

SINGLE-TENANT LEASE

LANDLORD:

BREITBARD PROPERTIES, LLC, a California limited liability company

TENANT:

THE CITY OF SAN DIEGO, a municipal corporation

SINGLE-TENANT LEASE

TABLE OF CONTENTS

	<u>Page</u>
1. Lease of Premises.....	1
2. Term	1
3. Rent	1
4. Net Lease	2
5. Intentionally Deleted	2
6. Use	2
7. Payments and Notices	3
8. Brokers	3
9. Surrender; Holding Over	3
10. Taxes	4
11. Repairs	5
12. Alterations.....	5
13. Liens	7
14. Assignment and Subletting.....	7
15. Entry by Landlord	8
16. Utilities and Services	8
17. Indemnification and Exculpation.....	9
18. Damage or Destruction	9
19. Eminent Domain	10
20. Tenant's Insurance	10
21. Waiver of Subrogation	11
22. Tenant's Default and Landlord's Remedies	11
23. Landlord's Default.....	13
24. Subordination	13
25. Estoppel Certificate	14
26. Modification and Cure Rights of Landlord's Mortgagees and Lessors.....	14
27. Quiet Enjoyment	14
28. Transfer of Landlord's Interest.....	14
29. Limitation on Landlord's Liability	15
30. Miscellaneous	15
31. Lease Execution	17
32. Landlord Termination Right	17
33. Lease Contingency.....	17

EXHIBIT "A" SITE PLAN

INDEX

	<u>Page</u>
Abandonment	11
ADA	2
CASp Report	17
Collateral	13
Commencement Date.....	1
Effective Date	1
Environmental Law	3
Extension Option	1
Force Majeure Delays	16
Hazardous Materials.....	3
Indemnified Claims.....	9
Initial Tenant Improvements	1
Land.....	i
Landlord.....	1
Landlord Indemnified Parties.....	2
Laws	5
Lease	i
Lease Expiration Date	1
Neighbors	3
Option Period.....	1
PCBs.....	3
Permitted Transfer.....	8
Permitted Transferee.....	8
Pre-Approved Change.....	6
Property	i
Real Property Taxes.....	4
Rent	2
Restoration	9
Restore	9
Summary	i
Tenant.....	1
Tenant Change.....	6
Tenant Changes,	6
Tenant Improvements.....	6
Tenant's Parties.....	2
Term	1
Termination Date	10
Transfer	7
Transfer Date.....	7
Transfer Notice	7
Transferee	7
Vacation.....	11

SUMMARY OF BASIC LEASE INFORMATION AND DEFINITIONS

This SUMMARY OF BASIC LEASE INFORMATION AND DEFINITIONS ("**Summary**") is hereby incorporated into and made a part of the attached Single-Tenant Lease which pertains to the Premises described in Section 1.3 below. All references in the Lease to the "**Lease**" shall include this Summary. All references in the Lease to any term defined in this Summary shall have the meaning set forth in this Summary for such term. Any initially capitalized terms used in this Summary and any initially capitalized terms in the Lease which are not otherwise defined in this Summary shall have the meaning given to such terms in the Lease.

1.1 Landlord’s Address:

Breitbard Properties, LLC
C/O Inland Industries Group LP
2411 2nd Avenue
San Diego, CA 92101-1507
Attn: Geoffrey Berg
Telephone: 619-544-1458
Email: Geoffrey@inlandindustries.com

1.2 Tenant's Address:

City of San Diego
Real Estate Assets
1200 Third Avenue, Suite 1700
San Diego, CA 92101
Attn: Cybele Thompson
Telephone: 619-236-6145
Email: thompsonc@sandiego.gov

1.3 **Premises:** The real property located at 1710 Imperial Ave., in the City of San Diego, County of San Diego, State of California, as shown on the site plan attached hereto as Exhibit "A" attached hereto (the "**Property**"), together with all improvements and facilities, which may be subsequently located on the Property from time to time in accordance with this Lease, consisting of approximately 26,000 square feet of unimproved land (APN's: 535-412-01 and 535-412-02) (the "**Land**").

1.4 **Commencement Date:** April 1, 2019.

1.5 **Lease Expiration Date:** March 31, 2021, subject to three (3) extension options of one (1) year each pursuant to Section 2.4 below.

1.6 Rent

Initial Term	Monthly Rent
April 1, 2019 – March 31, 2021*	\$5,000.00
First Option Period	
April 1, 2021 – March 31, 2022	\$5,150.00
Second Option Period	
April 1, 2022 – March 31, 2023	\$5,305.00
Third Option Period	
April 1, 2023 – March 31, 2024	\$5,464.00

*Including any partial month at the beginning of the Term.

1.7 **Security Deposit:** None.

1.8 **Permitted Use:** The Premises may be used only for the operation of temporary housing shelters for providing overnight accommodations and related services, including but not limited to providing laundry and restroom facilities to individuals experiencing homelessness, office space for staff, and providing housing counseling and other services to users of the shelter.

Notwithstanding anything to the contrary set forth hereinabove, and as more particularly set forth in the Lease, Tenant shall be responsible for operating and maintaining the Premises pursuant to, and in no event may Tenant's Permitted Use violate, (A) any applicable laws, or (B) any applicable zoning and building codes.

1.9 **Brokers:** None.

1.10 **Interest Rate:** The lesser of: (a) the prime rate announced from time to time by Wells Fargo Bank or, if Wells Fargo Bank ceases to exist or ceases to publish such rate, then the rate announced from time to time by the largest (as measured by deposits) chartered operating bank operating in California, plus five percent (5%) per annum; or (b) the maximum rate permitted by Law.

SINGLE-TENANT LEASE

This LEASE ("**Lease**"), which includes the preceding Summary of Basic Lease Information and Definitions ("**Summary**") attached hereto and incorporated herein by this reference, is made as of the 19th day of February, 2019, by and between BREITBARD PROPERTIES, LLC, a California limited liability company ("**Landlord**"), and THE CITY OF SAN DIEGO, a municipal corporation ("**Tenant**").

1. Lease of Premises.

1.1 **Lease of Premises.** Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the Premises upon and subject to the terms, covenants and conditions contained in this Lease to be performed by each party.

1.2 **Square Footage of Land.** The parties stipulate that the Land contains the square footage set forth in Section 1.3 of the Summary.

2. Term.

2.1 **Term; Notice of Lease Dates.** This Lease shall be effective upon the date first above written when approved by the San Diego City Attorney (the "**Effective Date**"). The term of this Lease (the "**Term**") shall commence upon the date set forth in Section 1.4 of the Summary ("**Commencement Date**") and shall expire on the date set forth in Section 1.5 of the Summary ("**Lease Expiration Date**"), unless sooner terminated or extended as permitted herein, and if extended, the "Term" will include the Option Period.

2.2 **Intentionally Deleted.**

2.3 **Option to Extend.** Tenant shall have three (3) options (each, an "**Extension Option**") to extend the Term for a period (each, an "**Option Period**") of one (1) year each, commencing upon the Lease Expiration Date upon the same terms and conditions previously applicable, except for the grant of any exercised Extension Option and Monthly Rent (which shall be as set forth in Section 1.6 of the Summary). An Extension Option may be validly exercised only by notice in writing received by Landlord not later than four (4) months prior to the expiration of the initial Term, or then current Option Period, as applicable; provided, however, that the Extension Option may be validly exercised only if no uncured Tenant default exists as of the date of exercise and, at Landlord's option, as of the commencement of the Option Period. If Tenant does not exercise the Extension Option during the exercise period set forth above in strict accordance with the provisions hereof, the Extension Option shall forever terminate and be of no further force or effect. Each Extension Option is personal to the original Tenant, may not be exercised by any person or entity other than the original Tenant and shall become null and void if the original Tenant assigns its interest in this Lease or sublets all or any portion of the Premises, unless such assignment or sublease is to a Permitted Transferee.

2.4 **Conditions Precedent.** Landlord will not be obligated to deliver possession of the Premises to Tenant (but Tenant will be liable for Rent if Landlord can otherwise deliver the Premises, or the applicable portion thereof, to Tenant as required hereunder) until Landlord has received from Tenant all of the following: (i) a copy of this Lease fully executed by Tenant; (ii) the first installment of Monthly Rent in accordance with Section 3.1 below; and (iii) copies of policies of insurance or certificates thereof as required under Section 20 of this Lease.

2.5 **Initial Tenant Improvements.** Tenant agrees to accept possession of the Premises on the Commencement Date and to proceed with due diligence to pave or asphalt the Premises, at Tenant's own cost and expense (the "**Initial Tenant Improvements**"), pursuant to the terms and conditions of Section 12 of this Lease and plans and specifications approved by Landlord. Tenant shall be responsible for the cost of compliance with any Laws by reason of construction of the Initial Tenant Improvements or any other work performed by or on behalf of Tenant on the Premises.

3. Rent.

3.1 **Monthly Rent.** Tenant agrees to pay Landlord, as rent for the Premises, the Monthly Rent designated in Section 1.6 of the Summary. The Monthly Rent shall be paid by Tenant in advance on the first day of each and every calendar month commencing upon the Commencement Date, except that the first full month's Monthly Rent for the Premises shall be paid upon execution of this Lease by Tenant. Monthly Rent for any partial month shall be prorated in the proportion that the number of days this Lease is in effect during such month bears to the actual number of days in such month. Notwithstanding anything to the contrary contained herein, Landlord and Tenant hereby agree and acknowledge that the Monthly Rent payable by Tenant hereunder is not intended nor shall be construed as any indication of the value of the Premises for purposes of valuation in connection with any eminent domain or condemnation action taken in the future by or on behalf of the City of San Diego or other governmental authority.

3.2 **Additional Rent.** All amounts and charges payable by Tenant under this Lease in addition to the Monthly Rent described in Section 3.1 above shall be considered additional rent for the purposes of this Lease, and the word "**Rent**" in this Lease shall include such additional rent unless the context specifically or clearly implies that only the Monthly Rent is referenced. Rent shall be paid to Landlord as provided in

Section 7, without any prior demand therefor and without any deduction or offset except as specified elsewhere in the Lease, in lawful money of the United States of America.

4. Net Lease.

4.1 Tenant's Obligations. Except as otherwise provided herein, all Rent shall be absolutely net to Landlord so that this Lease shall yield net to Landlord, the Rent to be paid each month during the Term of this Lease. Accordingly, and except as otherwise provided herein, excluding taxes (but subject to Section 10 below), all costs, expenses and obligations of every kind or nature whatsoever relating to the Premises which may arise or become due during the Term of this Lease shall be paid by Tenant. Nothing herein contained shall be deemed to require Tenant to pay or discharge any liens or mortgages of any character whatsoever which may exist or hereafter be placed upon the Premises by an affirmative act or omission of Landlord.

