLE 5
## TENANT'S TAXES

Section 5.01 Tenant shall pay and be liable for any tax or fee (now or hereafter imposed by any governmental entity) applicable to or measured by or on the rents or any other charges payable by Tenant under this Lease, including, without limitation, any gross income tax, gross receipts tax or excise tax with respect to the receipt of such rent or other charges or the possession, leasing, operation, use or occupancy of the Premises, and specifically including any commercial rental tax of the City of San Diego, if any, that may now or hereafter be imposed, but not including any net income, franchise, capital stock, estate or inheritance taxes. If such tax is paid to the governmental taxing entity directly by Landlord, Tenant shall, upon demand, fully reimburse Landlord for such payment.

Section 5.02 Tenant shall also be liable for all taxes levied against the leasehold held by Tenant or against any personal property, leasehold improvements, additions, alterations and fixtures placed by or for Tenant in, on or about the Premises or constructed by Landlord for Tenant in the Premises; and if any such taxes are levied against Landlord or Landlord's property, or if the assessed value of the Project is increased (whether by special assessment or otherwise) by the inclusion therein of value placed on such leasehold, personal property, leasehold improvements, additions, alterations and fixtures, and Landlord pays any such taxes (which Landlord shall have the right to do regardless of the validity thereof), Tenant, upon demand, shall fully reimburse Landlord for the taxes so paid by Landlord or for the portion of such taxes resulting from such increase in any assessment.

## ARTICLE 6
## SERVICES AND UTILITIES

Section 6.01 Landlord agrees to furnish to the Premises water and electricity suitable for use of the Premises as general office space 24 hours per day, and HVAC required in Landlord's judgment for the comfortable use and occupation of the Premises on the days and times set forth below, all of which shall be subject to the Rules (as defined in Section 12.03 herein) as well as any governmental requirements or standards relating to, among other things, energy conservation. HVAC shall be furnished to the Premises between the hours of 7:00 a.m. and 6:00 p.m., Monday through Friday, and between the hours of 8:00 a.m. and 1:00 p.m. Saturdays, with the following holidays excepted: New Year's Day, Presidents' Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day and such other holidays as may be observed by the Building ("**Business Hours**"). Elevator service to the Building shall be provided twenty-four (24) hours a day, seven (7) days per week, subject to any Rules. Janitorial service to the Premises shall be provided five (5) days per week, with the above holidays excepted, and subject to any Rules. The cost of providing the Building standard services and utilities under this Section 6.01 shall be includable in Operating Costs.

Section 6.02 Landlord shall provide, seven (7) days per week, twenty-four (24) hours per day, security for access to the Building and the parking garage of the Building as an Operating Cost.

Section 6.03 Tenant shall be required to pay to Landlord as additional rent any increased cost of any utilities (other than electrical) and services, including, without limitation, water, HVAC or janitorial services, resulting from: (1) any substantial recurrent use of the Premises in a manner or at any time other than the hours during which Landlord agrees to furnish such utilities and services as described above, or (2) any special electrical, cooling or ventilating needs created by Tenant's use of telephone equipment, computers and other similar equipment or uses. Tenant shall not be responsible for any charges for additional electrical usage by Tenant within the Premises; however, if Tenant requires additional electrical capacity for the Premises beyond that currently provided, Tenant shall install such additional electrical equipment as may be required to provide such additional capacity, at Tenant's expense, subject to Landlord's reasonable approval of specifications therefor. If Tenant requires HVAC during times other than the Business Hours specified in Section 6.01 above, Tenant shall give Landlord such advance notice as Landlord shall reasonably require and shall pay Landlord's standard charge for such after-hours use. Any failure to pay any excess costs as described above shall constitute a breach of this Lease and shall entitle Landlord to the same rights and remedies as provided in this Lease for failure to pay rent.

Section 6.04 Tenant shall not arrange for any telecommunication services to be installed in or on the Project or Premises or furnished to Tenant for Tenant's use, without the prior written consent of Landlord, which consent may be withheld only in Landlord's reasonable discretion. If Tenant desires at any time to arrange for telecommunication services to the Premises, Tenant shall request in writing Landlord's consent and provide such information as Landlord requests. Tenant shall pay all of Landlord's expenses for each such proposed telecommunication service to cover the review and processing expenses of Landlord (including reasonable attorneys' fees), whether or not Landlord grants its consent. Landlord makes no representations, warranties or guaranties with respect to the availability of any telecommunication service to the Premises, and Landlord shall not be liable for and Tenant shall not be entitled to any abatement or reduction of Fixed Rent or additional rent by reason of Landlord's failure to furnish to the Premises any telecommunication service.

Section 6.05 Tenant acknowledges that the deregulation of the energy industry may precipitate a change in the provider of electricity to the Building. Tenant further acknowledges and agrees that the decision whether to change providers and the selection of the provider shall be made by Landlord in its sole and absolute discretion. Tenant shall cooperate fully with Landlord (including providing Landlord at no charge with copies of all records which Tenant keeps regarding Tenant's electrical consumption) to facilitate Landlord's decision making process. Tenant shall cooperate with Landlord in any present or future government conservation requirements or conservation practices established by Landlord. Landlord shall not be liable for ~~and Tenant shall not be entitled to any abatement by reduction of Fixed Rent or additional rent~~ by reason of: (a) Tenant's claim that as a result of deregulation the cost of electricity should be less than the actual cost incurred by Landlord; or (b) any interruption, stoppage or failure in such service arising from any change in the provider of electricity to the Building; provided, however, that Landlord shall not make any profit by virtue of supplying any utility, and Landlord shall use its commercially reasonable efforts to avoid any interruption in services or utilities to Tenant.

Section 6.06 Landlord shall not be liable for and except as provided in Section 6.07 below, Tenant shall not be entitled to any abatement or reduction of Fixed Rent or additional rent by reason of Landlord's failure to furnish any of the foregoing utilities or services including, without limitation, when such failure is caused by (i) accidents, breakage or repairs, (ii) strikes, brownouts, blackouts, lockouts or other labor disturbances or labor disputes of any character, (iii) governmental regulation, moratorium or other governmental action, (iv) limitation, rationing, curtailment or restriction on the use of water, electricity, gas heating, cooling or other forms of service or utility provided to the Premises, or (v) by any other cause, similar or dissimilar, including without limitation, any improvements, alterations, repairs or maintenance required for the Project, nor shall such failure under such circumstances be construed as a constructive or actual eviction of Tenant. Landlord shall not be liable under any circumstances for loss or injury to property or business, however occurring, through or in connection with or incidental to Landlord's failure to furnish any of said service or utilities.

Section 6.07 An "**Abatement Event**" shall be defined as an event that prevents Tenant from using the Premises, or any portion thereof, as a result of any failure to provide services or access to the Premises, where (i) Tenant does not actually use the Premises or such portion thereof, and (ii) such event is caused by the negligence or willful misconduct of Landlord, its agents, employees or contractors. Tenant shall give Landlord notice ("**Abatement Notice**") of any such Abatement Event, and if such Abatement Event continues beyond the Eligibility Period (as that term is defined below), then the Fixed Rent and Tenant's Proportionate Share of Operating Costs and Tenant's obligation to pay for parking shall be abated entirely or reduced, as the case may be, after expiration of the Eligibility Period for such time that Tenant continues to be so prevented from using, and does not use, the Premises or a portion thereof, in the proportion that the rentable area of the portion of the Premises that Tenant is prevented from using, and does not use, bears to the total rentable area of the Premises; provided, however, in the event that Tenant is prevented from using, and does not use, a portion of the Premises for a period of time in excess of the Eligibility Period and the remaining portion of the Premises is not sufficient to allow Tenant to effectively conduct its business therein, and if Tenant does not conduct its business from such remaining portion, then for such time after expiration of the Eligibility Period during which Tenant is so prevented from effectively conducting its business therein, the Fixed Rent and Tenant's Proportionate Share of Operating Costs and Tenant's obligation to pay for parking for the entire Premises shall be abated entirely for such time as Tenant continues to be so prevented from using, and does not use, the Premises. If, however, Tenant reoccupies any portion of the Premises during such period, the Fixed Rent and Tenant's Proportionate Share of Operating Costs and Tenant's obligation to pay for parking allocable to such reoccupied portion, based on the proportion that the rentable area of such reoccupied portion of the Premises bears to the total rentable area of the Premises, shall be payable by Tenant from the date Tenant reoccupies such portion of the Premises. The term "**Eligibility Period**" shall mean a period of two (2) consecutive business days after Landlord's receipt of any Abatement Notice(s).

## ARTICLE 7
## ASSIGNMENT AND SUBLETTING

Section 7.01 Tenant shall not directly or indirectly, voluntarily or by operation of law, sell, assign, encumber, pledge or otherwise transfer or hypothecate all or any part of the Premises or Tenant's leasehold estate hereunder (collectively "**Assignment**"), or permit the Premises, or any portion thereof, to be occupied by anyone other than Tenant or to sublet the Premises, or any portion thereof (collectively "**Sublease**"), without Landlord's prior written consent in each instance, which consent shall not be unreasonably withheld, conditioned or delayed, subject to the terms and conditions contained in this Article 7. Any sale or other transfer, including transfer by consolidation, merger or reorganization, of fifty percent (50%) or more (measured cumulatively over the Term of this Lease) of the voting stock of Tenant, if Tenant is a corporation, or any sale or other transfer of fifty percent (50%) or more (measured cumulatively over the Term of this Lease) of the partnership or membership interests in Tenant, if Tenant is a partnership or limited liability company, shall be an Assignment for purposes of this Article 7. As used herein, the term "Tenant" shall also mean any entity that has guaranteed Tenant's obligation under this Lease, and the prohibition hereof shall be applicable to any sales or transfers of stock or partnership or membership interests of said entity. Landlord and Tenant agree (by way of example and without limitation) that it shall be reasonable for Landlord to withhold its consent if any of the following situations exist or may exist which are not exclusive:

(a) the proposed assignee's or sublessee's use of the Premises is inconsistent with the Permitted Use under this Lease or will materially and adversely affect Landlord's interest. Landlord shall not be obligated to alter the Permitted Use or any other provision of this Lease regarding the use of the Premises or any other matter in connection with any proposed Assignment or Sublease notwithstanding the financial resources of the proposed assignee or sublessee;

(b) Tenant is in monetary or material non-monetary default beyond applicable notice and cure periods pursuant to this Lease at the time of its request for consent and/or the effective date of such proposed Assignment or Sublease;

(c) the proposed assignee or sublessee does not have sufficient financial resources to operate the Premises in a first-class manner;

(d) the proposed Assignment or Sublease is to be effective at any time prior to the date eighteenth ($18^{th}$) month anniversary of the Term Commencement Date;

(e) Tenant proposes to subdivide the Premises or any portion thereof into irregularly shaped pieces or otherwise in a manner that is unacceptable to Landlord, in Landlord's reasonable discretion;

(f) the proposed Assignment or Sublease would, in Landlord's reasonable discretion, result in the use of the Premises by a substantially greater number of persons than a typical first-class office user;

(g) the proposed Assignment or Sublease provides for a rental or other payment based in whole or in part on the income or profits derived by any person from the Premises, or any part thereof;

(h) the proposed assignee or sublessee would breach any covenant of Landlord respecting exclusivity, use, location or signage in any other lease, financing agreement or other agreement relating to the Building or Project; or

(i) the proposed assignee or sublessee is a governmental agency (or a subdivision or agency thereof) which is inconsistent with the character of the Building as a first-class office building.

Tenant shall pay all of Landlord's reasonable, out-of-pocket expenses for each such proposed Assignment (or other transfer) or Sublease to cover the legal, administrative and processing expenses of Landlord, whether or not Landlord shall grant its consent to such proposed Assignment or Sublease not to exceed Two Thousand Dollars ($2,000.00) per occurrence.

Section 7.02 (a) Landlord's consent may be made or withheld subject to such terms and conditions as Landlord reasonably considers necessary in order to protect its interest in the Premises and the Project, including, but not limited to, the following: that the proposed assignee (or other transferee of Tenant's interest under this Lease) shall execute, acknowledge and deliver to Landlord Landlord's standard form of Assignment Consent or Sublease Consent, as applicable, subject to commercially reasonable changes agreed upon by Landlord and the transfereee. Landlord shall not be required to agree to any amendment of this Lease in connection with any Assignment or Sublease. Tenant and any such proposed assignee or sublessee shall promptly furnish to Landlord all documents, agreements and understandings of any nature reasonably required by Landlord with regard to such transaction. Tenant and any guarantors shall continue to be liable to Landlord under this Lease for the terms, covenants and conditions to be complied with by Tenant whether this Lease is assigned, sublet and/or otherwise transferred. No withholding of consent by Landlord for any reason deemed sufficient by Landlord shall give rise to any claim by Tenant or any proposed assignee or subtenant or entitle Tenant to terminate this Lease, to recover contract damages or to any abatement of rent and Tenant hereby expressly waives its rights under California Civil Code Section 1995.310.

(b) No consent by Landlord to any Assignment or Sublease by Tenant shall relieve Tenant of any obligation to be performed by Tenant under this Lease, whether arising before or after the Assignment or Sublease. The consent by Landlord to any Assignment or Sublease shall not relieve Tenant of the obligation to obtain Landlord's express written consent to any other Assignment or Sublease. Any Assignment or Sublease that is not in compliance with this Article 7 shall be void and, at the option of Landlord, shall constitute a material default by Tenant under this Lease. The acceptance of rent or payment of any other monetary obligation by Landlord from a proposed assignee or sublessee shall not constitute the consent by Landlord to such Assignment or Sublease.

Section 7.03 If Tenant desires at any time to enter into an Assignment or a Sublease of the Premises or any portion thereof, Tenant shall request in writing, at least thirty (30) days prior to the effective date of the Assignment or Sublease, Landlord's consent to the Assignment or Sublease, and provide the following: (a) the name of the proposed assignee or sublessee or occupant, (b) the nature of the proposed assignee's or sublessee's business to be carried on in the Premises, (c) the terms and provisions of the proposed Assignment or Sublease, and (d) sufficient financial information concerning the proposed assignee or sublessee to allow Landlord to assess the financial condition of such person or entity. At any time within fifteen (15) business days after Landlord's receipt of the foregoing information, Landlord may by written notice to Tenant elect either to (a) consent to the proposed Assignment or Sublease, (b) refuse to consent to the proposed Assignment or Sublease with a written explanation of its reason for refusal, or (c) terminate this Lease in full with respect to an Assignment or terminate this Lease in part with respect to the portion of the Premises covered by the Sublease; provided, however, that Landlord may only elect to so terminate this Lease in the event of an Assignment or in the event of a Sublease which, together with any then existing Subleases, would result in seventy-five percent (75%) or more of the rentable square feet within the Premises being subject to a Sublease for a term(s) which is co-terminous or substantially co-terminous with the Expiration Date of this Lease. If Landlord elects to terminate this Lease, Tenant shall surrender the Premises or applicable portion thereof to Landlord within thirty (30 days after receipt of Landlord's notice and this Lease or the applicable portion thereof shall terminate as of such date subject to the same terms and conditions as would be applicable upon the expiration of the Term of this Lease. If Landlord so elects to so terminate this Lease, Tenant may, by written notice to Landlord within fifteen (15) business days after Tenant's receipt of Landlord's notice of such election to terminate, vitiate such termination by withdrawing its request for consent to such Assignment or Sublease by written notice to Landlord, in which case such Assignment or Sublease shall not be effectuated and this Lease shall remain in full force and effect. Tenant's failure to so notify Landlord in writing within said fifteen (15) business day period shall be deemed to constitute Tenant's election to permit Landlord to so terminate this Lease. Tenant understands and acknowledges that Landlord's option to terminate this Lease rather than consent to an Assignment or Sublease is a material inducement for Landlord's agreeing to lease the Premises to Tenant. If Landlord consents to the Assignment or Sublease within said fifteen (15) business day period, Tenant may enter into such Assignment or Sublease of the Premises or portion thereof, but only upon the terms and conditions set forth in the notice furnished by Tenant to Landlord.

Section 7.04 In connection with such Assignment or Sublease, as a condition to Landlord's consent, Tenant shall pay to Landlord as additional rent as and when received by Tenant an amount equal to fifty percent (50%) of all "Profit" (as hereinafter defined) derived from such Assignment or Sublease. "Profit" shall mean the difference between (A) the rental, escalations thereto, percentage rent, additional rent and other payment obligations of the proposed assignee or sublessee under the terms of the proposed Assignment or Sublease together with any key money, bonus money, payment in excess of fair market value for services, assets, fixtures, inventory, accounts, goodwill, equipment, furniture, general intangibles, capital stock or equity ownership rendered or delivered by the assignee or sublessee to Tenant less the reasonable amount of Tenant's "Transaction Costs," as hereinafter defined, and (B) the sum of the rental and other payment obligations, or pro rata portion of the rental and payment obligations in the case of

a Sublease, payable to Landlord by Tenant under the terms of this Lease. "**Tenant's Transaction Costs**" shall mean only (1) the amounts paid by Tenant to Landlord for Fixed Rent and Excess Operating Costs for the portion of the Premises which is the subject of the Assignment or Sublease for all days that such space was vacated from the date that Tenant first vacated such space and notified Landlord that such space was available for assignment or sublease and retained a broker in order to market such space for assignment or sublease until the date that the assignee or subtenant pays rent, plus (2) that portion of Tenant's actual expenditures in connection with such Assignment or Sublease which are reasonable and customary in the market in which the Building is located (i) to rehabilitate or improve the portion of the Premises covered by such Assignment and/or Sublease for the assignee or sublessee, (ii) for brokerage fees, (iii) for Tenant's legal fees in connection with such Assignment or Sublease, and (iv) for any other out-of-pocket monetary concessions provided by Tenant in connection with such Assignment or Sublease. For purposes of calculating the Profit on a monthly basis, Tenant's Transaction Costs shall be deemed to be expended by Tenant in equal monthly amounts over the entire term of the Sublease or Assignment. For all purposes under this Article, a sub-sublease, assignment of sublease or any similar arrangement shall be prohibited unless approved by Landlord in writing. Tenant understands and acknowledges that the intent of the parties in negotiating this Lease was not to create any bonus value or allow Tenant to profit as a result of any favorable terms contained herein or any future changes in the market for the Premises.

Section 7.05 No Sublease entered into by Tenant shall be effective unless and until it has been approved in writing by Landlord and once approved, such Sublease shall not be changed or modified without Landlord's prior written consent. Any sublessee shall, by reason of entering into a Sublease under this Lease, be deemed, for the benefit of Landlord, to have assumed and agreed to perform and comply with each and every obligation herein to be performed by Tenant other than such obligations as are contrary to or inconsistent with provisions contained in a Sublease to which Landlord has expressly consented in writing.

Section 7.06 Notwithstanding anything to the contrary contained in this Article 7, an assignment or subletting of all or a portion of the Premises to an affiliate ("**Affiliate**") of Tenant (an entity which is controlled by, controls, or is under common control with, Tenant), shall not be deemed a Transfer under this Article 7, provided that Tenant notifies Landlord of any such assignment or sublease and promptly supplies Landlord with any documents or information reasonably requested by Landlord regarding such assignment or sublease or such Affiliate, and further provided that such assignment or sublease is not a subterfuge by Tenant to avoid its obligations under this Lease. An assignee of Tenant's entire interest in this Lease pursuant to the immediately preceding sentence may be referred to herein as an "**Affiliated Assignee.**" "**Control,**" as used in this Article 7, shall mean the ownership, ~~directly or indirectly, of greater than fifty percent (50%) of the voting securities of, or possession~~ of the right to vote, in the ordinary direction of its affairs, of greater than fifty percent (50%) of the voting interest in, an entity.