5. Intentionally Deleted.

6. Use.

6.1 General. Tenant shall use the Premises solely for the Permitted Use specified in Section 1.8 of the Summary, and shall not use or permit the Premises to be used for any other use or purpose whatsoever. Tenant shall, at its sole cost and expense, observe and comply with all requirements of any board of fire underwriters or similar body relating to the Premises, all recorded covenants, conditions and restrictions now or hereafter affecting the Premises and all Laws now or hereafter in force relating to or affecting the condition, use, occupancy, alteration or improvement (whether structural or non-structural, including unforeseen and/or extraordinary alterations or improvements, and regardless of the period of time remaining in the Term) of the Premises, including, without limitation, the provisions of the Americans with Disabilities Act ("**ADA**") as it pertains to the condition, use, occupancy, improvement and alteration (whether structural or non-structural, including unforeseen and/or extraordinary alterations or improvements, and regardless of the period of time remaining in the Term) of the Premises. Tenant shall not use or allow the Premises to be used (a) in violation of any recorded covenants, conditions and restrictions affecting the Premises or of any Law, or of any certificate of occupancy issued for the Premises, or (b) for any improper, immoral, unlawful or reasonably objectionable purpose. Tenant shall not cause, maintain or permit any nuisance in, on or about the Premises, nor commit or suffer to be committed any waste in, on or about the Premises.

6.2 Signs. Subject to the terms and conditions of Section 12 of this Lease, Landlord hereby grants Tenant the right to install and maintain exterior signage bearing Tenant's or third-party service provider's name and other identifying information. Tenant shall install, maintain, and repair the signage at Tenant's sole cost and expense. Tenant shall remove such signage pursuant to Section 12.3 of this Lease.

6.3 Hazardous Materials.

6.3.1 Tenant's Environmental Representations and Indemnification. Except for ordinary and general office supplies, such as copier toner, liquid paper, glue, ink and common household cleaning materials and, to the extent approved in writing by Landlord (which shall not be unreasonably withheld), materials reasonably necessary for the conduct of Tenant's business that are used and stored in compliance with all Environmental Laws (some or all of which may constitute "Hazardous Materials" as defined in this Lease), Tenant agrees not to cause or permit any Hazardous Materials to be brought upon, stored, used, handled, generated, released or disposed of on, in, under or about the Premises by Tenant, its agents, employees, subtenants, assignees, licensees, contractors or invitees (collectively, "**Tenant's Parties**"), without the prior written consent of Landlord, which consent Landlord may withhold in its sole and absolute discretion. Upon the expiration or earlier termination of this Lease, Tenant agrees to promptly remove from the Premises, at its sole cost and expense, any and all Hazardous Materials, including any equipment or systems containing Hazardous Materials which are installed, brought upon, stored, used, generated or released upon, in, under or about the Premises by Tenant or any of Tenant's Parties or any other persons or entities. To the fullest extent permitted by Law, Tenant agrees to promptly indemnify, protect, defend and hold harmless Landlord and Landlord's partners, officers, directors, employees, agents, successors and assigns (collectively, "**Landlord Indemnified Parties**") from and against any and all claims, damages, judgments, suits, causes of action, losses, liabilities, penalties, fines, expenses and costs (including, without limitation, clean-up, removal, remediation and restoration costs, sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees and court costs) which arise or result from the presence of Hazardous Materials on, in, under or about the Premises and which are caused or permitted by Tenant or any of Tenant's Parties or any other persons or entities. Tenant agrees to promptly notify Landlord of any release of Hazardous Materials that Tenant becomes aware of during the Term of this Lease, whether caused by Tenant or any other persons or entities. In the event of any release of Hazardous Materials caused or permitted by Tenant or any of Tenant's Parties or any other persons or entities, Landlord shall have the right, but not the obligation, to cause Tenant to immediately take all steps Landlord deems necessary or appropriate to remediate such release and prevent any similar future release to the satisfaction of Landlord and Landlord's mortgagee(s). At all times during the Term of this Lease, Landlord will have the right, but not the obligation, to enter upon the Premises to inspect, investigate, sample and/or monitor the Premises to determine if Tenant is in compliance with the terms of this Lease regarding Hazardous Materials. In the event of any release of Hazardous Materials caused or permitted by Tenant or any of Tenant's Parties, Tenant will, upon the request of Landlord, cause to be performed an environmental audit of the Premises

at Tenant's expense by an environmental consulting firm reasonably acceptable to Landlord. The term "**Hazardous Materials**" shall mean and include any hazardous or toxic materials, substances or wastes as now or hereafter designated or regulated under any law, statute, ordinance, rule, regulation, order or ruling of any agency of the State, the United States Government or any local governmental authority, including, without limitation, asbestos, petroleum, petroleum hydrocarbons and petroleum based products, urea formaldehyde foam insulation, polychlorinated biphenyls ("**PCBs**"), and freon and other chlorofluorocarbons. The term "**Environmental Law**" means any past, present or future federal, state or local statutory or common law, or any regulation, ordinance, code, plan, order, permit, grant, franchise, concession, restriction or agreement issued, entered, promulgated or approved thereunder, relating to (a) the environment, human health or safety, including, without limitation, emissions, discharges, releases or threatened releases of Hazardous Materials (as defined below) into the environment (including, without limitation, air, surface water, groundwater or land), or (b) the manufacture, generation, refining, processing, distribution, use, sale, treatment, receipt, storage, disposal, transport, arranging for transport, or handling of Hazardous Materials. The provisions of this Section 6.3.1 will survive the expiration or earlier termination of this Lease.

6.4 Refuse and Sewage. Tenant agrees not to keep any trash, garbage, waste or other refuse on the Premises except in sanitary containers and agrees to regularly and frequently remove same from the Premises. Tenant shall keep all containers or other equipment used for storage of such materials in a clean and sanitary condition. Tenant shall, at Tenant's sole cost and expense, properly dispose of all sanitary sewage. Tenant shall contract directly for all trash disposal services at Tenant's sole cost and expense.

6.5 Security within the Premises. Tenant shall maintain the Premises in a safe and secure manner at its sole cost and expense. Tenant shall provide security services only through duly qualified security service providers.

6.6 Neighbors. Tenant shall use best efforts to prevent any unreasonable disruptions or interference to neighboring properties around the Premises (the "**Neighbors**"). Tenant shall follow any reasonable directions of Landlord necessary or desirable to prevent disruptions or interference to Neighbors and to maintain or improve the relationship between the Premises and Neighbors. In the event a dispute or controversy arises between Tenant and any Neighbors, Tenant shall inform Landlord of such dispute or controversy and shall, at its own cost and expense, participate in any informal dispute resolution process reasonably proposed by Landlord.

7. Payments and Notices. All Rent and other sums payable by Tenant to Landlord hereunder shall be paid to Landlord at the address designated in Section 1.1 of the Summary, or to such other persons and/or at such other places as Landlord may hereafter designate in writing. Any notice required or permitted to be given hereunder must be in writing and given by personal delivery (including delivery by nationally recognized overnight courier or express mailing service), email, with a hard copy of such notice delivered no later than one (1) business day after email transmission by another method specified in this Section 7, or by registered or certified mail, postage prepaid, return receipt requested, addressed to Tenant at the address(es) designated in Section 1.2 of the Summary, or to Landlord at the address(es) designated in Section 1.1 of the Summary. Either party may, by written notice to the other, specify a different address for notice purposes. Notice given in the foregoing manner shall be deemed given (i) upon transmission if sent by email, provided such transmission is prior to 5:00 p.m. on a business day of the recipient (if such transmission is after 5:00 p.m. on a business day of the recipient or is on a non-business day of the recipient, such notice will be deemed given on the following business day), (ii) when actually received or refused by the party to whom sent if delivered by a carrier or personally served or (iii) if mailed, on the day of actual delivery or refusal as shown by the certified mail return receipt or the expiration of three (3) business days after the day of mailing, whichever first occurs. For purposes of this Section 7, a "business day" is Monday through Friday, excluding holidays observed by the United States Postal Service.

8. Brokers. Each party represents and warrants to the other, that, to its knowledge, no broker, agent or finder (a) negotiated or was instrumental in negotiating or consummating this Lease on its behalf, or (b) is or might be entitled to a commission or compensation in connection with this Lease. Tenant shall indemnify, protect, defend (by counsel reasonably approved in writing by Landlord) and hold Landlord harmless from and against any and all claims, judgments, suits, causes of action, damages, losses, liabilities and expenses (including attorneys' fees and court costs) resulting from any breach by Tenant of the foregoing representation, including, without limitation, any claims that may be asserted against Landlord by any broker, agent or finder undisclosed by Tenant herein. Landlord shall indemnify, protect, defend (by counsel reasonably approved in writing by Tenant) and hold Tenant harmless from and against any and all claims, judgments, suits, causes of action, damages, losses, liabilities and expenses (including attorneys' fees and court costs) resulting from any breach by Landlord of the foregoing representation, including, without limitation, any claims that may be asserted against Tenant by any broker, agent or finder undisclosed by Landlord herein. The foregoing indemnities shall survive the expiration or earlier termination of this Lease.

9. Surrender; Holding Over.

9.1 Surrender of Premises. Upon the expiration or sooner termination of this Lease, Tenant shall deliver exclusive possession of the Premises to Landlord broom clean and in similar condition that existed on the Commencement Date, reasonable wear and tear excepted (and casualty damage excepted if this

Lease is terminated as a result thereof pursuant to Section 18), with all tents, shelters and any related equipment and items and all of Tenant's personal property (and those items, if any, of Tenant Improvements and Tenant Changes identified by Landlord pursuant to Section 12.2 below) removed therefrom and all damage caused by such removal repaired, as required pursuant to Sections 12.2 and 12.3 below. If, for any reason, Tenant fails to surrender the Premises on the expiration or earlier termination of this Lease, with such removal and repair obligations completed, then, in addition to the provisions of Section 9.3 below and Landlord's rights and remedies under Section 12.4 and the other provisions of this Lease, Tenant shall indemnify, protect, defend (by counsel reasonably approved in writing by Landlord) and hold Landlord harmless from and against any and all claims, judgments, suits, causes of action, damages, losses, liabilities and expenses (including attorneys' fees and court costs) resulting from such failure to surrender, including, without limitation, any claim made by any succeeding tenant based thereon. The foregoing indemnity shall survive the expiration or earlier termination of this Lease.

9.2 Holding Over. If Tenant holds over after the expiration or earlier termination of the Lease Term, then, without waiver of any right on the part of Landlord as a result of Tenant's failure to timely surrender possession of the Premises to Landlord, Tenant shall become a tenant at sufferance only, upon the terms and conditions set forth in this Lease so far as applicable (including Tenant's obligation to pay all costs, expenses and any other additional rent under this Lease), but at a Monthly Rent equal to one hundred fifty percent (150%) of the Monthly Rent applicable to the Premises immediately prior to the date of such expiration or earlier termination. Acceptance by Landlord of rent after such expiration or earlier termination shall not constitute a consent to a hold over hereunder or result in an extension of this Lease. Tenant shall pay an entire month's Monthly Rent calculated in accordance with this Section 9.2 for any portion of a month it holds over and remains in possession of the Premises pursuant to this Section 9.2.

9.3 No Effect on Landlord's Rights. The foregoing provisions of this Section 9 are in addition to, and do not affect, Landlord's right of re-entry or any other rights of Landlord hereunder or otherwise provided at law or in equity.

10. Taxes.

10.1 Real Property Taxes. Tenant agrees to pay all general and special real property taxes, assessments (including, without limitation, change in ownership taxes or assessments), liens, bond obligations, license fees or taxes, commercial rent taxes and any similar impositions in-lieu of other impositions now or previously within the definition of real property taxes or assessments and any and all assessments under any covenants, conditions and restrictions affecting the Premises (collectively "**Real Property Taxes**") which may be now or hereafter levied or assessed against the Premises applicable to the period from the Commencement Date, until the expiration or sooner termination of this Lease. Real Property Taxes shall include, by way of illustration but not limitation, the following: (a) any tax on Landlord's "right" to rent or "right" to other income from the Premises or as against Landlord's business of leasing the Premises; (b) any assessment, tax, fee, levy or charge in substitution, partially or totally, of any assessment, tax, fee, levy or charge previously included within the definition of real property tax; (c) any assessment, tax, fee, levy or charge allocable to or measured by the area of the Premises or the Rent payable by Tenant hereunder, including, without limitation, any gross receipts tax or excise tax levied by state, city or federal government, or any political subdivision thereof, with respect to the receipt of such Rent, or upon or with respect to the possession, leasing, operation, management, maintenance, alteration, repair, use or occupancy by Tenant and of the Premises; (d) any assessment, tax, fee, levy or charge upon this transaction or any document to which Tenant is a party, creating or transferring an interest or an estate in the Premises; and/or (e) any assessment, tax, fee, levy or charge by any governmental agency related to any transportation plan, fund or system (including assessment districts) instituted within the geographic area of which the Premises make a part.

All Real Property Taxes for the tax year in which the Commencement Date occurs and for the tax year in which this Lease terminates shall be apportioned and adjusted so that Tenant shall not be responsible for any Real Property Taxes for a period of time occurring prior to the Commencement Date or subsequent to the expiration of the Term.

Tenant agrees to pay to the taxing authority entitled thereto the total Real Property Taxes due. Any of said payments to be made directly to the taxing authority shall be made at least fifteen (15) days prior to the delinquency date established by the taxing authority, and Tenant shall, concurrently with such payment, deliver evidence of such payment to Landlord. Failure of Tenant to pay said Real Property Taxes as and when herein specified shall, in addition to all other rights and remedies of Landlord hereunder, subject Tenant to any fine, penalty, interest, or cost which Landlord may incur as a result thereof. Tenant shall, within thirty (30) days after demand, reimburse Landlord for any such fine, penalty, interest, or cost, together with interest thereon at the Interest Rate.

Notwithstanding the foregoing provisions, if the Premises are not separately assessed but are included in a larger tax parcel for purposes of the assessment of Real Property Taxes, then Tenant shall pay to Landlord, within thirty (30) days following and invoice therefor, Tenant's pro rata share of all Real Property Taxes that are assessed against such larger tax parcel. Tenant's pro rata share under such circumstances shall be apportioned according to the square footage of the Premises as it relates to the total square footage of all of the buildings (including the Premises) situated in the separate tax parcel.

10.2 Personal Property Taxes. Tenant shall be liable for, and shall pay before delinquency, all taxes and assessments (real and personal) levied against (a) any personal property or trade fixtures placed by Tenant in or about the Premises (including any increase in the assessed value of the Premises based upon the value of any such personal property or trade fixtures); and (b) any Tenant Improvements or alterations in the Premises (whether installed and/or paid for by Landlord or Tenant). If any such taxes or assessments are levied against Landlord or Landlord's property, Landlord may, after written notice to Tenant (and under proper protest if requested by Tenant) pay such taxes and assessments, and Tenant shall reimburse Landlord therefor within thirty (30) days after demand by Landlord; provided, however, Tenant, at its sole cost and expense, shall have the right, with Landlord's cooperation, to bring suit in any court of competent jurisdiction to recover the amount of any such taxes and assessments so paid under protest.

10.3 Tax Exemption. Notwithstanding the foregoing, the provisions of Sections 10.1 and 10.2 above shall not apply to the original Tenant with respect to the Premises, but may apply to an assignee in the event the Tenant assigns this Lease to a non tax exempt entity in accordance with Section 14. In no event will the original Tenant be obligated to pay or reimburse Landlord for the payment of any Real Property Taxes, personal property taxes, or assessments.

11. Repairs.

11.1 Tenant's Repair Obligations. Tenant shall at all times and at Tenant's sole cost and expense, keep, maintain, clean, repair, renovate, retrofit, replace and preserve the Premises and all parts thereof, structural and non-structural, including, without limitation, utility meters, plumbing, pipes and conduits, fences, signs, lawns and landscaping, if any, all Tenant Improvements, Tenant Changes or other alterations, additions and other property and/or fixtures located within the Premises in a decent, safe, healthy, and sanitary condition and repair, reasonable wear and tear excepted. Tenant shall at all times during the Term make all structural and non-structural changes, repairs and improvements to the Premises of every kind and nature, whether ordinary or extraordinary, foreseen or unforeseen, which may be required by any Laws or for the safety of the Premises. Such maintenance and repairs shall be performed with due diligence, lien-free and in a good and workmanlike manner, by licensed contractor(s) which are selected by Tenant and approved by Landlord, which approval Landlord shall not unreasonably withhold or delay.

11.2 Landlord's Repair Rights and Obligations. Landlord has no obligation whatsoever to alter, remodel, improve, repair, renovate, retrofit, replace, redecorate or paint all or any part of the Premises. Tenant waives the provisions of California Civil Code Sections 1932(1) and 1942 and any successive sections or statutes of a similar nature). If Tenant fails to perform Tenant's obligations under Section 11.1 hereof, or under any other provision of this Lease, then Landlord shall have the option (but not the obligation) to enter upon the Premises after ten (10) days' prior written notice to Tenant, or in the case of an emergency immediately without prior notice, to perform such obligations on Tenant's behalf necessary to return the Premises to good order, condition and repair, whereupon the costs incurred by Landlord shall become due and payable to Landlord, upon demand, together with a fee of ten percent (10%) of the costs of such work for Landlord's managing agent.

11.3 Condition of Premises. Tenant acknowledges and agrees that, except to the extent specifically set forth in this Lease, Landlord has not made, does not make and specifically negates and disclaims any representations, warranties, promises, covenants, agreements or guarantees of any kind or character whatsoever concerning or with respect to (a) the value, nature, quality or condition of the Premises; (b) the suitability of the Premises for any and all activities and uses which Tenant may conduct thereon; (c) the compliance of the Premises with any laws, rules, ordinances or regulations of any applicable governmental authority or body, including, without limitation, environmental laws (collectively, "Laws" or "Law"); (d) the habitability, merchantability, marketability, profitability or fitness for a particular purpose of the Premises; (e) the manner or quality of the construction or materials incorporated into the Premises; (f) the manner, quality, state of repair or lack of repair of the Premises; or (g) any other matter with respect to the Premises. Tenant further acknowledges and agrees that, except to the extent specifically set forth in this Lease, the leasing of the Premises as provided for herein is made on an "AS-IS" condition and basis with all faults. Landlord shall have no liability or responsibility for any latent or patent defects in the Premises. Tenant and anyone claiming by, through or under Tenant hereby fully and irrevocably releases Landlord from any and all claims that it may now have or hereafter acquire against Landlord for any cost, loss, liability, damage, expense, demand, action or cause of action arising from or related to any construction defects, errors, omissions or other conditions, including, but not limited to, environmental matters, now or hereafter affecting the Premises. This release includes claims of which Tenant is presently unaware or which Tenant does not presently suspect to exist in its favor which, if known by Tenant, would materially affect Tenant's release of Landlord. Tenant specifically waives the provision of California Civil Code § 1542, which provides as follows: "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."

12. Alterations.

12.1 Tenant Changes; Conditions.

- (a) Tenant shall not make any alterations, additions, improvements or decorations to the Premises (including the Initial Tenant Improvements) (collectively, "Tenant Changes," and individually, a

"Tenant Change") unless Tenant first obtains Landlord's prior written approval thereof, which approval Landlord shall not unreasonably withhold or delay. If Landlord fails to notify Tenant in writing of the disapproval of any Tenant Change(s) within ten (10) days after receiving the plans, specifications, and working drawings for such Tenant Change(s), and such failure continues for an additional five (5) days after Landlord's receipt of a second written notice from Tenant that shall clearly state in all caps that **"Landlord's failure to respond within such five (5) day period will result in the subject Tenant Change being deemed approved by Landlord"**, then Landlord shall be deemed to have approved such tenant Change(s). Notwithstanding the foregoing, Landlord's prior approval shall not be required for any Tenant Change which satisfies all of the following conditions (hereinafter a **"Pre-Approved Change"**): (i) the costs of such Tenant Change does not exceed Ten Thousand Dollars (\$10,000.00) individually; (ii) the costs of such Tenant Change when aggregated with the costs of all other Tenant Changes made by Tenant do not exceed Fifty Thousand Dollars (\$50,000.00) in any three (3) year period; (iii) Tenant delivers to Landlord final plans, specifications and working drawings for such Tenant Change at least ten (10) days prior to commencement of the work thereof; (iv) Tenant and such Tenant Change otherwise satisfy all other conditions set forth in this Section 12.1; and (v) the Tenant Change does not affect the structural, electrical, mechanical, life-safety or exterior elements of the Premises.

- (b) After Landlord has approved the Tenant Changes and the plans, specifications and working drawings therefor (or is deemed to have approved the Pre-Approved Changes as set forth in Section 12.1(a) above), Tenant shall: (i) enter into an agreement for the performance of such Tenant Changes with licensed and bondable contractors and subcontractors selected by Tenant and approved by Landlord, which approval shall not be unreasonably withheld; and (ii) before proceeding with any Tenant Change, provide Landlord with at least ten (10) days' prior written notice thereof. In addition, before proceeding with any Tenant Change, Tenant's contractors shall obtain, on behalf of Tenant and at Tenant's sole cost and expense: (A) all necessary governmental permits and approvals for the commencement and completion of such Tenant Change; and (B) at Landlord's request, a completion and lien indemnity bond, or other surety, satisfactory to Landlord for such Tenant Change. Tenant shall provide written notice to Landlord regarding the identification of contractor(s) and subcontractor(s) selected by Tenant to perform Tenant Change(s). If Landlord fails to notify Tenant in writing of the disapproval of any contractor(s) and subcontractor(s) within five (5) days after receiving the written notice of selected contractor(s) and subcontractor(s), and such failure continues for an additional five (5) days after Landlord's receipt of a second written notice from Tenant that shall clearly state in all caps that **"Landlord's failure to respond within such five (5) day period will result in the subject requested contractor(s) and subcontractor(s) being deemed approved by Landlord"**, then Landlord shall be deemed to have approved such contractor(s) and subcontractor(s). Landlord's approval of any contractor(s) and subcontractor(s) of Tenant shall not release Tenant or any such contractor(s) and/or subcontractor(s) from any liability for any conduct or acts of such contractor(s) and/or subcontractor(s). Further, Landlord's approval of Tenant Changes and the plans therefor will create no liability or responsibility on Landlord's part concerning the completeness of same or their design sufficiency or compliance with Laws.
- (c) All Tenant Changes shall be performed: (i) in accordance with the approved plans, specifications and working drawings; (ii) lien-free and in a good and workmanlike manner; (iii) in compliance with all Laws including, without limitation, applicable building permit requirements and the provisions of Title III of the ADA; (iv) by licensed and/or bondable contractors and subcontractors approved by Landlord and (v) at such times, in such manner and subject to such rules and regulations as Landlord may from time to time reasonably designate.
- (d) Throughout the performance of the Tenant Changes, Tenant shall obtain, or cause its contractors to obtain, workers compensation insurance and commercial general liability insurance in compliance with the provisions of Section 20 of this Lease.