## ARTICLE 8
## MAINTENANCE AND REPAIRS

Section 8.01 Landlord shall keep in good condition and repair, at Landlord's initial cost and expense but subject to reimbursement by Tenant pursuant to and to the extent set forth in Article 4 (and subject to Section 1.02 above), the standard plumbing, electrical, and lighting improvements initially installed in the Premises (including replacement of fluorescent bulbs), HVAC systems which service the Premises in common with other premises or Common Areas within the Building, the foundations, exterior walls, structural condition of bearing walls, roof of the Premises, parking lots, parking garages, walkways, driveways, landscaping, fences, signs and utility installations and other improvements in the Common Areas. Landlord shall not be required to pay for the cost of any repairs that are the obligation of or are caused by any negligent or intentional act or omission of Tenant or any person claiming through or under Tenant or any of Tenant's agents, employees, sublessees, suppliers, shippers, customers or invitees; however, Landlord shall have the right, but not the obligation, to repair such damage, and Tenant shall reimburse Landlord within ten (10) days after demand for the cost thereof. Notwithstanding anything to the contrary contained in this Lease, Landlord shall not be liable for failure to make repairs required to be made by Landlord under the provisions of this Lease except as provided in the final sentence of this Section 8.01 and Tenant shall not be entitled to any abatement or reduction in Fixed Rent or additional rent by reason of such failure, no actual or constructive eviction of Tenant shall result from such failure, Tenant shall not have the right to terminate this Lease, and Tenant shall not be relieved from the performance of any covenant or agreement in this Lease because of such failure. Landlord shall not be liable for, and except as provided in Section 6.07 above, there shall be no abatement of, Fixed Rent or additional rent with respect to, any injury to or interference with Tenant's business arising from any repair, maintenance, alteration or improvement in and to any portion of the Project, Building or the Premises. Tenant hereby waives and releases its right to make repairs at Landlord's expense under Sections 1932, 1933(4), 1941 and 1942 of the California Civil Code or any similar law, statute or ordinance now or hereafter in effect. Landlord shall not be in breach of its obligations under this Section 8.01 unless Landlord fails to make any repairs or perform maintenance which it is obligated to perform hereunder and such failure persists for an unreasonable time after written notice of the need for such repairs or maintenance is given to Landlord by Tenant. Tenant acknowledges that except as provided in Section 6.07 above, Tenant's sole remedy for breach of this Section 8.01 shall be an action for damages as provided for in and limited by Section 19.03 of this Lease.

Section 8.02 Tenant shall, at its sole cost and expense, make all repairs and replacements as and when Landlord deems reasonably necessary to preserve in a first class order, ~~condition and repair the Premises and every part thereof, including, without limitation, all~~ fixtures, interior walls, interior surfaces of exterior walls, ceilings, windows, doors, cabinets, draperies, window coverings, carpeting and other floor coverings, plate glass and skylights located within the Premises, and all non-standard utility systems and facilities (i.e., plumbing, electrical, lighting, HVAC systems) which have been specifically designed and installed for the exclusive use of the Premises; provided, however, that Tenant shall not be responsible for material defects in the construction by Landlord of any of the fixtures or structures on the Premises. Tenant shall, at its sole cost and expense, repair or reimburse Landlord for any

damage to the Premises, the Building or the Project caused by any contractor, employee or agent of Tenant who has entered the Premises, the Building or the Project as a result of the express or implied invitation or permission of Tenant.

Section 8.03 In the event that Tenant fails to maintain the Premises in a first-class order, condition and repair as required by this Lease or fails to comply with Applicable Laws, Covenants and Requirements, then, following reasonable written notification to Tenant (except in the case of an emergency, in which case no prior notification shall be required), Landlord shall have the right, but not the obligation, to enter the Premises and to do such acts and expend such funds at the expense of Tenant as are required to place the Premises in good and sanitary order, condition and repair and to comply with Applicable Laws, Covenants and Requirements. Any amount so expended by Landlord shall be paid by Tenant within thirty (30) days after demand. Except as provided in Article 10 below, Landlord shall have no liability to Tenant for any loss or damage that may accrue to Tenant's merchandise, fixtures, equipment, furniture or other property or for any inconvenience or interference with the use of the Premises by Tenant resulting from Landlord's performance of such maintenance or repair work.

Section 8.04 Tenant shall, upon the expiration or earlier termination of the Term, surrender the Premises to Landlord in the same condition and configuration as on the date Tenant took possession, broom clean, reasonable wear and tear excepted. All appurtenances, fixtures, improvements, additions and other property attached to or installed in the Premises as part of the initial build-out of the Premises or otherwise pursuant to Article 15.01, whether by Landlord or by or on behalf of Tenant, and whether at Landlord's expense or Tenant's expense, shall be and remain the property of Landlord, at Landlord's option. Without limiting the generality of the foregoing, Tenant shall not remove any floor covering, shelving, cabinet units (whether for storage, for library purposes or for any other purpose), or other improvements affixed to the Premises unless requested to do so by Landlord and, as to those improvements so requested by Landlord, Tenant shall remove same from the Premises prior to the Expiration Date. Any furnishings and personal property installed on the Premises that are removable without material damage to the Building or the Premises, if the property of Tenant or leased by Tenant, shall be and remain the property of Tenant and, at the expiration of the Term, shall be removed by Tenant at Tenant's sole cost and expense. Tenant shall promptly repair any damage to the Premises or the Building resulting from removal of such property. If Tenant fails to remove from the Premises all of its personal property or any other property or improvements which Landlord may request Tenant to remove hereunder prior to the expiration or earlier termination of this Lease, Landlord may handle the items not so removed as provided in Section 19.02 of this Lease. Any damage to the Premises, including any structural damage, resulting from Tenant's use or from the removal of Tenant's fixtures, furnishings and equipment shall be repaired by Tenant at Tenant's expense. Tenant shall also remove prior to the expiration or earlier termination of the Term, at Tenant's sole cost and expense, and notwithstanding anything to the contrary contained herein, all of Tenant's telephone, computer and other electronic wiring and cabling within the Premises and within the common ducts and shafts of the Building leading to the Premises. Tenant shall use all necessary care in removing such wires and cables in order to avoid any damage to other tenant's wiring and cabling or any disruption of service to such other tenants and Tenant agrees to be liable for any such damage or disruption of service to the extent caused by its removal.

## ARTICLE 9
## INSURANCE

Section 9.01 Tenant (or if appropriate, Tenant's contractors) shall, during the Term hereof, keep in full force and effect the following insurance:

(a) commercial general liability insurance with a limit of not less than Two Million Dollars ($2,000,000.00) combined single limit per occurrence and naming Landlord and its designees as additional insureds against claims for personal injury liability including, without limitation, bodily injury, death or property damage liability and covering (i) the business(es) operated by Tenant and by any assignee or sublessee of Tenant on the Premises, (ii) operations of independent contractors engaged by Tenant for construction on or about the Premises, and (iii) contractual liability. Such insurance may be furnished under a "primary" policy or an "umbrella" policy, provided that it is primary insurance and not excess over or contributory with any insurance in force for Landlord;

(b) all-risk property damage insurance, insuring the personal property, furniture, furnishings and fixtures belonging to Tenant, the Tenant Improvements and any Alterations made by or on behalf of Tenant located on the Premises for not less than one hundred percent (100%) of the actual replacement value thereof;

(c) worker's compensation insurance, with coverage as required by the State of California; and

(d) such other insurance as Landlord or Landlord's lender deems reasonably necessary.

Section 9.02 Each insurance policy obtained by Tenant pursuant to this Lease shall contain a clause that the insurer will provide Landlord with at least thirty (30) days' prior written notice of any material change, non-renewal or cancellation of the policy and shall be in a form satisfactory to Landlord and shall be taken out with an insurance company approved by Landlord and authorized to do business in the State of California. Except for worker's compensation insurance, each insurance certificate shall indicate that the insurer waives its rights of subrogation against Landlord. In addition, any insurance policy obtained by Tenant shall be written as primary policies, non-contributing with or in excess of any coverage which Landlord may carry, with loss payable clauses reasonably satisfactory to Landlord. The liability limits of the above-described insurance policies shall in no way limit the liability of Tenant under the terms of Article 10 below. Not more frequently than every five (5) years, if, in the reasonable opinion of Landlord, the amount of liability insurance specified in this Article 9 is not adequate, the above-described limits of coverage shall be adjusted by Landlord, by written notification to Tenant. If Tenant fails to maintain and secure the insurance coverage required under this Article 9, then Landlord shall have, in addition to all other remedies provided herein and by law, the right, but not the obligation, to procure and maintain such insurance, the cost of which shall be due and payable to Landlord by Tenant on demand. Any policy of insurance required pursuant to this Lease containing a deductible exceeding Twenty-Five Thousand Dollars ($25,000) per occurrence must be approved by Landlord in writing prior to the issuance

of such policy and Tenant shall be solely responsible for the payment of any deductible. If, on account of the failure of Tenant to comply with the provisions of this Article 9, Landlord is deemed a co-insurer by its insurance carrier, then any loss or damage which Landlord shall sustain by reason thereof shall be borne by Tenant and shall be immediately paid by Tenant upon receipt of a bill therefor and evidence of such loss.

Section 9.03 Landlord and Tenant each hereby waives any and all rights of recovery against the other (and against the officers, employees and agents of the other party) for loss of or damage to such waiving party or its property or the property of others under its control, to the extent such loss or damage is covered by standard fire and extended coverage insurance policies or endorsements; provided, however, that this waiver does not apply to any rights that either party may have with respect to the insurance proceeds at the time of such loss or damage. Landlord and Tenant shall give notice to their respective insurance carriers that the foregoing mutual waiver of subrogation is contained in this Lease and Landlord and Tenant shall each obtain from their insurance carriers a consent to such waiver.

Section 9.04 Notwithstanding anything to the contrary contained herein, San Diego City Employees' Retirement System (and not any successor, assignee, subtenant or other transferee and not any contractor of Tenant) may, subject to the provisions of this Section 9.04, fulfill any or all of its insurance obligations under Section 9.01 above by self-insurance. Tenant shall only have the right to so self-insure any of the required insurance so long as (i) it maintains a minimum net worth of at least Five Hundred Million Dollars ($500,000,000.00) calculated in accordance with generally accepted accounting principles, and (ii) prior to the institution of such self-insurance, Tenant notifies Landlord in writing of its election to so self-insure (which notice shall specify the insurance coverage(s) which Tenant elects to so self-insure) including the name, address and phone number of the claims administrator and a certificate signed by an authorized representative of Tenant in letter form stating that Tenant is self-insured for the risks, occurrences, and amounts set forth in the applicable portion of Section 9.01. Within thirty (30) days after request, Tenant shall provide Landlord with reasonable documentation that Tenant satisfies the net worth requirement set forth in (i) above. If Tenant fails to provide any of the information described in the preceding two (2) sentences on a timely basis, Landlord may so notify Tenant in writing and if Tenant still fails to provide such information within five (5) business days after such notice from Landlord, then this Section 9.04 shall no longer apply until such time as Tenant provides Landlord with such information and Tenant shall be required to purchase the insurance described in this Article 9 above. Any self-insurance so maintained by Tenant shall be deemed to contain all of the terms and conditions applicable to such insurance as required in this Article 9 above, including, without limitation, a deemed waiver of subrogation and a deemed provision including Landlord and any other parties in interest designated by Landlord as an additional insured; consequently, Landlord shall be treated for all purposes as if Tenant had actually purchased such insurance from a third party. If Tenant elects to so self-insure, then with respect to any claims which may result from incidents occurring during the Lease Term, such self-insurance obligation shall survive the expiration or earlier termination of this Lease to the same extent as the insurance required under this Lease would survive.

## ARTICLE 10
## INDEMNITY

Section 10.01 Tenant agrees to indemnify, defend and hold Landlord and its respective members, partners, shareholders, officers, directors, employees, agents, affiliates and lenders (collectively, "**Landlord's Affiliates**") harmless from and against all liabilities, losses, demands, actions, judgments, expenses or claims (including attorneys' fees, fees of experts and court costs) for personal and bodily injury to or death of any person or for damages to any property arising out of or in any manner connected with (i) the use, occupancy or enjoyment of the Common Areas or Premises by Tenant or any of its sublessees, agents, employees, licensees or contractors (the "**Tenant's Agents**") or any work, activity or other things allowed or suffered by Tenant or Tenant's Agents to be done in or about the Common Areas or Premises, (ii) any breach or default in the performance of any obligation of Tenant under this Lease and (iii) any negligent act or negligent failure to act by Tenant or Tenant's Agents in or about the Premises, Building or Project and not covered by insurance required to be carried by Landlord or actually carried by Landlord. If Tenant is required to defend Landlord, then Landlord shall be entitled to select its own defense counsel (subject to Tenant's reasonable approval), and Tenant shall pay on behalf of, or to, Landlord all reasonable defense expenses incurred by Landlord. Tenant agrees that Landlord and Landlord's Affiliates shall not be liable for injury to Tenant's business or loss of income therefrom. Tenant further agrees that except as provided in Section 10.02 below, Landlord and Landlord's Affiliates shall not be liable in any event for injury to the person or property of Tenant, Tenant's employees, agents or contractors or to Tenant's property, whether such damage or injury is caused by or results from criminal acts, fire, steam, electricity, gas, water or rain, or from the breakage, leakage, obstruction or other defects of pipes, sprinklers, wires, appliances, plumbing, heating, ventilation, air conditioning or lighting fixtures, or from any other cause, whether damage or injury results from conditions arising upon the Premises or upon other portions of the Building or the Project, or from other sources or places appurtenant to the Premises and regardless of whether the cause of such damage or injury or the means of repairing the same is inaccessible to Tenant, and Landlord shall not be liable for any damages arising from any act or neglect of any other tenant, if any, of the Building or the Project. All property of Tenant kept or stored on the Premises or in the Building shall be so kept or stored at the risk of Tenant only, and Tenant shall hold Landlord harmless from any claims arising out of damage to the same, including subrogation claims by Tenant's insurance carriers. The indemnifications contained herein and in Section 10.02 below shall survive the expiration or early termination of this Lease. Notwithstanding the foregoing, Tenant shall not be required to indemnify, defend and/or hold Landlord harmless from any loss, cost, liability, damage or expense, including, but not limited to, penalties, fines, attorneys' fees or costs (collectively, "**Claims**"), to any person, property or entity to the extent resulting from the negligence or willful misconduct of Landlord or its agents, contractors, or employees (except for damage to the Tenant Improvements and Tenant's personal property, fixtures, furniture and equipment in the Premises in which case Tenant shall be responsible to the extent Tenant is required to obtain the requisite insurance coverage pursuant to this Lease).

Section 10.02 Landlord hereby indemnifies and defends Tenant and its shareholders, officers, directors, employees, agents, affiliates and lenders (collectively, "**Tenant's Affiliates**") and holds Tenant and Tenant's Affiliates harmless from any Claims to the

extent resulting from (a) the actions of Landlord's agents, contractors or employees in the Common Areas and the negligence or willful misconduct of Landlord or its agents, contractors or employees and not covered by insurance required to be carried under this Lease by Tenant or actually carried by Tenant, (b) any breach or default in the performance of any obligation of Landlord under this Lease, and (c) any work, activity or other things allowed by Landlord or Landlord's agents, employees or contractors to be done within the Common Areas of the Project; provided, however, that (i) because Landlord maintains insurance on the Project and Tenant compensates Landlord for such insurance as part of Tenant's Proportionate Share of Operating Costs and because of the existence of waivers of subrogation set forth in Section 9.03 of this Lease, Landlord hereby indemnifies and defends and holds Tenant harmless from any Claims to any property outside of the Premises to the extent such Claim is covered by such insurance, even if resulting from the negligent acts, omissions, or willful misconduct of Tenant or those of its agents, contractors, or employees, and (ii) because Tenant must carry insurance pursuant to Article 9 to cover its personal property within the Premises and the Tenant Improvements, Tenant hereby indemnifies and holds Landlord harmless from any Claim to any property within the Premises, to the extent such Claim is covered by such insurance, even if resulting from the negligent acts, omissions or willful misconduct of Landlord or those of its agents, contractors, or employees. Further, Tenant's agreement to indemnify Landlord and Landlord's agreement to indemnify Tenant pursuant to this Article 10 is not intended to and shall not relieve any insurance carrier of its obligations under policies required to be carried by Landlord or Tenant pursuant to this Lease, to the extent such policies cover the matters subject to such indemnification obligations.

## ARTICLE 11
## SECURITY DEPOSIT

Not Applicable.

## ARTICLE 12
## USE OF PREMISES

Section 12.01 Tenant shall use the Premises for the Permitted Use only, and for no other use without the prior written consent of Landlord, which may be withheld by Landlord in its sole and absolute discretion. In addition to complying with the Permitted Use and other provisions of this Lease concerning the use of the Premises, Tenant shall not permit the occupancy of any portion of the Premises located on a multi-tenant floor at any time during the Term to exceed one person (including visitors) per two hundred (200) usable square feet of space in the Premises. Tenant shall comply with any direction of any governmental authority having jurisdiction which shall, by reason of the nature of Tenant's specific use or occupancy of the Premises (as opposed to general office use), impose any duty upon Tenant or Landlord respecting the Premises or the use or occupation thereof. Tenant shall not do or permit anything to be done in or about the Premises which may diminish the market value of the Premises, the Building or Project, will in any way obstruct or interfere with the rights of other tenants or occupants of the Building, or injure or annoy them, or use or allow the Premises to be used for any unlawful purpose, nor shall Tenant cause, maintain or permit any nuisance in, on or about the Premises. Tenant shall not commit or suffer to be committed any waste in or upon the Premises.

Section 12.02 Tenant, its agents, servants, employees, invitees and licensees, shall comply with, and shall not use the Premises in any way (or permit or suffer anything to be done in or about the Premises) which will conflict with (a) any law, statute, ordinance or governmental rule or regulation affecting the Project now in force or which may be hereafter promulgated, including, but not limited to, the provisions of any city or county zoning codes regulating the use of the Project or any transportation management program established by any governmental or quasi-governmental entity made applicable to the Project; (b) any covenant, condition or restriction (whether or not of public record, but if not of public record, Tenant shall not be bound until Landlord delivers a copy of the non-public record document to Tenant) affecting the Project, now in force or which may hereafter be enacted or promulgated, but in no case shall any such covenant, condition or restriction materially and adversely affect Tenant's use of the Premises; (c) the Americans With Disabilities Act, including, without limitation, the architectural barrier removal requirements of said Act; (d) all requirements, now in force or which may hereafter be in force, of any board of fire underwriters or other similar body now or hereafter constituted relating to or affecting the condition, use or occupancy of the Premises; or (e) any licensing requirements of any city, county, or other governmental or quasi-governmental entity regulating Tenant's Permitted Use of the Premises (items (a) through (e) hereinafter collectively referred to as "**Applicable Laws, Covenants and Requirements**"). Tenant shall promptly notify Landlord of and shall promptly provide Landlord with true, correct and legible copies of all orders, reports, notices and correspondence (even those which may be considered confidential) of or concerning the investigation, compliance, and corrective actions and all complaints, pleadings, and other legal documents filed against Tenant relating to Tenant's failure to comply with Applicable Laws, Covenants and Requirements applicable to the Premises. Tenant shall, at its sole cost and expense, promptly comply with all Applicable Laws, Covenants and Requirements. The judgment of any court of competent jurisdiction or the admission by Tenant in any action against Tenant, whether Landlord be a party thereto or not, that Tenant has violated any Applicable Laws, Covenants and Requirements, shall be conclusive of the fact as between Landlord and Tenant.