12.2 Removal of Tenant Changes and Tenant Improvements. All Tenant Changes including the Initial Tenant Improvements in the Premises (whether installed or paid for by Landlord or Tenant) (the **"Tenant Improvements"**), shall become the property of Landlord and shall remain upon and be surrendered with the Premises at the end of the Term of this Lease; provided, however, Landlord may, by written notice delivered to Tenant on or before the expiration of the Lease Term (or upon any sooner termination of this Lease) identify those items of the Initial Tenant Improvements and Tenant Changes which Landlord shall require Tenant to remove at the end of the Term of this Lease. If Landlord requires Tenant to remove any such items as described above, Tenant shall, at its sole cost, remove the identified items on or before the expiration or sooner termination of this Lease and repair any damage to the Premises caused by such removal (or, at Landlord's option, shall pay to Landlord all of Landlord's costs of such removal and repair). Notwithstanding anything to the contrary contained herein, Tenant shall not be required to remove paving or asphalt.

12.3 Removal of Personal Property. All articles of personal property owned by Tenant or installed by Tenant at its expense in the Premises (including business and trade fixtures, signage, furniture and movable partitions) shall be, and remain, the property of Tenant, and shall be removed by Tenant from the Premises, at Tenant's sole cost and expense, on or before the expiration or sooner termination of this Lease. Tenant shall repair any damage caused by such removal.

12.4 Tenant's Failure to Remove. If Tenant fails to remove by the expiration or sooner termination of this Lease all of its personal property, or any items of Tenant Improvements or Tenant Changes identified by Landlord for removal pursuant to Section 12.2 above, then such failure shall constitute a holding over of the Premises pursuant to Section 9.2 and Landlord may, (without liability to Tenant for loss thereof), at Tenant's sole cost and in addition to Landlord's other rights and remedies under this Lease, at law or in equity: (a) remove and store such items in accordance with applicable Law; and/or (b) upon ten (10) days' prior notice to Tenant sell all or any such items at private or public sale for such price as Landlord may obtain as permitted under applicable Law. Landlord shall apply the proceeds of any such sale to any amounts due to Landlord under this Lease from Tenant (including Landlord's attorneys' fees and other costs incurred in the removal, storage and/or sale of such items), with any remainder to be paid to Tenant.

13. Liens. Tenant shall not permit any mechanic's, materialmen's or other liens to be filed against all or any part of the Premises, nor against Tenant's leasehold interest in the Premises, by reason of or in connection with any repairs, alterations, improvements or other work contracted for or undertaken by Tenant or any other act or omission of Tenant or Tenant's agents, employees, contractors, licensees or invitees. Tenant shall, at Landlord's request, provide Landlord with enforceable, conditional and final lien releases (and other reasonable evidence reasonably requested by Landlord to demonstrate protection from liens) from all persons furnishing labor and/or materials with respect to the Premises. Landlord shall have the right at all reasonable times to post on the Premises and record any notices of non-responsibility which it deems necessary for protection from such liens. If any such liens are filed, Tenant shall, at its sole cost, immediately cause such lien to be released of record or bonded so that it no longer affects title to the Premises. If Tenant fails to cause such lien to be so released or bonded within twenty (20) days after filing thereof, Landlord may, without waiving its rights and remedies based on such breach, and without releasing Tenant from any of its obligations, cause such lien to be released by any means it shall deem proper, including payment in satisfaction of the claim giving rise to such lien. Tenant shall pay to Landlord within five (5) days after receipt of invoice from Landlord, any sum paid by Landlord to remove such liens, together with interest at the Interest Rate from the date of such payment by Landlord. Notice is hereby given that Landlord shall not be liable for any labor, services or materials furnished or to be furnished to Tenant, or to anyone holding the Premises through or under Tenant, and that no mechanics' or other liens for any such labor, services or materials shall attach to or affect the interest of Landlord in the Premises.

14. Assignment and Subletting.

14.1 Restriction on Transfer. Tenant will not assign this Lease in whole or in part, nor sublet all or any part of the Premises (collectively and individually, a "**Transfer**"), without the prior written consent of Landlord, which consent Landlord will not unreasonably withhold, except as provided in this Section 14. In no event may Tenant encumber or hypothecate this Lease. The consent by Landlord to any assignment, encumbrance or subletting shall not constitute a waiver of the necessity for such consent to any subsequent assignment or subletting. This prohibition against assigning or subletting shall be construed to include a prohibition against any assignment or subletting by operation of Law. Irrespective of any assignment or sublease, Tenant shall remain fully liable under this Lease and shall not be released from performing any of the terms, covenants and conditions of this Lease. Without limiting in any way Landlord's right to withhold its consent on any reasonable grounds, it is agreed that Landlord will not be acting unreasonably in refusing to consent to an assignment or sublease if, in Landlord's opinion, (i) the net worth or financial capabilities of such assignee is less than that of Tenant at the date hereof, (ii) the proposed assignee or subtenant does not have the financial capability to fulfill the obligations imposed by the assignment or sublease, (iii) the proposed assignment or sublease involves a change of use of the Premises from that specified herein or (iv) the proposed assignee or subtenant is not, in Landlord's reasonable opinion, of reputable or good character. If Tenant is a corporation, limited liability company, or an unincorporated association or partnership, the transfer, assignment or hypothecation of any stock or interest in such entity in the aggregate in excess of forty-nine percent (49%) shall be deemed an assignment within the meaning and provisions of this Section 14.1.

14.2 Transfer Notice. If Tenant desires to effect Transfer, then at least thirty (30) days prior to the date when Tenant desires the Transfer to be effective (the "**Transfer Date**"), Tenant agrees to give Landlord a notice (the "**Transfer Notice**"), stating the name, address and business of the proposed assignee, sublessee or other transferee (sometimes referred to hereinafter as "**Transferee**"), reasonable information (including references) concerning the character, ownership, and financial condition of the proposed Transferee, the Transfer Date, any ownership or commercial relationship between Tenant and the proposed Transferee, and the consideration and all other material terms and conditions of the proposed Transfer, all in such detail as Landlord may reasonably require.

14.3 Landlord's Options. Within fifteen (15) days of Landlord's receipt of any Transfer Notice, and any additional information requested by Landlord concerning the proposed Transferee's financial responsibility, Landlord will notify Tenant of its election to do one of the following: (i) consent to the proposed Transfer subject to such reasonable conditions as Landlord may impose in providing such consent; (ii) refuse such consent, which refusal shall be on reasonable grounds; or (iii) terminate this Lease as to all or such portion of the Premises which is proposed to be sublet or assigned and recapture all or such portion of the Premises for reletting by Landlord.

14.4 Additional Conditions. A condition to Landlord's consent to any Transfer of this Lease will be the delivery to Landlord of a true copy of the fully executed instrument of assignment, sublease, transfer

or hypothecation, in form and substance reasonably satisfactory to Landlord. Tenant agrees to pay to Landlord, as additional rent, one hundred percent (100%) of all sums and other consideration payable to and for the benefit of Tenant by the assignee or sublessee in excess of the Rent payable under this Lease for the same period and portion of the Premises. In calculating excess Rent or other consideration which may be payable to Landlord under this Section, Tenant will be entitled to deduct commercially reasonable third party brokerage commissions and attorneys' fees and other amounts reasonably and actually expended by Tenant in connection with such assignment or subletting if acceptable written evidence of such expenditures is provided to Landlord. No Transfer will release Tenant of Tenant's obligations under this Lease or alter the primary liability of Tenant to pay the Rent and to perform all other obligations to be performed by Tenant hereunder. Landlord may require that any Transferee remit directly to Landlord on a monthly basis, all monies due Tenant by said Transferee, and each sublease shall provide that if Landlord gives said sublessee written notice that Tenant is in default under this Lease, said sublessee will thereafter make all payments due under the sublease directly to or as directed by Landlord, which payments will be credited against any payments due under this Lease. Tenant hereby irrevocably and unconditionally assigns to Landlord all rents and other sums payable under any sublease of the Premises; provided, however, that Landlord hereby grants Tenant a license to collect all such rents and other sums so long as Tenant is not in default under this Lease. Tenant shall, within ten (10) days after the execution and delivery of any assignment or sublease, deliver a duplicate original copy thereof to Landlord. Consent by Landlord to one Transfer will not be deemed consent to any subsequent Transfer. In the event of default by any Transferee of Tenant or any successor of Tenant in the performance of any of the terms hereof, Landlord may proceed directly against Tenant without the necessity of exhausting remedies against such Transferee or successor. If Tenant effects a Transfer or requests the consent of Landlord to any Transfer (whether or not such Transfer is consummated), then, upon demand, and as a condition precedent to Landlord's consideration of the proposed assignment or sublease, Tenant agrees to pay Landlord a non-refundable administrative fee of One Thousand Dollars (\$1,000.00), plus Landlord's reasonable attorneys' fees and costs (whether attributable to Landlord's in-house attorneys or paralegals or otherwise) and other costs incurred by Landlord in reviewing such proposed assignment or sublease. Acceptance of the administrative fee and/or reimbursement of Landlord's attorneys' fees and costs shall in no event obligate Landlord to consent to any proposed Transfer. Notwithstanding any contrary provision of this Lease, if Tenant or any proposed Transferee claims that Landlord has unreasonably withheld or delayed its consent to a proposed Transfer or otherwise has breached its obligations under this Section 14, Tenant's and such Transferee's only remedy shall be to seek a declaratory judgment and/or injunctive relief, and Tenant, on behalf of itself and, to the extent permitted by Law, such proposed Transferee waives all other remedies against Landlord, including without limitation, the right to seek monetary damages or to terminate this Lease.

14.5 Permitted Transfers. Notwithstanding the provisions of this Section 14 to the contrary, Tenant may assign this Lease or sublet the Premises or any portion thereof (herein, a "**Permitted Transfer**"), without Landlord's consent and without any administrative fee, to any entity that controls, is controlled by or is under common control with Tenant, or to any entity resulting from a merger or consolidation with Tenant, or to any person or entity that acquires all of the assets of Tenant's business as a going concern, or to a duly qualified third party service provider selected by Tenant to operate the Premises for the Permitted Use (a "**Permitted Transferee**"), provided that: (a) at least twenty (20) days prior to such assignment or sublease, Tenant delivers to Landlord the financial statements and other financial and background information of the assignee or sublessee as described in Section 14.2 above; (b) in the case of an assignment, the assignee assumes, in full, the obligations of Tenant under this Lease pursuant to a commercially reasonable assumption agreement, a fully executed copy of which is delivered to Landlord within twenty (20) days following the effective date of such assignment or subletting; (c) Tenant remains fully liable under this Lease; (d) the use of the Premises remains unchanged; (e) such transaction is not entered into as a subterfuge to avoid the restrictions and provisions of this Section 14; and (f) with respect to a subletting only, Tenant and such Permitted Transferee execute Landlord's standard consent to sublease form. For the purpose of this Section 14.5, the term "control" and its derivatives means the direct or indirect power and authority to direct the major decisions and policies of another entity and the direct or indirect ownership of more than fifty percent (50%) of the beneficial ownership interest in such entity.

15. Entry by Landlord. Landlord and its employees and agents shall at all reasonable times have the right to enter the Premises to inspect the same, to exhibit the Premises to prospective lenders or purchasers (or during the last twelve (12) months of the Term, to prospective tenants), to post notices of non-responsibility, to alter, improve or repair the Premises as contemplated by this Lease and/or to otherwise exercise its rights and remedies under this Lease, all without being deemed guilty of or liable for any breach of Landlord's covenant of quiet enjoyment or any eviction of Tenant, and without abatement of rent. In exercising such entry rights, Landlord shall endeavor to minimize, as reasonably practicable, the interference with Tenant's business, and shall provide Tenant with reasonable advance written notice of such entry (except in emergency situations and for providing regularly scheduled services, if any). Landlord shall have the means which Landlord may deem proper to open Tenant's doors in an emergency in order to obtain entry to the Premises. Notwithstanding the foregoing, personal property of the individuals using the Premises for temporary housing are not subject to inspection by Landlord or any third party except as may be warranted for reasons of health and safety, emergency, or compliance with applicable Laws.

16. Utilities and Services. Tenant shall be solely responsible for obtaining and shall promptly pay all charges for heat, air conditioning, water, gas, electricity or any other utility used, consumed or provided in, furnished to or attributable to the Premises directly to the supplying utility companies following the Commencement Date, together with all deposits and hook-up and connection charges for such utilities.

Tenant shall reimburse Landlord within thirty (30) days of billing for any hook-up, connection, fixture or other charges and/or tariffs that are charged to Landlord by utility companies. Landlord will notify Tenant of this charge as soon as it becomes known and such charge will be due as additional rent. In no event shall Rent abate or shall Landlord be liable for any interruption or failure in the supply of any such utility services to Tenant. Tenant hereby authorizes each utility company providing utility service to the Premises to provide/release utility consumption or similar data to Landlord for the purpose of assisting Landlord in Landlord's compliance obligations with legal disclosure requirements concerning utility consumption, including, without limitation, Section 25402.10 of the Public Resources Code of California.

17. Indemnification and Exculpation.

17.1 Tenant's Assumption of Risk and Waiver. Except to the extent such matter is attributable to the negligence or willful misconduct of Landlord or Landlord's agent(s) (but subject to the waivers set forth in Section 21 below), Landlord shall not be liable to Tenant, Tenant's employees, agents or invitees for: (i) any damage to property of Tenant, or of others, located in, on or about the Premises, (ii) the loss of or damage to any property of Tenant or of others by theft or otherwise, (iii) any injury or damage to persons or property resulting from fire, explosion, falling plaster, steam, gas, electricity, water, rain or leaks from any part of the Premises or from the pipes, appliance of plumbing works or from the roof, street or subsurface or from any other places or by dampness or by any other cause of whatsoever nature, or (iv) any such damage caused by other persons in the Premises, occupants of adjacent property, or the public, or caused by operations in construction of any private, public or quasi-public work. Landlord shall in no event be liable for any consequential damages or loss of business or profits and Tenant hereby waives any and all claims for any such damages. All property of Tenant kept or stored on the Premises shall be so kept or stored at the sole risk of Tenant and Tenant shall hold Landlord harmless from any claims arising out of damage to the same, including subrogation claims by Tenant's insurance carriers, unless such damage shall be caused by the negligence or willful misconduct of Landlord or Landlord's agent(s). Landlord or its agents shall not be liable for interference with the light or other intangible rights.

17.2 Indemnification. Tenant shall be liable for, and shall indemnify, defend, protect and hold Landlord and Landlord's parent, partners, officers, directors, employees, agents, successors and assigns (collectively, "**Landlord Indemnified Parties**") harmless from and against, any and all claims, damages, judgments, suits, causes of action, losses, liabilities and expenses, including attorneys' fees and court costs (collectively, "**Indemnified Claims**"), arising or resulting from (a) any occurrence at the Premises following the Commencement Date, (b) any act or omission of Tenant or any of Tenant's Parties; (c) the use of the Premises and conduct of Tenant's business by Tenant or any of Tenant's Parties, or any other activity, work or thing done, permitted or suffered by Tenant or any of Tenant's Parties, in or about the Premises; and/or (d) any default by Tenant of any obligations on Tenant's part to be performed under the terms of this Lease; provided, however, that Tenant's duty to indemnify and hold Landlord Indemnified parties harmless as set forth in this Section 17.2 shall not include any Indemnified Claims to the extent arising from the negligence or willful misconduct of Landlord. In case any action or proceeding is brought against Landlord or any Landlord Indemnified Parties by reason of any such Indemnified Claims, Tenant, upon notice from Landlord, shall defend the same at Tenant's expense by counsel approved in writing by Landlord, which approval shall not be unreasonably withheld.

17.3 Survival; No Release of Insurers. The indemnification obligations under Section 17.2, shall survive the expiration or earlier termination of this Lease. The covenants, agreements and indemnification in Sections 17.1 and 17.2 above, are not intended to and shall not relieve any insurance carrier of its obligations under policies required to be carried pursuant to the provisions of this Lease.

18. Damage or Destruction.

18.1 Obligation to Restore. In case of damage to or destruction of the Premises, this Lease shall not terminate and Tenant shall promptly restore, rebuild, replace or repair (hereinafter referred to as "**Restore**" or "**Restoration**") the Premises to substantially the same condition as existed on the Commencement Date as subsequently improved with the Initial Tenant Improvements, with the exception of normal wear and tear. Such Restoration shall be commenced promptly but in no event later than ninety (90) days after the casualty and shall thereafter be prosecuted with due diligence.

Notwithstanding the foregoing, however, in the case of damage to or destruction of the Premises (i) during the last twelve (12) months of the Term that will render the Premises inaccessible or unusable for purposes of conducting Tenant's business for a period of ninety (90) days or more or (ii) that is caused by an occurrence that is not covered by the insurance maintained, or required to be maintained hereunder, by Tenant, then Tenant may elect to terminate this Lease by giving Landlord written notice of such election within thirty (30) days following the casualty, in which event Tenant shall have no obligation to Restore the Premises; provided, however, Tenant shall, at its cost, clear the Premises of debris and return the same to a safe and clean condition, and deliver any insurance proceeds to Landlord in accordance with Section 18.5 below. If Tenant elects to terminate this Lease in accordance with this paragraph, this Lease shall terminate thirty (30) days following the later to occur of the date Landlord receives Tenant's written notice of such election or the date Tenant completes its obligations required by the preceding sentence (the "**Termination Date**") upon the payment by Tenant of all Rent and all other sums then due and payable under this Lease to and including the Termination Date. Said termination shall not release Tenant from the obligations and liabilities of Tenant under this Lease, actual or contingent, which have accrued on or prior to the Termination Date.

18.2 Reconstruction and Repair Requirements. Tenant shall obtain Landlord's prior approval of all plans for Restoration work performed by Tenant, which approval shall not be unreasonably withheld or delayed.

18.3 No Rent Abatement During Reconstruction. There shall be no Rent abatement during Restoration of the Premises or during that period after any casualty and prior to commencement of Restoration.

18.4 Waiver of Termination. The agreements contained in this Article 18 provide a material part of the consideration for this Lease and in bargaining for and obtaining its rights under this Article 18, Tenant waives any right to terminate this Lease under Section 1932 and/or 1933 of the Civil Code of California, or any similar Law now or hereafter in force.

19. Eminent Domain.

19.1 Total or Partial Taking. In case all of the Premises, or such part thereof as shall materially and substantially interfere with Tenant's ability to conduct its business upon the Premises, shall be taken for any public or quasi-public purpose by any lawful power or authority by exercise of the right of appropriation, condemnation or eminent domain, or sold to prevent such taking, Tenant shall have the right to terminate this Lease effective as of the date possession is required to be surrendered to said authority. Tenant shall not assert any claim against Landlord or the taking authority for any compensation because of such taking, and Landlord shall be entitled to receive the entire amount of any award without deduction for any estate or interest of Tenant; provided, however, in the event of such a taking, Tenant shall be entitled to such portion of the award as shall be attributable to goodwill and for damage to, or the cost of removal of, Tenant's personal property. In the event this Lease is not terminated following a taking, Landlord shall be entitled to the entire amount of the award without deduction for any estate or interest of Tenant, Landlord shall restore the Premises to substantially their same condition prior to such partial taking to the extent of any award proceeds received by Landlord, and a fair and equitable abatement shall be made to Tenant for the Monthly Rent corresponding to the time during which, and to the part of the Premises of which, Tenant shall be so deprived on account of such taking and restoration. If the award proceeds from the taking are insufficient to restore the Premises as required by the preceding sentence and Landlord does not provide its own funds to so restore the Premises, and if as a result thereof Tenant's ability to use the Premises as contemplated by this Lease is materially and substantially impaired, then Tenant may elect to terminate this Lease by giving Landlord written notice thereof; provided, however, Landlord may rescind such termination by giving Tenant written notice within ten (10) business days following Landlord's receipt of such termination notice from Tenant that Landlord will provide the necessary funds to so restore the Premises.

19.2 Temporary Taking. In the event of taking of the Premises or any part thereof for temporary use, (i) this Lease shall be and remain unaffected thereby and Rent shall not abate, and (ii) Tenant shall be entitled to receive for itself such portion or portions of any award made for such use with respect to the period of the taking which is within the Lease Term. For purposes of this Section 19.2, a temporary taking shall be defined as a taking for a period of one (1) year or less.

19.3 Waiver of Termination. Tenant and Landlord waive any right to terminate this Lease under Section 1265.130 of the California Code of Civil Procedure, or any similar Law now or hereafter in force.

20. Tenant's Insurance.

20.1 Types of Insurance. On or before the earlier of the Commencement Date or the date Tenant commences or causes to be commenced any work of any type in or on the Premises pursuant to this Lease, and continuing during the entire Term, Tenant shall obtain and keep in full force and effect, the following insurance:

- (a) Commercial general liability insurance coverage, on an occurrence basis, with a general aggregate liability of not less than Two Million Dollars (\$2,000,000).
- (b) Worker's compensation, in statutory amounts and employers liability with limits of One Million Dollars (\$1,000,000).

20.2 Self-Insurance. The original Tenant shall have the right to self-insure with respect to any of the insurance required to be carried by Tenant under section 20.1. The original Tenant shall supply to Landlord a letter of self-insurance indicating the original Tenant's self-insured status. This Section 20.2 shall only apply to the original Tenant.