Section 12.03 Tenant shall, and Tenant agrees to cause Tenant's Agents to, observe and comply fully and faithfully with the rules and regulations attached hereto as Exhibit D or such rules and regulations which may hereafter be reasonably adopted by Landlord for the care, protection, cleanliness, and operation of the Premises, the Building, the Common Areas and the Project, and any modifications or additions thereto reasonably adopted by Landlord, provided that Landlord shall give written notice thereof to Tenant (all such rules and regulations, collectively herein the "**Rules**"). Landlord shall not be responsible to Tenant for failure of any other tenant or occupant of the Building to observe or comply with any of the Rules. All Rules shall be non-discriminatory, and shall not be enforced in a discriminatory manner.

Section 12.04 (a) Tenant hereby agrees that neither Tenant nor Tenant's Agents will engage in any activity in, on or about the Premises, the Building, the Project or the Common Areas, nor permit others to engage in any such activity, which will result in the Premises, the Building, the Project or the Common Areas containing any of the following: (i) any oil or "Hazardous Material" as such term is defined below; (ii) asbestos in any form

which is or could become friable; (iii) urea formaldehyde foam insulation; (iv) transformers or other equipment which contain dielectric fluid containing levels of polychlorinated biphenyls (PCBs); or (v) any other chemical, material, or substance, to which exposure is prohibited, limited or regulated by any governmental authority or agency or which may or could pose a hazard to the health and safety of the occupants of the Building or the owners of property adjacent to the Building. However, notwithstanding the foregoing, Tenant shall be permitted to use Hazardous Materials which are customarily used in general office use in the ordinary course of business (e.g., copier toner, liquid paper, glue, ink, and cleaning solvents) in commercially reasonable amounts in compliance with Applicable Laws, Covenants and Requirements. If at any time it is determined that Tenant, or Tenant's officers, directors, partners or employees, have been responsible for the Premises, the Building, the Project or the Common Areas containing any of the above materials or substances, then Tenant shall be solely responsible for and shall pay for all costs incurred in connection with the removal of said materials and/or substances in violation of Applicable Laws, Covenants and Requirements. The obligations on the part of Tenant set forth in this Section 12.04 shall survive the expiration of the Term of this Lease or the exercise by Landlord of any of Landlord's remedies under this Lease.

(b) Each party shall promptly comply with the requirements of Section 25359.7(b) of the California Health and Safety Code and/or any successor or similar statute to provide the other party with written notice that any Hazardous Material has come or will come to be located on or beneath the Premises, the Building or the Project if the first party discovers or has reasonable cause to believe of the presence of such materials. Should the discovering party fail to so notify the other party, the other party shall have all rights and remedies provided for such a failure by such Section 25359.7(b) in addition to all other rights and remedies which such party may have under this Lease or otherwise. Tenant shall not take any remedial action related to Hazardous Materials located in or about the Premises, the Building or the Project and shall not enter into a settlement, consent decree or compromise in response to any claim related to Hazardous Materials without first notifying Landlord in writing of Tenant's proposed action and affording Landlord a reasonable opportunity to appear, intervene or otherwise participate in any discussion or proceeding for the purposes of protecting Landlord's interest in the Premises, the Building and the Project. Each party shall immediately notify the other in writing of: (i) any enforcement, clean-up, removal or other governmental action instituted, completed or threatened with regard to Hazardous Materials involving the Premises, the Building or the Project; (ii) any claim made or threatened by any person against the notifying party, the Premises, the Building or the Project related to damage, contribution, cost recovery, compensation, loss or injury resulting from or claimed to result from any Hazardous Materials; and (iii) any reports made to any environmental agency arising out of or in connection with any Hazardous Materials at or removed from the Premises, the Building or the Project, including any complaints, notices, warnings or assertions of any violation in connection therewith.

(c) For the purpose of this Lease, "**Hazardous Material**" shall include, but not be limited to, substances defined, or as may be defined, as "hazardous substances," "hazardous materials," or "toxic substances" in: (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("**CERCLA**"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901,

et seq. ("**RCRA**"), the Federal Water Pollution Control Act (33 U.S.C. §§ 1251 et seq.), the Safe Drinking Water Act (42 U.S.C. §§ 300f et seq.), the Toxic Substances Control Act (15 U.S.C. §§ 2601 et seq.), the Clean Air Act (42 U.S.C. §§ 7401 et seq.), California Health & Safety Code §§ 25100 et seq. and §§ 39000 et seq., the California Safe Drinking Water & Toxic Enforcement Act of 1986 (California Health & Safety Code §§ 25249.5 et seq.), the Porter-Cologne Water Quality Control Act (California Water Code §§ 13000 et seq.), any and all amendments and recodifications of the foregoing laws and any rules or regulations adopted and publications promulgated pursuant to said laws, (ii) any other substance which results in liability to any person or entity from exposure to such substance under any statutory or common law theory, and (iii) any matter or substance which is in excess of relevant and appropriate levels set forth in any applicable federal, state, or local laws or regulations pertaining to the regulation of any hazardous or toxic substance, material or waste, or for which any applicable federal, state or local agency orders or otherwise requires the removal, treatment or remediation.

Section 12.05 Landlord shall use commercially reasonable efforts to comply with all requirements of the ADA, Title 24 and any other Applicable Laws, Covenants and Requirements relating to disabled access and facilities, upgraded fire safety equipment and seismic protection, and other disability and health and safety regulations (collectively, "**Disability and Safety Laws**") with respect to the Common Areas and the parking structure unless Tenant is leasing a full floor of the Building in which event Tenant shall be responsible for all Disability and Safety Laws with respect to the Common Areas on such floor after the Term Commencement Date. Tenant shall use commercially reasonable efforts to comply with all requirements of the Disability and Safety Laws with respect to the Premises; provided, however, that Tenant shall not be required to pay for any modifications to the Premises required by Disability and Safety Laws unless such modifications are required due to Tenant's specific use of the Premises (as opposed to general office use) or Tenant's Alterations to the Premises. Landlord and Tenant hereby agree to indemnify, defend and hold each other harmless from and against all liabilities, losses, demands, actions, expenses or claims, including attorneys' fees and court costs, arising out of or in any manner connected with such party's failure to comply with Disability and Safety Laws, including the costs of making any alterations, renovations or accommodations required by Disability and Safety Laws or any governmental enforcement agency, to the extent compliance is such party's responsibility pursuant to this Section 12.05. Operating Costs shall include any cost incurred by Landlord to comply with Disability and Safety Laws enacted after the Term Commencement Date.

## ARTICLE 13
## PARKING

Section 13.01 Landlord agrees to maintain or cause to be maintained an automobile parking area and to maintain and operate, or cause to be maintained and operated, said automobile parking area during the Term of this Lease for the benefit and use of the customers, service suppliers, other invitees and employees of Tenant. Whenever the words "**automobile parking area**" or "**parking area**" are used in this Lease, it is intended that the same shall include, whether in a surface parking area or a parking structure, the automobile parking stalls, driveways, loading docks, truck areas, service drives, entrances and exits and sidewalks, landscaped areas, pedestrian passageways in conjunction therewith and other areas

designed for parking. Landlord shall keep said automobile parking area in a neat, clean and orderly condition, lighted and landscaped, and shall repair any damage to the facilities thereof, the cost of which shall be included in Operating Costs. Nothing contained herein shall be deemed to impose liability upon Landlord for personal injury or theft, for damage to any motor vehicle, or for loss of property from within any motor vehicle, which is suffered by Tenant or any of its employees, customers, service suppliers or other invitees in connection with their use of said automobile parking area. Landlord shall have the right, in its sole discretion exercisable at any time, to impose fees and charges for parking in the automobile parking area. Landlord shall also have the right to establish such reasonable rules and regulations as may be deemed desirable, at Landlord's sole discretion, for the proper and efficient operation and maintenance of said automobile parking area. Such rules and regulations may include, without limitation, the establishment of reserved or unreserved parking and visitor parking in Landlord's sole discretion.

Section 13.02 Landlord shall at all times during the Term hereof have the sole and exclusive control of the automobile parking area, and may at any time during the Term hereof exclude and restrain any person from use or occupancy thereof; excepting, however, Tenant and employees, customers, service suppliers and other invitees of Tenant and of other tenants in the Building, provided such person uses said area in accordance with any rules and regulations established by Landlord from time to time with respect thereto. The rights of Tenant and its employees, customers, service suppliers and invitees referred to in this Article 13 shall at all times be subject to (i) the rights of Landlord and other tenants in the Building to use the same in common with Tenant and its employees, customers, service suppliers and invitees, and (ii) Landlord's right to change the location of any assigned reserved parking spaces in such instances as shall be determined in Landlord's sole discretion. Tenant shall be entitled on an in-common, non-exclusive, unreserved basis to the Parking Space Allocation set forth in Item 13 of the Basic Lease Provisions and Tenant shall be required to pay, as additional rent hereunder, a monthly parking charge in the amount set forth in Item 13 of the Basic Lease Provisions for the full monthly portion of the Parking Space Allocation which Tenant has committed to for such month without regard to whether all of the allocated spaces are actually used by Tenant. However, notwithstanding the foregoing, Tenant shall be entitled to increase or decrease the number of unreserved parking spaces utilized by Tenant (up to the maximum Parking Space Allocation) on a monthly basis, upon at least thirty (30) days' prior written notice to Landlord.

## ARTICLE 14
## SIGNS

Section 14.01 Tenant shall not have the right to place, construct, or maintain on or about the exterior of the Premises, the Building or anywhere in the Common Areas, or in any interior portions of the Premises that may be visible from the exterior of the Building, signs, names, insignia, advertising placard, trademarks, descriptive material or any other similar item without Landlord's prior written consent, which consent may be withheld in Landlord's reasonable discretion. Furthermore, because portions of the Premises that face the lobby atrium of the Building are visible from such lobby, Landlord shall have the right, in Landlord's reasonable discretion, to approve any items that may be visible from the Building atrium and the location thereof so that Landlord may ensure that all items visible from the Building atrium present a first-class appearance. In the event Landlord consents to Tenant placing a sign on or

about the Premises or the Building, any such sign shall be subject to Landlord's approval of the color, size, style and location of such sign, and shall conform to any current or future sign criteria established by Landlord for the Building or Project and any applicable municipal or governmental approvals. If Landlord enacts a sign criteria or revises an existing sign criteria after Tenant has erected a sign to which Landlord has granted its consent, Tenant agrees, at Landlord's expense, subject to Landlord's prior approval of the cost thereof, to make the necessary changes to its sign in order to conform the sign to Landlord's sign criteria, as enacted or revised, provided that such changes shall be limited to the color, size, style and location of Tenant's sign and that Tenant shall not be required to change the content of its sign. Notwithstanding the foregoing, Landlord shall identify Tenant's name in the lobby directories on Tenant's multi-tenant floors and Tenant's name and up to twelve (12) of Tenant's key employees in the Building lobby directory and place Tenant's name, at Tenant's expense, at the entrance to the Premises, and the design and location of such entry signage on any full floor shall be determined by Tenant subject to Landlord's approval, in Landlord's reasonable discretion.

## ARTICLE 15
## ALTERATIONS, ADDITIONS AND TRADE FIXTURES

Section 15.01 Tenant shall not make any alterations, additions or improvements to the Premises, or any part thereof, whether structural or nonstructural (hereinafter "**Alterations**"), without Landlord's prior written consent. In order to obtain Landlord's consent, Tenant shall submit such information as Landlord may require, including, without limitation, (i) plans and specifications, (ii) permits and licenses and (iii) evidence of insurance coverage in such types and amounts and from such insurers as Landlord deems satisfactory. Tenant shall pay to Landlord all reasonable costs incurred by Landlord for any architectural, engineering, or legal services in connection with making a determination concerning consent for any Alteration requested by Tenant or in connection with making any correction to any work or improvement performed by or at the request of Tenant. Landlord may impose any conditions and requirements to any consent as Landlord shall in its reasonable discretion deem to be necessary or advisable, including, without limitation, the hours when work may be performed and the implementation of safety measures while the construction is being performed. All Alterations shall be done in a good and workmanlike manner by qualified and licensed contractors or mechanics, as approved by Landlord. Tenant and Tenant's contractors shall keep Common Areas free from debris during the construction of any Alterations. In no event shall any Alterations affect the structure of the Building, its operating systems (including mechanical, HVAC, plumbing, electrical and fire and life safety) or its exterior appearance. Immediately after the completion of any Alterations, Tenant shall prepare and deliver to Landlord a copy of the "as built" plans and specifications for the Alterations in a form acceptable to Landlord (including one set of signed bluelines, one set of ~~originals or sepias and one AutoCaD diskette) (but if an "as built" would not ordinarily be done~~ for a particular Alteration, Tenant shall not be obligated to provide same). Tenant shall indemnify, defend against and keep Landlord free and harmless from all liability, loss, damage, cost, attorneys' fees and any other expense incurred on account of claims by any person performing work or furnishing materials or supplies for Tenant or any person claiming under Tenant for any Alterations. Landlord shall have the right at all times to post on the Premises any notices permitted or required by law, or that Landlord shall deem proper, for the protection of Landlord, the Premises, the Project, and any other party having an interest therein, from

mechanics' and materialmen's liens, and Tenant shall give to Landlord at least ten (10) business days' notice of commencement of any construction on the Premises. Tenant shall not be required to pay any administrative fee to Landlord for any paint and/or carpet work within the Premises and no administrative fee shall be payable in connection with any Alteration which costs less than Fifty Thousand Dollars ($50,000.00). However, for any Alterations which costs Fifty Thousand Dollars ($50,000.00) or more, Landlord may charge Tenant an administrative fee equal to five percent (5%) of the cost of such Alterations performed by Tenant in order to cover the cost of Landlord's services in monitoring or supervising such work. All Alterations upon the Premises made by either party, including, without limitation, all wall coverings, floor coverings, built-in cabinet work, paneling and the like, shall, unless Landlord elects otherwise, become the property of Landlord, and shall remain upon, and be surrendered with the Premises upon the expiration or earlier termination of this Lease; provided, however, that Landlord may, by written notice to Tenant, at the time Landlord consents to such improvements, require Tenant to promptly remove all Alterations made by Tenant and any other alterations or installations made by Tenant anywhere within the Building. Tenant shall promptly repair all damage resulting from such removal or, at Landlord's option, upon Tenant's failure to do so promptly, shall pay to Landlord all costs arising from such removal.

Section 15.02 (a) "**Common Areas**" means all areas, space, equipment and special services provided by Landlord within the Building or as a part of the Project for the common or joint use and benefit of the tenants, their employees, agents and invitees, including, by way of illustration, but not limitation, retaining walls, fences, landscaped areas, parks, curbs, sidewalks, private roads, restrooms, stairways, elevators, lobbies, hallways, patios, service quarters, parking facilities and all other areas as shown on Exhibit A. Furthermore, although the exterior balconies on the second (2nd) and third (3rd) floors of the Building may be adjacent to the premises of tenants of the Building, Landlord shall have the option to cause any or all of such areas to be treated as Common Areas (in which case the terms and conditions of this Section 15.02 shall apply) or to designate any or all of such areas as areas for the exclusive use for any tenant(s) of the Building (in which case such areas shall not be considered to be Common Areas). The exterior balcony on the fourth (4th) floor shall be for the exclusive use of Tenant provided that Tenant leases the entire floor; provided, however, that Tenant acknowledges that two (2) external stairways lead to such balcony on the fourth (4th) floor from the third (3rd) floor and one (1) internal stairway leads to such balcony on the fourth (4th) floor from the fifth (5th) floor and Landlord shall have no obligation to ensure that individuals do not enter the fourth (4th) floor balcony from such stairways. Landlord shall not have the right, during the Term or any extension thereof, to increase the rentable square footage of the Premises or increase Tenant's Proportionate Share due to a change to the Common Areas after the Term Commencement Date.

(b) Landlord shall have the sole and exclusive control of the Common Areas, as well as the right to make changes to the Common Areas. Landlord's rights shall include, but not be limited to, the right to (i) restrain the use of the Common Areas by unauthorized persons, (ii) utilize from time to time any portion of the Common Areas for promotional and related matters, (iii) temporarily close any portion of the Common Areas for repairs, improvements or alterations, (iv) change the shape and size of the Common Areas or change the location of improvements within the Common Areas, including, without limitation, parking structures and other parking facilities, roadways and curb cuts, and (v) utilize the

Common Areas to permit ingress to and egress from the undeveloped property adjacent to the Project during the development thereof, provided that Tenant's business operations at the Premises are not materially adversely affected on other than a temporary basis. Landlord may determine the nature, size and extent of the Common Areas as well as make changes to the Common Areas from time to time which, in its opinion, are deemed desirable.

(c) Notwithstanding anything to the contrary herein, Tenant and its successors, assigns, subtenants, employees, agents and invitees shall use the Common Areas only for the purposes permitted hereby and by the Rules. All uses permitted within the Common Areas shall be undertaken with reason and judgment so as not to interfere with the primary use of the Common Areas which is to provide parking and vehicular and pedestrian access throughout the Common Areas within the Project and to adjacent public streets for the Landlord, its agents, tenants, subtenants and all persons, firms and corporations conducting business within the Project and their respective customers, invitees, guests and licensees. In no event shall Tenant erect, install, or place, or cause to be erected, installed, or placed, any structure, building, trailer, fence, wall, signs, or other obstructions on the Common Areas except as otherwise permitted herein and in the Rules, and Tenant shall not store or sell any merchandise, equipment or materials on the Common Areas.

(d) Landlord shall have the full right and authority to employ or cause to be employed all personnel and to make or cause to be made all Rules pertaining to or necessary for the proper operation and maintenance of the Common Areas and the improvements located thereon. No part of the Common Areas may be used for the storage of any items, including without limitation, vehicles, materials, inventory and equipment. All trash and other refuse shall be placed in the designated receptacles. No work of any kind, including, but not limited to, painting, drying, cleaning, repairing, manufacturing, assembling, cutting, merchandising or displaying shall be permitted upon the Common Areas.

(e) It is understood and agreed that the condemnation or other taking or appropriation by any public or quasi-public authority, or sale in lieu of condemnation, of all or any portion of the Common Areas shall not constitute a violation of Landlord's agreements hereunder, and Tenant shall not be entitled to participate in or make any claim for any award or other condemnation proceeds arising from any such taking or appropriation of the Common Areas. Notwithstanding the foregoing, Landlord shall provide to Tenant the number of vehicle parking spaces set forth in Item 13 of the Basic Lease Provisions throughout the Term (subject to the rights of Landlord under this Section 15.02).

(f) Landlord reserves the right to install, use, maintain, repair, relocate and replace pipes, ducts, conduits, wires and appurtenant meters and equipment within the Premises or outside the Premises, change the boundary lines of the Project, and install, use, maintain, repair, alter or relocate, expand and replace any Common Areas; provided, however, Landlord shall use commercially reasonable efforts not to unreasonably interfere with Tenant's use of the Premises. Such rights of Landlord shall include, but are not limited to, designating from time to time certain portions of the Common Areas as exclusively for the benefit of certain tenants in the Project. No exercise by Landlord of its rights under this subparagraph (f) shall unreasonably interfere with Tenant's business operations.