20.3 Requirements. Each policy required to be obtained by Tenant hereunder shall: (a) be issued by insurers which are approved by Landlord and/or Landlord's mortgagees and are authorized to do business in the state in which the Land is located and rated not less than Financial Size X, and with a Financial Strength rating of A in the most recent version of Best's Key Rating Guide; (b) be in form reasonably satisfactory from time to time to Landlord; (c) name Tenant as named insured thereunder and shall name Landlord and, at Landlord's request, such other persons or entities of which Tenant has been informed in writing, as additional insureds thereunder, all as their respective interests may appear; (d) not have a deductible amount exceeding Five Thousand Dollars (\$5,000.00), which deductible amount shall be deemed self-insured with full waiver of subrogation; (e) specifically provide that the insurance afforded

by such policy for the benefit of Landlord and any other additional insureds shall be primary, and any insurance carried by Landlord or any other additional insureds shall be excess and non-contributing; (f) contain an endorsement that the insurer waives its right to subrogation as described in Section 21 below; (g) require the insurer to notify Landlord and any other additional insureds in writing not less than thirty (30) days prior to any material change, reduction in coverage, cancellation or other termination thereof; (h) contain a cross liability or severability of interest endorsement; and (i) be in amounts sufficient at all times to satisfy any coinsurance requirements thereof. Each such policy shall also provide that any loss otherwise payable thereunder shall be payable notwithstanding any act or omission of Landlord or Tenant which might, absent such provision, result in a forfeiture of all or a part of such insurance payment. Tenant agrees to deliver to Landlord, as soon as practicable after the placing of the required insurance, but in no event later than the date Tenant is required to obtain such insurance as set forth in Section 20.1 above, certificates from the insurance company evidencing the existence of such insurance and Tenant's compliance with the foregoing provisions of this Section 20. Tenant shall cause replacement certificates to be delivered to Landlord not less than ten (10) days prior to the expiration of any such policy or policies. If any such initial or replacement certificates are not furnished within the time(s) specified herein, Tenant shall be deemed to be in material default under this Lease without the benefit of any additional notice or cure period provided in Section 22.1 below, and Landlord shall have the right, but not the obligation, to procure such policies and certificates at Tenant's expense. Notwithstanding any contrary provision of this Lease, this Section 20.3 shall not apply with respect to the original Tenant (i.e., the City of San Diego).

21. Waiver of Subrogation. Tenant hereby waives its rights against Landlord for any claims or damages or losses, including any deductibles and self-insured amounts, which are caused by or result from any occurrence covered by the insurance described in Section 20.1 above (regardless of whether the original Tenant self-insures with respect to any such insurance pursuant to Section 20.2 above). The foregoing waiver shall be in addition to, and not a limitation of, any other waivers or releases contained in this Lease. If Tenant does not elect to self-insure as set forth and in accordance with Section 20.2 above, then Tenant shall cause insurance policy required pursuant to Section 20.1(a) and the worker's compensation coverage required pursuant to Section 20.1(b), and any other property insurance obtained by Tenant, to provide that the insurer waives all rights of recovery by way of subrogation against Landlord, in connection with any claims, losses and damages covered by such policy. If Tenant fails to maintain insurance for an insurable loss, such loss shall be deemed to be self-insured with a deemed full waiver of subrogation as set forth in the immediately preceding sentence.

22. Tenant's Default and Landlord's Remedies.

22.1 Tenant's Default. The occurrence of any one or more of the following events shall constitute a default under this Lease by Tenant:

- (a) the vacation or abandonment of the Premises by Tenant. "**Abandonment**" is herein defined to include, but is not limited to, any absence by Tenant from the Premises for five (5) business days or longer while in material default of any other provision of this Lease. "**Vacation**" shall mean vacating the Premises without providing a reasonable level of security to minimize the potential for vandalism, or where the coverage of the property insurance under Section 20.1(a) is jeopardized as a result thereof;
- (b) the failure by Tenant to make any payment of Rent or any other payment required to be made by Tenant hereunder, within ten (10) days of written notice from Landlord that such payment was not received;
- (c) the failure by Tenant to observe or perform any of the express or implied covenants or provisions of this Lease to be observed or performed by Tenant, other than as specified in Sections 22.1(a) or (b) above, where such failure shall continue for a period of thirty (30) days after written notice thereof from Landlord to Tenant; provided, however, that if the nature of Tenant's default is such that it may be cured but more than thirty (30) days are reasonably required for its cure, then Tenant shall not be deemed to be in default if Tenant shall commence such cure within said thirty (30) day period and thereafter diligently prosecute such cure to completion;
- (d) (i) the making by Tenant or any guarantor hereof of any general assignment for the benefit of creditors, (ii) the filing by or against Tenant or any guarantor hereof of a petition to have Tenant adjudged a bankrupt or a petition for reorganization or arrangement under any Law relating to bankruptcy (unless, in the case of a petition filed against Tenant or any guarantor hereof, the same is dismissed within sixty (60) days), (iii) the appointment of a trustee or receiver to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease or of substantially all of any guarantor's assets, where possession is not restored to Tenant within sixty (60) days, or (iv) the attachment, execution or other judicial seizure of substantially all of Tenant's assets located at the Premises or of substantially all of any guarantor's assets or of Tenant's interest in this Lease where such seizure is not discharged within sixty (60) days;
- (e) any material representation or warranty made by Tenant in this Lease or any other document delivered in connection with the execution and delivery of this Lease or pursuant to this Lease proves to be incorrect in any material respect; or

- (f) Tenant or any guarantor hereof shall be liquidated or dissolved or shall begin proceedings towards its liquidation or dissolution.

Any notice given under this Section 22.1 shall be in lieu of, and not in addition to, any notice required under California Code of Civil Procedure, Section 1161.

22.2 Landlord's Remedies; Termination. In the event of any such default by Tenant, in addition to any other remedies available to Landlord under this Lease, at Law or in equity, Landlord shall have the immediate option to terminate this Lease and all rights of Tenant hereunder. In the event that Landlord shall elect to so terminate this Lease, then Landlord may recover from Tenant:

- (a) the worth at the time of award of any unpaid Rent which had been earned at the time of such termination; plus
- (b) 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 award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; plus
- (c) the worth at the time of award of the amount by which the unpaid Rent for the balance of the term after the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided; plus
- (d) 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: unamortized Tenant Improvement costs; attorneys' fees; unamortized brokers' commissions; the costs of refurbishment, alterations, renovation and repair of the Premises; and removal (including the repair of any damage caused by such removal) and storage (or disposal) of Tenant's personal property, equipment, fixtures, Tenant Changes, Tenant Improvements and any other items which Tenant is required under this Lease to remove but does not remove.

As used in Sections 22.2(a) and 22.2(b) above, the "worth at the time of award" is computed by allowing interest at the Interest Rate set forth in Section 1.10 of the Summary. As used in Section 22.2(c) above, the "worth at the time of award" is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%).

22.3 Landlord's Remedies; Re-Entry Rights. In the event of any such default by Tenant, in addition to any other remedies available to Landlord under this Lease, at Law or in equity, Landlord shall also have the right as permitted by applicable Law, with or without terminating this Lease, to re-enter the Premises and remove all persons and property from the Premises; such property may be removed, stored and/or disposed of pursuant to Section 12.4 of this Lease or any other procedures permitted by applicable Law. No re-entry or taking possession of the Premises by Landlord pursuant to this Section 22.3, and no acceptance of surrender of the Premises or other action on Landlord's part, shall be construed as an election to terminate this Lease unless a written notice of such intention be given to Tenant or unless the termination thereof be decreed by a court of competent jurisdiction.

22.4 Landlord's Remedies; Continuation of Lease. In the event of any such default by Tenant, in addition to any other remedies available to Landlord under this Lease, at Law or in equity, Landlord shall have the right to continue this Lease in full force and effect, whether or not Tenant shall have abandoned the Premises. The foregoing remedy shall also be available to Landlord pursuant to California Civil Code Section 1951.4 and any successor statute thereof in the event Tenant has abandoned the Premises. In the event Landlord elects to continue this Lease in full force and effect pursuant to this Section 22.4, then Landlord shall be entitled to enforce all of its rights and remedies under this Lease, including the right to recover rent as it becomes due. Landlord's election not to terminate this Lease pursuant to this Section 22.4 or pursuant to any other provision of this Lease, at Law or in equity, shall not preclude Landlord from subsequently electing to terminate this Lease or pursuing any of its other remedies.

22.5 Landlord's Right to Perform. Except as specifically provided otherwise in this Lease, all covenants and agreements by Tenant under this Lease shall be performed by Tenant at Tenant's sole cost and expense and without any abatement or offset of rent. If Tenant shall fail to pay any sum of money (other than Rent) or perform any other act on its part to be paid or performed hereunder and such failure shall continue for ten (10) days with respect to monetary obligations (or fifteen (15) days with respect to non-monetary obligations) after Tenant's receipt of written notice thereof from Landlord (except that no notice will be required in the event of an emergency), Landlord may, without waiving or releasing Tenant from any of Tenant's obligations, make such payment or perform such other act on behalf of Tenant. All sums so paid by Landlord and all necessary incidental costs incurred by Landlord in performing such other acts shall be payable by Tenant to Landlord within ten (10) days after demand therefor as additional rent.

22.6 Interest. If any monthly installment of Rent, or any other amount payable by Tenant hereunder is not received by Landlord by the date when due, it shall bear interest at the Interest Rate set forth in Section 1.10 of the Summary from the date due until paid. All interest, and any late charges imposed pursuant to Section 22.7 below, shall be considered additional rent due from Tenant to Landlord under the terms of this Lease.

22.7 Late Charges. Tenant acknowledges that, in addition to interest costs, the late payments by Tenant to Landlord of any Rent or other sums due under this Lease will cause Landlord to incur costs not contemplated by this Lease, the exact amount of such costs being extremely difficult and impractical to fix. Such other costs include, without limitation, processing, administrative and accounting charges and late charges that may be imposed on Landlord by the terms of any mortgage, deed of trust or related loan documents encumbering the Premises. Accordingly, if any installment of Rent or any other amount payable by Tenant hereunder is not received by Landlord by the due date thereof, Tenant shall pay to Landlord an additional sum of ten percent (10%) of the overdue amount as a late charge, but in no event more than the maximum late charge allowed by Law. The parties agree that such late charge represents a fair and reasonable estimate of the costs that Landlord will incur by reason of any late payment as hereinabove referred to by Tenant, and the payment of late charges and interest are distinct and separate 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 Landlord's processing, administrative and other costs incurred by Landlord as a result of Tenant's delinquent payments. Acceptance of a late charge or interest shall not constitute a waiver of Tenant's default with respect to the overdue amount or prevent Landlord from exercising any of the other rights and remedies available to Landlord under this Lease or at Law or in equity now or hereafter in effect.

22.8 Security Interest. Tenant hereby grants to Landlord a lien and security interest on all property of Tenant now or hereafter placed in or upon the Premises including, but not limited to, all fixtures, machinery, equipment, furnishings and other articles of personal property, and all proceeds of the sale or other disposition of such property (collectively, the "**Collateral**") to secure the payment of all Rent to be paid by Tenant pursuant to this Lease. Such lien and security interest shall be in addition to any landlord's lien provided by Law. This Lease shall constitute a security agreement under the Commercial Code of the state in which the Premises are located so that Landlord shall have and may enforce a security interest in the Collateral. Tenant agrees to execute as debtor and deliver such financing statement or statements and any further documents as Landlord may now or hereafter reasonably request to perfect or otherwise protect such security interest pursuant to such code. Landlord may also at any time file a copy of this Lease as a financing statement. Landlord, as secured party, shall be entitled to all rights and remedies afforded as secured party under such code, which rights and remedies shall be in addition to Landlord's liens and rights provided by Law or by the other terms and provisions of this Lease.