(g) Landlord reserves the right at any time and from time to time without the same constituting an actual or constructive eviction and without incurring any liability to Tenant therefor or otherwise affecting Tenant's obligations under this Lease, to make such changes, alterations, additions, improvements, repairs or replacements in or to the Building and the Project (including the Premises provided Landlord shall use commercially reasonable efforts to minimize any disruption to the business of the Premises) and the fixtures and equipment thereof, as well as in or to the street entrances, parking structure, parking facilities, walls, passages, and stairways thereof, or to change the name by which the Building is commonly known, as Landlord may deem necessary or desirable. Nothing contained herein shall be deemed to relieve Tenant of any duty, obligation or liability of Tenant with respect to making any repair, replacement or improvement or complying with any Applicable Laws, Covenants and Conditions in connection with Tenant's specific use of the Premises, and nothing contained herein shall be deemed or construed to impose upon Landlord any obligation, responsibility or liability whatsoever for the care, supervision or repair of the Building or any part thereof other than as otherwise especially provided in this Lease.

## ARTICLE 16
## MECHANICS' LIENS

Section 16.01 Tenant shall keep the Premises free from any liens arising out of any work performed, material furnished or obligation incurred by or for Tenant or any person or entity claiming through or under Tenant. In the event that Tenant shall not, within thirty (30) days following the imposition of any such lien, cause the same to be released of record by payment or posting of a proper bond, Landlord shall have, in addition to all other remedies provided herein and by law, the right, but not the obligation, to cause such lien to be released by such means as Landlord deems proper, including payment of the claim giving rise to such lien. All such sums paid and all expenses incurred by Landlord in connection therewith shall be due and payable to Landlord by Tenant within ten (10) business days after demand therefor.

## ARTICLE 17
## DESTRUCTION

Section 17.01 In the event the Premises, the Building of which the Premises are a part, or any portion thereof, is damaged or destroyed by any casualty that is covered by the insurance maintained by Landlord, then Landlord shall rebuild and restore the Premises or Building, as the case may be, and repair the damaged portion thereof, provided that (1) the amount of insurance proceeds available to Landlord plus any deductible equals or exceeds the cost of such rebuilding, restoration and repair, (2) such rebuilding, restoration and repair can be completed within one hundred eighty (180) days after the work commences in the opinion of a registered architect or engineer appointed by Landlord, (3) the damage or destruction has occurred more than twenty-four (24) months before the expiration of the Term and (4) such rebuilding, restoration, or repair is then permitted under applicable governmental laws, rules and regulations to be done in such a manner as to return the Premises, or Building, as the case may be, to substantially its condition immediately prior to the damage or destruction, including,

without limitation, the same rentable floor area. If any of the circumstances described in subparagraphs (1) through (4) above cannot be satisfied, or in the event the Premises or any part of the Project is damaged or destroyed by any casualty not covered by the insurance maintained by Landlord, Landlord may, at its option, either (a) rebuild or restore the Premises or Building, as the case may be, and repair the damaged portion thereof, or (b) elect not to rebuild or restore and this Lease shall then terminate effective as of the date such damage has occurred. To the extent that insurance proceeds must be paid to a mortgagee or beneficiary under, or must be applied to reduce any indebtedness secured by, a mortgage or deed of trust encumbering the Premises or the Building, such proceeds, for the purposes of this Article 17, shall be deemed not available to Landlord unless such mortgagee or beneficiary permits Landlord to use such proceeds for the rebuilding, restoration, and repair of the Premises or Building. Notwithstanding the foregoing, Landlord shall have no obligation to repair any damage to, or to replace any of, Tenant's personal property, furnishings, fixtures, equipment or other such property or effects of Tenant.

Section 17.02 Tenant may terminate this Lease upon thirty (30) days' prior written notice if Landlord elects to perform such repair or restoration and either (i) Landlord determines that such repair or restoration to the Premises cannot be completed within one (1) year after the work commences or (ii) the damage or destruction to the Premises occurs within the last twelve (12) months of the Term.

Section 17.03 Tenant shall be entitled to an abatement of Fixed Rent by reason of damage to or destruction of the Premises, or any portion thereof, to the extent that the floor area of the Premises cannot be reasonably used by Tenant for the conduct of its business, in which event the Fixed Rent shall abate in the proportion which the area of the damaged or destroyed portion of the Premises bears to the total area of the Premises commencing upon the date of the damage to or destruction of the Premises has occurred until substantial completion of the repair of such damage or destruction, and except that, if Landlord or Tenant elects to terminate this Lease as provided above, no obligation shall accrue under this Lease after such termination. Notwithstanding the provisions of this Article 17, if any such damage is due to the fault or neglect of Tenant, any person claiming through or under Tenant, or any of their employees, suppliers, shippers, customers or invitees, then there shall be no abatement of Fixed Rent or additional rent by reason of such damage, unless and until Landlord is reimbursed for such abatement pursuant to any rental insurance policy that Landlord may, in its sole discretion, elect to carry. Tenant's right to terminate this Lease in the event of any damage or destruction to the Premises is governed by the terms of this Article 17 and therefore Tenant hereby expressly waives the provisions of Section 1932, Subdivision 2, and Section 1933, Subdivision 4, of the California Civil Code and any and all laws, whether now or hereafter in force, and whether created by ordinance, statute, judicial decision, administrative rules or regulations, or otherwise, that would cause this Lease to be terminated, or give Tenant a right to terminate this Lease, upon any damage to or destruction of the Premises or Building that occurs.

## ARTICLE 18
## CONDEMNATION

Section 18.01 If all or substantially all of the Premises is condemned or taken in any manner for public or quasi-public use, including, but not limited to, a conveyance or assignment in lieu of the condemnation or taking, or if so much of the Premises is so taken or condemned so as to render the remaining portion of the Premises unusable by Tenant for the conduct of Tenant's business, as determined by the condemning authority, this Lease shall automatically terminate as of the earlier of the date on which actual physical possession is taken by the condemnor or the date of dispossession of Tenant as a result of such condemnation or other taking. If less than all or substantially all of the Premises is so condemned or taken, rendering the remaining portion of the Premises unusable by Tenant for the conduct of its business, as determined by Tenant in its reasonable discretion, this Lease shall automatically terminate as of the earlier of the date on which actual physical possession is taken by the condemnor or the date of dispossession of Tenant as a result of such condemnation or taking. If such portion of the Building is condemned or otherwise taken so as to require, in the opinion of Landlord, a substantial alteration or reconstruction of the remaining portions thereof, this Lease may be terminated by Landlord, as of the date on which actual physical possession is taken by the condemnor, by written notice to Tenant within sixty (60) days following notice to Landlord of the date on which such physical possession is taken or will occur.

Section 18.02 Landlord shall be entitled to the entire award in any condemnation proceeding or other proceeding for taking for public or quasi-public use, including, without limitation, any award made for the value of the leasehold estate created by this Lease. No award for any partial or total taking shall be apportioned, and Tenant hereby assigns to Landlord any award that may be made in such condemnation or other taking, together with any and all rights of Tenant now or hereafter arising in or to the same or any part thereof. Although all damages in the event of any condemnation are to belong to Landlord whether such damages are awarded as compensation for diminution in value of the leasehold or to the fee of the Premises, Tenant shall have the right to claim and recover from the condemnor, but not from Landlord, such compensation as may be separately awarded or recoverable by Tenant in Tenant's own right on account of damages to Tenant's business by reason of the condemnation and for or on account of any cost or loss to which Tenant might be put in removing Tenant's merchandise, furniture and other personal property, fixtures, and equipment or for the interruption of or damage to Tenant's business.

Section 18.03 In the event of a partial condemnation or other taking that does not result in a termination of this Lease as to the entire Premises pursuant to this Article 18, the Fixed Rent and all additional rent shall abate in proportion to the portion of the Premises taken by such condemnation or other taking. If this Lease is terminated, in whole or in part, pursuant to any of the provisions of this Article 18, all Fixed Rent and additional rent and other charges payable by Tenant to Landlord hereunder and attributable to the Premises taken shall be paid up to the date upon which actual physical possession shall be taken by the condemnor.

Section 18.04 If all or any portion of the Premises is condemned or otherwise taken for public or quasi-public use for a limited period of time, this Lease shall remain in full force and effect and Tenant shall continue to perform all terms, conditions and covenants of this Lease; provided, however, the Fixed Rent and all additional rent other charges payable by Tenant to Landlord hereunder shall abate during such limited period in proportion to the portion of the Premises that is rendered untenable and unusable as a result of such condemnation or other taking. Landlord shall be entitled to receive the entire award made in connection with any such temporary condemnation or other taking.

Section 18.05 Landlord may, without any obligation to Tenant, agree to sell and/or convey to the condemnor the Premises, the Building, or any portion thereof, sought by the condemnor, free from this Lease and the rights of Tenant hereunder, without first requiring that any action or proceeding be instituted or, if instituted, pursued to a judgment.

## ARTICLE 19
## DEFAULT

Section 19.01 The occurrence of any one or more of the following shall constitute a default hereunder by Tenant:

(a) Tenant abandons the Premises and stops paying Fixed Rent;

(b) Tenant fails to pay any Fixed Rent or additional rent or other charges required to be paid by Tenant under this Lease and such failure continues for seven (7) days after written notice from Landlord of such failure; provided, however, that any such notice shall be in lieu of and not in addition to any notice required under California Code of Civil Procedure Section 1161 and provided further, that the obligation of Tenant to pay interest pursuant to Article 23 shall commence as of the due date of the Fixed Rent or additional rent or such other monetary obligation and not on the expiration of such seven (7) day grace period;

(c) Tenant fails to promptly and fully perform any other covenant, condition or agreement contained in this Lease and such failure continues for thirty (30) days (or such shorter time provided herein) after written notice thereof from Landlord, provided, however, that if the term, condition, covenant or obligation to be performed by Tenant is of such nature that the same cannot reasonably be cured within thirty (30) days and if Tenant commences such performance within said thirty (30) day period and thereafter diligently undertakes to complete the same, then such failure shall not be a default hereunder if it is cured within ninety (90) days following Landlord's notice. Such thirty (30) day notice shall be in lieu of and not in addition to any notice required under California Code of Civil Procedure Section 1161;

(d) A trustee, disbursing agent or receiver is appointed to take possession of all or substantially all of Tenant's assets in, on or about the Premises or of Tenant's interest in this Lease and Tenant or any guarantor of Tenant's obligations under this Lease does

not regain possession within sixty (60) days after such appointment; Tenant makes an assignment for the benefit of creditors; or all or substantially all of Tenant's assets in, on or about the Premises or Tenant's interest in this Lease are attached or levied upon under execution and Tenant does not discharge the same within sixty (60) days thereafter.

(e) A petition in bankruptcy, insolvency or for reorganization or arrangement is filed by or against Tenant or any guarantor of Tenant's obligations under this Lease pursuant to any federal or state statute and, with respect to any such petition filed against it, Tenant or such guarantor fails to secure a stay or discharge thereof within sixty (60) days after the filing of the same.

Notwithstanding the grant of the cure periods described above (or elsewhere in this Lease) to Tenant, unless and until the event or condition for which the cure period has been given is actually cured, Tenant shall be deemed to be in default under this Lease for purposes of any provision of this Lease where any right or option granted to Tenant is conditioned upon Tenant not being in default.

Section 19.02 Upon the occurrence of a default by Tenant that is not cured by Tenant within the applicable grace period specified above, Landlord shall have the following rights and remedies in addition to all other rights and remedies available to Landlord at law or in equity:

(a) The rights and remedies provided by California Civil Code Section 1951.2 to recover from Tenant upon termination of this Lease (or at Landlord's election, such other amounts in addition to or in lieu of the following as may be permitted from time to time by applicable law):

(i) the worth at the time of the award of the unpaid rent which had been earned at the time of termination;

(ii) the worth at the time of the award of the amount by which the unpaid rent which would have been earned after termination until the time of the award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided;

(iii) subject to subdivision (c) of California Civil Code Section 1951.2, the worth at the time of the award of the amount by which the unpaid rent for the balance of the Term after the time of the award exceeds the amount of rental loss that Tenant proves could be reasonably avoided; and

(iv) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including, but not limited to, any attorneys' fees, broker's commissions or finder's fees (not only in connection with the reletting of the Premises, but also that portion of any leasing commission paid by Landlord in connection with this Lease which is applicable to that portion of the Lease

Term which is unexpired as of the date on which this Lease is terminated), any costs for repairs, cleanup, refurbishing, removal (including the repair of any damage caused by such removal) and storage or disposal of Tenant's personal property, equipment, fixtures, and anything else that Tenant is required under this Lease to remove but does not remove, and any costs for alterations, additions and renovations and any other costs and expenses incurred by Landlord in regaining possession of and reletting or attempting to relet the Premises.

The "**worth at the time of award**" of the amounts referred to in clauses (i) and (ii) of this paragraph (a) of this Section 19.02 shall be computed by allowing interest at the rate ("**Interest Rate**") of two percent (2%) over the prime rate then announced by Wells Fargo Bank, N.A. (or if Wells Fargo Bank, N.A. no longer exists, then the largest state-chartered bank in California), but in no event in excess of the maximum rate permitted by law. The "worth at the time of award" of the amount referred to in clause (iii) of this paragraph (a) of this Section 19.02 shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%). Landlord and Tenant hereby agree that Landlord's obligation to mitigate damages after a default by Tenant under this Lease that results in Landlord regaining possession of all or part of the Premises shall be satisfied in full if Landlord undertakes to lease the Premises to another tenant (a "**Substitute Tenant**") in accordance with the following criteria:

A. Landlord shall have no obligation to solicit or entertain negotiations with any other prospective tenants for the Premises until Landlord obtains full and complete possession of the Premises including, without limitation, the final and unappealable legal right to relet the Premises free of any claim of Tenant.

B. Landlord shall not be obligated to enter into a new lease under terms and conditions that are unacceptable to Landlord under Landlord's then current leasing policies for comparable space in the Building.

C. Landlord shall not be obligated to enter into a lease with any proposed Substitute Tenant that does not have, in Landlord's reasonable opinion, sufficient financial resources or operating experience to operate the Premises in a first-class manner.

D. Subject to the provisions of Article 7, Landlord shall not be required to accept any Substitute Tenant offered by Tenant or to observe any instructions given by Tenant regarding such reletting.

E. Landlord shall not be required to expend any amount of money to alter, remodel, or otherwise make the Premises suitable for use by a Substitute Tenant unless:

(x) Tenant pays any such sum to Landlord in advance of Landlord's execution of a lease with such Substitute Tenant (which payment shall not be in lieu of any damages or other sums to which Landlord may be entitled to as a result of Tenant's default under this Lease); or

(y) Landlord, in Landlord's sole but reasonable discretion, determines that any such expenditure is financially justified in connection with entering into any lease with such Substitute Tenant.

F. Landlord shall not be obligated to enter into a lease with any Substitute Tenant whose use would conflict with the Permitted Use under the Lease.

Upon compliance with the above criteria regarding the reletting of the Premises after a default by Tenant, Landlord shall be deemed to have fully satisfied Landlord's obligation to mitigate damages under this Lease; and Tenant waives, to the fullest extent legally permissible, any right to assert in any action by Landlord to enforce the terms of this Lease, any defense, counterclaim, or rights of setoff or recoupment respecting the mitigation of damages by Landlord, unless and to the extent Landlord maliciously and in bad faith fails to act in accordance with the requirements of this clause.

(b) The rights and remedies provided by California Civil Code Section 1951.4, which allows Landlord to continue this Lease in effect and to enforce all of its rights and remedies under this Lease, including the right to recover rent and any other additional monetary charges as they become due, for as long as Landlord does not terminate Tenant's right to possession. Acts of maintenance or preservation, efforts to relet the Premises or the appointment of a receiver upon Landlord's initiative to protect its interest under this Lease shall not constitute a termination of Tenant's right to possession.

(c) The right to terminate this Lease by giving notice to Tenant in accordance with applicable law.

(d) The right to have a receiver appointed for Tenant, upon application by Landlord, to take possession of the Premises and to apply any rental collected from the Premises and to exercise all other rights and remedies granted to Landlord for Tenant pursuant to this Article 19.

Neither the termination of this Lease nor the exercise of any remedy under this Lease or otherwise available at law or in equity shall affect the right of Landlord to any right of indemnification set forth in this Lease or otherwise available at law or in equity for any act or omission of Tenant, and all rights to indemnification or other obligations of Tenant which are intended to be performed after termination of this Lease shall survive termination of this Lease and termination of Tenant's right to possession under this Lease.

Section 19.03 It shall be a default and breach of this Lease by Landlord if it shall fail to perform or observe any term, condition, covenant or obligation required to be performed or observed by it under this Lease for a period of thirty (30) days after notice thereof from Tenant; provided, however, that if the term, condition, covenant or obligation to be performed by Landlord is of such nature that the same cannot reasonably be performed within such thirty (30) day period, such default shall be deemed to have been cured if Landlord commences such performance within said thirty (30) day period and thereafter diligently undertakes to complete

the same. Tenant shall not have the right to terminate this Lease or to withhold, offset or abate the payment of rent based upon the unreasonable or arbitrary withholding by Landlord of its consent or approval of any matter requiring Landlord's consent or approval, including, but not limited to, any proposed assignment or subletting, Tenant's remedies in such instance being limited solely to an action for declaratory relief, specific performance or injunctive relief. In no event shall Landlord by liable to Tenant for any consequential (including lost profits) or punitive damages.

Section 19.04 Notwithstanding anything to the contrary contained in this Lease, Tenant agrees and understands that Tenant shall look solely to the estate and property of Landlord in the Building of which the Premises are a part for the enforcement of any judgment (or other judicial decree) requiring the payment of money by Landlord to Tenant by reason of any default or breach by Landlord in the performance of its obligations under this Lease, it being intended hereby that no other assets of Landlord or any of Landlord's Affiliates shall be subject to levy, execution, attachment or any other legal process for the enforcement or satisfaction of the remedies pursued by Tenant in the event of such default or breach.

Section 19.05 In the event of a sale or transfer of the Premises by Landlord, the Landlord named herein or, in the case of a subsequent transfer, the transferor, shall, after the date of such transfer, be automatically released from all liability for the performance or observance of any term, condition, covenant or obligation required to be performed or observed by Landlord hereunder; and the transferee shall be deemed to have assumed all of such terms, conditions, covenants and obligations and Tenant shall seek performance thereof solely from such transferee, it being intended hereby that such terms, conditions, covenants and obligations shall be binding upon Landlord, its successors and assigns only during and in respect of their successive periods of ownership during the Term.

## ARTICLE 20
## ENTRY BY LANDLORD

Section 20.01 Landlord reserves and shall at any and all times have the right to enter the Premises at reasonable times upon written notice to Tenant (except in emergencies) to (i) inspect the same, (ii) supply any service to be provided by Landlord hereunder, (iii) determine whether Tenant is complying with its obligations hereunder, (iv) supply janitorial service and any other service to be provided by Landlord to Tenant hereunder, (v) exhibit the Premises to prospective purchasers, mortgagees or, during the last twelve (12) months of the term (unless Tenant has exercised an option to extend) or during any period in which Tenant is in default under this Lease after notice and expiration of applicable cure periods, tenants, (vi) post notices of nonresponsibility, and (vii) alter, improve or repair the Premises and any portion of the Building, without abatement of Fixed Rent or additional rent, and may for that purpose erect scaffolding and other necessary structures that are reasonably required by the character of the work to be performed by Landlord, provided that the business of Tenant shall not unreasonably be interfered with (except in emergencies). Tenant hereby waives any claim for damages for any injury or inconvenience to or interference with Tenant's business, any loss of occupancy or quiet enjoyment of the Premises, and any other loss occasioned thereby, except as provided in Article 10 above. For each of the aforesaid purposes, Landlord shall at all times have and retain

a key with which to unlock all of the doors in, upon and about the Premises, excluding Tenant's vaults and safes, and Landlord shall have the right to use any and all means which Landlord may deem proper to open such doors in the event of an emergency provided that Landlord shall repair any damage caused by such entry. Any entry to the Premises or portions thereof obtained by Landlord by any of said means, or otherwise, shall not under any circumstances be construed or deemed to be a forcible or unlawful entry into, or a detainer of, the Premises, or an eviction, actual or constructive, of Tenant from the Premises, or any portion thereof.

## ARTICLE 21
## HOLDING OVER

Section 21.01 Any holding over after the expiration of the Term, with or without the consent of Landlord, shall be construed to be a tenancy at sufferance at one hundred twenty-five percent (125%) of the Fixed Rent payable by Tenant immediately prior to the holdover period for the first two (2) months of such holding over and one hundred fifty percent (150%) of such Fixed Rent thereafter. In addition, during any such holding over, Tenant shall be responsible for all additional rent provided in this Lease and such holding over shall otherwise be on the terms and conditions herein specified as far as applicable. Any holding over without Landlord's consent shall constitute a default by Tenant and shall entitle Landlord to re-enter the Premises as provided in Article 20 hereof.

## ARTICLE 22
## ATTORNEYS' FEES

Section 22.01 Tenant shall pay to Landlord all amounts for costs, including, but not limited to, reasonable attorneys' fees and amounts paid to any collection agency, incurred by Landlord in connection with any breach or default by Tenant under this Lease or incurred in order to enforce or interpret the terms or provisions of this Lease. Such amounts shall be payable upon demand as additional rent. In addition, if any action shall be instituted by either Landlord or Tenant for the enforcement or interpretation of any of its rights or remedies in or under this Lease, the prevailing party shall be entitled to recover from the losing party all costs incurred by the prevailing party in said action and any appeal therefrom, including reasonable attorneys' fees and court costs to be fixed by the court therein. In the event Landlord is made a party to any litigation between Tenant and any third party arising out of actions occurring in the Premises, then Tenant shall pay all costs and reasonable attorneys' fees incurred by or imposed upon Landlord in connection with such litigation; provided, however, if Landlord is ultimately held to be liable, then Landlord shall reimburse Tenant for the cost of any attorneys' fees paid by Tenant on behalf of Landlord.

## ARTICLE 23
## LATE PAYMENTS; INTEREST AND LATE CHARGES

Section 23.01 Any amount due from Tenant to Landlord which is not paid when due (subject to any applicable grace period) shall bear interest at the Interest Rate (as that term is defined in Section 19.02(a) above) from the date such payment is due until paid, except that amounts spent by Landlord on behalf of Tenant shall bear interest at such rate from the date of

disbursement by Landlord. The interest required to be paid by Tenant pursuant to this Section 23.01 shall constitute additional rent under this Lease.

Section 23.02 Tenant hereby acknowledges that in addition to lost interest, the late payment by Tenant to Landlord of Fixed Rent and additional rent will cause Landlord to incur other costs not contemplated in this Lease, the exact amount of which will be extremely difficult and impracticable to ascertain. Such other costs include, but are not limited to, processing, administrative and accounting costs. Accordingly, if any installment of Fixed Rent or any additional rent or other sum due from Tenant shall not be received by Landlord within five (5) days after such amount shall be due, Tenant shall pay to Landlord, without notice from Landlord, as additional rent, a late charge equal to five percent (5%) of such overdue amount. The parties hereby agree that (i) such late charge represents a fair and reasonable estimate of the costs Landlord will incur in processing such delinquent payment by Tenant, (ii) such late charge shall be paid to Landlord as liquidated damages for each delinquent payment pursuant to California Civil Code Section 1671, and (iii) the payment of late charges and the payment of interest are distinct and separate from one another in that the payment of interest is to compensate Landlord for the use of Landlord's money by Tenant, while the payment of late charges is to compensate Landlord for the additional administrative expense incurred by Landlord in handling and processing delinquent payments.

Section 23.03 Neither acceptance of interest or late charges by Landlord shall constitute a waiver of Tenant's default with respect to such overdue amount, nor prevent Landlord from exercising any of its other rights and remedies under this Lease. Nothing contained in this Article 23 shall be deemed to condone, authorize, sanction or grant to Tenant an option for the late payment of Fixed Rent, additional rent or other sums due hereunder.

## ARTICLE 24
## MORTGAGE PROTECTION/SUBORDINATION

Section 24.01 The rights of Tenant under this Lease are and shall be, at the option of Landlord, either subordinate or superior to: (i) the holders of any mortgage or deed of trust (including a consolidated mortgage or deed of trust) constituting a lien on the Premises or Landlord's interest therein or any part thereof, whether placed upon the Premises by Landlord prior to or after the date of this Lease; and (ii) the holders of any ground or master lease entered into prior to or after the date of this Lease if Landlord's title to the Premises or any part thereof is or shall become a leasehold interest (each of the entities described in sub-paragraphs (i) and (ii) above are hereinafter referred to as a "**Superior Interest**"). To further assure the foregoing subordination or superiority, Tenant shall, upon Landlord's request, execute any instrument ~~(including without limitation an amendment to this Lease that does not adversely affect Tenant's~~ rights or duties under this Lease) or instruments intended to subordinate this Lease, or at the option of Landlord, to make it superior to any mortgage, deed of trust, or ground or master lease.

Section 24.02 Notwithstanding the provisions of Section 24.01, Tenant agrees: (1) to attorn to any Superior Interest and to any party acquiring title to the Premises by judicial foreclosure, trustee's sale, or deed in lieu of foreclosure; (2) to execute any attornment agreement reasonably requested by any Superior Interest, or party so acquiring title to the Premises; and

(3) that this Lease shall remain in force notwithstanding any such judicial foreclosure, trustee's sale, deed in lieu of foreclosure, or merger of titles. Notwithstanding the foregoing, neither a Superior Interest or any party acquiring title to the Premises by judicial foreclosure, trustee's sale, or deed in lieu of foreclosure, as the successor to Landlord hereunder, shall be liable or responsible for any breach of a covenant contained in this Lease that occurred before such party acquired its interest in the Premises (unless such breach is continuing at the time such party acquired its interest in the Premises, but only to the extent accruing thereafter) and no such party shall be liable or responsible for any security deposits held by Landlord hereunder which have not been transferred or actually received by such party, and such party shall not be bound by any payment of rent or additional rent for more than one (1) month in advance. Landlord shall provide to Tenant a subordination, non-disturbance and attornment agreement from the holder of any Superior Interest in commercially reasonably form throughout the term of this Lease.

## ARTICLE 25
## ESTOPPEL CERTIFICATE/FINANCIAL STATEMENTS

Section 25.01 Tenant, at any time and from time to time upon not less than ten (10) days' prior written notice from Landlord, agrees to execute and deliver to Landlord a statement (a) 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 date to which the rent and other charges are paid in advance, if any, (b) acknowledging that there are not, to Tenant's knowledge, any uncured defaults on the part of Landlord hereunder, or specifying such defaults if they are claimed evidencing the status of this Lease, and (c) setting forth such other information regarding this Lease as may be requested. Tenant's failure to deliver an estoppel certificate within such time shall be conclusive upon Tenant that (i) this Lease is in full force and effect without modification except as may be represented by Landlord, (ii) to Tenant's knowledge there are no uncured defaults in Landlord's performance, and (iii) no rent has been paid in advance except as set forth in this Lease. Upon written request from Tenant in connection with a prospective Assignment or Sublease, Landlord agrees to provide Tenant with a comparable statement from Landlord to Tenant.

Section 25.02 Tenant shall, upon not less than ten (10) days' prior written notice from Landlord, but not more frequently than once in any twelve (12) month period, furnish Landlord with current financial statements, which accurately reflect Tenant's then financial condition and the then financial condition of any guarantor under this Lease.

## ARTICLE 26
## BROKER

Section 26.01 Each party warrants and represents to the other that it has not dealt with any real estate broker, agent or salesperson in connection with this Lease or its negotiation except the Brokers identified in Item 14 of the Basic Lease Provisions. Each party shall indemnify, defend and hold the other and their agents and employees harmless from any cost, expense or liability (including costs of suit and reasonable attorneys' fees) for any compensation, commission or fees claimed as a result of a breach of the foregoing warranty and representation.

Landlord shall be responsible for the payment of a commission to the Brokers in accordance with a separate agreement.

## ARTICLE 27
## RELEASE OF PARTNERS OF LANDLORD

Section 27.01 Tenant agrees that in the event Tenant shall have any claim against any partners or members of Landlord under this Lease or arising out of the subject matter of this Lease, Tenant's sole recourse shall be against the estate and property of Landlord in the Building and Tenant further hereby waives any and all right to assert any claim against or obtain any damages from, for any reason whatsoever, the partners or members of Landlord and their respective directors, officers, agents and employees. This release, notwithstanding Section 1542 of the California Civil Code which provides that: "A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor," releases such partners or members of Landlord and their respective directors, officers, agents and employees from all claims for injuries, damages, or losses to Tenant's property, real and personal, whether known, unknown, foreseen, unforeseen, patent or latent, which Tenant may have under this Lease or arising out of the subject matter of this Lease. Tenant understands and acknowledges the significance and consequence of such specific waiver of Section 1542.

## ARTICLE 28
## NOTICES

Section 28.01 Any notice, demand, approval, consent, bill, statement or other communication required or desired to be given under this Lease shall be in writing and shall be directed to Landlord at Landlord's Address for Notice or to Tenant at Tenant's Address for Notice, as set forth in Items 15 and 17, respectively, of the Basic Lease Provisions and shall be personally served or given by certified mail, return receipt requested or by recognized overnight courier (requiring signed receipt). All such notices and other communications shall be deemed given on the date received or refused, as the case may be. If more than one Tenant is named under this Lease, service of any notice upon any one of said Tenants shall be deemed as service upon all of such Tenants.

## ARTICLE 29
## QUIET ENJOYMENT

Section 29.01 Upon payment by Tenant of the rents herein provided, and upon the observance and performance of all the covenants, terms and conditions on Tenant's part to be observed and performed, Tenant shall peaceably and quietly hold and enjoy the Premises for the term hereby demised without hindrance or interruption by Landlord or any other person or persons lawfully or equitably claiming by, through or under Landlord, subject, nevertheless, to the terms and conditions of this Lease, and any Superior Interest.

## ARTICLE 30
## SUBSTITUTED PREMISES

Section 30.01 Landlord, at its sole cost and expense as provided below, shall have the right, upon thirty (30) days' prior written notice to Tenant and within a reasonable period of time after said notice, to relocate Tenant from any portion of the Premises which does not constitute a full floor in the Building to other premises (the "**New Premises**") within the Project, which New Premises (i) shall be comparable to the applicable portion of the Premises, (ii) shall have approximately the same floor area as is contained in the applicable portion of the Premises, and (iii) shall be on the third ($3^{rd}$) or fifth ($5^{th}$) floor of the Building, provided that if the New Premises is located on the fifth ($5^{th}$) floor of the Building, then the Expansion Options (to the extent the Expansion Options have not yet expired) and Tenant's right of first refusal as otherwise provided in Articles 34 and 35 below, must be made available to Tenant in an area of approximately the same floor area as provided in Articles 34 and 35 below and contiguous to the New Premises on the fifth ($5^{th}$) floor of the Building. Notwithstanding the foregoing or anything to the contrary contained herein, in no event shall Landlord relocate Suite 310 or the Building Conference Facility described in Article 37 below. The New Premises shall be leased to Tenant on the same terms and conditions as provided in this Lease, except that if the floor area of the New Premises is more or less than that contained in the applicable portion of the Premises, there shall be a proportionate adjustment of Fixed Rent and any additional rent based upon the floor area in the New Premises. Landlord shall construct, prior to relocation, leasehold improvements within the New Premises which are comparable in scope, quality and layout to the applicable portion of the original Premises. Landlord shall pay to Tenant within thirty (30) days following the date Tenant initially opens for business in the New Premises the cost of relocating Tenant's personal property from the Premises to the New Premises and the cost of all leasehold improvements as set forth above, provided that Tenant provides to Landlord an itemized list of the expenses incurred and copies of all invoices and proof of payment evidencing such expenditures.

## ARTICLE 31
## GENERAL

Section 31.01 The Section headings used in this Lease are for the purposes of convenience only. They shall not be construed to limit or to extend the meaning of any part of this Lease.

Section 31.02 This Lease contains all agreements of Landlord and Tenant with respect to any matter mentioned, or dealt with, herein. No prior agreement or understanding pertaining to any such matter shall be binding upon Landlord. Any amendments to or ~~modifications of this Lease shall be in writing, signed by the parties hereto, and neither Landlord~~ nor Tenant shall be liable for any oral or implied agreements.

Section 31.03 Waiver by Landlord of any breach of any term, covenant, or condition contained in this Lease shall not be deemed to be a waiver of any subsequent breach of the same or of any other term, covenant, or condition contained in this Lease. Landlord's consent to, or approval of, any act shall not be deemed to render unnecessary the obtaining of Landlord's consent to, or approval of, any subsequent act by Tenant. The acceptance of Fixed Rent or

additional rent payable hereunder by Landlord shall not be a waiver of any preceding breach by Tenant of any provision hereof, other than failure of Tenant to pay the particular rent or other sum so accepted, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such rent, or other sum.

Section 31.04 Tenant agrees, at the request of Landlord, to execute, deliver and acknowledge a short form of this Lease satisfactory to counsel for Landlord, and Landlord may in its sole discretion, record such short form in the county where the Premises are located. Tenant shall not record this Lease, or a short form of this Lease, without Landlord's prior written consent.

Section 31.05 Time is of the essence in the performance of each provision of this Lease.

Section 31.06 Submission of this instrument for examination or signature by Tenant does not constitute a reservation of or option for lease, and it is not effective as a lease or otherwise until execution by and delivery to both Landlord and Tenant.

Section 31.07 If any term or provision of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

Section 31.08 Neither the voluntary or other surrender of this Lease by Tenant nor the mutual cancellation thereof shall cause a merger of the titles of Landlord and Tenant, but such surrender or cancellation shall, at the option of Landlord, either terminate all or any existing Subleases or operate as an assignment to Landlord of any such Subleases.

Section 31.09 Landlord and Tenant represent and warrant that each individual executing this Lease on behalf of such party is duly authorized to execute and deliver this Lease on behalf of such party in accordance with any required corporate, partnership or limited liability entity action (as applicable) authorizing such execution and delivery. Upon the request of either party, the other party shall provide reasonable evidence of the authority of the individuals executing this Lease.

Section 31.10 This Lease and the obligations of both parties hereunder shall not be affected or impaired because a party obligated to perform is unable to fulfill any of its obligations hereunder or is delayed in doing so, if such inability or delay is caused by reason of any prevention, delay, stoppage due to strikes, lockouts, acts of God, or any other cause previously, or at such time, beyond the reasonable control or anticipation of such party (collectively, a "**Force Majeure**") and such party's obligations under this Lease shall be forgiven and suspended by any such Force Majeure; provided, however, that this Section 31.10 is not intended to, and shall not, extend the time period for the payment of any monetary amounts due

(including, without limitation, rent payments from Tenant) from either party to the other under this Lease nor relieve either party from their monetary obligations to the other under this Lease.

Section 31.11 To the extent permitted by law, Tenant waives the right to trial by jury.

Section 31.12 If in connection with obtaining construction, interim or permanent financing for the Building or the Project, any lender or proposed lender shall request reasonable modifications of this Lease as a condition to such financing, then Tenant shall not unreasonably withhold, delay or condition its consent thereto, provided that such modifications do not increase the obligations of Tenant hereunder or adversely affect the leasehold interest hereby created or Tenant's rights hereunder.

Section 31.13 This Lease shall be governed by and construed in accordance with the laws of the State of California. Tenant agrees that all disputes arising out of or relating to this Lease shall be adjudicated in the State Courts of the State of California sitting in San Diego County or the Federal Courts sitting in the State of California in San Diego County; and Tenant hereby irrevocably submits to the jurisdiction in such courts in any suit, action or proceeding arising out of or relating to this Lease.

Section 31.14 If at any time a dispute shall arise as to any amount or sum of money to be paid by one party to the other under the provisions hereof, the party against whom the obligation to pay the money is asserted shall have the right to make payment "under protest" and such payment shall not be regarded as a voluntary payment and there shall survive the right on the part of said party to institute suit for recovery of such sum. If it shall be adjudged that there was no legal obligation on the part of said party to pay such sum or any part thereof, such party shall be entitled to recover such sum or so much thereof as it was not legally required to pay under the provisions of this Lease.

Section 31.15 Except for matters for which there is a standard of consent or approval specifically set forth in this Lease (other than a reasonableness standard), and except for matters which could affect (i) the systems and equipment of the Project; (ii) structural aspects of the Project or (iii) the exterior appearance of the Project, in which case Landlord shall have the right to act in its sole and absolute discretion (but at all times in good faith), any time the consent or approval of Landlord or Tenant is required under this Lease, such consent or approval shall not be unreasonably withheld, conditioned or delayed.

## ARTICLE 32
## EXECUTION

This Lease may be executed in several duplicate counterparts, each of which shall be deemed an original of this Lease for all purposes.

## ARTICLE 33
## OPTIONS TO EXTEND

Section 33.01 Landlord hereby grants the Tenant named in this Lease (the "**Original Tenant**") and any Affiliated Assignee under Section 7.06 above two (2) options ("**Options**") to extend the term for the entire Premises then leased by Tenant for periods of five (5) years each (each, an "**Option Term**"), which Options shall be exercisable only by written notice delivered to Landlord as set forth below. The rights contained in this Article 33 shall be personal to the Original Tenant and any Affiliated Assignee may only be exercised by the Original Tenant or an Affiliated Assignee (and not any other transferee) if the Original Tenant or an Affiliated Assignee occupies a majority of the Premises as of the date of Tenant's Acceptance (as defined in Section 33.03 below). In no event shall Tenant be entitled to exercise the second ($2^{nd}$) Option unless the initial term has been previously extended for the first ($1^{st}$) Option Term.

Section 33.02 The rent payable by Tenant during the Option Term ("**Option Rent**") shall be equal to the "Market Rent" (defined below). "**Market Rent**" shall mean the applicable Fixed Rent and Excess Operating Costs, additional rent and other charges at which tenants, as of the time of Landlord's "**Option Rent Notice**" (as defined below), are entering into leases for non-sublease space which is not encumbered by expansion rights and which is comparable in size, location and quality to the Premises (or Expansion Space, as applicable) in renewal or new transactions for a term comparable to the Option Term (or the term of Tenant's lease of the Expansion Space, as applicable) which comparable space is located in office buildings of size comparable to the Building in Downtown San Diego, California, taking into consideration the value of the existing improvements in the Premises (or Expansion Space, as applicable) to Tenant, as compared to the value of the existing improvements in such comparable space, with such value to be based upon the age, quality and layout of the improvements and the extent to which the same could be utilized by Tenant with consideration given to the fact that the improvements existing in the Premises are specifically suitable to Tenant, and adjusted for a new Base Year and such other concessions as are then generally being granted by landlords to tenants in downtown San Diego.