22.9 Rights and Remedies Cumulative. All rights, options and remedies of Landlord contained in this Section 22 and elsewhere in this Lease shall be construed and held to be cumulative, and no one of them shall be exclusive of the other, and Landlord shall have the right to pursue any one or all of such remedies or any other remedy or relief which may be provided by Law or in equity, whether or not stated in this Lease. Nothing in this Section 22 shall be deemed to limit or otherwise affect Tenant's indemnification of Landlord pursuant to any provision of this Lease.

22.10 Waiver of Redemption. Tenant hereby waives and surrenders for itself and all those claiming under it, including creditors of all kinds, (i) any right and privilege which it or any of them may have under any present or future Law to redeem any of the Premises or to have a continuance of this Lease after termination of this Lease or of Tenant's right of occupancy or possession pursuant to any court order or any provision hereof, and (ii) the benefits of any present or future Law which exempts property from liability for debt or for distress for rent.

22.11 Costs Upon Default. Tenant shall pay to Landlord and its mortgagees as additional rent all the expenses incurred by Landlord in connection with any default by Tenant hereunder or the exercise of any remedy by reason of any default by Tenant hereunder, including reasonable attorneys' fees and expenses.

23. Landlord's Default. Landlord shall not be in default in the performance of any obligation required to be performed by Landlord under this Lease unless Landlord has failed to perform such obligation within thirty (30) days after the receipt of written notice from Tenant specifying in detail Landlord's failure to perform; provided however, that if the nature of Landlord's obligation is such that more than thirty (30) days are required for its performance, then Landlord shall not be deemed in default if it commences such performance within such thirty (30) day period and thereafter diligently pursues the same to completion. Upon any such uncured default by Landlord, Tenant may exercise any of its rights provided in Law or at equity; provided, however: (a) Tenant shall have no right to offset or abate Rent in the event of any default by Landlord under this Lease; (b) Tenant's rights and remedies hereunder shall be limited to the extent (i) Tenant has expressly waived in this Lease any of such rights or remedies, and/or (ii) this Lease otherwise expressly limits Tenant's rights or remedies, including the limitation on Landlord's liability contained in Section 29 hereof; (c) Tenant shall not have the right to terminate this Lease as a result of any such default; and (d) in no event shall Landlord be liable for consequential damages or loss of business profits.

24. Subordination. At the request of Landlord or any mortgagee of a mortgage or a beneficiary of a deed of trust now or hereafter encumbering all or any portion of the Premises, or any lessor of any ground or master lease now or hereafter affecting all or any portion of the Premises, this Lease shall be subject and subordinate at all times to such ground or master leases (and such extensions and modifications thereof), and to the lien of such mortgages and deeds of trust (as well as to any advances made thereunder and to all renewals, replacements, modifications and extensions thereof); provided, however, no subordination of this Lease to a future ground or master lease or mortgage or deed of trust shall result in Tenant being disturbed in its possession of the Premises or in the enjoyment of its rights under this

Lease so long as Tenant is not in default with respect to its obligations hereunder, and any subordination agreement which Landlord, any mortgagee, beneficiary or lessor requests Tenant to execute to effect or confirm such subordination shall so provide. Notwithstanding the foregoing, Landlord shall have the right to subordinate or cause to be subordinated any or all ground or master leases or the lien of any or all mortgages or deeds of trust to this Lease. In the event that any ground or master lease terminates for any reason or any mortgage or deed of trust is foreclosed or a conveyance in lieu of foreclosure is made for any reason, at the election of Landlord's successor in interest, Tenant shall attorn to and become the tenant of such successor. Tenant hereby waives its rights under any current or future Law which gives or purports to give Tenant any right to terminate or otherwise adversely affect this Lease and the obligations of Tenant hereunder in the event of any such foreclosure proceeding or sale. Subject to the foregoing, Tenant covenants and agrees to execute and deliver to Landlord within fifteen (15) days after receipt of written demand by Landlord and in the form reasonably required by Landlord, any additional documents evidencing the priority or subordination of this Lease with respect to any such ground or master lease or the lien of any such mortgage or deed of trust or Tenant's agreement to attorn. Should Tenant fail to sign and return any such documents within said ten (10) day period, Tenant shall be in default hereunder without the benefit of any additional notice or cure periods specified in Section 22.1 above.

25. Estoppel Certificate.

25.1 Tenant's Obligations. Within fifteen (15) business days following Landlord's written request, Tenant shall execute and deliver to Landlord an estoppel certificate, in a form reasonably requested by Landlord, certifying: (a) the Commencement Date of this Lease; (b) that this Lease is unmodified and in full force and effect (or, if modified, that this Lease is in full force and effect as modified, and stating the date and nature of such modifications); (c) the date to which the Rent and other sums payable under this Lease have been paid; (d) that there are not, to the best of Tenant's knowledge, any defaults under this Lease by either Landlord or Tenant, except as specified in such certificate; and (e) such other matters as are reasonably requested by Landlord. Any such estoppel certificate delivered pursuant to this Section 25.1 may be relied upon by any mortgagee, beneficiary, purchaser or prospective purchaser of any portion of the Premises, as well as their assignees.

25.2 Tenant's Failure to Deliver. Tenant's failure to deliver such estoppel certificate within such time shall constitute a default hereunder without the applicability of notice and cure periods specified in Section 22.1 above and shall be conclusive upon Tenant that: (a) this Lease is in full force and effect without modification, except as may be represented by Landlord; (b) there are no uncured defaults in Landlord's or Tenant's performance (other than Tenant's failure to deliver the estoppel certificate); and (c) not more than one (1) month's rental has been paid in advance. Tenant shall indemnify, protect, defend (with counsel reasonably approved by Landlord in writing) and hold Landlord harmless from and against any and all claims, judgments, suits, causes of action, damages, losses, liabilities and expenses (including attorneys' fees and court costs) attributable to any failure by Tenant to timely deliver any such estoppel certificate to Landlord pursuant to Section 25.1 above.

26. Modification and Cure Rights of Landlord's Mortgagees and Lessors.

26.1 Modifications. If, in connection with Landlord's obtaining or entering into any financing or ground lease for any portion of the Premises, the lender or ground lessor shall request modifications to this Lease, Tenant shall, within fifteen (15) days after request therefor, execute an amendment to this Lease including such modifications, provided such modifications are reasonable, do not increase the obligations of Tenant hereunder, or adversely affect the leasehold estate created hereby or Tenant's rights hereunder.

26.2 Cure Rights. In the event of any default on the part of Landlord, Tenant will give notice by registered or certified mail to any beneficiary of a deed of trust or mortgagee covering the Premises or ground lessor of Landlord whose address shall have been furnished to Tenant, in writing prior to such default, and shall offer such beneficiary, mortgagee or ground lessor a reasonable opportunity to cure the default (including with respect to any such beneficiary or mortgagee, time to obtain possession of the Premises, subject to this Lease and Tenant's rights hereunder, by power of sale or judicial foreclosure, if such should prove necessary to effect a cure).

27. Quiet Enjoyment. Landlord covenants and agrees with Tenant that, upon Tenant performing all of the covenants and provisions on Tenant's part to be observed and performed under this Lease (including payment of rent hereunder), Tenant shall and may peaceably and quietly have, hold and enjoy the Premises, in accordance with and subject to the terms and conditions of this Lease, as against all persons claiming by, through or under Landlord.

28. Transfer of Landlord's Interest. The term "Landlord" as used in this Lease, so far as covenants or obligations on the part of the Landlord are concerned, shall be limited to mean and include only the owner or owners, at the time in question, of the fee title to, or a lessee's interest in a ground lease of, the Premises. In the event of any transfer or conveyance of any such title or interest (other than a transfer for security purposes only), the transferor shall be automatically relieved of all covenants and obligations on the part of Landlord contained in this Lease. Landlord and Landlord's transferees and assignees shall have the absolute right to transfer all or any portion of their respective title and interest in the Premises and/or this Lease without the consent of Tenant, and such transfer or subsequent transfer shall not be deemed a violation on Landlord's part of any of the terms and conditions of this Lease.

29. Limitation on Landlord's Liability. Notwithstanding anything contained in this Lease to the contrary, the obligations of Landlord under this Lease (including any actual or alleged breach or default by Landlord) do not constitute personal obligations of the individual members, partners, directors, officers or shareholders of Landlord or Landlord's partners, and Tenant shall not seek recourse against the individual partners, directors, officers or shareholders of Landlord or Landlord's members, partners, or any of their personal assets for satisfaction of any liability with respect to this Lease. In addition, in consideration of the benefits accruing hereunder to Tenant and notwithstanding anything contained in this Lease to the contrary, Tenant hereby covenants and agrees for itself and all of its successors and assigns that the liability of Landlord for its obligations under this Lease (including any liability as a result of any actual or alleged failure, breach or default hereunder by Landlord), shall be limited solely to, and Tenant's and its successors' and assigns' sole and exclusive remedy shall be against, Landlord's interest in the Premises, and no other assets of Landlord.

30. Miscellaneous.

30.1 Governing Law. This Lease shall be governed by, and construed pursuant to, the Laws of the state in which the Premises are located.

30.2 Successors and Assigns. Subject to the provisions of Section 28 above, and except as otherwise provided in this Lease, all of the covenants, conditions and provisions of this Lease shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective heirs, personal representatives and permitted successors and assigns; provided, however, no rights shall inure to the benefit of any Transferee of Tenant unless the Transfer to such Transferee is made in compliance with the provisions of Section 14.

30.3 No Merger. The voluntary or other surrender of this Lease by Tenant or a mutual termination thereof shall not work as a merger and shall, at the option of Landlord, either (a) terminate all or any existing subleases, or (b) operate as an assignment to Landlord of Tenant's interest under any or all such subleases.

30.4 Professional Fees. If either Landlord or Tenant should bring suit or arbitration against the other with respect to this Lease, including for unlawful detainer or any other relief against the other hereunder, then all costs and expenses incurred by the prevailing party therein (including, without limitation, its actual appraisers', accountants', attorneys' and other professional fees, expenses and court costs), shall be paid by the other party.

30.5 Waiver. The waiver by either party of any breach by the other party of any term, covenant or condition herein contained shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant and condition herein contained, nor shall any custom or practice which may become established between the parties in the administration of the terms hereof be deemed a waiver of, or in any way affect, the right of any party to insist upon the performance by the other in strict accordance with said terms. No waiver of any default of either party hereunder shall be implied from any acceptance by Landlord or delivery by Tenant (as the case may be) of any Rent or other payments due hereunder or any omission by the non-defaulting party to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect defaults other than as specified in said waiver. The subsequent acceptance of Rent hereunder by Landlord shall not be deemed to be a waiver of any preceding breach by Tenant of any term, covenant or condition of this Lease other than the failure of Tenant to pay the particular Rent so accepted, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such Rent.