Section 33.03 The Options shall be exercised by Tenant only in the following manner: (i) Tenant shall not be in monetary or material non-monetary default, and shall not have been in monetary or material non-monetary default under this Lease more than once, in either case beyond applicable notice and cure periods, on the delivery date of the Interest Notice and Tenant's Acceptance; (ii) Tenant shall deliver written notice ("**Interest Notice**") to Landlord not more than eighteen (18) months nor less than twelve (12) months prior to the expiration of the initial term (or first ($1^{st}$) Option Term, as applicable), stating that Tenant is interested in exercising the Option, (iii) within fifteen (15) business days of Landlord's receipt of Tenant's written notice, Landlord shall deliver notice ("**Option Rent Notice**") to Tenant setting forth the Option Rent; and (iv) if Tenant desires to exercise such Option, Tenant shall provide Landlord written notice of such exercise within fifteen (15) business days after receipt of the Option Rent Notice ("**Tenant's Acceptance**") and upon, and concurrent with such exercise, Tenant may, at its option, object to the Option Rent contained in the Option Rent Notice. Tenant's failure to deliver the Interest Notice or Tenant's Acceptance on or before the dates specified above shall be deemed to constitute Tenant's election not to exercise the Option. If Tenant timely and properly

exercises its Option, the initial term or first Option Term (as applicable) shall be extended for the Option Term upon all of the terms and conditions set forth in this Lease, except that the rent, base year for Operating Costs and all other monetary considerations for the Option Term shall be as indicated in the Option Rent Notice unless Tenant, concurrently with Tenant's Acceptance, objects to the Option Rent contained in the Option Rent Notice, in which case the parties shall follow the procedure and the Option Rent shall be determined, as set forth in Section 33.04 below.

Section 33.04 If Tenant timely and appropriately objects to the Market Rent in Tenant's Acceptance (or the Expansion Rent in the Expansion Exercise Notice), Landlord and Tenant shall attempt to agree upon the Market Rent (or the Expansion Rent) using their best good-faith efforts. If Landlord and Tenant fail to reach agreement within twenty-one (21) days following Tenant's Acceptance or the Expansion Exercise Notice, as applicable (in either case, the "**Outside Agreement Date**"), then each party shall make a separate determination of the Market Rent (or the Expansion Rent) which shall be submitted to each other and to arbitration in accordance with the following items (a) through (g):

(a) Landlord and Tenant shall each appoint, within ten (10) days of the Outside Agreement Date, one arbitrator who shall by profession be a current real estate broker of comparable commercial properties in the immediate vicinity of the Building, and who has been active in such field over the last ten (10) years. The determination of the arbitrators shall be limited solely to the issue of whether Landlord's or Tenant's submitted Market Rent (or Expansion Rent) is the closest to the actual Market Rent (or Expansion Rent) as determined by the arbitrators, taking into account the requirements of Section 33.02 above (*i.e.*, the arbitrators may only select Landlord's or Tenant's determination of Market Rent (or Expansion Rent) and shall not be entitled to make a compromise determination).

(b) The two (2) arbitrators so appointed shall within five (5) business days of the date of the appointment of the last appointed arbitrator agree upon and appoint a third (3rd) arbitrator who shall be qualified under the same criteria set forth hereinabove for qualification of the initial two (2) arbitrators.

(c) The three (3) arbitrators shall within fifteen (15) days of the appointment of the third (3rd) arbitrator reach a decision as to whether the parties shall use Landlord's or Tenant's submitted Market Rent (or Expansion Rent), and shall notify Landlord and Tenant thereof.

(d) The decision of the majority of the three (3) arbitrators shall be binding upon Landlord and Tenant.

(e) If either Landlord or Tenant fails to appoint an arbitrator within ten (10) days after the applicable Outside Agreement Date, the arbitrator appointed by one of them shall reach a decision, notify Landlord and Tenant thereof, and such arbitrator's decision shall be binding upon Landlord and Tenant.

(f) If the two (2) arbitrators fail to agree upon and appoint a third (3rd) arbitrator, or both parties fail to appoint an arbitrator, then the appointment of the third (3rd) arbitrator or any arbitrator shall be dismissed and the matter to be decided shall be forthwith submitted to arbitration under the provisions of the American Arbitration Association, but subject to the instruction set forth in this Section 33.04.

(g) The cost of arbitration shall be paid by Landlord and Tenant equally.

## ARTICLE 34
## EXPANSION OPTIONS

Section 34.01 Landlord hereby grants the Original Tenant and any Affiliated Assignee under Section 7.06 above two (2) separate options ("**Expansion Options**") to expand the Premises to include Suite 340 consisting of approximately 2,144 rentable square feet (the "**First Expansion Space**") and/or Suite 350 consisting of approximately 2,194 rentable square feet (the "**Second Expansion Space**") on the third (3rd) floor of the Building (collectively, the "**Expansion Spaces**") as shown on the floor plans attached hereto as Exhibit "B" and made a part hereof in accordance with, and subject to, the terms and conditions of this Article 34 below.

Section 34.02 The Expansion Options shall be exercised by only the Original Tenant or an Affiliated Assignee and only in the following manner: (1) Tenant shall deliver notice ("**Expansion Notice**") to Landlord not more than nine (9) months prior to expiration of the third (3rd) Lease Year (as to the first Expansion Option) and/or not less than nine (9) months prior to the expiration of the sixth (6th) Lease Year (as to the second (2nd) Expansion Option), stating that Tenant is interested in exercising such Expansion Option; (2) Landlord, within ten (10) days after receipt of Tenant's Expansion Notice, shall deliver notice (the "**Expansion Rent Notice**") to Tenant stating whether the applicable Expansion Space is then available for lease by Tenant and, if so, setting forth the "Expansion Rent," as that term is defined in Section 34.03 below; and (3) if the Expansion Rent Notice indicates that the Expansion Space is then available and if Tenant wishes to exercise its Expansion Option, Tenant shall, within ten (10) days after Tenant's receipt of the Expansion Rent Notice, exercise the applicable Expansion Option by delivering written notice ("**Expansion Exercise Notice**") thereof to Landlord, and upon and concurrent with such notice, Tenant may, at its option, object to the Expansion Rent, in which event the parties shall follow the procedure and the Expansion Rent shall be determined, as set forth in Section 33.04 of this Lease. If Tenant delivers an Expansion Exercise Notice but does not concurrently object to the Expansion Rent, then the Expansion Rent shall be as specified by Landlord in the Expansion Rent Notice. Tenant's failure to timely deliver the Expansion Notice or the Expansion Exercise Notice shall be deemed to constitute Tenant's waiver of the applicable Expansion Option. Notwithstanding anything to the contrary contained herein, if at the time of Landlord's receipt of the Expansion Notice, the applicable Expansion Space is then subject to a lease to a third party, such Expansion Option shall be null and void and Landlord's written Expansion Notice shall so indicate.

Section 34.03 The rent payable by Tenant for the Expansion Space (the "**Expansion Rent**") shall be the then Market Rent for the Expansion Space. In the event that the Expansion Rent has not been determined as of the effective date of Tenant's lease of the Expansion Space, Landlord's determination of the Expansion Rent shall apply and if it is subsequently determined under Section 33.04 that Tenant's determination of Expansion Rent shall apply, then the parties shall make a retroactive adjustment to amounts previously paid by Tenant.

Section 34.04 If Tenant leases Expansion Space pursuant to the provisions of this Article 34 above, Landlord shall deliver such Expansion Space with any leasehold improvements to be constructed by Landlord therein substantially complete within the first six (6) months of the fourth ($4^{th}$) Lease Year (as to the first ($1^{st}$) Expansion Option) and within the first six (6) months of the seventh ($7^{th}$) Lease Year (as to the second ($2^{nd}$) Expansion Option). Notwithstanding anything to the contrary contained herein, if Tenant does not lease the First Expansion Space pursuant to the terms of this Article 34 and if Tenant subsequently exercises the second ($2^{nd}$) Expansion Option, Landlord shall have the option to cause such Expansion Option to apply to either the First Expansion Space or the Second Expansion Space, at Landlord's election.

Section 34.05 Construction of Tenant Improvements within the Expansion Space shall proceed generally in accordance with the terms of the Work Letter, except that the amount of the Tenant Improvement Allowance shall be determined as a component of the Expansion Rent and the date for Tenant's delivery of Tenant Improvement Plans shall be as reasonably determined by Landlord.

Section 34.06 If Tenant timely exercises Tenant's right to lease Expansion Space as set forth herein, Landlord and Tenant shall within fifteen (15) days after determination of the Expansion Rent execute an amendment adding such Expansion Space to this Lease upon the same terms and conditions as the initial Premises, except as otherwise set forth in this Article 34. Tenant shall commence payment of rent for the Expansion Space and the term of the Expansion Space shall commence upon the date of delivery of the Expansion Space to Tenant in accordance with the requirements of Section 34.04 above. The term of Tenant's lease of the Expansion Space shall expire on the Expiration Date, subject to extension as provided in Article 33 above.

Section 34.07 The rights contained in this Article 34 shall be personal to the Original Tenant or an Affiliated Assignee and may only be exercised by the Original Tenant or an Affiliated Assignee (and not any other transferee) if Tenant or an Affiliated Assignee occupies a majority of the Premises as of the date of the Expansion Exercise Notice. Tenant shall not have the right to lease Expansion Space as provided in this Article 34, if, as of the date of the Expansion Exercise Notice, or, at Landlord's option, as of the scheduled date of delivery of such Expansion Space to Tenant, Tenant is in monetary or material non-monetary default under this Lease or Tenant has previously been in default under this Lease more than once, in either case beyond applicable notice and cure periods.

## ARTICLE 35
## RIGHT OF FIRST REFUSAL

Section 35.01 In addition to the Expansion Options described in Article 34 above, Landlord hereby grants to Tenant an ongoing right of first refusal with respect to the Expansion Spaces. The Expansion Spaces, in the context of Tenant's right of first refusal, may be referred to herein as the "**First Refusal Spaces.**" Such first refusal right of Tenant shall commence only following the expiration or earlier termination of any then existing lease pertaining to the First Refusal Space (collectively, the "**Superior Leases**"), including any renewal or extension of such lease, but only if such renewal or extension is for the period specified in an express written provision in such lease, but regardless of whether any such renewal or extension is consummated pursuant to a formal exercise of such renewal or extension right (collectively, the "**Superior Rights**"). Tenant's right of first refusal shall be on the terms and conditions set forth in this Article 35.

Section 35.02 Landlord shall notify Tenant (the "**First Refusal Notice**") from time to time when Landlord receives or intends to make an offer for either or both First Refusal Spaces which Landlord finds acceptable. The First Refusal Notice shall describe the subject space and shall set forth the material economic terms and conditions applicable to such acceptable offer (collectively, the "**Economic Terms**"); provided, however that (i) if the term of the proposed lease to a third party would extend beyond the term of this Lease (or the then applicable Option Term), any concessions shall be prorated to conform to the term of this Lease (*e.g.*, if a $20.00 per rentable square foot improvement allowance is offered for a five-year term to a third party, and if only three (3) years remain in the term of this Lease, then the Economic Terms shall reflect a $12.00 per rentable square foot improvement allowance available to Tenant), and (ii) if the term of the proposed lease to a third party would be less than the remaining term of this Lease (or the then applicable Option Term), any concessions shall be extrapolated to conform to the remaining term of this Lease (e.g., if a $6.00 per rentable square foot improvement allowance is offered for a three-year term to a third party and four (4) years remain in the term of this Lease, then the Economic Terms shall reflect an $8.00 per rentable square foot improvement allowance available to Tenant). Notwithstanding the foregoing, Landlord's obligation to deliver the First Refusal Notice shall not apply during the last twelve (12) months of the initial term nor during the last twelve (12) months of the first (1st) Option Term unless Tenant has delivered an Interest Notice to Landlord pursuant to Section 33.03 above nor shall Landlord be obligated to deliver the First Refusal Notice during the last eleven (11) months of the initial Term or first Option Term unless Tenant has timely delivered Tenant's Acceptance to Landlord pursuant to Section 33.03 above.

Section 35.03 If Tenant wishes to exercise Tenant's right of first refusal with respect to the space described in the First Refusal Notice, then within seven (7) business days after delivery of the First Refusal Notice to Tenant, Tenant shall deliver an unconditional irrevocable notice to Landlord of Tenant's exercise of its right of first refusal with respect to the entire space described in the First Refusal Notice, and the Economic Terms shall be as set forth in the First Refusal Notice. If Tenant does not unconditionally exercise its right of first refusal within the seven (7) business day period, then Landlord shall be free to lease the space described in the First Refusal Notice to the third party (or an affiliate thereof) that triggered the First

Refusal Notice. If Landlord does not lease such space to such third party (or an affiliate thereof) within ninety (90) days after expiration of such seven (7) business day period, Tenant's rights under this Article 35 shall be reinstated with respect to such space. Notwithstanding anything to the contrary contained herein, Tenant must elect to exercise its right of first refusal, if at all, with respect to all of the space offered by Landlord to Tenant at any particular time, and Tenant may not elect to lease only a portion thereof.

Section 35.04 If Tenant timely and properly exercises Tenant's right to lease the First Refusal Space as set forth herein, Landlord and Tenant shall execute an amendment adding such First Refusal Space to this Lease upon the same non-economic terms and conditions as applicable to the initial Premises, and the Economic Terms and conditions as provided in this Article 35. Unless otherwise specified in the Economic Terms, Tenant shall commence payment of rent for the First Refusal Space and the term of the First Refusal Space shall commence upon the date of delivery of such space to Tenant. The term of Tenant's lease of the First Refusal Space shall be co-terminous with Tenant's lease of the Premises. If Tenant leases a First Refusal Space pursuant to this Article 35 prior to the date that Tenant's Expansion Option with respect to such space becomes effective pursuant to Article 34 above, then such Expansion Option shall become null and void.

Section 35.05 The rights contained in this Article 35 shall be personal to the Original Tenant or an Affiliated Assignee, and may only be exercised by the Original Tenant or an Affiliated Assignee (and not any other transferee) if the Original Tenant or an Affiliated Assignee occupies a majority of the Premises as of the date of the First Refusal Notice. Tenant shall not have the right to lease First Refusal Space as provided in this Article 35 if, as of the date of the First Refusal Notice, or, at Landlord's option, as of the scheduled date of delivery of such First Refusal Space to Tenant, Tenant is in monetary or material non-monetary default under this Lease or Tenant has previously been in default under this Lease more than once, in either case beyond applicable notice and cure periods.

## ARTICLE 36
## MOVING ALLOWANCE

Landlord hereby agrees to reimburse Tenant for costs ("**Moving Costs**") up to Forty Seven Thousand Two Hundred Thirty-Seven and 85/100 Dollars ($47,237.85) (based on $1.65 per rentable square foot of the Premises) (the "**Moving Allowance**") in relocating from Tenant's current office space to the Premises. Landlord shall reimburse Tenant for Moving Costs within thirty (30) day after the later of (i) Landlord's receipt of invoices evidencing Tenant's Moving Costs and (ii) the Term Commencement Date. Tenant shall not be entitled to any credit for any unused portion of the Moving Allowance.

## ARTICLE 37
## BUILDING CONFERENCE FACILITY

Throughout the term of this Lease and any applicable Option Terms, Landlord shall make available to Tenant the conference facility consisting of 2,060 usable square feet at the location on the third (3rd) floor of the Building shown on Exhibit "B" attached hereto and

made a part hereof (the "**Building Conference Facility**") for up to six (6) business days per month. In order to reserve such use of the conference facility, Tenant must provide Landlord with at least sixty (60) days' prior written notice. Except for the days that Tenant reserves such use, Landlord shall be free to make the Building Conference Facility available for use by others. Any such use of the Building Conference Facility by Tenant shall be subject to Tenant's payment of the Building-standard daily charge for such use. Landlord shall improve that portion (the "**Conference Facility Portion**") of Suite 310 which consists of all of Suite 310 other than that portion of Suite 310 consisting of 396 rentable square feet as shown on Exhibit "B" (which 396 square foot portion shall be improved pursuant to Exhibit "C" hereto) and the Building Conference Facility and furnish the Conference Facility Portion and Building Conference Facility with improvements, fixtures and furniture reasonably determined by Landlord and reasonably approved by Tenant including, but not limited, Tenant's "dais" to accommodate seventeen (17) people (Tenant to provide chairs for such dais); a manually operated accordion door approved by Landlord and Tenant in order to separate the Building Conference Facility from Suite 310; electronically controlled blackout shades at all exterior windows; a ceiling and lighting system designed by Tenant's space planner; wall covering on three (3) of the four (4) walls which will be a fabric wrapped acoustical wall system comparable to a "Fabritrac" system or equivalent with a specified "Maharam" or equal wall covering; and stacking chairs and folding tables to seat one hundred twenty (120) people in a "seminar" setup and sixty (60) people in a "classroom" setup, provided that such furniture and fixtures shall be similar in quality and quantity to Tenant's existing furniture and fixtures in its conference room at 401 B Street as of the date of this Lease; provided further, however, that Tenant shall be responsible for any specialized audio visual equipment which Tenant desires to use at the Building Conference Facility at Tenant's sole cost and expense. During Tenant's use of such Building Conference Facility, such Building Conference Facility shall be deemed to constitute a portion of the Premises for purposes of Article 10 of this Lease.

REMAINDER OF THE PAGE INTENTIONALLY LEFT BLANK

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

SIGNATURES

"Landlord"

401 WEST A STREET SD PT, LLC,
a Delaware limited liability company

By: _____
Name: Robert Jones
Title: Vice President

"Tenant"

SAN DIEGO CITY EMPLOYEES' RETIREMENT SYSTEM$,
a city charter created public pension system

By: _____
Name: PETER PREVOLOS
Title: BOARD CHAIRMAN

By: _____
Name: DAVID WESCOE
Title: Administrator

EXHIBIT "A"

SITE PLAN

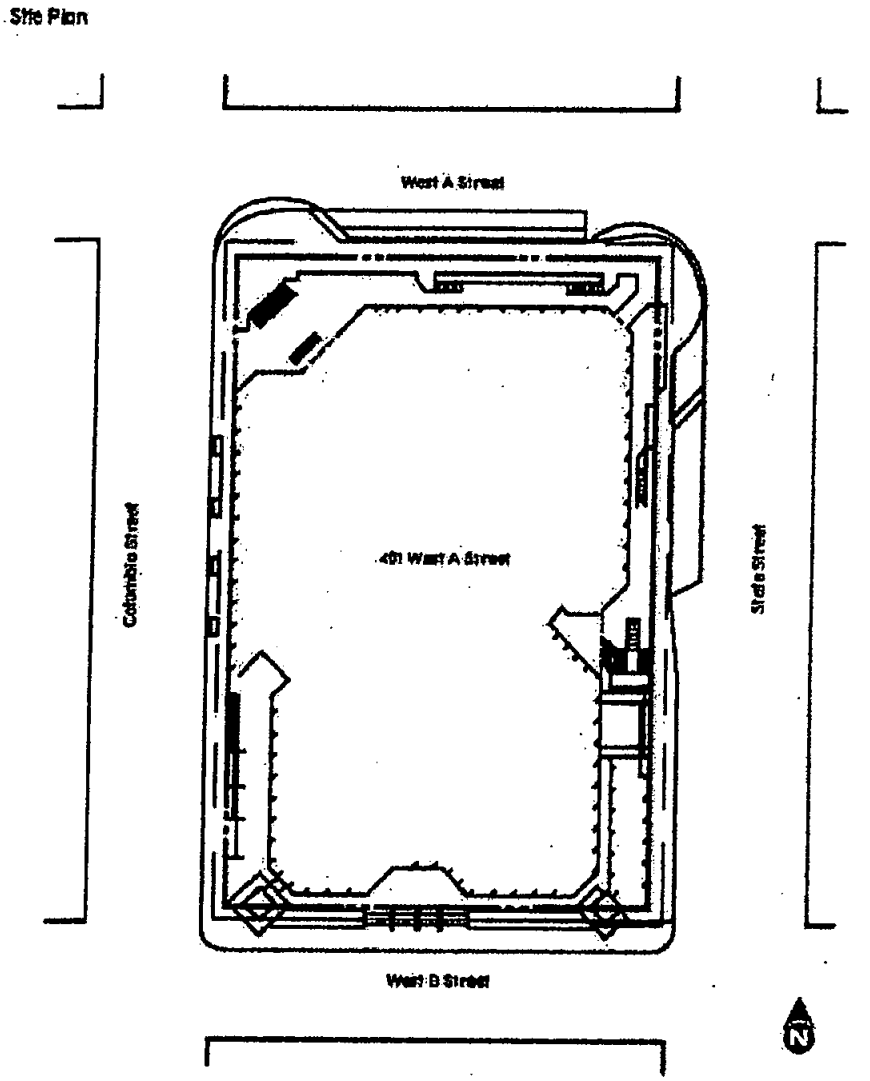
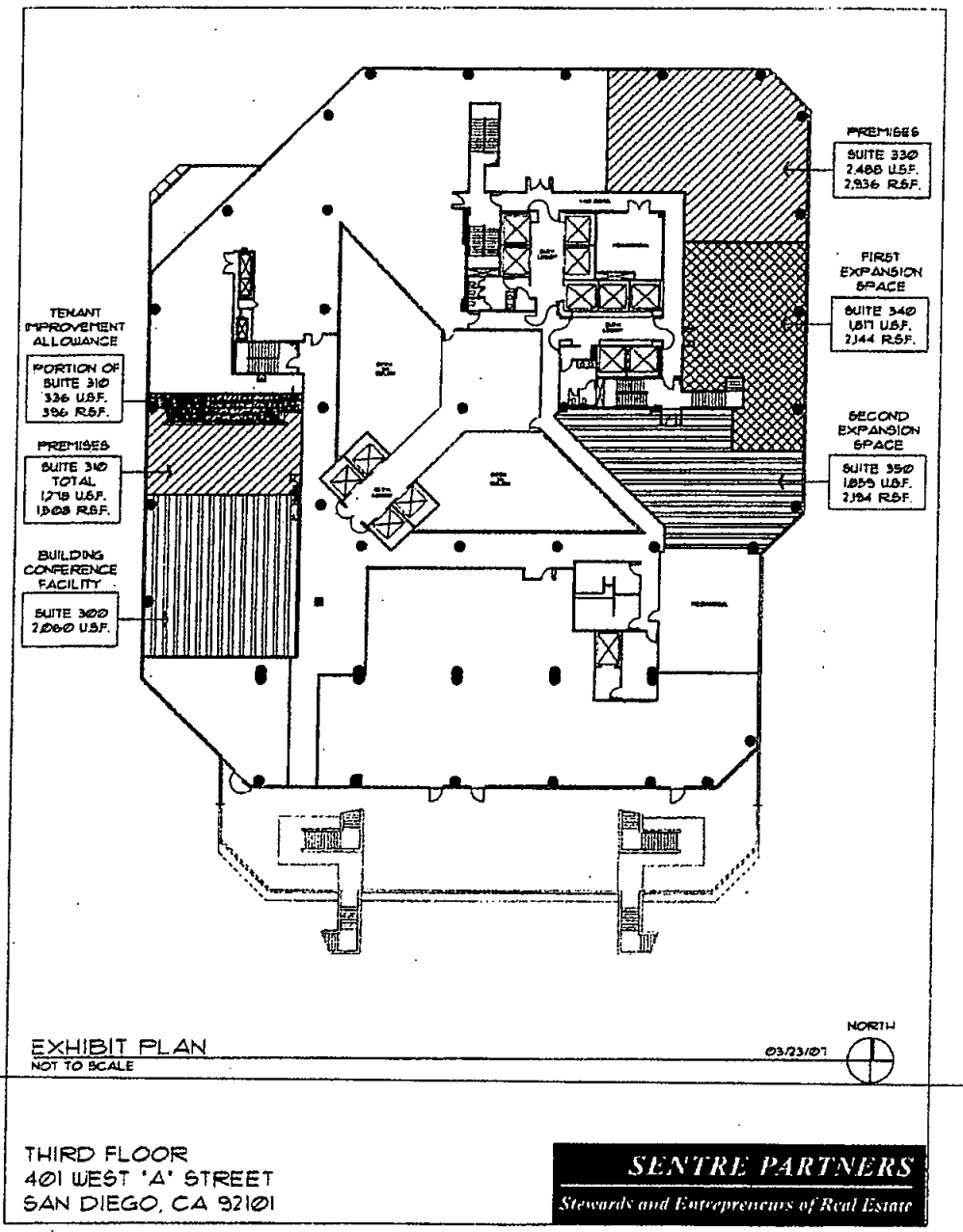
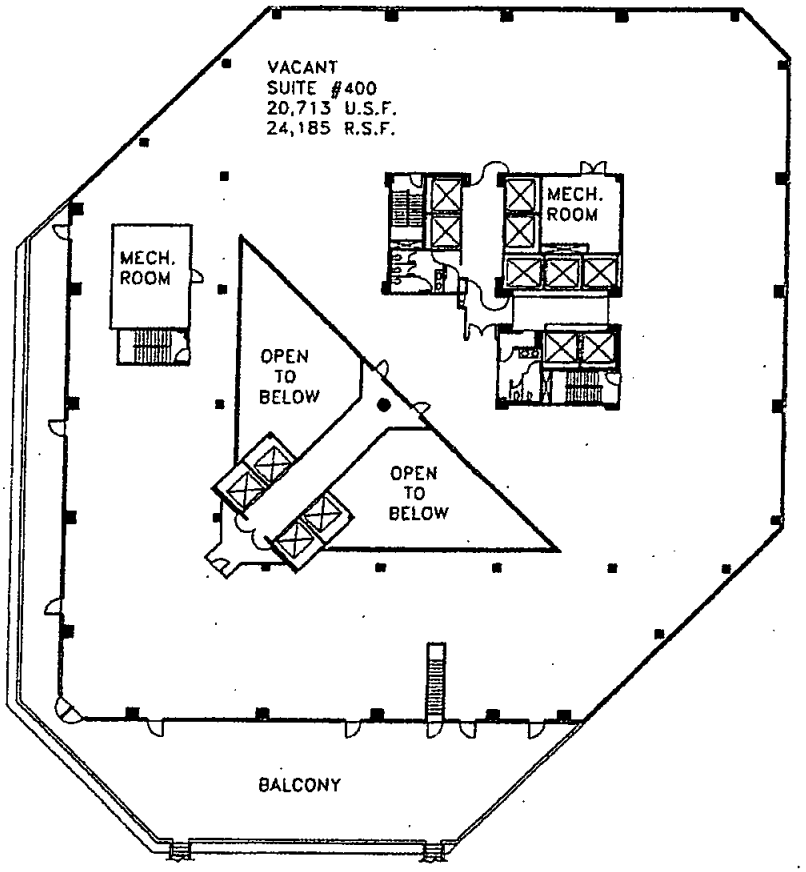


EXHIBIT "B"

FLOOR PLAN OF PREMISES, EXPANSION SPACES AND CONFERENCE FACILITY






FOURTH FLOOR

N

UPDATED: 11/08/05

EXHIBIT "C"

WORK LETTER

In connection with the lease to which this Work Letter is attached (the "**Lease**"), and in consideration of the mutual covenants hereinafter contained, Landlord and Tenant agree as follows:

1. TENANT IMPROVEMENTS. Landlord shall, at Landlord's sole cost and expense and not as a charge to the Tenant Improvement Allowance, demolish the existing improvements within that portion of the Premises located on the third (3rd) floor of the Building. In addition, Landlord shall (i) cause the Common Areas of the Building and the third (3rd) and fourth (4th) floors of the Building to comply with current requirements of the ADA, at Landlord's sole cost and expense, and not as a charge to the Tenant Improvement Allowance, and (ii) build out the conference facility on the third (3rd) floor of the Building in accordance with Article 37 of the Lease at Landlord's sole cost and expense, and not as a charge to the Tenant Improvement Allowance. Except as provided in this Paragraph 1 above and Landlord's obligation to fund the Tenant Improvement Allowance, the Premises shall be provided to Tenant in its "as is" condition. "Tenant Improvements" shall include all work to be done and improvements installed in the Premises by Landlord pursuant to the Tenant Improvement Plans (defined in Paragraph 2 below). Subject to Sections 8.04 and 15.01 of the Lease, all Tenant Improvements and components thereof shall at all times be and remain the sole property of Landlord.

2. TENANT IMPROVEMENT PLANS. IR2 has been selected by Tenant as the space planner and designer of the Tenant Improvements and may be referred to herein as the "Space Planner." Landlord and Tenant hereby approve that certain Space Plan, dated April 3, 2007 and prepared by the Space Planner (the "**Space Plan**"), a copy of which is attached to this Work Letter as Schedule 1 and incorporated herein by reference; provided, however, that the Space Plan is approved as to the Premises only and the configuration of the Common Areas on the third (3rd) floor as shown on the Space Plan shall in no way obligate Landlord to make the changes shown, as the construction of the Common Areas shall be designed and completed by Landlord in its sole and absolute discretion. The Space Plan shall be the basis for the final working drawings and specifications for the Tenant Improvements, which shall be prepared by the Space Planner. Those working drawings and specifications are referred to herein as the "Tenant Improvement Plans" and shall be approved by Landlord and Tenant pursuant to Paragraph 4 below. The Tenant Improvement Plans must be consistent with Landlord's standard specifications (the "**Standards**") for tenant improvements for the Building, as the same may be changed from time to time by Landlord.

3. NON-STANDARD TENANT IMPROVEMENTS. Landlord shall permit Tenant to deviate from the Standards for the Tenant Improvements provided that (a) the deviations shall not be of a lesser quality than the Standards; (b) the total lighting for the Premises shall comply with the provisions of Title 24 of the California Code of Regulations; (c) the deviations conform to applicable governmental regulations, and necessary governmental permits and approvals have

been secured; (d) the deviations do not require Building service beyond the level normally provided to other tenants in the Building and do not overload the weight-bearing capacity of the floors; and (e) Landlord has determined in its sole discretion that the deviations are of a nature and quality that are consistent with the overall objectives of the Landlord for the Building.

4. DRAWING SCHEDULE. On or before April 13, 2007, Tenant shall cause the Tenant Improvement Plans to be submitted to Landlord for approval, which shall not be unreasonably withheld, conditioned or delayed. If the Tenant Improvement Plans, or any revised Tenant Improvement Plans, are disapproved by Landlord pursuant to this Paragraph, Landlord shall provide to Tenant a written explanation of the reason(s) for such disapproval concurrently with that disapproval, and the Tenant Improvement Plans shall be revised and resubmitted to Landlord for approval. After the Tenant Improvement Plans are so approved by Landlord, the Tenant Improvement Plans shall be submitted to the appropriate governmental body by Landlord for plan checking and the issuance of a building permit. Without limitation on other reasons for disapproval, Landlord reserves the right to disapprove any proposed Tenant Improvements which Landlord reasonably believes will materially adversely affect the Building or any Building structure and systems. Landlord, with Tenant's cooperation, shall cause to be made to the Tenant Improvement Plans any changes necessary to obtain the building permit and to comply with the requirements of local agencies, including, without limitation, the City of San Diego. After final approval of the Tenant Improvement Plans no further changes may be made thereto without the prior written approval from both Landlord and Tenant, and then only after agreement by Tenant to pay any excess costs, above the Tenant Improvement Allowance, resulting from the design or construction of such changes. Tenant acknowledges that any such changes may be subject to the terms of Paragraph 7 below.

5. CONSTRUCTION OF TENANT IMPROVEMENTS.

(a) After a building permit for the Tenant Improvements has been issued, Landlord shall cause a contractor selected pursuant to the procedure specified in Paragraph 5(b) below to perform the Tenant Improvements in accordance with the Tenant Improvement Plans. Landlord shall supervise the completion of such work and shall use its commercially reasonable efforts to secure substantial completion of the work in a diligent manner. The cost of such work shall be paid as provided in Paragraph 6 below. Except as provided in Paragraph 8 below, Landlord shall not be liable to Tenant for any direct or indirect damages as a result of delays in construction, including, but not limited to, acts of God, inability to secure governmental approvals or permits, governmental restrictions, strikes, lack of availability of materials or labor, or delays by Tenant (or its architect or anyone performing services on behalf of Tenant).

(b) The general contractor for the Tenant Improvements shall be Johnson & Jennings. The subcontractors utilized by the contractor shall be subject to Landlord's reasonable approval and the bidding instructions shall provide that for mechanical, electrical, plumbing and fire/life-safety work, Landlord shall be entitled to designate the subcontractors provided that such designated subcontractors are competitively priced (but not necessarily the lowest price available).

6. PAYMENT FOR THE TENANT IMPROVEMENTS.

(a) Landlord grants to Tenant a "**Tenant Improvement Allowance**" of $66.45 per rentable square foot of Suite 400 (24,185 rsf), Suite 330 (2,936 rsf) and 396 rentable square feet of Suite 310, for a total of 27,517 rentable square feet (*i.e.*, the Tenant Improvement Allowance shall be $1,828,504.65). The Tenant Improvement Allowance shall only be used for:

(i) Payment of the cost of preparing the Space Plan and the Tenant Improvement Plans, including mechanical, electrical, plumbing and structural drawings, and of all other aspects necessary to complete the Tenant Improvement Plans. The Tenant Improvement Allowance may also be used for the payment of extraordinary design work or for payments to any other consultants, designers or architects other than the Space Planner, all of which other costs can be paid for out of the Tenant Improvement Allowance, at Tenant's sole discretion. However, Landlord agrees that the fees of the Space Planner for preparing former "Option 3" for the space plan which was not chosen by Landlord and Tenant shall be borne entirely by Landlord and shall not be charged to the Tenant Improvement Allowance.

(ii) Payment of plan check, permit and license fees relating to construction of the Tenant Improvements.

(iii) Construction of the Tenant Improvements, including, without limitation, the following to the extent set forth in the Tenant Improvement Plans:

(aa) Installation within the Premises of all partitioning, doors, floor coverings, ceilings, wallcoverings and painting, millwork and similar items;

(bb) Any electrical work to be installed within the Premises, excluding however computer, telephone and telecommunication cable and wiring;

(cc) The furnishing and installation of all duct work, terminal boxes, diffusers and accessories required for the completion of the HVAC systems within the Premises, including the cost of meter and key control for after-hour air conditioning;

(dd) Any additional Tenant requirements including, but not limited to, air quality control, special heating, ventilation and air conditioning, noise or vibration control or other special systems;

(ee) All fire and life safety control systems such as fire walls, sprinklers, fire alarms, including piping and wiring, installed within the Premises;

(ff) All plumbing, including fixtures and pipes, to be installed within the Premises;

(gg) Testing and inspection costs; and

(hh) Contractors' fees, including, but not limited to, any fees based on general conditions.

(iv) All other costs to be expended by Landlord in the construction of the Tenant Improvements, including those costs incurred by Landlord for construction of elements of the Tenant Improvements in the Premises, which construction was performed by Landlord prior to the execution of the Lease and which construction is for the benefit of tenants and is customarily performed by Landlord prior to the execution of leases for space in the Building for reasons of economics (examples of such construction would include, but not be limited to, the extension of mechanical, HVAC and electrical distribution systems outside of the core of the Building, wall construction, column enclosures and painting outside of the core of the Building, ceiling hanger wires and window treatment).

(b) If the actual costs of purchasing and installing the Tenant Improvements exceed the Tenant Improvement Allowance, or if any of the Tenant Improvements are not to be paid out of the Tenant Improvement Allowance as provided in Paragraph 6(a) above, the excess shall be paid by Tenant to Landlord prior to the commencement of construction of the Tenant Improvements.

(c) If, after the Tenant Improvement Plans have been prepared and a price therefor has been established by Landlord, Tenant shall require any changes or substitutions to the Tenant Improvement Plans, any additional costs related thereto shall be paid by Tenant prior to the commencement of the Tenant Improvements. Landlord shall have the right to decline Tenant's request for a change to the Tenant Improvement Plans if such changes are inconsistent with the provisions of Paragraphs 2 or 3 above, or if the change would, in Landlord's sole opinion, unreasonably delay construction of the Tenant Improvements.

(d) If increases in the cost of the Tenant Improvements as set forth in Landlord's final pricing are due to any new requirements of any governmental agency, Tenant shall pay Landlord the amount of such increase within fifteen (15) days of Landlord's written notice and Tenant's prior reasonable approval; provided, however, that Landlord shall first apply toward such increase any remaining balance in the Tenant Improvement Allowance.

(e) Any unused portion of the Tenant Improvement Allowance upon completion of the Tenant Improvements shall be applied, at Tenant's election, to Tenant's moving and/or cabling expenses, as a credit against Tenant's obligations to pay Fixed Rent or to any other costs associated with Tenant's move to the Premises, including the acquisition of systems furniture.

(f) The Tenant Improvements have been agreed on by Landlord as part of the total consideration flowing from Landlord to Tenant under the Lease and on the assumption that Tenant will not be in default under the Lease during the Term. If Tenant commits a default under the Lease which remains uncured and Landlord institutes one or more of its legal remedies under the Lease, Landlord shall be entitled to recover the percentage portion of the cost of the Tenant Improvements which the number of full calendar months remaining in the Term as of the date of Tenant's default bears to the total number of full calendar months in the Term.

7. DELAY IN COMPLETION. "**Substantial Completion**" of the Tenant Improvements shall occur upon completion of the Tenant Improvements other than "Punch List

Items" (as that term is defined below) and receipt of a temporary certificate of occupancy, final inspector's sign-off or other indication that the Premises may be legally occupied. If there shall be a delay in Substantial Completion of the Tenant Improvements as a result of any of the following (each, a "**Tenant Delay**"):

(a) Tenant's failure to approve any item or perform any other obligation in accordance with and by the time specified in this Work Letter;

(b) Tenant's request for materials, finishes or installations other than those readily available;

(c) Tenant's changes in the Tenant Improvement Plans after Tenant approves the Tenant Improvement Plans;

(d) Tenant's request to deviate from the Standards for the Building; or

(e) Tenant's failure to timely make any payment due from Tenant under this Work Letter or the Lease; or

(f) Any other act or omission of Tenant which delays the substantial completion of the Tenant Improvements.

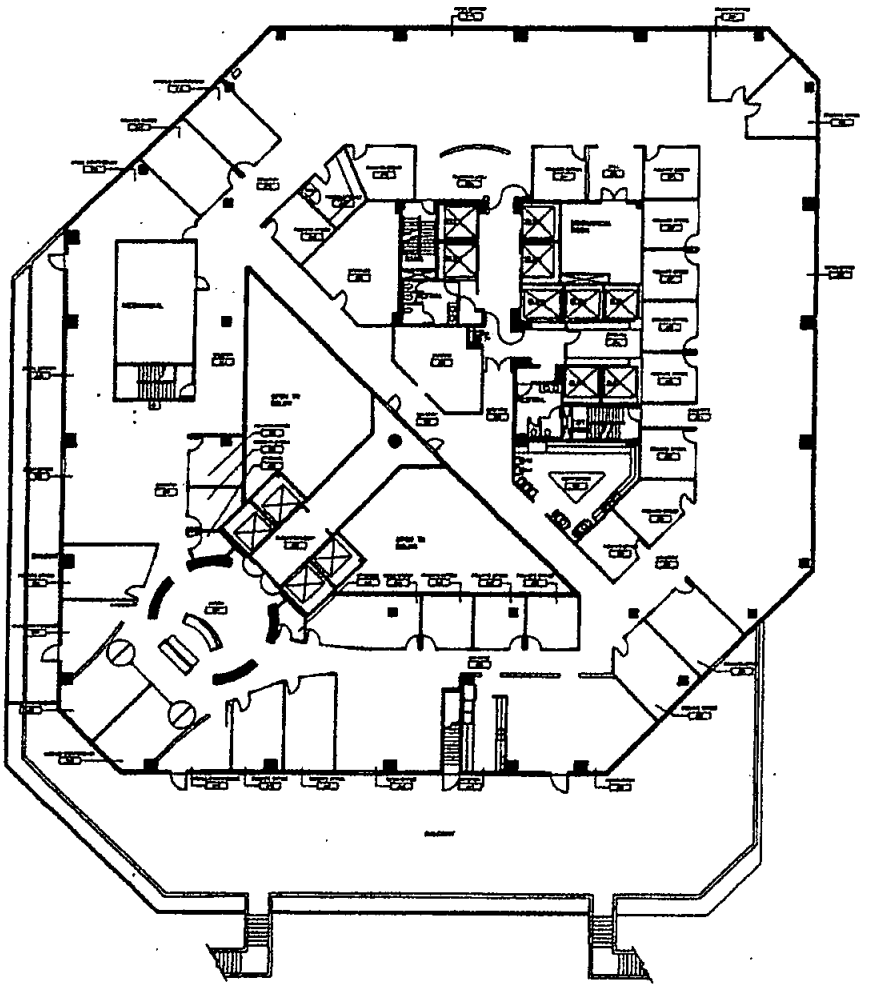
then, the Beneficial Occupancy Commencement Date shall be accelerated by the number of days of such delay. The term "**Punch List Items**" shall mean minor items of the Tenant Improvements (such as construction, mechanical adjustments, or decorations) which do not materially interfere with Tenant's use of the Premises, which items Landlord shall promptly complete or correct.