30.6 Terms and Headings; Interpretation. The words "Landlord" and "Tenant" as used herein shall include the plural as well as the singular. Words used in any gender include other genders. The Section headings of this Lease are not a part of this Lease and shall have no effect upon the construction or interpretation of any part hereof. Any deletion of language from this Lease prior to its execution by Landlord and Tenant shall not be construed to raise any presumption, canon of construction or implication, including, without limitation, any implication that the parties intended thereby to state the converse of the deleted language. The parties hereto acknowledge and agree that each has participated in the negotiation and drafting of this Lease; therefore, in the event of an ambiguity in, or dispute regarding the interpretation of, this Lease, the interpretation of this Lease shall not be resolved by any rule of interpretation providing for interpretation against the party who caused the uncertainty to exist or against the draftsman.

30.7 Time. Time is of the essence with respect to performance of every provision of this Lease in which time or performance is a factor. All references in this Lease to "days" shall mean calendar days unless specifically modified herein to be "business" days.

30.8 Prior Agreements; Amendments. This Lease, including the Summary and all Exhibits and Riders attached hereto contains all of the covenants, provisions, agreements, conditions and understandings between Landlord and Tenant concerning the Premises and any other matter covered or mentioned in this Lease, and no prior agreement or understanding, oral or written, express or implied, pertaining to the Premises or any such other matter shall be effective for any purpose. No provision of this Lease may be amended or added to except by an agreement in writing signed by the parties hereto or their respective successors in interest. The parties acknowledge that all prior agreements,

representations and negotiations are deemed superseded by the execution of this Lease to the extent they are not expressly incorporated herein.

30.9 Separability. The invalidity or unenforceability of any provision of this Lease (except for Tenant's obligation to pay Rent) shall in no way affect, impair or invalidate any other provision hereof, and such other provisions shall remain valid and in full force and effect to the fullest extent permitted by Law.

30.10 Recording. Neither Landlord nor Tenant shall record this Lease. In addition, neither party shall record a short form memorandum of this Lease without the prior written consent (and signature on the memorandum) of the other. If such short form memorandum is recorded in accordance with the foregoing, (i) the party requesting the recording shall pay for all costs of or related to such recording, including, but not limited to, recording charges and documentary transfer taxes and (ii) Tenant will, promptly following request therefor by Landlord following the expiration or earlier termination of this Lease, execute, acknowledge and deliver to Landlord such instrument as Landlord reasonably require in order to remove the memorandum of record (which obligation shall survive such expiration or earlier termination).

30.11 Exhibits and Riders. All Exhibits and Riders attached to this Lease are hereby incorporated in this Lease for all purposes as though set forth at length herein.

30.12 Auctions. Tenant shall have no right to conduct any auction in, on or about the Premises.

30.13 Accord and Satisfaction. No payment by Tenant or receipt by Landlord of a lesser amount than the Rent payment herein stipulated shall be deemed to be other than on account of the Rent, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as Rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such Rent or pursue any other remedy provided in this Lease. Tenant agrees that each of the foregoing covenants and agreements shall be applicable to any covenant or agreement either expressly contained in this Lease or imposed by any Law.

30.14 Financial Statements. Upon ten (10) days prior written request from Landlord (which Landlord may make at any time during the Term but no more often than once in any calendar year unless in connection with a proposed sale, financing or refinancing of the Premises), Tenant shall deliver to Landlord a current financial statement of Tenant and any guarantor of this Lease. Such statements shall be prepared in accordance with generally acceptable accounting principles and certified as true in all material respects by Tenant (if Tenant is an individual) or by an authorized officer of Tenant (if Tenant is a corporation or limited liability company) or a general partner of Tenant (if Tenant is a partnership). Notwithstanding the foregoing, this Section shall not apply with respect to the original Tenant (*i.e.*, the City of San Diego) since the original Tenant's financial statements are available online at <https://sandiego.gov/financerpts>. **[DRAFTING NOTE TO TENANT: THE FINANCIAL STATEMENT PROVISION WAS REINSERTED IN CASE THE LEASE IS ASSIGNED PURSUANT TO SECTION 14 BUT IT DOES NOT APPLY TO THE CITY OF SAN DIEGO]**

30.15 No Partnership. Landlord does not, in any way or for any purpose, become a partner of Tenant in the conduct of its business, or otherwise, or joint venturer or a member of a joint enterprise with Tenant by reason of this Lease.

30.16 Force Majeure. In the event that either party hereto shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of strikes, lock-outs, labor troubles, inability to procure materials, failure of power, governmental moratorium or other governmental action or inaction (including failure, refusal or delay in issuing permits, approvals and/or authorizations), injunction or court order, riots, insurrection, war, fire, earthquake, flood or other natural disaster or other reason of a like nature not the fault of the party delaying in performing work or doing acts required under the terms of this Lease (but excluding delays due to financial inability) (herein collectively, "**Force Majeure Delays**"), then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. The provisions of this Section 30.16 shall not apply to nor operate to excuse Tenant from the payment of Rent strictly in accordance with the terms of this Lease.

30.17 Counterparts. This Lease may be executed in one or more counterparts, each of which shall constitute an original and all of which shall be one and the same agreement.

30.18 Non-Discrimination. Tenant acknowledges and agrees that there shall be no discrimination against, or segregation of, any person, group of persons, or entity on the basis of race, color, creed, religion, age, sex, marital status, national origin, or ancestry in the leasing, subleasing, transferring, assignment, occupancy, tenure, use, or enjoyment of the Premises, or any portion thereof.

30.19 Waiver of Jury Trial. To the greatest extent permitted by Laws, each party hereby waives any right to a trial by jury in any action seeking specific performance of any provision of this Lease, for damages for any breach under this Lease, or otherwise for enforcement of any right or remedy hereunder.

30.20 Certified Access Specialist. Pursuant to California Civil Code § 1938, Landlord hereby states that the Premises have not undergone inspection by a Certified Access Specialist (CASp) (defined in

California Civil Code § 55.52(a)(3)). Pursuant to Section 1938 of the California Civil Code, Landlord hereby provides the following notification to Tenant: "A Certified Access Specialist (CASP) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction related accessibility standards within the premises." If Tenant requests to perform a CASp inspection of the Premises, Tenant shall, at its cost, retain a CASp approved by Landlord (provided that Landlord may designate the CASp, at Landlord's option) to perform the inspection of the Premises at a time agreed upon by the parties. Tenant shall provide Landlord with a copy of any report or certificate issued by the CASp (the "**CASP Report**") and Tenant shall, at its cost, promptly complete any modifications necessary to correct violations of construction related accessibility standards identified in the CASp Report notwithstanding anything to the contrary in this Lease. Tenant agrees to keep the information in the CASp Report confidential except as necessary for the Tenant to complete such modifications.

31. Lease Execution.

31.1 Tenant's Authority. If Tenant executes this Lease as a limited liability company, partnership or corporation, then Tenant and the persons and/or entities executing this Lease on behalf of Tenant represent and warrant that: (a) Tenant is a duly organized and validly existing limited liability company, partnership or corporation, as the case may be, and is qualified to do business in the state in which the Premises are located; (b) such persons and/or entities executing this Lease are duly authorized to execute and deliver this Lease on Tenant's behalf in accordance with the Tenant's operating agreement (if Tenant is a limited liability company), Tenant's partnership agreement (if Tenant is a partnership), or a duly adopted resolution of Tenant's board of directors and Tenant's by-laws (if Tenant is a corporation); and (c) this Lease is binding upon Tenant in accordance with its terms. Tenant shall, promptly following Landlord's request therefor, deliver evidence, reasonably acceptable to Landlord, of such qualification, organization, existence and authorization.

31.2 Joint and Several Liability. If more than one person or entity executes this Lease as Tenant: (a) each of them is and shall be jointly and severally liable for the covenants, conditions, provisions and agreements of this Lease to be kept, observed and performed by Tenant; and (b) the act or signature of, or notice from or to, any one or more of them with respect to this Lease shall be binding upon each and all of the persons and entities executing this Lease as Tenant with the same force and effect as if each and all of them had so acted or signed, or given or received such notice.

31.3 No Option. The submission of this Lease for examination or execution by Tenant does not constitute a reservation of or option for the Premises and this Lease shall not become effective as a Lease until it has been executed by Landlord and delivered to Tenant.

32. Landlord Termination Right. Landlord shall have the on-going right ("**Termination Option**") to terminate this Lease effective on any date after February 1, 2021 (the "**Termination Date**"). In order to exercise the Termination Option, Landlord must give Tenant written notice ("**Termination Notice**") of its exercise of the Termination Option, which Termination Notice must be delivered to Tenant at least twelve (12) months prior to the Termination Date designated by Landlord in the Termination Notice. In such event this Lease shall terminate as of the Termination Date and the parties shall have no further obligations hereunder, except for any obligations that expressly survive the expiration or termination of this Lease.

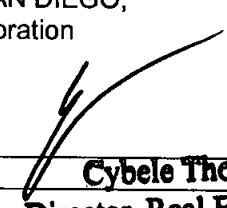
33. Lease Contingency. Tenant's continuing obligations under this Lease are hereby made contingent upon the Tenant obtaining appropriated funds from which payment for contract purposes can be made. Tenant will use good faith efforts to obtain funding for this Lease; however, nothing in this Lease may be considered as implying that City Council will appropriate funds sufficient to extend this Lease in subsequent fiscal years. Tenant shall promptly notify Landlord in writing in the event appropriated funds are not available. In such event this Lease shall terminate as of the date that no further appropriated funds are available and the parties shall have no further obligations hereunder, except for any obligations that expressly survive the expiration or termination of this Lease.

[Signature page follows]

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

"TENANT"

THE CITY OF SAN DIEGO,
a municipal corporation

By: 

Name: Cybele Thompson
Title: Director, Real Estate Assets

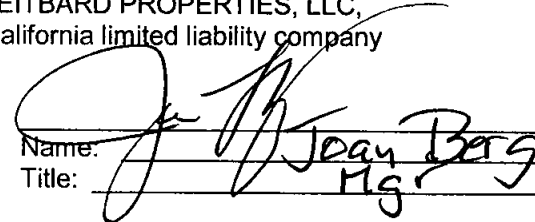
APPROVED AS TO FORM:

MARA W. ELLIOTT, City Attorney

By: 
Name: Marco A. Verdugo
Title: Deputy City Attorney

"LANDLORD"

BREITBARD PROPERTIES, LLC,
a California limited liability company

By: 

Name: Jean Berg
Title: MG

ENVIRONMENTAL ANALYSIS SECTION ENVIRONMENTAL CLEARANCE:

This activity is exempt from CEQA pursuant to State CEQA Guidelines Section 15060(c)(2) and, nevertheless, is categorically exempt from CEQA pursuant to State CEQA Guidelines Section 15303 (New Construction or Conversion of Small Structures), Section 15304 (Minor Alterations to Land), and Section 15332 (In-Fill Development Projects).

Date: 2/8/19

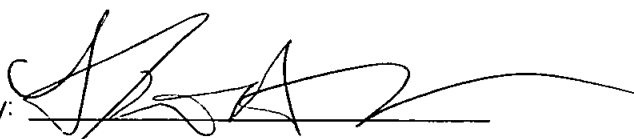
By: 
Name: Alyssa Muto
Title: Deputy Director, Planning Dept.

EXHIBIT "A"

SITE PLAN

[See Attached]