8. PAYMENT OF HOLDOVER PREMIUM. In the event that Substantial Completion of the Tenant Improvements in the Premises does not occur by August 1, 2007, as such August 1, 2007 date shall be extended by any Tenant Delays (as defined in Section 7 above) and by any Force Majeure Delays (as defined below) and if, as a result, Tenant is required to hold over in its current premises consisting of a total of 23,979 rentable square feet at 401 B Street, San Diego, California (the "**Existing Premises**"), Landlord agrees to reimburse Tenant for the Holdover Premium Tenant must pay as a result of such holdover in its Existing Premises for the number of days after August 1, 2007 (as such date may be so extended for Tenant Delays and Force Majeure Delays) until the date of Substantial Completion of the Tenant Improvements in the Premises. For purposes of this Section 8, the term "**Holdover Premium**" shall mean the amount of base rent Tenant must pay with respect to its Existing Premises as a result of Tenant's holdover therein over and above the amount of base rent Tenant must pay for the last month of the term of such lease. In no event shall the Holdover Premium which Landlord is obligated to reimburse Tenant pursuant to the terms of this Section 8 exceed Twenty Two Thousand One Hundred Twenty-One Dollars ($22,121.00) per month. The Holdover Premium shall be calculated on a per diem basis for each day after August 1, 2007 (as such date may be so extended) in which Landlord fails to cause Substantial Completion of the Tenant Improvements to occur. Landlord shall reimburse Tenant for the Holdover Premium pursuant the terms of this

Section 8 above within thirty (30) days after Landlord's receipt of invoice from Tenant from time to time. For purposes of this Section 8, the term "**Force Majeure Delays**" shall mean and refer to a period of delay or delays encountered by Landlord affecting the work of construction of the Tenant Improvements because of delays due to excess time in obtaining governmental permits or approvals beyond the time period normally required to obtain such permits or approvals for similar space, similarly improved, in comparable office buildings in the downtown San Diego, California area; fire, earthquake or other acts of God; riot; public unrest; terrorism; governmental regulation of the sales of materials or supplies or the transportation thereof; strikes or boycotts; shortages of material or labor or any other cause beyond the reasonable control of Landlord, but not financial inability.

SCHEDULE 1

SPACE PLAN

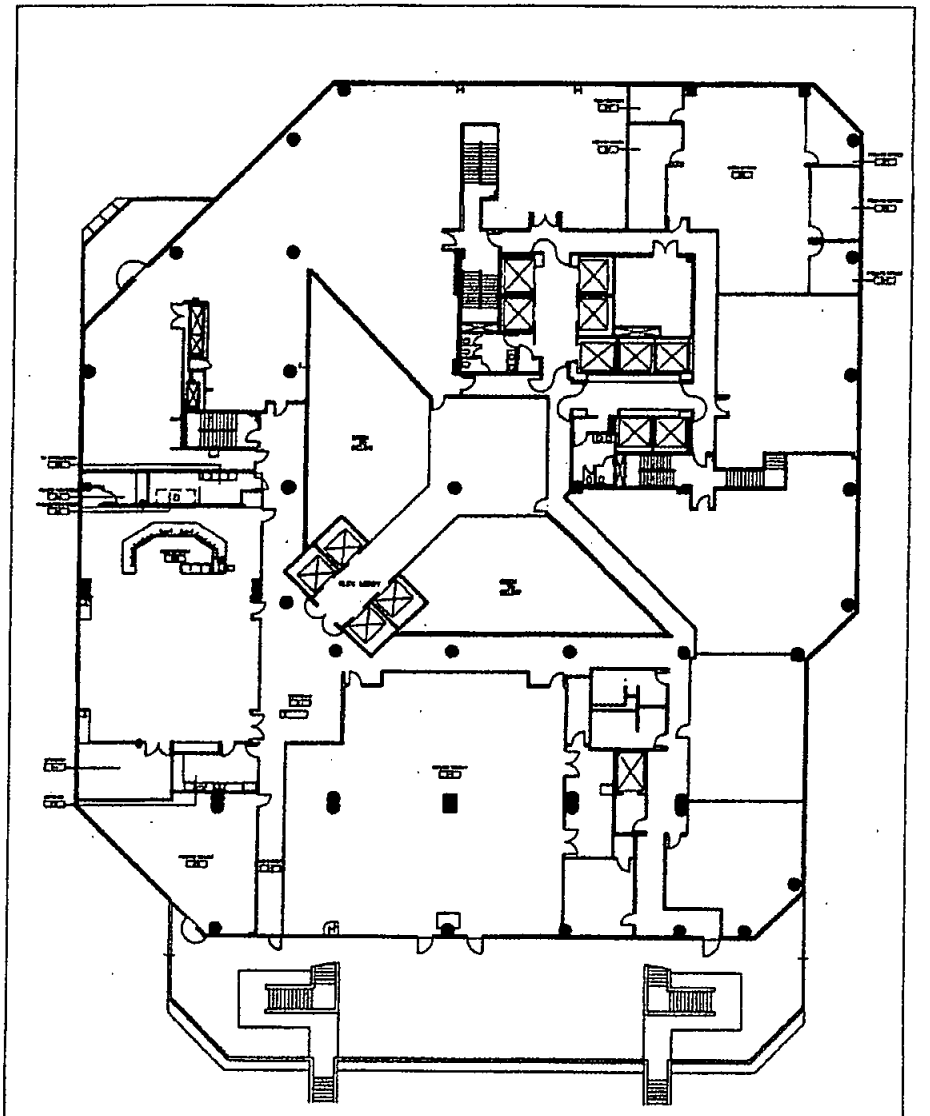


APPROVED SPACE PLAN

sdCERS

FIRST NATIONAL BANK 4th Floor

APRIL 3, 2007



APPROVED SPACE PLAN

sdCERS

FIRST NATIONAL BANK 3rd Floor

APRIL 5, 2007

EXHIBIT "D"

RULES AND REGULATIONS

1. No part or the whole of the sidewalks, plaza areas, entrances, passages, courts, elevators, vestibules, stairways, corridors or halls of the Project shall be obstructed or encumbered by Tenant or used for any purpose other than ingress and egress to and from the Premises. Tenant shall not have access to the roof of the Building, unless accompanied by a representative of Landlord.

2. No equipment, furnishings, personal property or fixtures shall be placed on any balcony of the Premises or Building without first obtaining Landlord's written consent. No awnings or other projections shall be attached to the exterior walls of the Premises or Building. No skylight, window, door or transom of the Building shall be covered or obstructed by Tenant, and no window shade, blind, curtain, screen, storm window, awning or other material shall be installed or placed on any window or in any window of the Premises except as approved in writing by Landlord. If Landlord has installed or hereafter installs any shade, blind or curtain in the Premises, Tenant shall not remove the same without first obtaining Landlord's written consent thereto.

3. No showcases or other articles shall be put in front of or affixed to any part of the exterior of the Premises or Building, nor placed in the Common Areas.

4. Tenant shall not place or permit its Tenant's Agents to place any trash or other objects anywhere within the Project (other than within the Premises) without first obtaining Landlord's written consent.

5. The water and wash closets and other plumbing fixtures shall not be used for any purposes other than those for which they were constructed, and no sweepings, rubbish bags or other substances (including, without limitation, coffee grounds) shall be thrown therein.

6. Tenant shall not mark, paint, drill into or in any way deface any part of the Project or the Premises. No boring, cutting or stringing of wires shall be permitted except for hanging ordinary pictures, bulletin boards and the like.

7. No cooking shall be done or permitted in the Building by Tenant or its Tenant's Agents except that Tenant may install and use microwave ovens. Tenant shall not cause or permit any unusual or objectionable odors to emanate from the Premises.

~~8. The Premises shall not be used for the manufacturing or storage of merchandise.~~

9. Tenant shall not make or permit any unseemly or disturbing noises or disturb or interfere with other tenants or occupants of the Project or neighboring buildings or premises by the use of any musical instrument, radio, television set, other audio device, unmusical noise, whistling, singing or in any other way.

10. Nothing shall be thrown out of any doors, windows or skylights or down any passageways.

11. No additional locks or bolts of any kind shall be placed upon any of the doors or windows of the Premises, nor shall any changes be made in locks or the mechanism thereof without prior notice to and the approval of Landlord. Tenant shall, upon the termination of its Lease, return to Landlord all keys to the Premises and other areas furnished to, or otherwise procured by, Tenant. In the event of the loss of any such keys or card keys, as applicable, Tenant shall pay Landlord the cost of replacement keys.

12. Tenant shall not use or occupy or permit any portion of the Premises to be used or occupied as an employment bureau or for the storage, manufacture or sale of liquor, narcotics or drugs. Tenant shall not engage or pay any employees in the Building except those actually working for Tenant in the Building. The Premises shall not be used, or permitted to be used, for lodging or sleeping or for any or illegal purpose.

13. Landlord reserves the right to control and operate the Common Areas in such manner as it deems best for the benefit of the Project tenants. Landlord may exclude from all or a part of the Common Areas at all hours, other than during Normal Business Hours, all unauthorized persons. "Normal Business Hours" shall be deemed to be between the hours of 6:00 A.M. and 6:00 P.M. Monday through Friday and between the hours of 8:00 A.M. and 1:00 P.M. Saturday, but excluding Building holidays. Tenant shall be responsible for all Tenants or Tenant's Agents who enter the Building and Project during Normal Business Hours and during other than Normal Business Hours and shall be liable to Landlord for all acts of such persons.

14. Tenant shall have the responsibility for the security of the Premises and, before closing and leaving the Premises at any time, Tenant shall endeavor to see that all entrance doors are locked and all lights and office equipment within the Premises are turned off, and Landlord shall have no responsibility relating thereto. Landlord will not be responsible for any lost or stolen personal property, equipment, money or jewelry from the Premises or Common Areas regardless of whether such loss occurs when the area is locked against entry or not.

15. Requests and requirements of Tenant shall be attended to only upon application at the office of Landlord. Project employees shall not be required to perform any work outside of their regular duties unless under specific instructions from Landlord.

16. Vending, canvassing, soliciting and peddling in the Project are prohibited, and Tenant shall reasonably cooperate, at no cost to Tenant, in seeking their prevention.

17. In connection with the delivery or receipt of merchandise, freight or other matter, no hand trucks or other means of conveyance shall be permitted, except those equipped with rubber tires, rubber side guards or such other safeguards as Landlord may require.

18. No animals of any kind shall be brought into or kept about the Building by Tenant or Tenant's Agents, except seeing eye dogs for the visually impaired.

19. No vending machines shall be permitted to be placed or installed in any part of the Premises by Tenant without the permission of Landlord. Landlord reserves the right to place or install vending machines in the Project (other than in the Premises).

20. Tenant shall not allow in the Premises, on a regular basis, more than one person for each two hundred fifty (250) usable square feet of the Premises.

21. So that the Building may be kept in a good state of cleanliness, Tenant shall permit only Landlord's employees and contractors to clean its Premises unless prior thereto Landlord otherwise consents in writing. Tenant shall provide adequate waste and rubbish receptacles, cabinets, bookcases, map cases, etc. necessary to prevent unreasonable hardship to Landlord in discharging its obligation regarding cleaning service.

22. Tenant shall keep the windows and doors of the Premises (including, without limitation, those opening on corridors and all doors between any room designed to receive HVAC service and room(s) not designed to receive such service) closed while the HVAC system is operating in order to minimize the energy used by, and to conserve the effectiveness of, such systems.

23. The elevator designated for freight by Landlord will be available for use by all tenants in the Building during the hours and pursuant to such procedures as Landlord may determine from time to time. The persons employed to move Tenant's equipment, material, furniture or other property in or out of the Building must be reasonably acceptable to Landlord. The moving company must be a locally recognized professional mover, whose primary business is the performing of relocation services, and must be bonded and fully insured. A certificate or other verification of such insurance must be received and approved by Landlord prior to the start of any moving operations. Insurance must be sufficient in Landlord's sole but reasonable opinion, to cover all personal liability, theft or damage to the Project, including, but not limited to, floor coverings, doors, walls, elevators, stairs, foliage and landscaping. Special care must be taken to prevent damage to foliage and landscaping during adverse weather. All moving operations will be conducted at such times and in such a manner as Landlord will reasonably direct, and all moving will take place during non-Normal Business Hours unless Landlord agrees in writing otherwise. Tenant will be responsible for the provision of Building security during all moving operations, and will be liable for all losses and damages sustained by any party as a result of the failure to supply adequate security. Landlord will have the right to prescribe the weight, size and position of all equipment, materials, furniture or other property brought into the Building. Heavy objects will, if considered reasonably necessary by Landlord, stand on wood strips of such thickness as is reasonably necessary properly to distribute the weight. Landlord will not be responsible for loss of or damage to any such property from any cause, and all damage done to the Building by moving or maintaining such property will be repaired at the expense of Tenant. Landlord reserves the right to inspect all such property to be brought into the Project and to exclude from the Project all such property which violates any of these Rules and Regulations or the Lease. Supplies, goods, materials, packages, furniture and all other items of every kind delivered to or taken from the Premises will be delivered or removed through the entrance and route designated by Landlord, and Landlord will not be responsible for the loss or

damage of any such property unless such loss or damage results from the negligence of Landlord.

24. A directory of the Building will be provided for the display of the name and location of tenants only and such reasonable number of the principal officers and employees of tenants as Landlord in its sole discretion approves. All entries on the Building directory display will conform to standards and style set by Landlord in its sole discretion. Space on any exterior signage will be provided in Landlord's sole discretion.

25. Neither Landlord nor any operator of the parking areas within the Project, as the same are designated and modified by Landlord, in its sole discretion, from time to time will be liable for loss of or damage to any vehicle or any contents of such vehicle or accessories to any such vehicle, or any property left in any of the parking areas resulting from fire, theft, vandalism, accident, conduct of other users of the parking areas and other persons, or any other casualty or cause. Further, Tenant understands and agrees that: (i) Landlord will not be obligated to provide any traffic control, security protection or operator for the parking areas; (ii) Tenant uses the parking areas at its own risk; and (iii) Landlord will not be liable for personal injury or death, or theft, loss of or damage to property, except as expressly provided in Section 10.02 of the Lease. Tenant indemnifies and agrees to hold Landlord, any operator of the parking areas and their respective Agents harmless from and against any and all claims, demands, and actions arising out of the use of the parking areas by Tenant and Tenant's Agents, whether brought by any of such persons or any other person.

26. Tenant (including Tenant's Agents) will use its Parking Space Allocation solely for the purpose of parking passenger model cars, small vans and small trucks and will comply in all respects with any rules and regulations that may be promulgated by Landlord from time to time with respect to the parking areas. The parking areas may be used by Tenant or Tenant's Agents for occasional overnight parking of vehicles. Tenant will endeavor to ensure that any vehicle parked in any of the Parking Space Allocation will be kept in proper repair and will not leak excessive amounts of oil or grease or any amount of gasoline. If any of the Parking Space Allocation are at any time used: (i) for any purpose other than parking as provided above; or (ii) in any way or manner reasonably objectionable to Landlord, Landlord, in addition to any other rights otherwise available to Landlord, may consider same a default under the Lease.

27. Tenant's right to use the parking areas will be in common with other tenants of the Project and with other parties permitted by Landlord to use the parking areas. Landlord reserves the right to assign and reassign, from time to time, particular parking spaces for use by persons selected by Landlord provided that Tenant's rights under the Lease are substantially preserved. Landlord will not be liable to Tenant for any unavailability of Tenant's designated spaces, if any, nor will any unavailability entitle Tenant to any refund, deduction, or allowance. Tenant will not park in any numbered space or any space designated as: RESERVED, HANDICAPPED, VISITORS ONLY, or LIMITED TIME PARKING (or similar designation).

28. If the parking areas are damaged or destroyed, or if the use of the parking areas are limited or prohibited by any governmental authority, or the use or operation of the parking areas is limited or prevented by strikes or other labor difficulties or other causes beyond

Landlord's control, Tenant's inability to use the Parking Space Allocation will not subject Landlord or any operator of the parking areas to any liability to Tenant and will not relieve Tenant of any of its obligations under the Lease and the Lease will remain in full force and effect. Tenant will pay to Landlord upon demand, and Tenant indemnifies Landlord against, any and all loss or damage to the parking areas, or any equipment, fixtures, or signs used in connection with the parking areas and any adjoining buildings or structures caused by Tenant or any of its Agents, except to the extent such loss or damage is due to the negligence or willful misconduct of Landlord or its agents, contractors or employees.

29. Tenant has no right to assign or sublicense any of its rights in its Parking Space Allocation, except as part of a permitted assignment or sublease of the Lease; however, Tenant may allocate the Parking Space Allocation among its employees.

30. Tenant shall cooperate with Landlord in keeping its Premises neat and clean.

31. Smoking of cigarettes, pipes, cigars or any other substance is prohibited at all times within the Premises, elevators, common area restrooms and any other interior Common Area of the Building or Project.

32. These Rules and Regulations are in addition to, and shall be construed to modify and amend the terms, covenants, agreements and conditions of the Lease; provided, however, in the event of any inconsistency between the terms and provisions of the Lease and the terms and provisions of these Rules and Regulations, the terms and provisions of the Lease shall control.

33. Tenant shall give Landlord prompt notice of any accidents to or defects in the water pipes, gas pipes, electric lights and fixtures, heating apparatus, or any other service equipment.

34. Tenant and Tenant's Agents shall not bring into the Building or keep on the Premises any bicycle or other vehicle without the written consent of Landlord.

35. Landlord reserves the right to amend these Rules and Regulations and to make such other and further reasonable Rules and Regulations as, in its judgment, may from time to time be needed and desirable, subject to the terms of the Lease.

36. Tenant will refer all contractors, contractors' representatives and installation technicians rendering any service for Tenant to Landlord for Landlord's supervision and reasonable approval before performance of any such contractual services. This shall apply to all work performed in the Project, including, but not limited to, installation of telephones, telegraph equipment, electrical devices and attachments, and installations of any and every nature affecting floors, walls, woodwork, trim, windows, ceilings, equipment or any other physical portion of the Project. None of this work will be done by Tenant without first obtaining Landlord's written approval.